



**PRINCETON**  
**MAYOR AND COUNCIL OF PRINCETON**  
**MINUTES • AUGUST 16, 2017**

**Extra Meeting**

**Community Room**

**8:00 AM**

400 Witherspoon Street, Princeton, NJ 08540

**I. STATEMENT CONCERNING NOTICE OF MEETING**

The following is an accurate statement concerning the providing of notice of this meeting and said statement shall be entered in the minutes of this meeting. Notice of this meeting as required by Sections 4a, 3d, 13 and 14 of the Open Public Meetings Act has been provided to the public in the form of a written notice. On January 10, 2017 at 9:00 a.m., said schedule was posted on the official bulletin board in the Municipal Building, transmitted to the Princeton Packet, the Trenton Times, the Town Topics and filed with the Municipal Clerk.

**II. ROLL CALL**

The Clerk called the roll.

PRESENT: Ms. Howard, Mr. Liverman, Mr. Miller, Ms. Butler, Mr. Quinn and Mayor Lempert

ABSENT: Ms. Crumiller

ALSO PRESENT: Marc Dashield, Administrator, Jeffrey Grosser, Assistant Administrator and Lucille Davey, Assistant Municipal Attorney, Mason, Griffin and Pierson.

**III. PLEDGE OF ALLEGIANCE**

The audience participated in the pledge of allegiance.

**IV. ANNOUNCEMENTS**

Mayor Lempert announced that this meeting is not being posted live but being recorded by TV 30. She also added that today's meeting is a work session and that no decision will be made today and that this will be continued at regular Council Meeting in September.

**V. COMMENTS FROM THE PUBLIC FOR ITEMS NOT ON THE AGENDA**

John Bailey thanked Council and everyone involved in making the annual Safe Streets Neighborhood Event such a success.

**VI. WORK SESSION**

Mr. Dashield began by saying that Mr. Hillier approached Council in November of 2016 and requested a modification of the Waxwood Developers Agreement to convert all the units to rentals. The original agreement called for Mr. Hillier to sell three affordable units and five "foundation" units earmarked for long-time residents of the Historic Witherspoon-Jackson Neighborhood as condominiums. Mr. Hillier is requesting to be released from this agreement and to be allowed to operate the units as rentals permanently. Under the terms of the current agreement, if Council takes no action the

units are required to be sold as condominium units, the foundation units would be sold at market rate and subsidized at 20% and the affordable units will be sold at either a moderate or low income price.

Mr. Hillier reviewed with Council the three options he is proposing to amend the developer's agreement. (Proposal attached.)

Mr. Hillier said that he recently sold the property to a developer and signed a 15 year master lease and he will act as a master tenant of the development, he said it is a common refinancing options and it acts like a mortgage.

Mr. Liverman asked if the 15 year lease can last longer. Mr. Hillier responded that yes it can last longer. Ms. Butler asked if the owner is required to fulfill whatever agreement is currently on the books and asked when was the property sold. Mr. Hillier responded that yes the new owner would honor the agreement and that the property was sold in March of 2017. Ms. Howard asked what is the mechanism for binding the current owner to keeping the units affordable. Mr. Tarr, Esq., Attorney for Mr. Hillier responded that the current owner is bound by the agreement.

Council reviewed with Mr. Hillier and Mr. Tarr the three options he is proposing.

John Bailey, said he supports Mr. Hillier's proposal and that the Municipality needs to work as a partnership with Mr. Hillier.

Michael Floyd, 35 Quarry Street, said he thinks Mr. Hillier is genuine in his proposal and is concerned that if Council eliminated the 10 year residency requirement on purchasing units that the Waxwood would end up with non Witherspoon-Jackson neighborhood tenant's and strongly feels that should not be removed. He said he had an interest in purchasing but that the \$400,000 appraisal seemed high and that the appraisal should be made public and added that true affordability is a concern whether for sale or rental. He added that he does think there are some good points in the options offered but that he has to be comfortable with the appraised value whether \$300,000 or \$400,000.

Mr. Dashield said that the Foundation Units are valued at \$400,000, but because they are restricted to the Witherspoon-Jackson neighborhood the value is actually \$310,000, and adding the 20% discount makes the price approximately \$250,000.

Robert Lytle, Esq., representing George Cumberbatch a resident of the Waxwoods reviewed with Council his letter sent to them on August 15, 2017. He noted that Mr. Cumberbatch is unavailable to attend the meeting and requested that Council extend their decision on this item until September. He said he encourages Council not to ignore the fact that for some amending the developer's agreement may be a benefit but it may also be a burden to others and that time needs to be taken to evaluate where to go. (Letter attached).

Yina Moore, 19 Green Street, said people expected to be given the right to purchase their units and that the Foundation Units not being designated as affordable housing in the beginning was a flaw in the original agreement and she thinks there are still issues that need to be discussed and that the three options proposed do not meet the intent of the original developer's agreement and more work is needed.

Mildred Trotman, 181 Witherspoon Street, said she supports the proposal Mr. Hillier has presented and added that she supports a 10 year residency preference requirement.

Dosier Hammond, 87 Leigh Avenue, said he thinks the Princeton preference should stay in place and the units not go into COAH housing, he said to keep part or all units to be local preference.

Sharon Campbell, 86 Leigh Avenue, said she supports Mr. Hillier's proposal and is also in full support of the Princeton preference and a 10 year residency requirement.

Hendricks Davis, 232 John Street, asked Council what will the process be in making a decision. Mayor Lempert responded that since Council had a request that the issue come back to Council in September, she suggested the issue to be heard at the Council meeting of September 25, 2017.

After discussion by Council concerning the proposed three options Mr. Hillier presented, Council requested the following issues be addressed for the September 25, 2017 Council meeting:

1. What current tenants want to buy and the status of those negotiations
2. Definition of qualified neighborhood resident
3. What is the demand in the neighborhood
4. Option B and the \$400,000 cash contribution - what are the options to use this money
5. Report on liens on the properties in the neighborhood
6. Is using the Princeton preference discriminatory
7. Require in writing from the new owner that he will abide by the terms of Councils decision.

## **VII. ADJOURNMENT**

A motion to adjourn at 10:00 a.m. was made by Mr. Liverman, seconded by Mr. Miller and carried unanimously by those present.

Respectfully submitted,  
Kathleen K. Brzezynski

## **THE WAXWOOD**

### **The 2003 Amended Developer's Agreement between Bob Hillier and the Borough**

#### **Affordable Units**

The agreement required the creation of three (3) affordable units, to be rented or sold as condominiums to low- and moderate-income residents under the following guidelines:

- Units would be available for income-eligible applicants based on the Council for Affordable Housing (COAH) guidelines.
- Applicants would be restricted to those persons that reside in the John Witherspoon neighborhood for at least 10 years or are a direct descendant of such a resident (each, a Qualified Neighborhood Resident).

Of the affordable units, two (2) moderate-income units and one (1) low-income unit would be made available. The following benefits would be provided to the low- and moderate-income units:

- Moderate-income units – Mr. Hillier would rent or sell those units at the rental rates or sales prices dictated by COAH.
- Low-income unit – Mr. Hillier would rent or sell this unit for the rent or sales price dictated by COAH, and the Municipality would then pay to Mr. Hillier the difference between the moderate-income and low-income rent if rented, or the difference in sales prices if sold.

#### **Foundation Units**

Mr. Hillier would create (5) additional units for rent or sale as a condominium to applicants who exceeded COAH income guidelines but who are Qualified Neighborhood Residents. Mr. Hillier would provide a 10% reduction in rent and a 20% loan toward the down payment for each unit, that loan to be repaid on the eventual resale of the unit.

### **Current Conditions at The Waxwood**

#### **Affordable Units**

The affordable units have not been converted to condominiums, but they are being rented to Qualified Neighborhood Residents at rents at or below those dictated by COAH. The Municipal subsidy for the low-income unit has not been paid to Mr. Hillier for the past nine years.

#### **Foundation Units**

The Foundation units have also not been converted to condominiums, but they are available for rent to Qualified Neighborhood Residents in accordance with the Amended Developer's Agreement, at 10% below market rent. Some of the units are empty because Mr. Hillier cannot find tenants who

are Qualified Neighborhood Residents and those which are rented are being rented for between 30 and 35% below market rent instead of the 10%.

### **Proposals for the Future of the Waxwood**

Mr. Hillier would agree to any of the following options, but prefers Option 1 over Option 2 and Option 2 over Option 3:

#### **OPTION 1**

- Mr. Hillier would provide seven (7) COAH-qualified units, made up of the three (3) existing affordable units and the conversion of four (4) of the Foundation units, the other Foundation unit to become a market-rate rental.
- He would allow the current Foundation tenants to continue renting, but once the units were vacated, they would be converted to COAH-qualified units.
- The Qualified Neighborhood Resident requirement would be removed. Council can decide whether to (a) impose a Princeton preference for tenants, (b) allow them to qualify as COAH units, or (c) a combination of both.

#### **OPTION 2**

- Mr. Hillier would provide six (6) COAH-qualified units, made up of the three (3) existing affordable units and the conversion of three (3) of the Foundation units, with the two (2) remaining Foundation units to become market rentals.
- He would allow the current Foundation tenants to continue renting, but once the units were vacate, they would be converted to COAH-qualified units.
- The Qualified Neighborhood Resident requirement would be removed. Council can decide whether to (a) impose a Princeton preference for tenants, (b) allow them to qualify as COAH units, or (c) a combination of both.
- Mr. Hillier would pay \$400,000.00 to provide neighborhood affordability assistance to Qualified Neighborhood Residents in the form of loans to be paid back at the time that each property is sold. Such affordability assistance could be provided in a number of ways, the following being possible examples:
  - The two (2) current Foundation tenants have been offered a 25% down payment loan toward the purchase of a home anywhere, that offer to end after a reasonable time.

- Any Qualified Neighborhood Resident would be entitled to a 20% down payment loan to buy a home in the neighborhood.
- Working with the Municipal Affordable Housing staff, loans could be provided to existing Qualified Neighborhood Residents to avoid foreclosure.
- Other affordability loans could be made to Qualified Neighborhood Residents, such as supporting the Municipal home repair program.

### **OPTION 3**

- Allow the Amended Developer's Agreement to lapse.
  - Mr. Hillier would then sell the affordable and Foundation units as dictated by the original 2002 Developer's Agreement.
  - All existing tenants would be entitled to remain for as long as they want, and new short-term tenants could occupy units while they were marketed for sale.
  - The Qualified Neighborhood Resident program would be continued for the residents of the Witherspoon Jackson Neighborhood for both the affordable units and the Foundation units, unless Council chose to make the affordable units COAH-qualifying.
  - Council would reimburse Mr. Hillier for the difference in sales price between the low-income unit and the moderate-income unit and reimburse him for the prior rental subsidies.

# SZAFERMAN LAKIND

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August 15, 2017

Via Email ([llemPERT@princetonNJ.gov](mailto:llemPERT@princetonNJ.gov)) and Regular Mail

Mayor Liz Lempert  
Princeton Council  
400 Witherspoon Street  
Princeton, New Jersey 08540

Re: The Waxwood  
Mayor and Council Extra Meeting on August 16, 2017 and  
Regular Mayor and Council Meeting on August 21, 2017

Dear Mayor Lempert:

This firm represents George Cumberbatch, a resident of the Waxwood. I am writing to you in connection with tomorrow's Extra Meeting of the Council regarding The Waxwood. Unfortunately, we did not learn of the Extra Meeting until today. And I understand from an article in the Princeton Planet that the Extra Meeting was only scheduled yesterday. Because of the lack of notice, as well as the fact that my client cannot appear tomorrow - because he is in the mid-west taking care of his elderly mother - I request that the tomorrow's meeting be canceled and rescheduled for a more convenient time that will allow those opposed to the application to voice their objections. Because my client won't return to Princeton until September, I also request that, to the extent that Mr. Hillier's application to amend the Developer's Agreement will be considered at the Regular Meeting of the Council on August 21<sup>st</sup>, that it be taken off that agenda as well so as to allow my client an opportunity to be heard on the application.



**BACKGROUND****The First Amended Developer's Agreement**

As a condition of various land use approvals granted by the Zoning Board of Adjustment, J. Robert Hillier (the "Developer") entered into a First Amended Developer's Agreement (the "1<sup>st</sup> Amended Agreement") with Princeton Borough on or about July 1, 2003. With respect to the Foundation Units, the 1<sup>st</sup> Amended Agreement provided:

- (1) that the Developer would sell or rent 5 such units to individuals or families who exceeded the income requirements of COAH;
- (2) that to be eligible for a Foundation Unit the applicant must have been a resident of the John Witherspoon neighborhood for at least 10 years or be a direct descendant of such a neighborhood resident;
- (3) that the rental period for the units was limited to a five year term;
- (4) that, at the expiration of the five year term, the Foundation Units "must be sold" to in accordance with the 1<sup>st</sup> Amended Agreement;
- (5) that, when the Foundation Units were converted from rentals to sale, the Waxwood Foundation would provide qualifying Owners with 20% of the purchase price for the unit based on current market value - essentially eliminating the need for a down payment - with interest to accrue and compound at a rate of twice the Consumer Price Index which would be repaid upon sale from the Owner's 80% equity interest;
- (6) that, when a first purchaser sold a Foundation Unit, the Foundation would have a right of refusal to purchase the unit back at market value for the purpose of reselling it to another applicant who met moderate income eligibility requirements;



- (7) that, if the value of the unit at resale was insufficient for the Owner's equity to cover the interest, the shortfall would be forgiven by the Developer; and
- (8) that the Owner would receive 80% of the resale value when the unit was sold and the remaining 20% would be returned to the Foundation for future transactions.

### The Lease

On or about November 6, 2004, The Waxwood entered into a lease agreement with Mr. Cumberbatch for a Foundation Unit (Apartment #201). Notably, the sale requirement contained in the 1<sup>st</sup> Developers Agreement was of such importance to Mr. Cumberbatch that he requested further confirmation from the Developer on that subject. Consequently, on November 19, 2004, a memo was sent to my client by Jim Banks, who was The Waxwood's project manager. The "Re:" line of the memo stated, "Eventual Sale of Waxwood Foundation Units." The body of the memo provided, in relevant part:

Please find attached a copy of the executed Developer's Agreement between Waxwood LLC and the Borough of Princeton.

Paragraph 3 h. of this Agreement States that "The rental period for the (Foundation) units shall be limited to a five year term commencing with the initial date of any leases. Following this five year period, the units must be sold in accordance with this Agreement."

I trust this documentation provides the assurance you require that the Foundation units will in fact be available for sale in five years from the initial lease date.

In sum, my client chose his current apartment because it was identified as a Foundation Unit and in reliance on the representations made by the Developer and Princeton to Foundation Unit lessees contained in the Developer's Agreement - to which my client is at least a third party beneficiary.

### **The Extensions**

Pursuant to the terms of the 1<sup>st</sup> Amended Developers Agreement, the deadline for converting Mr. Cumberbatch's Foundation Unit from a rental unit to a for sale unit was November 4, 2009. However, the Developer obtained an extension of that deadline from Princeton Borough approximately eight months before it was set to expire. Thus, on March 3, 2009 - and without notice to my client - the Developer and Princeton entered into a Second Amended Developer's Agreement ("2<sup>nd</sup> Amended Agreement") which extended the Developer's obligation to offer Mr. Cumberbatch an opportunity to buy his Foundation Unit for an additional two years.

Princeton granted another five year extension of the sale requirement to the Developer on May 25, 2010. That extension was also granted without notice to Mr. Cumberbatch.

The Developer also made a request to extend the deadline on October 3, 2016, at which time my client was finally given the required notice. Mr. Cumberbatch was given a brief opportunity expressed his opposition to any further temporary modification of the Foundation Unit sale requirement contained in the Developer's Agreement by appearing at a Council meeting held on November 28, 2016. The Council nevertheless granted an extension to March 31<sup>st</sup>.

Since March 31<sup>st</sup>, the Council granted one or more additional extensions to the Developer. They too were granted without notice to Mr. Cumberbatch.

### **ANALYSIS**

In our view it was unlawful for the Council to allow any modifications to the sale requirement Developer's Agreement - either temporary or permanent - since the Agreement, along with other representations contained therein: (1) were express conditions of the approvals that were granted to the Developer pursuant to the Municipal Land Use Law ("MLUL") and (2) because Mr. Cumberbatch was a beneficiary of the representations contained in the Developer's Agreements. The fact that the extensions were granted without notice to my client serves to further underscore their unlawful nature. In addition to being



a violation of the MLUL, we would consider the elimination of the sale requirement of the Developer's Agreement to be a material breach of contract by both the Developer and Princeton.

Notably, the foregoing actions taken by the Council and the Developer, as well as any future decision to amend the current Developer's Agreement to eliminate the sale requirement, have and will result in significant harm to Mr. Cumberpatch. Even before the Waxwood was developed by Mr. Hillier, my client had long been a resident of the historic Witherspoon District, which is the oldest African-American community in the State. Because of his attachment to the community, as well as his desire to put down even firmer roots there, Mr. Cumberbatch decided to lease Apartment #201 at the Waxwood with the option to purchase that unit. Simply stated, there is no substitute for his current unit which is situated not only in a historic neighborhood, but in a historic building that was once a school for African-American children. As a result of the actions taken by the Council and the Developer, my client has been denied the opportunity to purchase his unit, develop equity in his home and benefit from the appreciation in its value since 2009. In addition, Mr. Cumberpatch would have chosen to rent a more affordable unit at the Waxwood if he had known that the more expensive Foundation Units would not be offered for sale. Consequently, for the last thirteen years Mr. Cumberpatch has been forced to pay a monthly rent that was significantly higher than what he should have been paying - resulting in an overpayment of approximately \$50,000 based on my calculations. A decision to eliminate the sale requirement would, therefore, result in irreparable harm to my client.

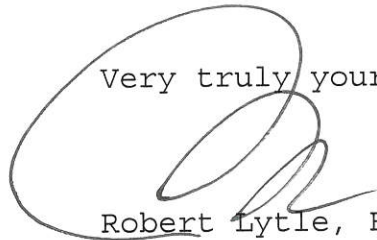
Please be advised that my client intends to take an appeal in the event that the Council agrees to amend the Developer's Agreement. In addition, whether or not the proposed amendment to the Developer's Agreement is granted, my client also intends to file an action in Law Division of the Superior Court of New Jersey (Mercer County) against both the Developer and Princeton seeking, among other relief, the rent that he has been overcharged since November 2004, attorney fees and the costs of suit.

CONCLUSION

In conclusion, my client has been in negotiation with the Developer over the last few months in an effort to amicably resolve this matter. Those efforts, while conducted in good faith by all parties, have proven unsuccessful. That said, today the Developer made an offer to my client that demonstrated a different approach to the problem. As I am sure you can understand, both time and additional information will be necessary for my client and I to properly evaluate the offer and conduct the necessary negotiations. As a result, and for the reasons contained herein, I request that consideration of the Developer's application be adjourned and that it not be considered either at the Extra Meeting tomorrow or at the Council's Regular Meeting on August 21<sup>st</sup>.

Thank you.

Very truly yours,



Robert Lytle, Esq.

c: Jenny Crumiller ([jcrumiller@princetonnj.gov](mailto:jcrumiller@princetonnj.gov))  
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