

**Birmingham Township Planning Commission (BTPC)**  
**Minutes of the meeting May 10, 2016**

The regular meeting of the BTPC was called to order by Ms. McCarthy at 7:30pm in the township building.

PRESENT: Nick DiMarino, Scott Garrison, Eric Hawkins, Dan Hill, Mary Pat McCarthy, Frone Crawford

Others Present: Matthew Bush, Steve DiMarco, David Vitali, John DiMarco

ABSENT:

A motion to approve the minutes of the April 12, 2016 meeting was made by Nick DiMarino and seconded by Scott Garrison. Motion carried unanimously.

**Public Comment:**

**Freddy's Frozen Custard - Land Development Plan**

Matt Bush, states that he plans to address Jim Hatfield's May 5, 2016 letter item by item. He also notes for the record that they have not received a letter from the sewer engineer yet, so that item will be outstanding.

1. This comment deals with the existing stormwater facilities on the property. This is a re-development project and thus Jim wants the existing SW systems that are underground and already 15+ years old to be cleaned out and restored to their original design condition. They have contracted with a company to do this. Once the work is completed, they will provide a report and submit it to Jim.
2. This item is another outstanding Conditional Use issue regarding the environmental remediation on the site. They are working with past property owners to gather all the documentation in order to get the complete picture of what has transpired on the site and what is continual. The applicant plans to comply with sub-items (a) and (b) by adding those notes to the plan; and will discuss (c) with the architect.

Mr. DiMarino asks who will be responsible for the stormwater management on the site. Mr. Bush states that he believes the ultimate responsibility falls to the condominium association as they have joint ownership/responsibility for such items. Mr. Crawford states that the O&M agreement will state who is responsible. Mr. DiMarco interjects that they are paying for these items because they want to expedite the work. He also states that he has provided a letter to each of the other condo association members to sign regarding stormwater management responsibility. Mr. Crawford states it is more than a letter – that it will be recorded with the county so that all future owners will know who is responsible. Mr. DiMarco states it is already in their condo association documents.

Mr. Hawkins asks for clarification on who owns the ground underneath the actual buildings on the condo association site. Is it owned by the member who occupies that particular portion of the site or is it owned by the entire association? Mr. Bush is not sure whether the parcels are all separate or not. Mr. Crawford states that you would need to check the declaration to see if the land is considered a common element or part of the unit. Usually the individual units have a boundary that is equal to the bottom floor, so that the land itself is still considered common. But this is not always the case. No conclusive answer was determined to this question.

Mr. DiMarino also asks a question relating to item 2. His question relates to the monitoring wells on the site. Mr. Vitali states that there are two different engineering reports - one from Advantage Engineering whom Giant contracted with and one from Tyree. There are two different reports from two different time periods for the same property. There are 8 existing monitoring wells on the property. However, the applicant is unaware of whether they are actually being monitored. Mr. DiMarino says that it is essential that we get an authoritative report on what is actually going on with regard to the storm water and the underground status. Mr. Bush states that in his conversation with Jim Hatfield they will not be making any modifications to the storm water because they are actually reducing the impervious coverage. However they will be utilizing the storm water management system and that is the reason Jim Hatfield wanted the work done in item 1.

In order to proceed, the Planning Commission will need confirmation from the Planning Commission Attorney (Frone Crawford) or Township Attorney (Kristin Camp) or both that responsibility for ongoing monitoring, if any, and responsibility for providing the current state of environmental regulation compliance of the site has been identified and legally recorded. In short we will need to know that the township is protected from liability for further remediation or monitoring of the site.

3. Plan to get all the architectural plans into the township as soon as possible.
4. Their landscaping plan is to utilize the onsite vegetation. They are proposing a few additional trees on the site in the interior parking areas.
5. They realize they need to update the tree selection to meet the ordinance requirements and plan to meet both of the requirements in this item.
6. Will comply by adding the note to the plans
7. Will comply by adding the notes to the plans
8. Will comply by adding the detail to the plan and also making sure that during construction no additional dirt gets into the system.
9. This is simply more detail on the previously discussed storm water management item. This item addresses the requirement for an O&M agreement for all the storm water facilities on the site and also notes that must be added to the land development plan. The O&M agreement will need to be signed by the condominium association agreeing to maintain the storm water management system according to the following schedule.

Mr. DiMarino interjects a question here for Mr. Crawford asking who will sign these O&M agreements on behalf of the condo association. Mr. Crawford states that there is an executive board for the association. He would guess that since there are only three properties in this

association, that each property owner would be represented on the executive board. Mr. Crawford asks what the lease arrangement is for Freddy's. Mr. DiMarco states that the lease arrangement is with Giant. Giant currently has an agreement with Marty Rudman. Freddy's agreement with Giant provides them with an option to buy it out in seven years. Due to this information, Mr. Crawford states that the O&M agreement would need to be signed by the actual property owner, Mr. Rudman.

10. Requires modifying the detail on the plans and placing the markings on the storm water structures on the property.
11. The applicant is planning to execute the blanket easement. Mr. Crawford notes that the deed reference in the easement will need to reference all of the owners for this purpose (it will be five deeds).
12. Mr. Bush has not spoken with the applicant about this yet as they are waiting to hear from AECOM on this issue. They will comply once they have the exact procedure.
13. They will comply with the detectable warning surface and other items.
14. They will remove the detail on the plan that is not needed and add the downspout locations.
15. The applicant plans to meet with the township on the signage issue. However they do plan to use the existing sign at the corner of 202 and Old Wilmington Pike.

Mr. DiMarino asks about other signage on the building and whether it will comply with the township ordinance. Mr. DiMarco stated they just started reviewing the township requirements and they may need a little clarification as to the lineal feet allowed on the building since their building is located on two roads. Discussion ensues about types of signage and such. This discussion will continue once the applicant has a better understanding of the township ordinance and how their signage relates to those requirements.

Mr. Crawford asks for the impervious coverage on the site now and how much it is decreasing. It is approximately 75,000 sq ft. existing impervious coverage (68.2%) and the proposed is 74,000 sq. ft. (67.2%). Mr. Crawford states this site was always non-conforming.

Ms. McCarthy asks for clarification on how the parking situation ended up now that they have a better idea of the relationship within the condominium association. Mr. DiMarco states that after doing a time study of Freddy's busy periods and it turns out that this business will be exactly opposite of the other two businesses in the condo association. Freddy's is more of a dinner and weekend business.

Mr. Bush states that they realize that there are some rather sizable outstanding issues. They plan to get them all addressed to the satisfaction of the township engineer's letter prior to the next meeting. They are looking for feedback as to the potential of receiving a preliminary approval at the next meeting. Mr. Hawkins states that the applicant should plan to come back next month with all the outstanding issues handled. The PC will plan to have Jim Hatfield at the meeting next month in order to be able to have the open dialogue that is necessary to move forward.

### **Design Standards for Commercial Properties**

Jim Hatfield has added property lines in Thornbury Township on the color coded maps for the PC to use when working through this issue. Mr. Crawford's biggest concern is that the current C-3 zoning is such a large lot that could potentially be ripe for redevelopment in the future as the current owner doesn't have much invested in the current lot in terms of buildings; their largest investment is their inventory which is mobile. Mr. Hawkins asks the other PC members if they would be opposed to eliminating C-3. Mr. Crawford is going to talk with Kristin Camp to see if it is even an option.

Mr. Crawford asks if the members have any issues with any of the other types of uses that he has proposed. Mr. DiMarino asks what the reasoning is behind supporting multi-family residential in the commercial area of the township. Mr. Crawford states that it provides a level of stability to the township and also allows an upgrade to the commercial area of the township other than heavy uses.

Mr. DiMarino asks how changing the zoning would affect the current property owner. Mr. Crawford states they are already lawful non-conforming. Mr. Crawford believes the change in zoning provides the current property owner with more variety of uses in the future. Mr. Crawford says that this decision is not to meet a legal requirement because it is not a fair share issue. The township already met that requirement when they allowed townhouses to be built. The PC could add the requirement of mixed use to this zoning to provide senior housing.

In summary, the PC is currently: proposing to drop C-3 zoning; re-zone Stoltzfus property as C-1 and talk with Kristin Camp about removing some of the use options that are currently provided for under the zoning ordinance; update the language in the current ordinance. The final item that needs to be discussed at the next meeting is the bulk and area regulations.

### **New Business:**

Mr. Hawkins has an update on the special committee. Two items discussed at their last meeting was recommending to combine HARB and the HC committees. They also want a more simplified application process. Mr. Garrison adds that they are looking at two different applications for work: one for simple updates like painting a house and another for more in-depth updates. Mr. Crawford states that the HARB is limited to activities within the historic district. Thus, if you have historic resources outside of the historic district than that would not fall under HARB. These ideas are still in the discussion and exploration stage. They are reviewing ordinances that are already in place in adjacent townships to see what would make sense in Birmingham.

Mr. DiMarino stated that the Brandywine Conservancy received a grant of \$490,000.00 from the William Penn Foundation to "advance planning and design of 30 miles of trails for the Brandywine Greenway and improve access to the Brandywine for recreation..." The focus is biking and pedestrian trails within the community. Secondly Mr. DiMarino spent a day looking through the township files for the information related to storm water on the land development

plans and was unable to locate any details. Thus, the PC will need to move to option two in order to gather this information.

Motion to adjourn the meeting was made at 8:48pm by Nick DiMarino and seconded by Eric Hawkins and approved unanimously. Next meeting is scheduled for June 14, 2016.

Respectfully submitted,  
Jennifer A. Boorse  
Planning Commission Secretary