

**BIRMINGHAM TOWNSHIP PLANNING COMMISSION  
MINUTES OF THE MEETING OF JANUARY 12, 2010**

The regular meeting of the Birmingham Township Planning Commission was called to order by Nick DiMarino with a quorum present at 7:30 p.m. in the Township Building. The following members were present: Scott Boorse, Mary Pat McCarthy, Janet DeCaestecker, Debbie Hineman, Doug Marshall, Pete Davenport, and Eric Hawkins, as well as Solicitor Fronefield Crawford.

The minutes of the December 8 (2009) meeting were approved (Boorse, Marshall, all in favor).

Reorganization: The following slate of Members and appointments was proposed:

All Members retained

Chair: Nick DiMarino

Vice-Chair: Eric Hawkins

West Chester Regional Planning Commission Member Liaison: Scott Boorse

Birmingham Township HARB Member Liaison: Pete Davenport

Scenic Byways Member Liaisons: Mary Pat McCarthy and Debbie Hineman

On a motion by Mr. Boorse, seconded by Ms. McCarthy, the slate was approved unanimously.

Boor Subdivision: On behalf of Mrs. Boor, Jim Fritsch of Register Associates presented a “minor subdivision” proposal dated 12-15-09 for Spring Meadows Lot 56 at 1128 Dorset Drive. The colored rendering he displayed showed a subdivision Mrs. Boor’s 8 acres with a new 2-acre lot formed on the southwest area, a change from the 3-lot sketch plan presented last year. Mr. Fritsch proposed that the new lot use the existing drive that currently serves Spring Meadows Lot 56 and 59. Mr. Fritsch said the plan shows successful perc tests and stormwater management proposals and that the plans had been submitted to the Township Engineer for examination.

Mrs. DeCaestecker asked why the new lot line was at an angle. Mr. Fritsch replied that the intent was to keep the larger lot as large as possible (6 acres). Mr. Boorse asked the area of the new lot. Mr. Fritsch said the gross and net are 2 acres, keeping as much land as possible for the old house. Mrs. Hineman asked about the shared driveway. Mr. Fritsch explained that the proposal expands the entrance, widens the drive, and provides a pull-off for cars to pass each other; the drive is about 600 feet long from the Dorset Drive into the Boor garage. Mr. Marshall asked Mr. Crawford if, for calculation purposes, the property is part of the Spring Meadows subdivision or not. Mr. Crawford replied that it is definitely “a daughter” and that he believes there is a case to be made that it is part and parcel of the Spring Meadow subdivision. However, there was an incorrect order of recordation and the declaration of restrictive covenants did not preclude further subdivision. Mr. Crawford said he wanted to address Dr. Robert Schwan’s letter of December 29. Mr. Crawford asked if the owner considers herself to be bound by the Declaration of Restrictive Covenants. Mr. Fritsch did not know the answer. If the proposed subdivision is approved, it should be recorded to acknowledge that the property is subject to the terms of the Restrictive Covenants and include a permanent restriction against further subdivision. This was clearly the intent of the original subdivision.

Mr. Boorse asked about the original open space formulation. Mr. Crawford said that the original Spring Meadows subdivision open space calculation was “maxed out” under the ordinance of its time, but that there have been changes in the density requirements since then, so if the Spring Meadows subdivision were submitted today, it would not violate the current density requirements. Mr. DiMarino asked if the original plan would violate any of the other ordinance changes that have been made. Mr. Crawford said that the Planning Commission should ask the Township Engineer to answer that question by doing a double review to see how the proposed subdivision would be affected under the original ordinance as well as under the current ordinance, keeping in mind that the property owner is entitled to proceed under the current ordinance, so that is the one whose requirements must be met for the current proposal. Mr. Fritsch said the plan was designed to meet the current requirements.

Mr. DiMarino asked about the old drive shown in the southeast area of the original Lot 56. Mr. Fritsch responded that it is an existing drive, is paved, and has a 20-foot wide access easement coming across the homeowners association open space connecting to a private drive; there’s also a 20-foot-wide access easement that continues out from the southernmost point of the property. Mr. DiMarino asked about the storm water management. Mr. Fritsch said the storm water management plan follows the current ordinance, but there was no formal storm water management before. Mr. DiMarino asked about the driveway in the northeast area of the lot. Mr. Fritsch said a 25-foot access easement is proposed, replacing the current 20-foot wide easement.

Dr. Robert Schwan, 1114 Dorset Drive, whose property abuts Lot 56 on the southwest side, spoke as a neighbor and representing the Spring Meadows Homeowners Association. Dr. Schwan said that the proposed lots, if approved, should be required to be a part of the Spring Meadows Homeowners Association and development– by notes on the plan, etc. He expressed concern that the proposed lot is a landlocked flag lot with no access to the open space, as other Spring Meadows lots have, but the proposed new lot would have open space access if its northeast lot line were extended to the open space to its east. In an examination of the northwestern shared drive, Dr. Schwan explained that it is the current access to the open space behind the pond - a driveway that serves 4 properties (the other access points are unusable); he requested that the plan include a useable right-of-way easement for access to the pond area of the open space. Another of Dr. Schwan’s concerns is the possible arsenic residue in the orchard on Lot 56, especially the inevitable runoff during construction of the storm water management implementation. Dr. Schwan suggested that widening the northeast driveway may kill the trees alongside of it, so that the applicant should be required to replace them. Mr. Fritsch replied that the plan is to widen the first part of the driveway from its current 9.5 feet to 18 feet and that only one tree would be endangered; the applicant intends to save it. A pass-by further up may be widened from 9.6 feet to 16 feet; the rest of the drive is shown to be 10 feet wide.

Eric Pavilonis, 1004 Dorset Drive, spoke about the southeastern driveway. He said that what many people think is a road there, coming from Dorset Drive, is actually a common drive serving four houses. Mr. Pavilonis said the Boors stopped paying Homeowner Association dues in 1993 and put a chain across the drive; in so doing, they relinquished their rights to the driveway access through the open space and (he feels) the Boor

property should be denied future access there. Mr. Pavilonis also expressed concern about contaminants from the orchard being released into the stream. He asked that there be stipulations that the contaminants are properly taken care of by EPA standards if or when there is any digging.

Matt Tucker, 1124 Dorset Drive, asked if both proposed lots had passed perc tests. Mr. Fritsch said they'd been tested by Rick Johnson and had passed. Mr. Tucker asked which way the proposed house would face; Mr. Fritsch said that would be determined by the buyer.

John Carnes, counsel for Cindy Emlet (1130 Dorset Drive), said he had three issues of concern. The first is the aesthetics of the plan for the infiltration system (topsoil storage, silt fence, tree disturbance, etc.). Mr. Fritsch said they are not proposing disturbance of trees, that the proposed berm would only be four feet high, and that the water would come from the higher ground around the old house. Mr. Carnes asked why new storm water management was necessary for a property with no problems. Mr. Fritsch said that the plan was made to meet the current zoning requirements so as not to have to ask for a waiver, but that a waiver could be requested. Mr. Carnes requested that, if constructed, the construction be done in an extremely aesthetic manner and asked that the neighbors have an opportunity to comment on it. Mrs. Emlet said she prefers that nothing be disturbed on the original lot, especially since there's no problem with water now and the house has been there since 1757. Mr. DiMarino said the Mr. Hatfield may find it unnecessary to implement that part of the plan. Mr. Fritsch said they are just following the ordinance to a T, but they've taken extreme caution to avoid the trees. Mr. Carne said he'd like more clarification of what the infiltration change would look like. Mr. Fritsch said he would contact Mr. Carne.

Mr. Carne's second issue is that he'd like to see a maintenance and easement agreement for the shared driveway, especially one for the Emlet and Boor lots (59 and 56). Mr. Carne's third issue concerned the number of dwelling units that will use the shared driveway. He said there appear to be two dwelling units currently on the Boor property. Mrs. Emlet presented a marketing flyer produced by Mrs. Boor's realtor, Kit Anstey, marketing the property as having "Separate Quarters (office)." Mr. Crawford said a dwelling unit was defined by a kitchen; the ordinance limits driveways to serving four dwellings. Mr. Carne pointed out that, if the garage is a dwelling, there are now three dwelling units using the drive, the proposed lot would be a fourth unit, and the large lot may be subdivided in the future for additional units. Mr. Tucker reported that Mrs. Boor's residence has been vacant for some time and that her son was living in the garage.

John Robinson, 1125 Dorset Drive, said he supports the other concerns mentioned and adds that this subdivision would make a big change in his property's view of the open space, that view being one of the reasons he purchased his home, so he objects to this change.

Lloyd Roach, 1025 Meetinghouse Road, asked if Spring Meadows was "maxed out" in the number of lots that could be built under its original subdivision. Mr. Crawford said that it was - under the original ordinance of 1978. Noting that this proposal increases problems (increased number of people sharing the drive, etc.), Mr. Roach urged the

Planning Commission to seize this opportunity to correct the omissions of the past, prevent the creation of more problems, and deny the subdivision. Doug Marshall said the PC should look at Spring Meadows in totality because allowing this subdivision could open the door for all the other homeowners to subdivide. Mr. Marshall asked, if the Boor deed was an imperfect document, how do you handle an imperfect document? Mr. DiMarino asked, if there are three subdividable lots in Spring Meadows, does the current ordinance restrict them to subdivide? Mr. Crawford said the definition of lot area has changed, so it seems that today's density requirements would allow this subdivision, but we don't yet know the accurate formula for determining density today because the "sensitive areas" may also have been changed.

Mr. Roach said the Township's Historic Commission is reviewing the list of historic structures and that this subdivision could change the character of the house built in 1757, so the proposal seems injurious.

Chairman DiMarino said that Township Engineer Jim Hatfield will review the proposal to see if it meets the Township's requirements. Mr. Fritsch said it meets all of today's zoning requirements of a conventional two-acre lot. John Robinson asked that the plan be available for public inspection. Mr. Robinson also asked about the timing of the land disturbance. Mr. Fritsch said it probably would all take place at once while the machinery is on site. Mr. Fritsch reiterated that the applicant would request a waiver for the storm water management plan on the Boor lot if the Planning Commission recommends it.

Mr. DiMarino said he would ask Jim Hatfield to review both calculations, the one in the 1978 zoning context and the one in the 2009 zoning context and that the PC would not make a motion until they have Mr. Hatfield's letter; a PC recommendation should be made no later than the March 9 meeting. Mr. Crawford said it's important that the plan be reviewed under the current zoning ordinance and that, if it does not comply, then the PC and the Township Supervisors must make a decision. Mr. Crawford knows of no relevant court decisions, but even though we know the intent of the original Spring Meadows plan, the courts may not implement the intent. Mr. Crawford said the risk in denying the proposal is that you can't put conditions on a denial, and an appeal could prevail (though the Township could ask the court to impose conditions). He said that the intentional keeping of six acres may make it possible for an applicant to ram through further subdivision. Otherwise, the Township could take the position that, since Mrs. Boor has reduced the plan from two new lots to one new lot (since last winter's original proposal), the new single lot could be approved with conditions. Mr. DiMarino said we could have more conditions suggested by Mr. Hatfield's review. Mr. Crawford said that, if the applicant does not agree to the conditions of approval, the downside of the risk is eliminated.

Mr. Marshall urged that it be definitely determined whether the drive shown on the southwest area of the plan from Lot 56 is or is not an access. Mr. Hawkins asked, if the township has put in the barrier to the pond, does Lot 56 have a legal right to access to the pond? Mr. Pavidonis said the drive is chained off and that currently four residences share the lane for a driveway and pay \$220 annual dues for its maintenance; the Boors have paid nothing since 1993. Dr. Schwan said he has a copy of the (southwest) driveway

agreement but that there needs to be an easement to the open space from the northwest drive, since the southwest access is unusable. The northwest access has been by verbal agreement with the Boors and their predecessors. Mr. Carne said he'd seen two agreements, but they're confusing. Mr. Tucker asked how Lot 56 could have an easement to a private drive, especially since it would be a fifth property using the drive. Mr. Crawford said that the abandonment of the drive was not a Township issue, but one to be settled among the homeowners.

Grace Kaminstein, said that the proposed plan, in her view, goes against American law and definitely does not fit Birmingham's tradition of preserving open space. Mr. Carne asked that it be determined whether one dwelling or two dwellings currently are on the Boor property. Mr. Hawkins requested clarification of the driveway agreements by the next Planning Commission meeting. He said the second driveway should also be delineated one way or the other with its rights and easements. Mr. Hawkins asked if, when some large lots are permitted an accessory structure, is that right eliminated when the lot is reduced in size. In addition, Mr. Hawkins asked for a determination of the historic classification of the Boor's old house, a homeowner's agreement regarding maintenance of the open space and the pond, and a review by Mr. Hatfield of the plan under both the 1978 and the 2009 ordinances.

Signs: In advance of the meeting, Fronefield Crawford had distributed Article 15's Section 122-87 "Definitions of sign types and classifications" integrating three proposed new definitions into the existing section: Commercial Event Sign, Non-Commercial Event Sign, and Real Estate Sign. Mr. Crawford had also distributed Sections 122-88 (no changes), 122-89, 122-90, 122-90.1, 122-90.2, 122-90.3, and 122-90.4 integrating proposed changes into the existing language. Ms. McCarthy noted the difference between a real estate open house sign and directional sign. After a brief review highlighting the changes, Mr. Crawford asked that the members examine the sections, mark them up, and email or send them to him. Mr. Crawford noted that American flags are exempt from signs regulation. Ms. McCarthy asked about signs hanging on fences, such as at CJ Tires; Mr. DiMarino said they should have a permit.

With no further business, the meeting was adjourned at 9:06 p.m. (Hawkins, DeCaestecker, all in favor).

Respectfully submitted,

Jacquie Roach

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