

MINUTES
EXETER TOWNSHIP PLANNING COMMISSION MEETING
DECEMBER 4, 2007

The Regular Meeting of the Exeter Township Planning Commission was held on Tuesday, December 4, 2007 at the Township Hall, 4975 DeMoss Road, Berks County, Pennsylvania. Donald R. Wilson, Chairman called the meeting to order at 7:30 p.m. followed by the Pledge to the Flag.

COMMISSION MEMBERS: Donald R. Wilson, Chairman
Richard Littlehales, Vice Chairman
John W. Bittig, Secretary
Paul L. Schwartz
Gary L. Shane
Greg T. Unger
Gregory A. Shantz

OTHERS IN ATTENDANCE: Craig Peifer, GVC Consulting Engineer
Cheryl Franckowiak, Zoning Officer
Linda Cusimano, Recording Secretary
Eric Gardecki, GIS Administrator

1. MINUTES

MOTION BY Mr. Littlehales, seconded by Mr. Schwartz, to approve the minutes of the November 7, 2007 Planning Commission Meeting as presented. The motion carried unanimously.

* **Gregory Shantz arrived**

2. AGENDA

MOTION BY Mr. Bittig, seconded by Mr. Unger, to approve the agenda of the December 4, 2007 Planning Commission meeting. The motion carried unanimously.

The following business was discussed:

3. KLEINSMITH SUBDIVISION – FINAL PLAN – John Hoffert

GVC reviewed the Kleinsmith Subdivision Final Plan (reference letter dated November 30, 2007).

Mr. Hoffert handed out waiver requests and exhibits and then stated all the review letter items listed under Zoning were addressed. They had three waiver requests that needed to be discussed and acted upon. At last month's meeting there was discussion concerning the right-of-way and they wanted to show what would happen with the plan if they added an additional 5-ft. right-of-way, which would give 25-ft. on their side of Rittenhouse Dr. and Richard Place, and 30-ft. on Lorane Rd. Lot #2 became irregular in order to keep the rear distance from the existing garage to the property line. Mr. Bittig stated that he went down and measured

Kleinsmith Subdivision continued

Rittenhouse and their original plan showed 40-ft. right-of-way. Mr. Hoffert replied yes, on their side of the street. The school added additional right-of-way with the school's plan, but they did not need to show that on their plan. Mr. Bittig stated that in SALDO it stated, "the Township shall require 30-ft. from centerline of the street". Mr. Hoffert replied yes, but that was in SALDO and could be waived. He further stated that in the package he handed out were copies of the minutes of the October meeting where the Planning Commission agreed with Mr. Hamm's decision that additional r-o-w was not needed. He asked Township staff if there was any precedence set relative to waivers of 30-ft. r-o-w and there were two. Mr. Bittig stated that one was a double driveway out onto residential street and that did not make any sense. The other one was on the end of a dead-end street that wasn't going anywhere so there was no justification. Mr. Bittig stated that all other developments since that time had given the additional r-o-w, even through a stone garage, but the Township would not take it unless it was needed. Mr. Hoffert replied that he understood that he was requesting that on behalf of his client and he was not in favor of the plan showing the additional r-o-w. Mr. Hoffert stated that he was asking for deferral of right-of-way. He also gave them copies of the County tax maps that showed all the existing non-conforming lots in that area that do not meet the 12,000-sf. area requirement. Mr. Schwartz asked how much area would be lost with the 5-ft. additional r-o-w? Mr. Hoffert replied 500-sf. on one lot, 1,000-sf. on the other. Mr. Hoffert stated that if the Township needed to acquire additional r-o-w in that area all of the existing non-conforming lots would be made less conforming. Mr. Bittig stated that then the Township would not need to pay. Mr. Hoffert replied that they were looking for a deferral and they could place a note on the plan that if the Township would need to take any area on one of those lots, no payment would need to be made for that. Mr. Bittig stated that it was just a personal preference of his client; they did not show a hardship. Mr. Hoffert replied that was correct, but Mr. Kleinsmith lived there for over 50 years. Mr. Littlehales stated that we already agreed to a note on the plan concerning sidewalks, what more did they need? Mr. Bittig replied we did not act on right-of-way. Mr. Hoffert replied that we did on curb and sidewalk. Mr. Unger asked what waivers they were looking for? Mr. Hoffert replied that they would request that curb and sidewalk be deferred to a later date; request that any additional right-of-way be deferred to a later date and a waiver of stormwater. He further stated that they could not provide "over" detention because of the location of trees that they did not want to cut down. Due to the limited size of the areas they were 15% short of the detention requirement. They met the 1-1, 2-2 and 5-5. Mr. Bittig asked if they met the required infiltration. Mr. Peifer replied that they met that requirement; they just did not meet the release rate. They could not meet 2-1 and 5-2. Mr. Bittig asked where the water would go? Mr. Hoffert replied it would go back down into the gutter of the road area as it did today. There would be no greater amount of runoff from the property than there was today. Mr. Unger stated that he was concerned about the deferral of the right-of-way because the owners of the property might not be aware of that, what would they do to be sure that the owners would understand that? Mr. Hoffert replied that they could make it a deed restriction and be a note on the plan. Mrs. Franckowiak replied that was the way conservation easements were handled and it would then be transferable. Mr. Bittig stated that he had a high degree of discomfort, as it would set precedence in the Township. Mr. Peifer stated that each wavered plan would stand on its own merit. Mrs. Franckowiak stated that Clarence looked at it and he stated that there was no justification for that. Mr. Bittig replied that Clarence doesn't want any r-o-w added anywhere. Mrs. Franckowiak replied that was not true, Clarence looked to the future for the Township, and he said that he did not foresee any issue there. They wanted to give us the right-of-way as a deferral and it would be in the deed restriction. Mr. Peifer stated that he felt they should get the right-of-way now or not get it at all. Mr. Bittig stated that Mr. Kleinsmith could still get his three-lot subdivision; there was not a demonstrated hardship. Mr. Hoffert replied that the hardship was that the streets were all created the same in that area of the Township. Not one of those streets were 60-ft wide.

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Mr. Schwartz stated that he had two comments and they contradicted each other, but he was uncomfortable granting a waiver in a situation where it's been demonstrated that they could meet the Ordinance without the waiver. If they had no way of meeting the Ordinance that would be a hardship and then he would see a reason to grant the waiver. On the other hand, and he wanted to throw that out for a thought exercise, the purpose of the lot size was to regulate density, juggling those lots lines has no impact on density. In other conservation zoning we allowed them to create smaller lots in order to get the best configuration. It was a shame that we did not have the power to do that here. Mr. Bittig replied that was a Zoning Hearing Board issue. Mr. Hoffert stated that his only comment to the additional right-of-way was that it was in an already developed area and SALDO looked at how the Township wants to develop undeveloped areas and how the Township would want it developed, and that their area was an already developed area. He felt it was ludicrous to get the additional right-of-way because we would take an isolated pocket, create additional right-of-way and nothing would be done with it. To do any major project in that area the Township would need to take additional right-of-way from all of the properties located there. Mr. Hoffert further assumed that, in Mr. Hamm's mind, he had every right in saying that he didn't think it was necessary. Mr. Hoffert then stated that it was not practical in this case.

MOTION BY Mr. Schwartz, seconded by Mr. Bittig to recommend the Board of Supervisors waive the requirement of SALDO Section 6.203; curbs and Section 6.204; sidewalks for the Kleinsmith Subdivision provided that there was a note on the plan that they would put them in at the property owners expense should the Township require them. The motion carried unanimously.

MOTION BY Mr. Schwartz, seconded by Mr. Bittig to recommend the Board of Supervisors waive the requirement of Stormwater Ordinance Section 308.A.1. The motion carried with Mr. Littlehales, Mr. Shantz, Mr. Shane, Mr. Unger, Mr. Schwartz, Mr. Bittig voting in favor and Mr. Wilson voting opposed.

Mr. Shantz stated that at every meeting the idea of precedence was thrown around, saying that our actions would create precedence because we waive something in the past. He did not agree with that, every action we took was unique, as Mr. Peifer said, every plan was unique and we needed to substantiate every waiver that we made, so we could state that the waiver that we made two years ago was not like this one. Or if we grant a waiver on this one, this waiver was not the same; it's a special circumstance. He felt that we should continue to look at these on a case-by-case and plan-by-plan basis without concern on setting precedence. Or every single time, if we were worried about appropriate right-of-way, we would never grant a waiver. He did not feel that it was appropriate to take the additional right-of-way in this case. Based on the comments from our Highway Superintendent, we didn't need it. Mr. Bittig stated that he wanted to address what Mr. Shantz said since Mr. Shantz was fairly new to the Planning Commission. He further stated that other than the previously mentioned two areas, one a dead end street and the other being a driveway access, we had been consistent in always taking the right-of-way. We had always been consistently requiring the granting of an ultimate right-of-way of 60-ft. Mr. Wilson stated that Mr. Shantz stated that it wasn't setting precedence, but they used the previous waivers as examples. We couldn't say we never set precedence because people would bring that up and he believed that we needed to look at each case on it's own merits. Mr. Bittig stated that it should be based on hardship and this was not a hardship, Mr. Kleinsmith would still get his three lots. Mr. Shantz replied that he agreed, but he disagreed with precedence, you could always go back and look at the minutes to see why the waiver was granted, then would the applicant appeal our decision because of precedence? He further stated that he doubted that. He also stated that we were not the

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Zoning Hearing Board so they did not have to show hardship. Mr. Littlehales stated that we were concerned with SALDO and the hardship was not a decision maker. He further stated that the gentleman had been a resident of Exeter for over 50 years and we shouldn't punish him. Mr. Bittig replied that we would be opening up Pandora's box if we approved it. Mr. Wilson asked if he had two separate lots that he was combining to make into three separate lots? Mr. Hoffert replied yes. Mr. Wilson replied that it was not his fault, it was our fault and he has been saying for five years that this was where the Township would get nailed because now we would see less of the bigger developments and more of people coming in to create piece-meal lots.

MOTION BY Mr. Shantz, seconded by Mr. Littlehales, to recommend the Board of Supervisors waive the requirement of SALDO Section 5.216 for additional right-of-way for the Kleinsmith Final Plan. The motion carried with Mr. Unger, Mr. Shane, Mr. Littlehales, Mr. Shantz voting in favor and Mr. Wilson, Mr. Bittig, and Mr. Schwartz voting opposed.

Mr. Hoffert stated that they had the DEP letter. They brought in the auto-cad file and the pins were set. Mr. Hoffert then asked what would be needed in the Improvements agreement? Mr. Peifer replied the stormwater controls. Mr. Hoffert replied that they would have the Improvements Agreement done before bringing the plan before the Board. They were asking for Conditional Final Plan approval. Mr. Bittig asked about the waivers that were granted by the Board, did the plans need to show the waivers. Mr. Peifer replied yes, along with the dates that they were granted.

MOTION BY Mr. Schwartz, seconded by Mr. Littlehales, to recommend the Board of Supervisors grant approval for the Kleinsmith Subdivision Final Plan subject to the Board of Supervisors granting the waivers, the notes with the dates being placed on the plan and all outstanding items in the November 7, 2007 GVC review letter be addressed. The motion carried unanimously.

4. VARIANCE REQUEST – 119 HEDGEROW LANE

Mrs. Franckowiak stated that the Planning Commission had a variance request in their packets. She was not familiar with the request, as she did not meet with the people. They were requesting an encroachment in the rear yard with a setback of 28-ft. instead of 30-ft. Mrs. Franckowiak further stated that they claimed that they started the planning of the project in 2006 before the zoning changes. Mr. Bittig stated that he had no problem with the variance request of a two-foot encroachment, but that the reason was not true as the zoning changes were made in July of 2005. They claimed that the changes were made in March of 2007 and they started in 2006. Mr. Schwartz asked if we didn't have another one of these that we turned down? Mrs. Franckowiak replied yes, on Pennsylvania Ave.

Mr. Shantz asked if someone submitted an application to the Zoning Hearing Board, were they aware that the Planning Commission would discuss the application? Mrs. Franckowiak replied that they were informed of that at the time of application.

MOTION BY Mr. Schwartz, seconded by Mr. Shane to recommend the Zoning Hearing Board not grant relief as there was no hardship demonstrated by the applicant. They were simply unaware of the zoning change that was made prior to their designing of the project. The motion carried unanimously.

5. GENERAL DISCUSSION

Ms. Cusimano reminded the Planning Commission of the January meeting date of Wednesday, January 2, 2008. Mr. Bittig asked about scheduling a workshop for Zoning. The Planning Commission asked to have Thursdays in January checked for availability, send them to each member and set a date from that.

Mr. Wilson stated that he wanted to bring up land for the schools. The Methodist Church no longer needed the acreage at Amber Hill for their church and returned it for \$680,000 because they were not building there. Mrs. Franckowiak stated that was incorporated into the revised Amber Hill plan.

Public Comment

Jordan Bausher, 391 Ritters Lane, a member of Holy Cross Methodist Church, stated that they offered the piece of property that was supposed to be for the church, to the School Board and the School Board said that they were not interested.

Mr. Unger asked if anything happened with Exeter Golf Club Estates Phase VII? Mr. Bittig replied that one area on a recorded plan stated that it was to remain for golf. Mrs. Franckowiak replied that there were private covenants/deed restrictions that stated that area was to remain open area/golf course. She further stated that although we cannot enforce the private deed restrictions Mr. Hoffert, Township Solicitor, had rendered an opinion that on behalf of the residents that bought into that subdivision, we should surely be involved. When Mr. Filippini learned about that he had not been back with the plan. Mr. Bittig stated that the residents have banded together and he thought that they had sought legal counsel. Mr. Schwartz asked if they brought back a plan, would we need to have legal counsel for that? Mrs. Franckowiak replied that yes, we should have legal counsel, just from the standpoint that on the one recorded plan it very specifically stated "to be maintained for golf".

Mrs. Franckowiak stated that the Mt. Penn Water Authority stopped in to ask if the former Fegely's restaurant/diner car could be moved onto their property at the Antietam Recreation Center. She wanted to ask the Planning Commission if we felt that they would need Land Development Plans or could it be handled with a building permit to be sure that they met setbacks etc., as they had plenty of parking. Mrs. Franckowiak further stated that they wanted to use it as a meeting room, and our original thought was that land development was not needed, but she wanted to run it by the Planning Commission to get their feedback. The Planning Commission agreed that they would not need to do Land Development.

Mrs. Franckowiak stated that she had one more issue to discuss, signs, that was now a part of the Zoning Ordinance. A few months ago the Board went through the steps to file a call for curative amendment as it related to signs and billboards due to the litigations with Lamar. Nothing happened with that, so when we came to the deadline for the curative amendment we quickly readopted the deficient sign ordinance that we already have. The Board discussed enlisting the help of Andy Bellwoar, counsel for billboard litigation, to take a hard look at the Sign Ordinance to suggest necessary changes. That would be something that the Board would like the Planning Commission to look at, with Mr. Bellwoar's comments and any lighting comments, to put in the Zoning Ordinance. Greg Koontz was currently looking at a multiple use building and the Sign Ordinance was being too restrictive for signs on the face of buildings. The Board did not want to have Exeter looking like Fifth Street Highway with the pylon signs, but be less restrictive for building signage. Mrs. Franckowiak further stated that the Board would like the Planning Commission to work with

General Discussion continued

Mr. Koontz, Mr. Bellwoar and Mr. Littlehales (lighting) to make the necessary changes in our Zoning Ordinance. The Planning Commission agreed to work on that.

ADJOURNMENT

MOTION BY Mr. Schwartz, seconded by Mr. Shantz, to adjourn the December 4, 2007 meeting of the Exeter Township Planning Commission at 8:39pm. The motion carried unanimously.

Respectfully Submitted,

John W. Bittig
Planning Commission Secretary

lrc

Correspondence to:

BOS: Kleinsmith Subdivision Final plan and waiver requests
ZHB: Variance request - 119 Hedgerow Lane