Minutes of the Planning Board Public Meeting of Wednesday, August 20, 2014

Present are Mr. Brady, Mr. Awofolaju, Mr. Hirsch, Mr. Mirabal, Deputy Mayor Montone, Mr. Shenton, Mrs. Williams

Also present are Michael Leckstein, Esq., Leckstein & Leckstein, Tim Gillen and Anthony Abbonizio, CME Associates, and Anthony Rodriguez, T&M Associates.

Absent are Mayor Tagliarini, Mr. Vena, Mrs. Sims, and Mr. Vinci

New Business **Ordinance No. 10-2014/Amended Redevelopment Plan**
Ordinance Adopting the Amended Redevelopment Plan Relating to the Property at 1337, 1341-1343, and 1355 Route 34, Commonly Known As Block 114, Lots 6, 7.01, 13 and 13 Q-Farm in the Township of Aberdeen

Mr Rodriguez tells the Board that the only thing changing is the building height. By definition of Ordinance, building height is defined as the average grade of all sides of the building up to half way between the ridge and eaves. This site is extremely typographic in nature so we created an unnecessary deviation from building height. So he revised the building height to measure along street frontages, so in areas where buildings slope down from the wall of a building, it will not be considered building height. These will be the downhill units. It is a very simple amendment.

If you had a building that abuts the street and the backyard slopes down, the back of the building will not be considered for building height; they created an artificial building height. This will correct that.

Mr. Leckstein says the Board has to report that this is in the purview of the Master Plan; it can be done by letter.

Mr. Hirsch moves that this Ordinance be sent to Council for adoption, seconded by Mr. Awofolaju.

Yes: Mr. Brady, Mr. Awofolaju, Mr. Hirsch, Mr. Mirabal, Deputy Mayor Montone, Mr. Shenton, Mrs. Williams

No: None Abstain: None

New Business, **Ordinance No. 9-2014/Ordinance Amending the Revised General Ordinance**
An Ordinance Amending the Revised General Ordinance of the Township of Aberdeen, Section 2, Administration and Section 25, Land Code Development

Mr. Leckstein, says looking at the second page, nonconforming structures, this is contrary to the law. Mr. Rodriguez says that is the change. Mr. Leckstein says b and c are not correct.

Mr. Leckstein, referring to 4c, No. 4©: A nonconforming structure ***shall not*** be reconstructed if destroyed without an appeal to the Zoning Board of Adjustment. This is how our Ordinance currently reads.

However, it is the suggested to change it to: A nonconforming structure ***may*** be reconstructed if destroyed without an appeal to the Zoning Board of Adjustment.

Mr. Leckstein says this is very dangerous; it is contrary to the law. He does not think b is a good idea either. Item 4a is the way the law in New Jersey is currently written; that should not change. These items should be deleted in its entirety; it is very dangerous.

Mr. Leckstein, regarding nonconforming structures, clarifies that the proposed change it may be reconstructed without an appeal to the Zoning Board of Adjustment, states this is contrary to the law. That is a very strong change. He doesn't even think (b) is a good idea. It is very dangerous thing. Mr. Rodriguez says the intent of the MLUL is to eliminate nonconforming structures. Mr. Leckstein says, right, but now it is saying it can be enlarged. Mr. Leckstein does not think that is what the town or Council wants to do. It is a very dangerous thing. What you are doing is the whole idea of zoning is that nonconforming structures should some day go away. To allow them to be structurally altered or increasing it or making it stronger or doing something to it without the Board reviewing it is contrary to the whole theory of nonconforming structures in the State of New Jersey and so dangerous to nonconforming structure meaning. Mr. Gillen, Mr. Abbonizio and Mr. Rodriguez agree with Mr. Leckstein. It is contrary to the purpose of the Master Plan and the MLUL.

Mr. Shenton asks why is this being done; Deputy Mayor Montone does not know. She asks if anyone knows where this came from. Mr. Gillen says he believes it came from the Building/Zoning Department. Deputy Mayor Montone asks Maxine if she knows where it came from; she answers she does not know who asked for the change, perhaps John Quinn. She was given the Ordinances by the Clerk, Karen Ventura, to put on the next agenda of the Planning Board, after being introduced at a Council meeting.

Deputy Mayor Montone does not understand it.

Both Mr. Gillen and Mr. Rodriguez said they had no input about this Ordinance prior to it going to Council. They would have advised that it should not be done.

Mr. Shenton asks about auxiliary buildings.

Mr. Brady suggests it be sent back to the Council for review. Deputy Mayor Montone says send it back to the Council; she does not understand it.

Mr. Leckstein says the Planning Board has to report on it, so someone should make a motion that the Planning Board strongly disagrees with the adoption of the Ordinance , that the Board feels it is counter to the Master Plan, (professionals all say here absolutely), that it is counter to the Land Use Act (professionals all say absolutely, they agree with this statement), and in particular but not limited to Section 4b and c. As Mr. Leckstein lists each objection, all Board members are saying they agree, absolutely, yes, it will do nothing but cause problems.

Mr. Leckstein says looking at No. 6, the lot and dimensions shall not be less than 95%, what does that mean. Mr. Leckstein says it is or isn't. What they are trying to do is reduce the amount of applications and someone can approve things that are close. He has never seen that. There has to be a line somewhere in the sand. The Board would be inclined to grant variance approvals to someone with 95% frontage, but it must be noticed, the Board must have knowledge of what is being proposed, what is being built. Notice must also be given on these issues. He has never seen one turned down, but the Board has to have an idea of what is going on.

Mr. Shenton objects to the fee of $65 as excessive. Mr. Gillen says several years ago Maxine asked to increase the application fee of $20 with a recommendation to go to $50, and it was knocked down by the Council as excessive and an enormous burden to the homeowners in the Township, go to $25. Mr. Shenton says now they are asking $65. Too much, one heck of an increase. Other Board members are agreeing, too much.

Mr. Leckstein says with all due respect to Mr. Quinn, but he is a building inspector.

Deputy Mayor Montone says send it back to Council with all the comments.

Mr. Hirsch moves to rejects adoption of this Ordinance and sends the negative comments as to why back to the Council, seconded by Mr. Awofolaju.

Yes (to reject): Mr. Brady, Mr. Awofolaju, Mr. Hirsch, Mr. Mirabal, Deputy Mayor Montone, Mr. Shenton, Mrs. Williams

No: None Abstain: None

New Business, **Ordinance No. 12-2014/Ordinance Amending the Revised General Ordinance Amending the Revised General Ordinance of the Township of Aberdeen, Section 25, Land Development, Signs**

Mrs. Rescorl says these changes appear to be amending some words not necessary in the applications; apparently somehow some extra words got added to the Ordinance at the time of adoption. It was introduced to Council last night and Maxine was asked to put it on the agenda for tonight. The changes are not affecting the Ordinance per se.

Mr. Brady moves to recommend to Council the adoption of this Ordinance, that it is in the purview of the Master Plan, seconded by Mr. Hirsch.

Yes: Mr. Brady, Mr. Awofolaju, Mr. Hirsch, Mr. Mirabal, Deputy Mayor Montone, Mr. Shenton, Mrs. Williams

No: None Abstain: None

New Business, **Ordinance No. 11-2014/An Ordinance of the Township Council of the Township of Aberdeen Approving the Redevelopment Plan For the south River Metals Redevelopment Area Pursuant to the New Jersey Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-1, ET SEQ**

Mr. Rodriguez says the site was designated redevelopment site in 2004. There was an Ordinance amendment to provide a new zoning district for that area. A redevelopment plan for that area was never adopted, so the Council powers are limited as far as redevelopment goes. He prepared a plan that contemplates 100% affordable housing development that consists of up to a combination 150 senior and affordable housing units, where it was all previously senior housing. There is money grants available for this. It provides more units to the COAH plans, from 109 to 140. The environmental constraints will be remediated within the DEP requirements, and there is money available to assist in the costs for that. Deputy Mayor Montone says it is a unique

opportunity to take advantage of funds to clean up the site that is really damaged. It looks pretty good for the Township, and works for COAH. It is within the purpose and intent of the Master Plan.

Mr. Awofolaju moves to recommend to Council adoption of this Ordinance, seconded by Mrs. Williams.

Yes: Mr. Brady, Mr. Awofolaju, Mr. Hirsch, Mr. Mirabal, Deputy Mayor Montone, Mr. Shenton, Mrs. Williams

No: None Abstain

Note that Mr. Abbonizio leaves the meeting.

New Business **SD14-300 (rev)/Philogene and Philo, LLC, Applicant and Property Owner: Sam Philogene and Philo, LLC, Bayview Avenue, Block 175, Lots 11 and 12, Minor subdivision with Variances** to create two lots to construct two single family homes. Variances required for Lot Area 6,000 sq. ft. required for each lot, 4,820 sq. ft. provided for each lot; Lot Frontage 60 ft. required for each lot, 50 ft. provided for each lot; Lot Width 60 ft. required for each lot, 50 ft. provided for each lot, on property located in the R60 single family residential zone. **This application was previously before the Planning Board as a concept plan. This application was carried from the June 18 and July 16 public meetings for noticing.**

Fred Kalma, Esq., attorney for the applicant, asks that a copy of the tax map being presented tonight be marked as Exhibit A-1. Mr. Kalma says this is an application to subdivide lots; looking at the plan, to the east are Lots 9 and 10, owned by Mr. and Mrs. Philogene. The side yard between Lot 11 does not permit acquisition of any further land. The same with Lot No. 13, which is in close proximity, but no land can be acquired. Lot 11 is owned by Philo LLC, and Lot 12 is owned individually by Mr. and Mrs. Philogene. They want to readjust the lot lines to create two 50 x 100 ft. lots, but because of the angulation, the lots will be less than 5000 sq. ft. each, where 6,000 sq. ft. is required for each lot.

Mr. Leckstein asks if any new development, new construction is taking place.

Richard Karl Heuser is sworn in by Mr. Leckstein. Under questioning by Mr. Kalma, Mr. Heuser said he did an overlay from a planning standpoint. Mr. Leckstein asks Mr. Heuser is any new construction is taking place. Mr. Heuser says the property adjoins the railroad, the lots are located in an R 60 single family residential zone. They are seeking a subdivision to create two lots of 50 ft. frontage where 60 ft. is required. The two adjoining lots have dwellings, and the lot to the north is only 60 ft., so no property can be acquired. This part of the township was mapped out as Cliffwood Heights in 1910, and the streets are at an acute angle. A 50 ft x 100 ft. lot contains 4,820 not 5,000 sq. ft. A 60 x 100 ft. lot contains 5,785 sq. ft. because of the geometry. The houses will fit into the architectural of the neighborhood once submitted. This area of the town has a mixture of lot sizes, referring to his tax map. There are quite a few lots nonconforming in lot frontage and lot area. Within this area there are several nonconforming lots. There is a corner lot subdivided in 2003 at Bayview and Arlington with less than 6,000sq. ft. Block 180, Lot 13.01 has frontage of 50 ft. in a subdivision. Further along, Arlington a lot has frontage of 40 sq. ft. and 4,000 sq. ft.lot area. Out of his exhibit, four lots have 40 ft. frontages, one lot has 50 ft. frontage, and the two proposed 50 ft. lots just under 5,000, and there are seven

6,000 sq. ft. lots, three 80ft. lots, and one corner oft of 100 ft. and one lot greater than 100. There are numerous nonconforming lots obvious in the street.

Mr. Heuser believes the undersized lots are undeveloped. He believes developing the lots would be in keeping with the character of the neighborhood. He believes the variance request and Municipal Land Use Law would be advanced by deviation because by developing the lots it would be consistent with the character of the neighborhood. It would be almost identical to Lot 13 in Block 180. Variances can be granted without substantial detriment to the public good and Zone Plan in his opinion.

Mr. Hirsch looking at the plan, the lots being described such as 7, 8, 9, 10 that are nonconforming lots, except there is only one dwelling on a double lot. Lot 7 and 8 is the same story. Lot 6 is an larger lot.

Mr. Leckstein says Lots 7 and 8 and Lots 9 and 10 are merged into one lot, even though they have separate tax lot numbers. Mr. Heuser says on part of his exhibit, Lot 7 and 8 is an 80 ft. lot. Mr. Heuser says Lot 3 is 40 ft. and has a dwelling. It is 100 ft. in from County Road. He confirms Lot 13 has a 40 ft. lot with a house on it.

The only nonconforming lots are 13, 1.02 and 3, according to Mr. Leckstein. Mr. Heuser did not look at the rest of the neighborhood to see what is and is not conforming.

Mr. Mirabal says he passes by and cannot remember an open lot there.

Mr. Leckstein asks if the owner of the 40 ft. lot suggested a sale to the owner of the 60 ft. lot. Mr. Kalma asks why would he. Mr. Leckstein replies that it is available land to make the lots conforming, a test under the Land Use Act. If the person who owns the 40 ft. sells to the owner of the 60 ft. lot, you would wind up with a 100 ft. lot; Mr. Kalma argues the point, but Mr. Leckstein says the lot next door is 80 ft. Mr. Kalma says it would not be conforming with the neighborhood because there is only one 100 ft. lot.

Mr. Kalma has not presented architectural plans of exactly what the house would look like; the architectural submitted was for the look alike, but the applicant will agree to the recommendations of the CME review letter that architectural plans will be submitted prior to approval of the zoning. This will be a condition of approval.

A resident is sworn in but it is determined that she has questions on the next application, not this one.

Mr. Awofolaju moves to approve the application, seconded by Mr. Brady, subject to the buildings will not be identical, the concept plans submitted are not the true architecturals but they must have conforming structures that fit the building envelope as approved by the engineer, and must be architecturally different, not a mirror image.

Yes: Mr. Brady, Mr. Awofolaju, Mr. Mirabal, Deputy Mayor Montone, Mrs. Williams

No: Mr. Shenton Abstain: Mr. Hirsch

The vote is 5 to 2, the abstention counts as a “no.”

New Business, **SD 14-301 (rev)/Bhangley, Applicant and Property Owner: Rohini Bhangley, 593 Line Road, Block 14, Lot 6, Minor Subdivision with Variances** to create two lots, maintaining an existing home on proposed Lot 6.02 and build one single family home on proposed Lot 6.01. Variances required for proposed Lot 6.01, Lot Area 10,000 sq. ft. required, 9,518 sq. ft. proposed, Lot Frontage and Lot Width 100 ft. required for each, 70 ft. proposed for each; proposed Lot 6.02 Lot Area 10,000 sq. ft. required, 9,876 sq. ft. proposed, Lot Frontage and Lot Width 100 ft. required, 72.63 ft. proposed; Front Yard Setback 35 ft. required, 18.7 ft. existing and proposed on property located in the R 100 zone**. This application was carried from the July 16 public meeting for noticing**.

Fred Kalma, Esq., attorney for the applicant, presents a tax map, marked as Exhibit A-1. Looking at the color coded map, the property is surrounded on two sides by the "PC" zone, and it is almost spot zoning for the "R 100". If it was considered under the "PC" zone, there would be no variances. But there is an existing nonconforming set back of 18.7 ft. front yard where 35 ft. is required. The applicant's proposal is to renovate the existing home and construct a new home on the second lot, if the subdivision is granted. .

Richard Heuser is sworn in by Mr. Leckstein and says Lot 6 is located on the westerly side of Line Road, having a depth of 136 ft. and frontage and width of 142.6, with a total lot area of 19,394 sq. ft., in the "R 100". The one story dwelling on the property is to remain. The typography goes from 102 high elevation at Line Road to 95 at the rear of the lot. The rear of the lot adjoins the Strathmore development, where exists a 30 ft. wide sanitary sewer easement, established in 1962, and contains the sewer line. The new dwelling will be tied in to the existing easement to the rear, not as he shows it going out to Line Road, which is a force main.

Any disturbance to the land caused to Lot 15 by this sewer connection will be restored, and he will work with the neighbors to restore it and to determine the location of the sewer lateral.

These lots create a unique situation in that Lots 6 and 7 are in the "R 100" zone fronting on Line Road, but the "PC" zone surrounds Lot 6 in the rear and on the north side.

The applicant's proposal is to subdivide and keep the existing dwelling on the southerly lot, and construct a new dwelling on the northerly lot. Based on the "R 100" zone, they are seeking variances for proposed Lot 6.01, Lot Area 10,000 sq. ft. required and 9,518 sq. ft. proposed, Lot Frontage and Lot Width 100 ft. required for each, 70 ft. proposed for each. Under the "PC" zone requirements, proposed Lot 6.01 would meet the requirements of that zone.

With respect to proposed Lot 6.02, you have the same variances, Lot Area 10,000 sq. ft. required, and proposed is 9,876 sq. ft., a shortage of 1%. Lot Width and Lot Frontage 100 ft. required, and 72.63 ft. proposed. There is an existing the dwelling being 18.7 ft. from Line Road where 35 ft. is required. Looking at the "PC" requirements for proposed Lot 6.02, this lot exceeds the requirement for lot frontage, lot width and lot frontage.

Looking at the lots, one lot is 1% less and the other lot is 4.8% less, exceeding the area required for the "PC" zone.

Looking at the colored exhibit provided by Mr. Heuser, it shows Lot 6 is unique and the lots adjoining are designated in the "R 100". Lot 6 is bound to the north and rear by the "PC" zone. Just to the north of the three lots, there is another blue, another segment of the "R 100", and the

Purple is the “R 70” zone. The property is surrounded by multiple zones. The “R 100” zone is rather isolated.

Mr. Heuser says, in his opinion, the lot width and frontage are consistent with adjoining areas. A hardship exists for Lot 6 and the conditions and variances required satisfy the hardship requirements. The Municipal Land Use Law would be advanced by these variations by providing housing consistent with the neighborhood, and he believes can be granted without detriment to the public good. He further believes granting the variances would not impair the intent and purpose of the Aberdeen Zone Ordinance.

Deputy Mayor Montone asks Mr. Heuser if the Strathmore zone has to have certain frontage; Mr. Shenton answers her, saying R75/PC is 7,500 sq. ft., and the existing house is nonconforming to what is in the PC zone. Mr. Heuser answers Deputy Mayor Montone to refer to his schedule on his map; which shows what is required vs. what is proposed.

Mr. Shenton asks how is it a hardship when the existing house is already nonconforming.; Mr. Heuser says it is a hardship for 70 ft. lots vs. 100 ft. lots. Mr. Shenton asks about the set back. Mr. Heuser says the existing house is the set back. Mr. Shenton says it is not conforming to the PC zone. The architecture of the house does not conform to the PC zone. If you are going to continue the PC zone you should continue that architecture. Deputy Mayor Montone asks if the architecture of the PC zone was from the developer or the town. Mr. Shenton replies there were certain conditions. Deputy Mayor Montone asks Mr. Shenton if he is saying if they want to be in the PC zone should they confirm in architecture to that zone. That is what Mr. Shenton is saying. They want to be the same as the PC zone; Deputy Mayor Montone says that is not what they are saying. Mr. Kalma says the lot area of both of these lots is minimally less than the lot area of the R 100 zone. Air, space, light are all considerations and they meet those.

Mr. Hirsch confirms the lot area as it exists now, and what it is proposed to change to, leaving the existing lot as it, disposing of the garage, and build a new dwelling, keeping to all the zoning requirements except for lot frontage of 70 ft. and lot area of 10,000 sq. ft. Are they looking to change to the R70 zone; Mr. Leckstein says they are asking for a variance, not to change the zone. They are trying to show the adjoining zone is consistently smaller.

Mr. Brady says before the area was developed it was mostly all farm land; it became an R 75/PC zone, not an R 100 zone.

Mr. Kalma says it is only 604 sq. ft. less than what would be required.

Mrs. Adrian Garellick, 28 Avalon Lane, Aberdeen, is sworn in by Mr. Leckstein, and says she lives behind the home that is there now and is concerned that her view and quality of life will be disrupted as well as the run off. There is a high pitch, there is a gulley there, and the pitch will affect water running into her yard. She has been in her home 38 years, some light will be gone, animals will be gone. She knows this, but she would like to be reassured her home and property will not be affected. She also wants to know what type of landscaping is proposed.

Mr. Heuser says the run off should be less with the new house because the roof leaders as directed by the engineer will run to Line Road. With regard to landscaping, they propose foundation plantings around the building and shade trees. Answering Mr. Leckstein, Mrs. Garellick says she would prefer a berm. Mr. Heuser says evergreens could be planted back there.

Mr. Gillen says there will be no run off to her house if she is behind the existing house. They will connect to a sewer connection from the new home to go to her neighbor's property.

Mr. Kalma says there may be a second story put on the existing house with roof leaders going to Line Road, and some landscaping and sprucing up. Mr. Heuser says landscape screening, Arbor Vitae, will be put in, 6 or 7 ft. at planting. Mrs. Garellick is satisfied.

Mr. Brady moves to approve the subdivision with conditions, seconded by Mrs. Williams

Yes: Mr Brady, Mr. Awofolaju, Mr. Hirsch, Mr. Mirabal, Deputy Mayor Montone, Mr. Shenton, Mrs. Williams

No: None Abstain: None

New Business, **SD 14-302 (rev)/STC Realty, LLC, Applicant and Property Owner: STC Realty, LLC, 117 Marshall Concourse, Block 379, Lot 5, Minor subdivision with Variances** to create two lots in the R 50 zone and build two single family homes on the subdivided lots. Variance required for Lot Area 5,000 sq. ft. required, 4,751 sq. ft. proposed for Lot 5.01 and Lot 5.02.

Salvatore Alfieri, attorney for the applicant, states everything conforms except for lot areas.

Mr. Leckstein swears in Richard Heuser, who states these are converging side lots.

Mr. Gillen says the existing sanitary sewer connection to the existing dwelling are going to be demolished, and a cleanout should be added on the sanitary lateral on Lot 5.01 for the new building. Mr. Heuser confirms the existing dwelling is to be demolished, and he presumes the existing lateral will be used but a new clean out will be put in. Mr. Gillen says they will need to check its integrity., If it is viable they will reuse it but add a clean out. Mr. Heuser will put it on the plan as a condition of approval.

Mr. Brady says they mention milling of the road; Mr. Heuser says that has been incorporated into the revised plans.

Mr. Mirabal says he wants to see the architectural plans; the Board needs to get back to their requirements.

Mr. Leckstein says if some of the lots are close to other lots and those houses are not conforming, the size of the house being proposed is very important and the Board should have a general idea of what is proposed to be built. Mr. Alfieri says the buildings will conform to the 25% of lot area, not the 5,000 sq. ft. required. Mr. Gillen says there is a building percent coverage; since the lot is smaller, the applicant will make sure the house fits the lot size.

Mr. Leckstein asks if the two houses will be architecturally different, not just mirror images. Mr. Alfieri says they will be. Mr. Mirabal says we need to see architectural plans. Mr. Brady says many of these developers are home owners looking to sell the property for development; maybe we should take it on a case by case basis. Mr. Shenton is talking over Mr. Brady so I cannot hear all that Mr. Brady is saying.

Mrs. Williams moves to approve the application, seconded by Mr. Hirsch

Yes: Mr Brady, Mr. Awofolaju, Mr. Hirsch, Mr. Mirabal, Deputy Mayor Montone, Mr. Shenton, Mrs. Williams

No: None Abstain: None

Meeting adjourned.