

**MINUTES
TOWN OF PITTSBORO
PLANNING BOARD SPECIAL MEETING
ON THE POWELL SPRING REVISED SITE PLAN
WEDNESDAY, MAY 12, 2010, 7:00 P.M.**

ATTENDANCE: Chair Kenneth Hoyle, Vice Chair Alfreda Alston, John Clifford, Jimmy Collins, Harold Howard, and Karl Shaffer.

STAFF: Town Attorney Paul Messick.

GUESTS: Patrick Bradshaw, attorney representing the applicant for Powell Spring.

CALL TO ORDER

Mr. Hoyle called the meeting to order at 7:00 p.m. He stated for the record that this was not a normal public meeting in that the discussion would take place among the Planning Board members, staff and the applicant. Mr. Hoyle noted at the end of the discussion they would craft a recommendation which may or may not be acceptable to all, but it was important to remember that the Planning Board was making a recommendation to the Town Board and the final decision would rest with them.

Mr. Hoyle stated that at the beginning of this process several months ago, it was their job to review and form recommendations on a site plan within certain boundaries. He said if the site plan met the criteria, then it would continue through the process. Mr. Hoyle said they could also recommend certain conditions, and that was what their intent and purpose was tonight. He said before they began review of the Powell Spring application, he wanted to ask that the Planning Board members review the first 25 pages of the Town's Comprehensive Plan before the Planning Board's meeting in June. Mr. Hoyle also asked that the Board think about what date their July meeting should be rescheduled to, as the July 4th holiday fell just prior to their regular meeting date.

Town Attorney Paul Messick introduced Roger Waldon with Clarion Associates, who had been retained by the Town to provide interim planning services since Town Planner David Monroe's retirement. He said that Mr. Waldon was very experienced, and because today was his first day he would not participate in tonight's proceedings but would deal with issues coming before the Planning Board after tonight.

POWELL SPRING SITE PLAN REVIEW

Mr. Messick stated that the Powell Spring site plan, because it was in a MUPD, was required to be considered by the Planning Board before it could be considered by the Town Board. He said this particular site plan was filed in March and revised in April in order to provide 2 parking spaces per apartment unit, noting it was a 48-unit apartment complex. Mr. Messick said it had

been reviewed by the Planning Board previously but this revised plan provided 96 parking spaces.

Mr. Messick said from his review, the site plan appeared to be consistent with the provisions of the Powell Place conceptual Master Plan and provisions of the Zoning Ordinance, and appeared to satisfy concerns expressed in the past regarding public safety and welfare with respect to emergency services and solid waste. He said with that being said, it would be his recommendation that it be recommended for approval.

Mr. Hoyle asked Mr. Messick to point out the changes that had been made to the site plan, noting he understood the parking had been increased and that the building had been moved back closer to the street as it had originally been presented. Mr. Messick indicated that Patrick Bradshaw would provide that information.

Patrick Bradshaw, speaking for the applicant, stated that the parking had increased from 48 to 96 spaces, and the building had been moved forward 10 feet closer to the right-of-way of Millbrook Drive. He said the setbacks in Powell Place under the Master Plan were 10 feet, so it was still 7 feet further back than required by the setback. Mr. Bradshaw said they had moved it forward 10 feet because the retaining wall which was within the 75-foot water hazard setback and some had expressed concern that that retaining wall violated that setback. He said they had wanted to present the revised site plan that was four square within the ordinance as much as possible so there was no question that the revised site plan complied with all parts of the ordinance.

Mr. Bradshaw said that the Planning Board under Section 6.1 of the Subdivision regulations had the authority to allow development within that 75-foot water hazard setback, so if the Planning Board would prefer that the building be set back 10 feet further, then if they would also allow for the retaining wall to be located in that 75-foot water hazard setback up to a maximum encroachment of 20 feet his client would not oppose that.

Mr. Bradshaw said those were the only changes to the revised plans, with the exception of some minor changes in the notes that incorporated suggestions made either by this Board or by the former Planner.

Mr. Hoyle said he believed the plan included one or two additional fire hydrants. Mr. Bradshaw responded one additional fire hydrant had been included in the plan. He said one had originally been shown on the north side, and one had now been added in the Millbrook Drive right-of-way.

Ms. Alston stated that from her review of the materials it appeared that all was in order. She said with the changes to the revised plans, she would be in favor of approval.

Mr. Shaffer said he had received Friday for the first time what he was told was the approval Planning document for the MUPD. He read from the introductory paragraph, which stated that in no case were standards proposed that compromised public safety, pedestrian orientation, or environmental health such as light, air, and noise. Mr. Shaffer said from previous discussion it was impossible for him to say, and likely impossible for the Board to say, what would constitute

a noise problem with respect to the fact that there were 15 plus HVAC units on the home side of the structure.

Mr. Shaffer said there were two maps that defined the segregation of how the MUPD was to be laid out. He said the first map referred to the area in question where the facility was designed as townhomes, and there were other areas that included a school, hotel, multi-family, village center, and others, but specifically the area in question was labeled as townhomes, but was labeled as residential on the second map. Mr. Shaffer said the definitions of what those things were to be in that MUPD approval stated that street-oriented townhomes were planned adjacent to the neighboring shops and offices, and that the townhomes would surround the school site and extend north along residential streets. He said the key term in that language that struck him was street-oriented townhomes, noting that he had perceived the townhome structure to have its back to the street and its frontage facing to the north or north and east.

Mr. Shaffer said then there was a definition for single-family residential, which said that the residential was a diverse mix of roadhouses, patio homes, and conventional homes. He said it said nothing about multi-family residential. In fact, Mr. Shaffer said, where the definitions talked about multi-family residential was in the category for hotels and multi-family, which was described as high density, multi-family residential and planned overlooking the lake. He said that was consistent with the area defined on the map as multi-family.

Mr. Shaffer said the question was what you made of all that. He said it appeared to him that the facility was not in the location it was originally designed to be as per the MUPD he was given on Friday to review.

Mr. Bradshaw said he believed the confusion arose from the fact that when he was looking at a drawing that showed townhomes in that area he was looking at the illustrative plans which was not the Master Plan that controlled the land uses in Powell Place. He said the illustrative plan was drawn to demonstrate how the property might be developed, but the Master Plan was what controlled the uses on the property. Mr. Bradshaw said that Powell Place was approved for 910 residential units on 148 acres, and the property was divided on the Master Plan into two main areas of which one was residential and one was mixed use. He said the residential area, according to the Master Plan, was explicitly allowed to be developed up to a density of 20 units per acre. Mr. Bradshaw said that meant that anywhere within the residential portion of the MUPD they were allowed to build up to 20 units per acre of residential units. He said Powell Spring was clearly a residential use and was only 12.5 units per acre and well below the maximum density allowed on the site. Mr. Bradshaw said that was why he disagreed with Mr. Shaffer's interpretation of the requirement of the Master Plan, in that it did not require townhomes in that location but did require residential at no more than 20 units per acre.

Mr. Shaffer said he had been asking the applicant for 4 months for the information that would allow him to review the plans thoroughly, and he had reviewed only the document he had been given. He asked if staff could respond, noting he had heard the explanations and it appeared to him to be circumstantial. Mr. Shaffer said he understood Mr. Bradshaw's interpretation, but he had been told otherwise. Mr. Bradshaw said he did not know who might have told him otherwise and asked what document he had referred to. Mr. Shaffer responded he was referring

to the MUPD approval he had received on Friday. He said after Mr. Bradshaw's statements, the terminology on the maps was an illustrative plan. Mr. Shaffer said he could only make his decision based on the information he had been provided.

Mr. Messick said the Master Plan, as Mr. Bradshaw had indicated, was what the Planning Board was to go by, and the Master Plan said that location was residential. He said what was referred to in the plan was a density of 91 acres of 910 units and 18 acres of open space. Mr. Messick said in the text of the approval the density was specified and Mr. Bradshaw was correct that it was a maximum of 20 units per acre. He reiterated that the illustrative plan was not what was to be used to form the recommendation from the Planning Board.

Mr. Bradshaw said in recent weeks he had gone back and listened to the audio recording of the March 10, 2003 meeting of the Board where a clarification question was raised about the Powell Place Master Plan. He said as Mr. Messick had indicated the overall density of the residential area calculated out to something like 10 units per acre, but the developer had intended all along to have apartment units in the residential portion. So, Mr. Bradshaw said, they had come back to the Board of Commissioners to clarify that in that precise area that they were discussing it could be developed up to 20 units per acre because it was anticipated that there would be apartments there.

Mr. Bradshaw said that anyone could ask the Town Clerk for a copy of the same audio recording he had obtained, noting that at that time Commissioner Brooks had made a motion to approve that clarification. He said his point was that the Board of Commissioners had been very clear that apartments were allowed in the area in the MUPD, noting no other kind of housing had 20 units per acre. He reiterated that their plans were for 12.5 units per acre.

Mr. Shaffer said reading from Article 13 which established the powers and duties of the Planning Board, it said that it was the function and the duty of the Planning Board to make comprehensive studies of the area within its jurisdiction and to prepare and recommend plans, policies and ordinances that would promote orderly development and the public health, safety, and general welfare of the community. He said he believed that there could be a lot of interpretations of that language, but he would argue that when he drove by that neighborhood and saw multiple homes for sale and others had indicated that should Powell Spring be approved they would be putting their homes up for sale, then there was some problem with the general welfare of that neighborhood. Mr. Shaffer said there was something significant about this project where that might happen and the flavor of the entire neighborhood changed, noting that practically all owners of property in the neighborhood had signed petitions protesting the Powell Spring project.

Mr. Shaffer said it was his opinion, as he had said before, that there were more appropriate sites within the scope of Powell Place that would be more palatable. He said he understood that the proposal met the letter of the ordinance, but he wanted his opinion made known.

Mr. Howard said this was a mixed use development as set forth by the approved Master Plan, and he saw no way the Planning Board could recommend anything other than approval. He said the revised plan met the requirements of the ordinance, so he saw no alternative.

Mr. Howard referred to a memo from Hydrostructures, and asked if the Board needed to do anything in regards to that. Mr. Messick responded no, that the memo was only Hydrostructures comments on the plans, adding that the applicant was obligated to follow the Town's regulations. He suggested that if the Town chose not to accept the piping on the interior of the project, then the applicant could do whatever it wished. Mr. Messick said he was not sure whether the Town had made that decision yet, but did not believe it made any difference to the plan itself. Mr. Howard said with that being said, he saw no reason to disapprove the plan.

Mr. Collins agreed with Mr. Howard, stating many hours had been spent on these plans by all parties to get to this point and since it appeared that the revised plans met all requirements then it should be recommended for approval to the Town Board.

Mr. Hoyle thanked the Board for its comments, noting he believed what they were expressing by their comments was that although the plans satisfied the regulations they wanted the applicant to know what their concerns were and wanted those concerns noted for the record.

Mr. Clifford said when he had looked through the packet of information, there was a letter from Fire Chief Griffin who had expressed a concern that he had expressed previously as well, which was the single entrance and exit. He said he understood there had been a lot of discussion over the last four months and a lot of energy spent to get to this point, but as he looked at the plan the facility had gone from independent living to fully handicapped. Mr. Clifford said in the event of a fire on Millbrook Road and the enormous amount of equipment that might be needed, could the road handle it if a full evacuation was necessary. He said he also wondered on the Millbrook side how an aerial or hook and ladder truck would have access to that side of the building, noting he just did not see how that would be possible.

Mr. Messick said the Fire Chief's letter clearly indicated that the plan met the Code requirements for fire safety.

Mr. Clifford, reading from the last paragraph of the Fire Chief's letter, said that as the structure itself was of minimal impact, there was concern with the structure of that proposed size and occupancy type being provided with only one entrance and exit, which could be extremely congested during an actual emergency situation. He said the Chief went on to say that it appeared that the structure's close proximity to the access road, which he assumed was Millbrook, and proposed vehicle parking arrangement may restrict or prohibit the placement of aerial apparatus. Mr. Clifford read that that coupled with the topography in the rear of the structure may inhibit rescue activities.

Mr. Messick reiterated that the letter was more explicit and dealt with that.

Mr. Clifford said he would be happy to read that letter for the record, noting he believed it was fairly generic. Mr. Bradshaw replied it as a fairly generic problem. Mr. Clifford said he did not believe life was generic, and that was his point. Mr. Messick said it was not something the Town had any jurisdiction over.

Mr. Hoyle said he wanted to go back and review the Powell Place MUPD. He said it was conceived, processed, came before the Planning Board many years ago, and because it was the first MUPD they had ever reviewed they were grappling with the proper way to do it. Mr. Hoyle said the MUPD approval had been recommended for approval to the Town Board who had revised it with their limited knowledge of MUPDs and what they had now was what had been approved during that process, and that was what the owners of Powell Place would go by. So, he said, that was where they were. Mr. Hoyle said he knew there were some grave deficiencies and they may or may not agree with it, but it was something that the Town Board would have to deal with when it came back to them for approval.

Mr. Hoyle said there had been a lot of effort and thought put towards this MUPD, and reiterated that the Planning Board had to look at it in terms of the criteria required by the Town regulations. He said he personally would recommend, and hoped the other Board members would reflect on it, that the applicant place the building 27 feet from the current plan as had originally been proposed. Mr. Hoyle said he realized that would place the retaining wall within the 75-foot buffer, but would ask that the applicant agree that they would not come any closer than 25 feet from the stream. Mr. Bradshaw said they could actually go back to 27½ feet, which was what was originally proposed. Mr. Hoyle said doing that would help with the noise as well as the aesthetic effect. Mr. Bradshaw asked would that condition allow the retaining wall to be 20 feet into the water hazard setback. Mr. Hoyle said it would have to be. Mr. Bradshaw said that would also result in there being more separation from the corner of the building and the retaining wall, which would assist with emergency access to the side of the building.

Mr. Hoyle said he knew that a certain amount of trees would need to be removed, but asked that they retain as many trees as possible, noting they were living in a “green” world today. Mr. Bradshaw said there would be a 25-foot undisturbed buffer as well as many other open areas as noted in the plans. He explained that the Town’s ordinance noted that within that 75 feet you could not place buildings, septic systems, or parallel roads which were roads that ran parallel to what you were buffering. The exception, he said, was that the Planning Board had the authority to allow development in that 75-foot buffer as close as 25 feet to the feature that was buffered if the project was on public water and sewer and if there was stormwater management on site. Mr. Bradshaw said it had always been his belief that the retaining wall was not prohibited in the setback, although some did not agree, and that was why they had presented it that way.

Mr. Shaffer said it may be almost irrelevant to this discussion, but he would like for that street to be designated as one side parking only. He said he had talked with Chief Griffin and the fire trucks were 9 feet, 8 inches wide, and if you measured two common sized vehicles the street was just not wide enough to allow parking on both sides and the safe passage of fire trucks. Mr. Shaffer said that also spoke to his concern expressed at an earlier meeting about children and bicycles with cars parked on both sides of the road. He said they could not change the street, but they could restrict parking to only one side to help alleviate some of the concerns.

Mr. Shaffer asked if restricting parking to only one side of Millbrook was a decision the Town Board should make. Mr. Messick replied yes, noting that could be passed on by the Planning Board as a recommendation for approval.

Mr. Shaffer moved to recommend to the Town Board approval of the revised site plan as presented this evening, with the conditions that parking be restricted to one side of Millbrook Drive only, that the setback be moved back to its original location which was 27½ feet and allowing the retaining wall to be located in that 75-foot setback water hazard, and that they would not come any closer than 25 feet from the stream. Ms. Alston seconded. The vote was unanimous.

ADJOURN

Ms. Alston moved to adjourn the meeting at 8:00 p.m. Mr. Shaffer. The motion was adopted unanimously.

Kenneth Hoyle, Chairperson