

**BIRMINGHAM TOWNSHIP
BOARD OF SUPERVISORS MINUTES
MARCH 15, 2010**

The regular meeting of the Board of Supervisors was called to order at 7:30 PM in the Township Building by Chairman Conklin with the pledge of allegiance and a 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
Thomas Nelling	-	Chief of Police
Jim Hatfield	-	Township Engineer, VanDemark & Lynch, Inc.
Lloyd Roach	-	EMC and Historic Commission Member
Jacquie Roach	-	Historic Commission and Planning Commission Secretary
Kristin Camp	-	Township Solicitor
Quina Nelling	-	Secretary/Treasurer

Absent was Supervisor Al Bush.

Chairman Conklin moved to approve the March 1, 2010 minutes as written. Mr. Kirkpatrick seconded the motion and it was carried.

Mr. Kirkpatrick moved to approve the bills submitted for payment. General Fund bills totaled \$29,087.56. Sewer Fund bills totaled \$9,642.79. State Fund Check #143 was approved for payment to International Salt Co. for \$2,890.79. Chairman Conklin seconded the motion and it was carried.

BOOR PRELIMINARY SUBDIVISION PLAN

At its March 9th meeting, the Planning Commission reviewed the Revised Preliminary Subdivision Plan for the Boor 2 Lot Subdivision proposed in Spring Meadows. The Plan, dated December 15, 2009, last revised March 2, 2010, was drawn by Regester Associates and consists of seven sheets. The Plan proposes to subdivide the eight acre Boor property into two lots. Lot 1 will be six acres and will contain the existing house, pool, and detached garage. Lot 2 will be two acres and will contain an existing shed and a new dwelling. Lot 2 will access Dorset Drive via the shared driveway with Lot 1.

The Planning Commission voted three in favor and two opposed to deny the subdivision because the Plan is in direct opposition to the spirit and intent of the original Spring Meadows Subdivision which intended no further subdivision. Approving this Plan would harm the character of Spring Meadows and could open the door for additional potential subdivisions in the development. The subdivision is being presented because of a "loophole" created by the faulty timing of the recording of the sale of Lot 56 (Boor) prior to the recording of the Spring Meadows Subdivision Plan. The Planning Commission felt that the approval of this subdivision plan would compound the original error.

If the Supervisors decide to approve the Boor Subdivision Plan, the Planning Commission provided a list of conditions that it would like to see imposed.

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 should include the adjoining property owners that share the common driveway, currently the Emlets, in the driveway maintenance agreement. If a mutual satisfactory agreement cannot be reached there must still be a driveway easement agreement between lots 1 and 2.
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 HOA 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 demonstrate to an arborist, to be retained by the Township (at applicant's expense), that the disturbance in this area for construction of the new driveway will not result in the destruction (including death over a period of years) of mature trees (over six inches in caliber). 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 northwest lot 2 lot line) shall be such as to minimize loss of privacy to surrounding homes.

The PC recommendation letter noted that condition 2 has been addressed and the lot line has been moved so there is direct access from lot 2 to the open space. Also, Art Sagnor, legal counsel for Mrs. Boor, has prepared an eleven page Shared Driveway Maintenance Easement Agreement which is being reviewed by the PC Solicitor Frone Crawford, Jr.

Chairman Conklin proceeded to read the March 8, 2010 review letter from the Township Engineer, Jim Hatfield. Mr. Hatfield noted that all the issues in previous reviews have

been resolved provided:

1. The proposed location of a storm drain and pipe are revised to reduce the potential disturbance to the root zone of two trees.
2. The applicant submits, and the Township Solicitor approves, a Shared Driveway Easement and Maintenance Agreement.
3. The Board grants a waiver from Section 101-9-C(4) of the Stormwater Management Ordinance.
4. The applicant and the Township determine whether a permanent easement will be established to allow the Spring Meadows HOA the ability to perform periodic maintenance at the pond.

Mrs. Boor was present with legal counsel, Art Sagnor, and her engineer, Jim Fritsch of Register Associates. Mr. Fritsch indicated that the comments identified by Mr. Hatfield will be addressed for final plan submission. Mr. Sagnor commented that he is preparing a license agreement to address comment #4 as a license is revocable if the conditions are not met whereas an easement agreement would have to be changed through the courts.

Mr. Fritsch said that to accommodate the adjacent property owner, Cynthia Emlet, a waiver from Section 103-28.B(2)(a) would be required so the width of the common access driveway would not have to be widened to 18 feet for the first 30 feet. Mrs. Emlet was concerned with the potential patch job appearance that could be created with the different colors of macadam. Mr. Hatfield commented that the reason for the 18 foot width is to allow the passing of vehicular traffic.

Mr. Fritsch reviewed the conditions suggested by the PC. There were no issues with conditions #1, #2, #3, #5, #7.

#4 – There is no vehicular access from this driveway as the culvert needs to be modified before it can accept traffic. Currently it is only used for foot traffic. Mrs. Boor would like to retain the option to use this driveway in the future if the culvert is ever repaired.

#6 – Mr. Fritsch believes that the driveway can be staked out in order to avoid the removal of any mature trees. Mr. Fritsch said that Mrs. Boor is allowed to remove trees in accordance with Section 103.41.C of the land development ordinance but Mr. Fritsch did not believe that any mature trees would have to be removed. As Mrs. Boor was in compliance with the ordinance he did not feel that there was any need for her to incur additional expense to hire an arborist.

#8 – Conditions #4 and #6 need to be removed from the Declaration of Covenants, Easements and Restrictions.

#9 – “Applicant’s expense” should be the expense of the owner of lot 2.

#10 – The orientation of the new house will be such as to not require a berm.

Mr. Fritsch asked the Board for Preliminary Subdivision Approval with the two waiver requests.

Comments were taken from the public.

Lenore Larry – 1134 Dorset Drive – She didn’t understand why the subdivision isn’t grandfathered by zoning. Mrs. Camp explained that the Boor subdivision has to comply

with current ordinances and Mrs. Boor has rights under the current ordinances. The intent of the subdivision was for no further subdivision which would have been the case if the subdivision had been properly recorded.

Grace Kaminstein – 1136 Dorset Drive – She wondered why the subdivision was not recorded properly. Mrs. Camp said that ordinances were new when Spring Meadows was built. There were no formal procedures the way there are today for recordation of a plan.

Matt Tucker – 1124 Dorset Drive – The back of the house on lot 2 will be seen by motorists entering the Spring Meadow Development and the front yard of the house will be facing his back yard which will result in a large expense on his part to get his privacy back. At a minimum some screening should be provided between his lot and lot 2. Mr. Fritsch did not recommend that any additional restrictions be placed on the property and that it should be an issue for the buyer of lot 2. Mr. Sagnor discussed a willingness for screening on the property. The matter was reviewed at the table with the plans with Mr. Tucker, the Board and the Boor representatives.

Discussion ensued on the private drive off of Dorset Drive that services four houses. Lenore Larry questioned the rights of Mrs. Boor to use this private drive as Mrs. Boor has never contributed to its maintenance. Cynthia Emlet said that the Boors refused to contribute to the repair of the culvert. Mrs. Boor respectfully disagreed and said that she cooperated with the HOA and the Boors did contribute to financial repairs of the bridge and the culvert in prior years. The culvert is once again in disrepair and needs to be repaired. Mrs. Camp explained that the Township has no standing on private restrictions for the shared driveway.

John Robinson – 1125 Dorset Drive – He is not in support of the development but if it is approved he is in support of the two waiver requests so the shared driveway doesn't have to be widened to 18' and that no stormwater facilities have to be built on the property.

Grace Kaminstein expressed concern over the size of the house which would not be in line with the other houses in the Spring Meadows development. Mr. Hatfield indicated that there isn't a limitation on square footage, but there is a maximum building footprint. There is an impervious coverage limitation of 10% which includes the driveway.

Chairman Conklin stated that this subdivision application before the Board is the result of a very unfortunate situation which this Board inherited. Chairman Conklin agreed in spirit with the recommendation from the Planning Commission, but the Board has more responsibility and it has to consider not only its recommendation but also spending the tax money of all the Township residents, including Spring Meadow residents. The Board has gotten legal advice from two sources which have to be considered, not personal feelings.

Chairman Conklin moved to approve the Preliminary Minor Subdivision Plan for Barbara Boor, 1128 Dorset Drive, with the following conditions:

1. The Plan shall be revised to relocate a storm drain and pipe that is routed through the tree root systems for two of the larger trees adjacent to the proposed driveway. The pipe shall be relocated to minimize root disturbance per the Township Engineer's review letter and memo dated March 8, 2010.
2. Applicant shall submit a Driveway Easement and Maintenance Agreement which shall be approved by the Township Solicitor and Board prior to final land development plan approval. Applicant shall use her best efforts to include the Emlets in the Easement Agreement. However, if an agreement with the Emlets cannot be reached, the Easement Agreement shall establish a shared driveway between lots 1 and 2 and a mechanism for sharing the costs of maintenance shall be established.
3. Applicant, as owner of lot 1, shall grant an easement or license to the Spring Meadows Homeowners Association to allow entry by the Association onto lot 1 for access to the Association's open space which is located to the south of the property. The terms of the easement and/or license shall be set forth in a Declaration of Restrictive Covenants which shall be recorded simultaneously with the recordation of the final plan. The language of the Declaration shall be approved by the Township Solicitor and Board prior to final land development approval.
4. Both lot 1 and lot 2 shall be restricted against further subdivision. Such restriction shall be included in the Declaration of Covenants which shall be Recorded simultaneously with the recordation of the final plan.
5. The Plan shall be revised to modify the internal lot line between lot 1 and lot 2 to provide direct access from lot 2 to the Association open space located to the south of lot 2.
6. Applicant shall subject lot 1 and lot 2 to the Restrictive Covenant Agreement for Spring Meadows so that the owners of both lot 1 and lot 2 shall participate in the Association and pay their appropriate share of common expenses of the Association.
7. After construction of the dwelling on lot 2, the common driveway will be improved to the condition which existed prior to the construction of the dwelling. The cost of repairing the common driveway shall be borne by the then owner of Lot 2.

In addition, the Board agreed to grant the following waivers:

- A. A waiver from Section 101-9.C(4) of the Birmingham Code to not require areas of existing impervious surface to be considered meadow.
- B. A waiver from Section 103-28.B(2)(a) of the Birmingham Code to not require the width of the common access driveway to be widened to 18 feet for the first 30 feet of length.

Mr. Kirkpatrick seconded the motion and it was carried.

2010 ROAD PROGRAM

Chairman Conklin moved to authorize advertising on the 2010 Road Program with bids to be opened at the April 5th meeting. Mr. Kirkpatrick seconded the motion and it was

carried.

GIRL SCOUT GOLD AWARD

Chairman Conklin moved to adopt Resolution #100315A to recognize the achievements of Stephanie Forbes of 1615 Masters Way in completing the requirements for the Girl Scout Gold Award. Mr. Kirkpatrick seconded the motion and it was carried.

301 BRINTON LLC/ARDEN FORGE/HARB APPLICATION

At the March 1st meeting the Board did not approve the Certificate of Appropriateness Presented by HARB because of a lack of specificity. The Board requested that Brinton LLC submit a letter of extension of time for the Board to render a decision on the Certificate of Appropriateness to allow the Board to review mock-ups of sample colors to be used on the siding of the buildings. The applicant orally agreed to the extension but never memorialized it in writing. Chairman Conklin moved to deny the Certificate of Appropriateness for lack of specificity in the color choices for the siding. A new application will have to be submitted to HARB with the sample colors to be used for the siding of the Farm House and the Forge. Mr. Kirkpatrick seconded the motion and it was carried.

PUBLIC COMMENT

Victor Leonhard, 700 Brinton's Bridge Road, encouraged the Township to spray for ticks as Lyme disease is such a prevalent problem in the Township.

The meeting was adjourned at 8:51 PM. (JLC)

Respectfully submitted,

Quina Nelling
Secretary/Treasurer