

BIRMINGHAM TOWNSHIP PLANNING COMMISSION
Minutes of the Meeting of March 9, 2010

Chairman Nick DiMarino called to order the regular March Planning Commission meeting in the Township Building at 7:30 p.m. Present were members Scott Boorse, Mary Pat McCarthy and Debbie Hineman; a quorum existed when Eric Hawkins arrived at 7:38. Absent were Janet DeCaestecker, Doug Marshall, Pete Davenport and Scott Towler.

Minutes: The minutes of the February 9 meeting were approved. (Hineman, McCarthy, all in favor)

Boor Preliminary Plan: Register Associates' Jim Fritsch appeared on behalf of Barbara Boor to present a Preliminary Plan for the subdivision of the Spring Meadows Lot 56 Boor property at 1128 Dorset Drive into 2 lots. Mr. Fritsch explained that Mrs. Boor's attorney Art Sagnor was unable to attend the meeting due to the death of his father. Mr. Fritsch requested approval of the Preliminary Plan. Addressing a concern expressed by the Emlets who share part to the driveway, Mr. Fritsch said that Township Engineer Jim Hatfield had agreed that a waiver could be requested from SLDO 103.28.B(2)a - so as not to have to widen the driveway entrance (the Emlets objected to the driveway's appearing to have new and old macadam - different colors). Responding to the March 8 Hatfield letter, Mr. Fritsch said everything in the review letter had been addressed, but responding to the covering summary letter from Mr. Hatfield, Mr. Fritsch said the following: He will comply with item #1 (moving a pipe); Mr. Sagnor was working with Emlet attorney John Carr and with Fronfield Crawford on items #2 and #4 (driveway and access agreements); and he requests a waiver from Zoning Code provision 101-9.C(4) [to avoid stormwater management on Lot 1, thus avoiding seemingly unnecessary land disturbance]. Mr. Fritsch produced a March 3 letter from Birmingham's Richard Jensen confirming that Mrs. Boor's garage is not a dwelling unit just because the second floor has a bathroom and a bar sink.

Mr. Boorse asked if the driveway could just be completely Seal-Koted after the widening. Mr. Carr said the driveway should be returned to pre-construction condition after the construction. Mr. Fritsch agreed and the pre-construction condition could be documented by the Township and the homeowners.

Mrs. Emlet displayed pictures showing the circumference of the trees in the path of the proposed driveway to Lot 2. Mr. DiMarino said that Mr. Crawford had suggested that the proposed driveway area be staked and an arborist be hired to make a judgment about whether the 6-inch (in diameter) trees in question would survive the driveway construction. Mr. Sagnor said there was no plan to remove any 8-inch trees.

Lenore Larry, 1134 Dorset Drive, representing the Spring Meadows Homeowners Association, requested that any cost of revising their restrictive covenant be covered by the Township or by Mrs. Boor, since the proposed plan is due to the Township's error and that the Spring Meadows 76 homeowners are opposed to this subdivision proposal. Matt Tucker, 1124 Dorset Drive asked Mr. Fritsch to confirm that the proposed new house would face the rear of the Tucker house. Mr. Fritsch said the purchaser would decide which way the house would face. Mr. Tucker objected to the invasion of his privacy that would

result if the house faced his rear yard. Grace Kaminstein, 1136 Dorset Drive, objected to the likelihood of the rear of the proposed new house facing the front of her house. Mr. Fritsch suggested that the proposed house be rotated 180 degrees. Mrs. Emlet asked if the proposed house would be subject to any design guidelines or might it turn out to be like the new house on Creek Road. Mr. Tucker asked if the Planning Commission would recommend that a privacy berm be placed between his rear yard and the proposed new house and permanently maintained by the owners of the proposed new house. Mr. DiMarino replied that the PC can recommend, but the Supervisors decide and probably will not put in recommendations that will not stand up in court. Mr. DiMarino repeated that the PC can recommend Supervisor approval of this plan with conditions, or recommend Supervisor denial and risk having no control over the proposed plan.

Mr. Carr asked if there would be a revised Preliminary Plan. Mr. Fritsch said that any revisions would be in a Final Plan. Mr. Tucker asked that the Boor and proposed lots be made part of the homeowners association. Joan Lawless, 1196 Hampshire Place, asked if this proposed subdivision would nullify the current deed restrictions and covenants; Mr. DiMarino said that Mr. Crawford had said it would not. Mrs. Lawless asked if that could be in writing; Mr. DiMarino said it would be recorded in the minutes. PC Secretary Jacquie Roach asked if, after the moving of the SE lot line of proposed Lot 1, the Lot 1 acreage would change; Mr. Fritsch said it was still two acres. Mr. Carr said that, since there is not yet an executed agreement regarding the shared driveway, the Emlets are in a precarious position if no agreement can be reached. Mr. DiMarino said the PC would recommend that the agreement be approved before Supervisor approval of the Final Plan. Mr. Carr asked that there be a note on the Preliminary Plan regarding the proposed revisions and that they be made conditional to Preliminary Plan approval. Cindy Emlet, 1130 Dorset Drive, stated that she wanted the Township to know that, with regard to the shared driveway, the Emlets have gone above and beyond their neighborly duties in dealing with the Boors. Eric Hawkins asked about the question of access to the pond for maintenance. Mr. Fritsch said Mr. Sagnor was treating it as a "license" and was working on it with Mr. Crawford.

Chairman DiMarino announced that he would take a straw vote on recommending to the Board of Supervisors approval with the following conditions:

1. Both lots shall be restricted against further subdivision.
2. The internal lot line shall be modified so that there is direct access from Lot 2 to the open space.
3. The use of the common driveway, together with maintenance obligations, shall be memorialized in the form of an easement agreement. The applicant shall use applicant's best efforts to include Mr. and Mrs. Emlet in the agreement (which would then cover all three of the lots using the common driveway), but if agreement with Mr. and Mrs. Emlet cannot be reached, then there must be a maintenance agreement between Lots 1 and 2 at a minimum.
4. The applicant shall formally abandon any and all rights to use the driveway which traverses the open space to the south border of Lot 1.

5. The applicant shall memorialize the prior practice of consenting to the homeowners association that the association may traverse Lot 1 to access that portion of the open space to the north of the waterway, including, but not limited to, achieving de-siltation of the pond on a periodic basis.
6. The applicant shall “stake out” the area of the proposed new driveway which would traverse the treed area of Lot 2 in order to allow an arborist, to be retained by the Township (at applicant’s expense) to determine if the disturbance in this area for construction of the new driveway will result in the destruction (including death over a period of years) of mature trees (over 6 inches in caliper). Further, concurrently with the commencement of construction, the applicant shall provide “orange fencing” in order to limit the area of disturbance for driveway construction in this vicinity.
7. The applicant shall join both Lots 1 and 2 to the Restrictive Covenant Agreement for Spring Meadows, such that each lot shall participate in (and pay its appropriate share of common expenses of) the Spring Meadows Community.
8. Items 1, 4, 5, 6 and 7 shall be implemented by the drafting, signing and recording of a Declaration of Covenants, Easements and Restrictions, in form and substance satisfactory to the Township Solicitor, to be recorded *concurrently with the recordation of the subdivision plan*.
9. The common driveway would be returned to pre-construction condition at applicant’s expense.
10. The orientation of the new house and the grading (possibly a berm on the NW Lot 2 lot line) on Lot 2 shall be such as to minimize loss of privacy to surrounding homes.

Mrs. Larry said the Restrictive Covenant will have to be modified if this plan is approved because the first statement in the document is that there are 76 homes, so Mrs. Larry asked that either Mrs. Boor or the Township pay for the modification. Mr. DiMarino said that Mr. Crawford had advised the PC not to commit the Township to this expense because homeowner agreements are between homeowners, not between the Township and the homeowners, but that the request would be in the minutes and suggested as a good thing.

Mr. Carr asked about the topsoil storage; Mr. Fritsch said it had already been removed from the plan. Mr. Carr asked that any new mailbox be placed beside the Boor mailbox and not beside the Emlet mailbox. Mrs. Emlet asked if there’s a maximum size for the proposed house, since an oversized house would depreciate the value of the other properties; Mr. Fritsch said the maximum impervious coverage is ten percent – 8600 square feet of impervious coverage, including the driveway, walkways, etc.

Mr. DiMarino asked how many PC members would vote against Supervisor approval of the proposed plan. Mrs. Hineman said she didn’t like the plan but didn’t know what else the PC

could do; with the recommendations the PC is trying to meet half-way. Ms. McCarthy said she's sympathetic to the neighbors because she lives in a development, but she also wants to protect them (with conditions). Mr. Boorse said he would vote against approval because the proposed plan is against the intent of the original development; loopholes created unforeseen consequences, including opening up some other lots for subdivision. Mr. Hawkins said he agreed with Mr. Boorse about the original intent, but that some properties end up with no protection. He believes the proposed lots should be part of the homeowners association and that the homeowners should be protected from further development. Mr. Hawkins noted that there remain the open items of a right-of-way for the pond access and a shared driveway agreement and that all should be in place before approval. Mr. DiMarino said he would vote in favor of approval in order to have conditions imposed.

When the vote was taken, **three voted against Supervisor approval and two voted in favor of Supervisor approval.** The reasons given for the negative vote were: The plan is in direct opposition to the original spirit and intent of the original Spring Meadows subdivision which intended no further subdivision. The approval of this plan would harm the character of Spring Meadows and might allow other Spring Meadows lots to be subdivided. The applicant has applied for this subdivision because of a "loophole" created by the faulty timing of the recording of the sale of Lot 56 prior to the recording of the Spring Meadows subdivision; thus, the approval of this plan would compound the original error. Mr. Fritsch requested to be placed on the Supervisors agenda March 15. On behalf of the Spring Meadows homeowners, Grace Kaminstein thanked the PC members for their work.

Billboard & Sign Ordinance: Mr. DiMarino explained that, to save money on advertising, the Township had combined the billboard changes with parking changes into a single ordinance. Mr. DiMarino distributed a proposed Temporary Sign document and reviewed the changes that the PC had agreed upon. The only unresolved item was 122.90D - the size of the temporary signs for commercial events; the PC members agreed upon the size: 32 square feet. **The PC voted to recommend adoption of the ordinance controlling temporary signs in commercial districts (Boorse, McCarthy, all in favor). The PC voted to recommend approval of the proposed billboard and parking ordinance (Hineman, Boorse, all in favor).**

The Billboard, Parking and Signs in Commercial Districts ordinance changes can be combined into one ordinance change hearing if that will save the township cost to publish notice and record testimony.

Mr. Hawkins said he hoped that, with regard to subdivision approval, the PC would engage in better due diligence than in the past. Mrs. Hineman commended Mr. DiMarino for the manner in which he had conducted tonight's meeting.

The meeting was adjourned at 9:00 (McCarthy, Hineman, all in favor).

Respectfully submitted,

Jacquie Roach

This document was created with Win2PDF available at <http://www.win2pdf.com>.
The unregistered version of Win2PDF is for evaluation or non-commercial use only.
This page will not be added after purchasing Win2PDF.