

**Birmingham Township Planning Commission (BTPC)
Minutes of the meeting October 10, 2023**

The regular meeting of the BTPC was called to order by Ms. McCarthy at 7:00pm.

PRESENT: Scott Garrison, Eric Hawkins, MaryPat McCarthy, Brendan Murphy, David Shields

ABSENT:

Also present: Kristin Camp, Esq., Scott Deisher (JMR Engineering), Chris Varela (developer) and Bill Messier (developer)

Mr. Murphy made a motion to approve the September 12, 2023 minutes. Motion was seconded by Mr. Garrison and it passed unanimously.

541 Webb Road/Land Development Plan

Mr. Deisher, is in attendance tonight representing the 541 Webb Road subdivision. The applicant is proposing to subdivide the existing 21-acre parcel; maintaining the existing house and subdividing the property into 5 lots and constructing 4 new dwellings. Since the Planning Commission meeting last month, they have incorporated some of the recommendations and updated the plans accordingly. Arro has provided a new comment letter dated October 9, 2023 pertaining to these updated plans -- there are fewer comments this time.

Mr. Deisher addressed the items in the ARRO letter dated October 9, 2023 one by one:

Relief/Waivers Requested:

1. Waiver for the overall stormwater management plan to be drawn at a scale of 60 when the ordinance requires a scale of 50. Mr. Hawkins asked why they cannot comply with the ordinance? Mr. Deisher indicated that it would require re-drawing all of the plans and they would be much less legible. He also noted that there is a provision in the ordinance that allows for a waiver if the net lots are above 4 acres and the net lots in this subdivision are 3.89 which is extremely close, thus the waiver request.
2. Preliminary/final request rather than two separate items
3. See above comment 1 as this relates to that same issue.
4. Mr. Schlott asked for the information to be added onto the plan; Ms. Camp asked where the views would be added on the plan. Mr. Schlott indicated that it would be more of a note on the plan. This waiver request will be removed as they can indicate this information directly on the plan via a note.
5. A tree survey has been provided already and it is extremely detailed for the side of the creek that they will be working on. Ms. Camp asked if there is a deed restriction on the trees located in the riparian buffer area? Mr. Deisher indicated that the woodlands in the riparian buffer area will not be disturbed as they are on the other side of the creek with the existing house.

6. The applicant has requested relief from the maximum vertical cut of 10 feet with the sloping lands exceeding 15%. This request pertains to lot 3 and the applicant is requesting a 2:1 finished slope instead of a 3:1 requirement. There was a brief discussion about this lot and the requested waiver. Mr. Schlott from Arro commented but again deferred to the BOS for a final decision.

Zoning:

1. Will comply and add comments to the restrictions on plan and the covenants. Ms. Camp stated that it cannot just be noted on the plan, it must be included in the master declaration and covenants. It must be in the recorded deeds themselves or in a separately recorded document. You are going to have to do a shared driveway easement anyway. Mr. Deisher confirmed they are planning to do a shared driveway easement that will also incorporate storm water management, so that they are all on the same page.
2. Will comply with adding all the lighting restrictions to the plan. Mr. Schlott noted that this comment came from a concern from one of the adjacent property owners in attendance at the meeting last month.

Subdivision and Land Development:

1. Already submitted at the meeting last month
2. Will comply – they are working on the PennDot permit; they are performing a speed study currently. It is a bit confusing due to the proximity of the property to both the Delaware and Chester County line.
3. Will comply
4. Will comply
5. Will comply – there is a blank section on the plan to add the address numbers once they are assigned.
6. The applicant was discussing a fee in lieu of the requirement of the dedication of parkland. The acreage is about a half-acre. SALDO requires this but Ms. Camp stated that she does not believe this has been done in the township previously. The fee in lieu is not just a random dollar figure – it must be based on a study of the value of parkland in the township. Mr. Deisher commented that they are providing a 50-foot conservation easement around the creek area and he wondered if this could be considered open space and negate the additional requirement. Mr. Schlott noted that one of the adjacent property owners last month noted that his property had a bridle trail easement along back of his property that is adjacent to the rear of this property. However, there is no access to this trail except from the existing private properties. Ms. Camp noted that if it's not a public trail, there could be liability issues for the private landowners. The intent of this ordinance is to provide public land. Mr. Murphy asked if the applicant could request relief from this requirement. Ms. Camp stated they can. Mr. Deisher doesn't want to request a waiver from the BOS and then be denied. Ms. Camp indicated the applicant could request either a waiver or have the BOS establish a fee in lieu of.
7. Will comply with the driveway easement along with the stormwater and the restrictions for the riparian buffer. Ms. Camp will want to see this. Mr. Hawkins

would like Ms. Camp to see this prior to the PC providing final approval. Ms. Camp stated that it could just be a condition of final plan approval, but the plans can't be released until they are recorded.

8. They are still working on this as they had to re-test one of the lots as the road had to go through the area where the prior testing was performed.
9. Will comply
10. Will comply and provide a detail for the concrete monuments.

Stormwater Management:

1. Will comply once they have it
2. Will comply once they have the NPDES permit.
3. Will comply
4. Will comply
5. This was performed last week and they have a clean draft report. They will provide the final report once they receive it.
6. Will comply. Ms. Camp stated that Birmingham Township adopted the county model in 2022 and she will forward that information to Mr. Deisher. Ms. Camp noted that it must be submitted with the final plans.

General:

1. Will comply
2. Will update as the process progresses.
3. He will figure out a better way to identify this in a clearer manner – it will either be a detail or a blow up of each lot with this information – but the entirety of each lot will be tied into the facility. Mr. Schlott noted that it's important for the detail to be identified as someone will ultimately have to construct this
4. Will comply
5. Will update the road name and make it consistent throughout
6. Will correct
7. Will update the wording to the correct terminology.
8. Will fix this error
9. Will comply
10. Will fix this
11. This will get fixed when the final numbers are calculated for NPDES.
12. Will change this
13. Will check this and correct

Ms. McCarthy asked if the applicant has the letter from the CCPC? He stated it was just submitted this week.

Mr. Shields asked if the NPDES permit has been submitted. Mr. Deisher stated they will be submitting it in the next month. He doesn't foresee any issues as this is the first creek he has ever worked on that has no impairments.

Ms. McCarthy verified the two outstanding items are the CCPC letter and also the CCHD about having to move the septic. Mr. Hawkins asked if they have their sewage

and well permits yet? Mr. Deisher stated they do not as that was what Ms. McCarthy was referring to. He noted that typically the well permits won't be pulled for subdivision. Mr. Schlott noted they have to pull them as when you get your sewage permit, they put the well permit number on the sewage permit. Mr. Hawkins asked if they have the PENDOT permit yet? No, they haven't yet due to the confusion of the whether it's Delaware County or Chester County.

Mr. Shields asked if the lot 3 steep slope changes will have to be approved by NPDES? Ms. Camp stated they will not be concerned with that.

Mr. Hawkins asked what the new dates will be with all the outstanding items. Ms. Camp suggested that the applicant ask for a 90-extension and plan to come back to the PC for a preliminary/final once some of the permits are in place, as the BOS will not take any action on the plan until the sewer is lined up.

Historical Commission Ordinance

Ms. Camp explained the background of Article 8A. She worked on the original HC ordinance with Al Bush when he was a township Supervisor. BT already had an historic district under Act 167 considered the HARB district - that is a completely standalone, follows the state law. This article 8A is not something that all municipalities have so it stands alone. When this was adopted, it recognized that there was a Comprehensive Plan in place that identified a list of historic resources within the township – some of those resources are cemeteries, some are homes, et cetera. The list of historic resources came from the Comprehensive Plan. In conjunction with the CP, this article 8A created an historical commission which identified Class I, Class II or Class III historic resources within the township. The article established a procedure that prohibited demolition of an historic resource unless it went through a process that was handled on a case-by-case basis. The HC reviewed the case, made a recommendation to the BOS who then acted on the case before the Building Inspector could issue a demolition permit. The same process was in place for alterations or modifications to historic resources – for tearing a wall down or adding an addition to an existing historic resource. These are the processes that are in place currently. Unfortunately, because the township has a very limited staff in the office, no one owns this process administratively. This limited staff in conjunction with changes in the outsourcing of the Zoning Officer and township Engineering firm, allowed for some applications to fall through the cracks. Additionally, sometimes there is overlap on some applications that fall under both the HARB and HC ordinances – and they each have their own processes. When steps were missed on some applications that fell under both the HARB and HC peripheries, it created controversy and angst and the BOS looked sort of foolish. Some of these missed cases went on appeal and this made the current BOS stop and say, let's look at Article 8A and see if there is a way to make the process less cumbersome for everyone involved – to the staff, to the applicants, to the engineers and to the BOS.

The historical commission wants to still be involved in the process and is reluctant to relinquish any of their current control. The BOS has tried to compromise with the HC stating that there are certain applications that are minor, or they don't believe the impact on the historic resource is that significant that it is necessary to make the applicant mandatorily go to the Historical Commission for a review. These are some of changes that are contained in the proposed ordinance – that the BOS will determine if an application warrants having to go to the HC for review. They did however keep in the requirement that all demolitions must go to the HC for a recommendation to the BOS.

Ms. Camp went through and explained the proposed changes in each section of the ordinance.

Purpose Statement: modified to reflect the policy decisions that the BOS has changed regarding not all applications being reviewed by the HC

The new ordinance has eliminated the various classifications of the historic resources and simply refers to them as historic resources. The historic resource list will now be attached to the ordinance and will indicate what exactly is the historic resource – whether is a house, a barn or some other specific structure. The list also includes the current property owner's names.

There is a process by which new resources can be added and that process is outlined in the ordinance.

The demolition process is also outlined.

One area that has been changed is the notification process by which an applicant must notify adjacent property owners with 200 feet of the historic resource. Notification is considered important so that adjacent property owners know that an application is being considered. The notice will still be sent at least 14 days prior to the meeting, via certified return receipt mail. An addition to this notification process will be the written notice will be posted on the property also.

The landscaping and screening section has changed. In any subdivision plan, a landscaping and screening plan must be submitted. The scope of when this landscape plan must be submitted for an historical resource has narrowed to only when the tract of land is adjacent to an historical resource.

The minimum building setback is one of the more significant changes to the ordinance. This is in relation to an application was fell through the cracks previously. Thus, the BOS has decided that rather than an arbitrary number of 200 feet, instead it will be double the normal building setback if the property abuts a property with an historic resource on it. Discussion ensued about this and its impact within the township. There is not a significant amount of developable land left in the township and this seems to be a way to still protect the historical resources within the township and make it easier for all involved to manage this protection.

It is important to note that the Board's intention has never been to stop protecting the historic resources within the township. It is more to streamline the process and to make judgement calls by the BOS (except in the case of demolition) to lessen the burden on the property owner.

This section about Alterations to historical resources is also significant as it previously was open to interpretation that allowed zoning officers to make judgement calls about what qualified as an alteration/modification. There was a previous application where a homeowner was making a modification to an interior bathroom and they were required to seek input from the historical commission. The BOS determined that only exterior alterations will be covered under this ordinance. This section appears as though it is all new, because sections of the ordinance were rearranged to be covered under this section. It is made clear that you don't have to go through the process if you are dealing with ordinary maintenance or repairs to an historic resource where that work does not require a building permit, or where the purpose is to correct deterioration, decay of or damage to the structure. This wording came from a historic resource that was damaged during Ida and the homeowner needed to begin immediate repairs in order to prevent further damage.

Also, the BOS can always ask the historic commission for a recommendation on any application that they need their input.

At the end of the day, this ordinance has taken into consideration input from the Historic Commission, from the Chester County Historic Commission, and from the public. The Board has put a lot of thought into the processes and feels these changes will make it a more streamlined process and still have the protections in place for the historic resources within Birmingham township.

Mr. Garrison asked if the owners of the HR's are ever notified that they live in an HR and they will have extra steps that they need to go through in order to make modifications to their homes? Ms. Camp stated that technically that information should be indicated on a seller's disclosure form – if they are aware of that information. Mr. Garrison stated that he was on the historic commission when the list was originally completed. He believes that there was some sort of notification sent out to the owners at that time.

Ms. Camp did state that it would not be a bad idea, either before the hearing or after the hearing, that the property owners be notified. Since there is no re-zoning of the properties, there is not requirement under the law to notify the property owners, but it would be a good idea to do anyway.

Mr. Hawkins asked about the various classifications of the Historic Resources? He asked if there are certain requirements that need to be met for the different classifications? Mr. Forbes stated that the new language that is replacing the classifications is taken directly from the federal government's National Historic Registry designation – so it is consistent with both the national and state designations.

Mr. Murphy recommended for the BOS to approve the Article 8A ordinance as amended. The Planning Commission would like to also recommend that the BOS include the addition of a process by which property owners who live in an historic resource are notified. It would be preferable that this process include a continual notification to new homeowners when the properties are sold. At the very least, the Planning Commission would recommend inclusion of some language on the township website directing owners of historic resources that they have additional steps that must be followed when making exterior changes or modifications to their homes. Mr. Shields seconded the motion and it passed unanimously.

New Business/Public Comment:

Motion to adjourn the meeting was made at 8:23pm by Mr. Shields and seconded by Mr. Murphy and approved unanimously. Next meeting is scheduled for November 14, 2023.

Respectfully submitted,
Jennifer A. Boorse
PC Secretary