

**BIRMINGHAM TOWNSHIP  
BOARD OF SUPERVISORS MINUTES  
JANUARY 21, 2008**

The regular meeting of the Board of Supervisors was called to order at 7:30 PM by Chairman Conklin with the customary moment of silence. A quorum of Supervisors was declared. The following Township Officials were in attendance:

|                     |   |  |
|---------------------|---|--|
| John Conklin        | - | Chairman, Board of Supervisors                 |
| William Kirkpatrick | - | Vice-Chairman, Board of Supervisors            |
| Al Bush             | - | Member, Board of Supervisors                   |
| Thomas Nelling      | - | Chief of Police                                |
| Dr. Robert Reder    | - | Recreation, Park & Open Space Committee Member |
| Joseph Sofranko     | - | Building Code Official & Zoning Officer        |
| Kristin Camp        | - | Township Solicitor                             |
| Quina Nelling       | - | Secretary/Treasurer                            |

Mr. Kirkpatrick moved to approve the minutes from the January 7, 2008 organizational meeting as written. (Approved all in favor.)

Mr. Kirkpatrick moved to approve the bills submitted for payment. General Fund bills totaled \$37,390.92. Sewer Fund bills totaled \$16,183.58. (Approved all in favor.)

**ANNOUNCEMENTS**

The Township is in receipt of a letter dated January 9, 2008 from Joan Lee of Deptford, New Jersey, withdrawing her application to the Zoning Hearing Board to obtain a special exception to operate a spa for massage therapy and acupuncture at 15 Brinton's Bridge Road. The hearing was scheduled for January 30, 2008.

The Township is in receipt of a letter dated November 30, 2007 from George Elser, legal counsel for Roberta O'Dell, enclosed with correspondence from Joseph Brion, Township Solicitor dated December 13, 2007, advising that the Roberta O'Dell three lot subdivision proposal on 13.62 acres on Meetinghouse Road has been withdrawn.

**PERMITTING ISSUES**

At its meeting on December 3, 2007, the Board of Supervisors reviewed recommendations from HARB for Certificates of Appropriateness for two construction projections that were completed without receiving Township approvals. The Board chose not to act on the Certificates without understanding the reason for the ordinance violation. The Board was very concerned that residents are choosing to undertake construction without following Township ordinances and obtaining the necessary permits. At the Board's request, the Township Secretary sent letters to the property owners asking them to attend tonight's meeting to discuss their construction projects.

#### KHINE/1015 LAMBOURNE ROAD/ROOF REPLACEMENT

HARB had recommended that a Certificate of Appropriateness be issued to Henry Khine, 1015 Lambourne Road, for the replacement of the cedar shake roof shingles with man-made asphalt shingles by Grand Canyon. The shingle color is Sedona Sunset.

Mr. Khine was present. He explained that he had the same roof installed as his neighbors, the Burklands. His neighbor had informed him that he would need a permit. He thought the contractor that did the work was getting the permit, but he didn't follow through to confirm that the permitting had been obtained. He said that his not getting a permit was unintentional. Mr. Kirkpatrick explained to Mr. Khine that the permitting process was secondary to the HARB approval.

Mr. Kirkpatrick moved to approve the Certificate of Appropriateness for Henry Khine for the roof replacement on his house at 1015 Lambourne Road as recommended by HARB. (Approved all in favor.)

#### DEMENT/1010 LAMBOURNE ROAD/DECK EXTENSION

HARB recommended that a Certificate of Appropriateness be issued to Crit DeMent, 1010 Lambourne Road, for a deck extension with grill area and pergola at the rear of his house.

Mr. DeMent was not in attendance at the meeting. Mrs. Camp informed the Board that they would need to act on the Certificate of Appropriateness at tonight's meeting or it would be deemed approved. Mr. Sofranko had issued a zoning violation notice to Mr. DeMent and recommended that he submit the necessary paperwork for approvals. Mr. Kirkpatrick asked if the Certificate could be denied since Mr. DeMent proceeded without the necessary approvals and he didn't attend tonight's meeting, as requested, to explain his actions? Mr. Kirkpatrick said that Mr. DeMent was knowledgeable about the permitting requirement and chose to do the work without the permits. Mrs. Camp indicated that the Board could have the Building Code Official issue a non-traffic citation fine which would be a minimum of \$100. and a maximum of \$1,000., plus costs, but she recommended that the Certificate of Appropriateness and Building Permits be issued, which would correct the zoning violation. Mr. Kirkpatrick was not keen on engaging in fines. Mr. Bush was concerned that the Building Code Official had already advised Mr. DeMent that the cure to the violation was to pursue township permits and approvals without any explanation of the fine. Mrs. Camp explained that the violation could explain the flagrant disregard of the ordinance requirements by Mr. DeMent and Mr. DeMent's disregard of the Board's request to come to a township meeting to explain his actions. .

After much discussion, the Board decided that the best approach would be to approve the Certificate of Appropriateness and have the Building Code Official issue a citation for a building code violation. After the violation has been issued, the Building Code Official can issue the building permit.

Chairman Conklin moved to approve the Certificate of Appropriateness for Crit DeMent, 1010 Lambourne Road, for a deck extension with grill area and pergola as recommended by HARB. (Approved all in favor.)

Chairman Conklin said that the Board had three HARB recommendations to consider where the work was done without a permit. The Board listened to each individual case to determine the seriousness of the violation. The Board has been reasonable and has reached out to the residents. However, Chairman Conklin felt that it is important for the Board to enforce the law or it might as well not exist. Mr. DeMent chose not to attend tonight's meeting to explain himself and if a fine is what it takes for enforcement then this is what should be done.

Mr. Kirkpatrick noted that because of these non-permitting issues, at the organizational meeting on January 7<sup>th</sup>, the Board updated its fees resolution to include the imposition of a double permit fee for those residents that do work without going through the permitting process.

A discussion ensued on permitting procedures.

Kristin Camp explained that a violation of Chapter 61 of the Code, Historic Districts, is through a civil enforcement.

A zoning violation is strictly regimented by the Municipalities Planning Code. The Zoning Officer, without the direction of the Supervisors, has the discretion to issue a zoning violation. A notice of violation must be issued before a fine can be imposed. The property owner has the right to appeal to the Zoning Hearing Board or to cure the violation. If neither action is taken, the Township has the right to seek civil fines.

Under the Building Code, if construction has commenced without a building permit, the Building Official can issue a non-traffic criminal citation to the property owner. Prior to the issuance of the citation, the Building Code Official has the option of serving a notice of violation. The citation is processed by the District Court and the District Judge would establish the appropriate fine according to the Building Code which shall be not less than \$100. and not more than \$1,000., plus the costs of issuing the citation.

Chairman Conklin said that he wanted a procedure established

Joe Sofranko said that if he comes across construction that has commenced without a permit that he will put a stop work order notice on the property, citing the section of the violation. He will then follow up with a written notice of violation giving the property owner 48 hours to submit a building permit application to the Township for consideration. If it is determined that construction proceeded after the stop work order had been issued, then a citation will be issued. Also, if a permit application has not been applied for within 48 hours, then a citation will be issued. The Board agreed with the process. Chairman Conklin stated that the process was reasonable but specific.

Joe Sofranko reported that he had sent a notice of violation to Stillman Volvo on January 9<sup>th</sup> for violating the approved Final Land Development Plan for the Dealership by exceeding the impervious coverage limitations by the replacement of landscaped areas with a stone paving system for vehicle display. Chief Nelling noted that Stillman's is also violating their approved plan by parking in the fire lanes and in locations that are not parking spots.

### **PLANNING COMMISSION ORDINANCE RECOMMENDATION**

The Planning Commission has forwarded two ordinance proposals to the Supervisors for consideration. The first ordinance amends Chapter 122, Zoning, to modify the definition of "structure" and to provide regulations pertaining to fences and walls in residential zoning districts. The second ordinance amends Chapter 122, Zoning, by deleting existing Section 122-92 ("Restrictions into Required Yards") and enacting a revised section 122-92 ("Projections into Required Yards").

The Township Solicitor has reviewed the ordinance proposals. She notes that the ordinance which amends the definition of structure and adds a new Section 122-105.7 does not regulate the location of retaining walls. She suggested that the Planning Commission review the ordinance to determine if it is appropriate to enact restrictions on the location of retaining walls, especially if the retaining walls are located in the front yard. She also felt the Planning Commission should review whether the provisions in Section 122-105.7.(F)(1)&(2) are constitutional based on the law protecting nonconforming uses and structures.

Solicitor Camp had no comments on the second ordinance concerning projections into yard areas. However, the suggestion made by the Zoning Officer was not incorporated into the Ordinance, so paragraph (f) should be amended to include "or emergency escape egress". Mrs. Camp felt that there was no reason the ordinance proposals couldn't be combined into one ordinance for administrative efficiencies.

Mrs. Camp has had dialogue on the ordinance proposals with the Planning Commission Solicitor. The Board agreed that the ordinance proposals should be remanded back to the Planning Commission. Mrs. Camp will provide a memo to the Planning Commission on the proposed ordinance changes.

### **POLICE REPORT**

Chief Nelling reported for the month of December 2007. There were 1,016 incidents during the month. There are 32 open cases for 2007. There were 9,342 patrol miles logged on the police vehicles during the month. Police Commissioner Conklin asked what happens to open cases. Chief Nelling responded that the cases close themselves after a certain time limit as they expire under the statute of limitations. Mr. Kirkpatrick noted that 70% of the incidents are traffic incidents. Chief Nelling said that in 2007 there were 2,495 traffic incidents and 165 criminal arrests, the majority being thefts, DUI's, and vandalism.

### **PUBLIC COMMENT**

#### **PHP ENTERPRISES/SIGN ORDINANCE**

Paul Canavarro, PHP Enterprises/1313 Wilmington Pike, was present to ask the Board to consider updating the Township's sign ordinance so that "the regulations would be more in line with the times to address current technology". He had applied to the Zoning Hearing Board for relief from the ordinance requirements to use a sign with LED lights and message boards. Mr.

Canavarro said that Birmingham Township has rigid standards that are not similar to adjacent townships.

Mr. Kirkpatrick felt it would be useful to observe the signage in adjacent townships. The Board discussed sending this request to the Planning Commission; however it was felt that the Board should provide some sort of guidance to the Planning Commission. Chairman Conklin said that the Supervisors support the businesses on Rt. 202 but their first concern is safety. Other issues include lighting, noise, clutter, accommodating traffic, and maintaining the character of the community. It is also impossible for the signage to address the numerous businesses that exist on some of the properties. Mr. Canavarro noted that he has in excess of fourteen businesses on his property.

Mr. Canavarro said that he had pursued his application to the Zoning Hearing Board so that his situation could be handled on an individual basis so that it wouldn't affect the entire township. His sign is already non-conforming in size and it impedes the line of sight on Rt. 202. The sign he proposed would have been conforming in size and it would have improved the line of sight. Chairman Conklin said that Mr. Canavarro could, again, pursue relief from the Zoning Hearing Board.

Mr. Kirkpatrick felt it was reasonable for the Board to review the existing ordinance in conjunction with current technology while addressing the health and safety of the Rt. 202 corridor. Chairman Conklin said that a survey of the existing signage could be done. He felt that direction should be provided to the Planning Commission in its review of the ordinance. Mr. Bush agreed that a change to the ordinance should be defined and limited before it was remanded to the Planning Commission. Signage issues are also size and number and he wasn't sure he wanted the Planning Commission to review these issues. Solicitor Camp said that the Board could ask the Planning Commission to amend Section 122-88.B.2 of the Code to allow LED signs. Mr. Kirkpatrick felt that the Planning Commission should be given specific direction. He volunteered to traverse Rt. 202 this week to review the signs and the technology being used for the signs. Chairman Conklin warned that any change would be precedent setting. However, if it was convincing that there were no safety issues and that a change would benefit the businesses, then it could warrant a review.

Mr. Canavarro said that there are so many businesses on his property and people don't know that they exist. Chairman Conklin noted that even if there is a change to the ordinance, that there will be limits on what can and can't be done. Mr. Kirkpatrick said that the right approach is not to design an ordinance around an individual business but to look at the ordinance to address the specific job.

It was decided that Mr. Kirkpatrick will review the technology on the signs in the adjacent townships and forward a recommendation to the Board for forwarding to the Planning Commission.

#### PLEDGE OF ALLEGIANCE

Chairman Conklin said that he would like future meetings to begin with the Pledge of Allegiance, which is currently being done in other townships as well as at the Chester County Courthouse. He prefers this to the moment of silence. Mrs. Nelling had

reviewed the minutes and the first moment of prayer was noted in the December 1967 minutes. He thinks the Pledge starts the meeting with allegiance and a tone of seriousness, both of which he believes are appropriate. Mr. Bush had no objection to the proposal. Mr. Kirkpatrick did not think it was necessary to add the Pledge of Allegiance to the agenda as the meetings are operated under the rules and regulations of the State. The United States and Pennsylvania State Flags are present in the meeting room. The Board had previously chosen to add the Pledge of Allegiance to the meetings around various holidays during the year. Chairman Conklin moved to open the meetings with the Pledge of Allegiance. Mr. Bush seconded the motion. Mr. Kirkpatrick opposed the motion. The motion was carried with two in favor and one opposed. Discussion ensued on the moment of silence. Mr. Conklin did not feel the need to have both. Mr. Kirkpatrick felt the moment of silence was more in accord with the tradition of the Township being founded in 1684 by the Quakers yet it did not violate any constitutional issues. He felt the moment of silence added to the meeting and now the meetings, which are often very short, will start with a series of ceremony. Mr. Bush felt the moment of silence is appropriate. The moment of silence will continue.

#### MASSAGE PARLORS

Mr. Kirkpatrick said that Chadds Ford Township had a series of problems with a massage parlor that had employees that were not licensed by the State. The facility was ultimately closed. Chairman Conklin noted that the closure was due to prostitution. Mr. Kirkpatrick said that Chadds Ford Township passed an ordinance regulating massage establishments by enacting a licensing procedure. He suggested that Birmingham be judicious in this area and suggested that the Township Solicitor examine the ordinance for future consideration by the Board.

#### BEDWELL BUILDING/1380 WILMINGTON PIKE

Mrs. Camp reported that the sewer permit for the Bedwell Building has been rescinded as there is no easement to cross the Muhly-Schorn property to access the existing sewer line on Brinton's Bridge Road. The easement in place is for a stormwater crossing, but not for a sewer line. David Patten, legal counsel for Mr. Bedwell, has asked that the Township consider condemnation for the sewer crossing. Apparently the owner of the Fern Hill property is also interested in tying into the public sewer. For condemnation, the Township would have to pay the fair value for the taking of the property. There are other costs for the Township to go through this process. Even though the Board preferred to have the commercial properties tie into the public sewer, they did not feel that it was appropriate for Township involvement.

The meeting was adjourned at 8:56 PM. (AWB)

Respectfully submitted,

Quina Nelling  
Secretary/Treasurer