

MINUTES
EXETER TOWNSHIP PLANNING COMMISSION MEETING
MAY 1, 2007

The Regular Meeting of the Exeter Township Planning Commission was held on Tuesday, May 1, 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. Bittig, to approve the minutes of the April 3, 2007 Planning Commission Meeting as presented. The motion carried Mr. Wilson, Mr. Littlehales, Mr. Bittig, Mr. Shane voting in favor and Mr. Schwartz, Mr. Shantz, Mr. Unger abstaining.

2. AGENDA

MOTION BY Mr. Shane, seconded by Mr. Unger, to approve the agenda of the May 1, 2007 Planning Commission meeting with the removal of Pathfinders Meadows Section 2 – Informal Discussion. The motion carried unanimously.

The following business was discussed:

3. POSSIBLE ZONING AMENDMENTS – Jeremy Fogel
- Henry Koch, Jr.
- Kevin Trapper

Mrs. Franckowiak stated that one issue we needed to discuss was the idea of a Fiscal Subdivision. We had discussed that when we did the last amendments to the Zoning Ordinance where one or more stores in a Shopping Center could own their own parcel. We incorporated language so that could be owned by multiple people (Section 501.1). Mr. Fogel and Mr. Koch were here just for clarification that was the Planning Commissions understanding and intent. We had Mr. Hoffert review it and he believed that it met the intent, but suggested that it be discussed and reviewed with the Planning Commission to get confirmation that was

Possible zoning amendments continued

how the Planning Commission would perceive it when the plan was brought in for review. Mr. Fogel explained that one or more of the occupants would own their parcel so there would be a fee property line within the center but the idea would be that the Center would be reviewed under the Township's Ordinance's and SALDO as a whole rather than separate pieces. Mr. Schwartz asked if that would occur at original plan stage or would there be future subdivision potential. He further stated that he wanted to do what they needed to do but had to cover the Township for the future. Mr. Fogel showed a concept plan and stated that when an occupant wanted to own their parcel it would trigger some land development issues such as setbacks, etc. From the Township and their resident's perspective the lines would be invisible. There would be an agreement in place that governed how the center would operate: everyone had a right to use the parking. One unified group would manage the access drives and the center. He further stated that they did not want that to trigger land development issues such as setback from their internal line, or having to view their parcel on it's own as it related to open space and other design criteria of the Ordinance. They were not suggesting that they were exempt and that the center would go through the process, but be viewed as a whole. There would be an operating easement agreement that everyone would be a party to. Mr. Littlehales asked if, in the future, that one hold out would sell them the parcel, how would that effect the purchase of the property? Mr. Fogel replied that everyone would have to agree to incorporate that parcel to the center. Mr. Koch asked if

Mr. Littlehales was concerned whether that out-parcel would be subject to land development?

Mr. Littlehales replied yes. Mr. Koch stated that it would absolutely be subject to land development, but we might not have to setback the building 45-ft because it was adjacent to the Shopping Center. Mr. Unger asked how they would handle the utilities and the stormwater? Mr. Fogel replied that it would be a unified plan servicing the entire tract and would be submitted on the land development plan. Mr. Schwartz asked about a subdivision after the fact; what if a retailer wanted to purchase the store after the plan was approved? Mr. Koch replied if that would happen after the plan was approved they would have to come back to the Township for subdivision. Mr. Schwartz stated that we would just need to approve the subdivision, not land development. Mr. Peifer stated that they would need to come in for any other parcels to be added, but the exemption would come into play concerning setbacks etc. Mr. Trapper stated that the operation agreement was a recorded document that ran with the land, if any retailer sold to another, they would have to follow the same obligations. Mr. Bittig stated that, in concept, he agreed with what they were saying. He further stated that he had a problem with our deficient Zoning Ordinance and secondly our need for the Supervisors to pay attention to the County's review. He noted that Mr. Koch had picked up on it and since we haven't defined "Shopping Center" we have deficiencies in our Ordinance. The proposed re-write for Section 502.1 stated that the only thing we could have in Shopping Center Commercial was Shopping Centers and that did not address the Highway Commercial issue. We could not do that but we could modify it. He would not agree to send that before the Supervisors until we had a definition of "shopping center". Mrs. Franckowiak stated that we talked about that during the Zoning Ordinance amendments because they asked us to come up with a definition for Shopping Centers and the Board said no. Mr. Bittig stated the Board was wrong we needed the definition. The uses that should be allowed were spelled out in the ordinance and, nothing against the project, but the way it read now, with a Shopping Center, they could put a massage parlor in there. There was no prohibition against it, because shopping center was undefined. Mrs. Franckowiak stated that she completely disagreed with that. There were zones that allowed for massage parlors. Mr. Bittig stated that the new ordinance allowed a bunch of uses and allowed shopping center as a stand-alone use; therefore they could do anything they wanted in that shopping center. The Board left that wide open. Mrs. Franckowiak stated that originally they asked to add shopping centers as a use and we came back and said that might not be necessary as we already allowed for retail sales, which covered everything that could be done in a shopping center. Mr. Bittig stated that if it was not defined, it was wide open.

Possible zoning amendments continued

Mr. Koch stated that their intent was not to expand the uses that were permitted. Mrs. Franckowiak stated that was understood. Mr. Bittig replied Mr. Koch could say it's understood, but the next lawyer that came in would drive a truck right through that. We needed to get a definition of shopping center into the ordinance. Mrs. Franckowiak stated that she disagreed; they would come in for a Zoning permit, they would tell her what they were doing and she would say it was not an allowed use. Mr. Bittig stated that we should clean it up and send it on to the Board. Mrs. Franckowiak replied that here we go again, having to make an amendment to the ordinance. The idea for them to be here was to ask the Planning Commission concurred with Mr. Hoffert's opinion that the Zoning Ordinance's specific intent covered what they needed. Mr. Bittig stated that Mr. Koch had prepared amendments to the Ordinance. Mrs. Franckowiak stated that was correct and we shared the letter with Mr. Hoffert and he stated the specific intent under the Highway Commercial Zoning section covered what they intended to do. We did not need Mr. Koch's letter. Mr. Koch stated that was what he understood Mr. Hoffert suggested. Mr. Bittig then asked why were we talking about this? Mrs. Franckowiak replied we were talking about this because we sent the letter and said Mr. Koch was trying to get information for Mr. Fogel to do his plan submission; was that necessary? Mr. Hoffert's response was no, we covered that when we amended the ordinance with the specific intent now talking about a shopping center which may consist of buildings under common ownership or unified control. Mr. Hoffert stated that he did not think we needed to address the letter, but we needed to take it to the Planning Commission and see if they concurred. Mr. Koch stated that they were here to make sure that the issue did not come up later on. Mrs. Franckowiak stated that was correct, so we would not expect to see a 50-ft side yard setback between the two parcels that may potentially be under separate ownership. Mr. Fogel stated that their operating agreement would prevent massage parlors. Mr. Shane asked if the operating agreement could be changed? Mr. Fogel replied he guessed "yes", but it would have to be agreed on by all parties. Mr. Peifer asked if that would have to be approved by the Township? Mr. Koch replied normally not. Mr. Bittig stated that would be a risk. Mrs. Franckowiak stated that would not be allowed by the Township.

Mr. Schwartz stated that he wanted to raise the issue that DeMoss Road ran through that property on the Township Official Map. Mr. Koch replied that they were addressing that issue with their land development plan. Mr. Fogel stated that they had been in discussions with PennDOT and the Township concerning DeMoss Road. They were also in discussions with Boscov's concerning where it tied into the Boscov's property so it met both of their needs. Mr. Littlehales stated that he was concerned that someone who owned a larger piece of property and wanted to subdivide it could cause a flag lot and we hated flag lots. Mr. Koch stated any further subdivision would have to return to the Township for approval.

Mr. Wilson stated that if Mr. Hoffert's opinion was that we did not need the changes, then we could go with that.

4. GODSHALL ANNEXATION – REVIEW WAIVER

Ms. Cusimano stated that there was a letter in the Planning Commission packet from John Hoffert Surveying with a copy of the plan. There was only a small triangle of the plan that was in Exeter Township and they were looking for a waiver from the subdivision process.

MOTION BY Mr. Bittig, seconded by Mr. Schwartz to recommend the Board of Supervisors waive the right to review the Godshall Annexation as only a very small corner was located in Exeter Township. The motion carried unanimously.

5. VARIANCE REQUEST – EXETER BIBLE CHURCH

Mr. Schwartz asked if we would object to having a lighted sign if it was not red and why not red?

Mrs. Franckowiak stated that the Sign Ordinance stated they could not be red, amber or green possibly because those were the colors of traffic lights. Mr. Bittig stated that was in Section 643.1.H. Mr. Littlehales stated that lighting the sign would not be a problem; the problem would be if it was in motion. They could change the message, but not continually. He further stated that the extra 20' would not be a safety hazard. Mr. Schwartz stated that we should first advise them of the deficiencies in their request: Gross area of the sign exceeds the Ordinance.

MOTION BY Mr. Unger, seconded by Mr. Littlehales to recommend the Zoning Hearing Board deny the variance because 1) it exceeds the size allowed per 643.3.B.1, 2) uses red LED, 3) they have not demonstrated any hardship. Also their application was deficient. The motion carried unanimously.

Mr. Shantz stated that he felt we were pre-judging them without hearing their case. Their application was poor at best. His personal feeling was that we should not have an opinion on it and just let them know that their application was deficient. Mr. Wilson stated that we as a Board had the responsibility to have an opinion and pass it along to the Zoning Hearing Board. The Zoning Hearing Board still made the ruling, but we needed to send along a recommendation to them. Mr. Shantz stated that then he agreed with the motion.

6. VARIANCE REQUEST – BAYLISS – 116 PENNSYLVANIA AVE

Mrs. Franckowiak stated that she received a building permit application for 116 Pennsylvania Ave from the contractor to put in an enclosed porch and they did not meet the setbacks. When she called the homeowner she told them that we were sorry, they did not meet the setbacks. They said ok, just call the contractor and let them know. She called the contractor and met with him and he stated that there was already a pre-existing non-conforming porch located there. So she checked the property file and there was no permit from Exeter Township that they were allowed to do that. Just by the virtue of the fact that already existed, did not make it right, so that was why they were going to the Zoning Hearing Board. Mr. Bittig stated that was to replace the existing one and would be better but it did not meet the setbacks.

MOTION BY Mr. Schwartz, seconded by Mr. Bittig, to recommend the Zoning Hearing Board deny the variance request for 116 Pennsylvania Ave because the homeowner had created the hardship, not the property itself. The motion carried unanimously.

7. DELAWARE RIVER KEEPERS ORDINANCE

Mr. Peifer stated that the Delaware River Keepers would come and make a presentation to the Planning Commission about the Ordinances. Currently we have steep slopes, woodland and some others covered. They had a block of money that they use to offer municipalities. They write the sections of the ordinance and insert them, at no cost to us. The Planning Commission decided to review the papers and discuss it at the next meeting.

8. GENERAL DISCUSSION

Mrs. Franckowiak stated that she attended the Historical Commission meeting last month and they would like to meet with the Planning Commission to discuss some changes to the Ordinance for Historical controls. The next meeting was May 16th at 7pm. Also at that meeting we would be making photo I. D.s for every member.

Mr. Bittig stated that we had two conflicting tree lists in two separate ordinances that needed to be amended. The EAC had done a list, which was in Ordinance #547, but Ordinance #295 had another list that was totally different.

MOTION BY Mr. Bittig seconded by Mr. Schwartz to recommend the Board of Supervisors take action to replace Appendix A of Ordinance #295 with the list of Ordinance #547. The motion carried unanimously.

Mrs. Franckowiak stated that if they wanted to change the Ordinance there were other items in that ordinance that needed changing, we no longer have a Shade Tree Commission. Mr. Bittig stated that the developers were still planting junk trees, red maples, etc. He then stated that he questioned that at Valhalla, they put in red maples. Mr. Peifer asked if they were going in on the interior or as street trees? Because if it was inside the parking lot, then that was ok. They could just not use them as street trees.

Mr. Bittig stated that at Exeter Golf Club Estates Phase V the developer removed trees that were marked for preservation per SALDO 4.242. There were about a dozen trees or so that were to remain – 24 to 28 inches. The Ordinance states that if they would cut them down they needed to come to the Township for approval. They needed to be cited, as it was a violation of the SALDO. Mrs. Franckowiak asked if there was a penalty provision in the SALDO. Mr. Schwartz found that on page 63 of the Ordinance.

Mrs. Franckowiak stated that we needed a complaint form filled out. Mr. Bittig stated that he wanted it to be on record that the Planning Commission agreed to have the Township take action against Berks Construction for violation of the approved plan. The Planning Commission agreed to have the form filled out and given to engineering.

The other problem was Country Club Estates II. Mr. Peifer stated that their plan did not call for retaining walls; they were to grade down to the lots. They came back with plans for the retaining wall and the Township told them that they would need to do a revision to the plan of record. They have not done that.

Mrs. Franckowiak asked if the Planning Commission would entertain the idea of them coming back to revise the plan of record and they could address the potential for a retaining wall so future unsuspecting residents don't have a disaster. Mr. Schwartz asked if we could refuse building permits? Mr. Shantz replied that it depended how the agreement was written. We would have to put some type of review by the Township and it's engineers and if it wasn't satisfactory then they would not get a building permit. We could not make them submit other plans and come to the Planning Commission, but we could ask the Township to take action and it seemed like requesting an injunction against them might prevent them from building any other homes out there until they remedy the situation satisfactory to the Township. Mr. Unger asked if it was appropriate to ask the Township to stop issuing any building permits for that development until the problem was remedied. Mrs. Franckowiak replied that you could make a recommendation that the Board ask Mr. Hoffert to come up with a reason for us to do that. We, in our department, could not stop issuing permits because the Planning Commission asked us to; we needed a good sound legal reason to do so.

MOTION BY Mr. Unger, seconded by Mr. Schwartz to ask the Board of Supervisors to request a legal opinion on what action we could take to halt building at Country Club Estates II because they were deviating significantly from the recorded plan which was creating immediate health, safety and welfare concerns and potential environmental damage which could cause problems for future residents and could cause potential litigation for the Township. The motion carried unanimously.

Ms. Cusimano stated that she did not have time extensions for some plans and the time extension for Windy Willows was incorrect.

MOTION BY Mr. Littlehales, seconded by Mr. Shane, to recommend the Board of Supervisors reject the following plans: Dutch Colony site – Final Plan and Limekiln Heights – Preliminary Plan because no time extension was provided and they had taken no action to resolve the outstanding issues. The motion carried unanimously.

MOTION BY Mr. Schwartz, seconded by Mr. Unger, to recommend the Board of Supervisors, unless a corrected time extension form was provided, reject the Windy Willows Preliminary Subdivision plan due to all the outstanding issues. The motion carried unanimously.

ADJOURNMENT

MOTION BY Mr. Schwartz, seconded by Mr. Littlehales, to adjourn the May 1, 2007 meeting of the Exeter Township Planning Commission at 9:20pm. The motion carried unanimously.

Respectfully Submitted,

John W. Bittig
Planning Commission Secretary

lrc

Correspondence to:

BOS: Godshall Annexation Subdivision – review waiver
BOS: Dutch Colony Site Final - rejection
BOS: Limekiln Heights Preliminary plan - rejection
BOS: Exeter Golf Club Estates Phase V – legal opinion
BOS: Street Trees Ordinance
ZHB: Bayliss – 116 Pennsylvania Ave Variance request
ZHB: Exeter Bible Church Variance request