

# WESTTOWN TOWNSHIP PLANNING COMMISSION MEETING MINUTES

Stokes Assembly Hall  
1039 Wilmington Pike, Westtown Township  
Wednesday, March 4, 2020 – 7:30PM

## **Present**

Commissioners – Planning Commission (PC) member, Kevin Flynn, was absent, all others were present. Also, present were Gregg Adelman and Andrew Semon for Toll Bros., Kristin Camp, PC solicitor, Al Federico, Township Traffic Consultant, Dave Walter, Historical Commission member and Planning Director Will Ethridge.

## **Call to Order and Pledge of Allegiance**

Mr. Hatton called the meeting to order at 7:30 PM and led those present in the Pledge of Allegiance.

## **Adoption of Agenda (JE/JL) 6-0**

No changes were made.

## **Approval of Minutes (JE/JL) 5-0**

The Planning Commission Meeting minutes of 02/19/2020 were approved. (Tom Sennett was not a member of the PC during this meeting)

## **Announcements**

- Mr. Hatton welcomed and introduced the newest member of the PC, Tom Sennett.

## **Public Comment – Non Agenda Items**

None

## **New Business**

1. **2020-01 Bump Variance** – Don Petrosa, the attorney representing Nate and Cheryl Bump, of 1106 Cardinal Drive, provided a summary of the application submitted to the Zoning Hearing Board (ZHB) for a variance from the side yard setback requirements for an accessory structure. He noted that the property is an acre in size and located in the R-1 Residential district. The applicant proposed to construct a two-story accessory residential structure at or near the driveway on the southeast side of the property. He described that the first floor of the accessory structure was intended for a two-car garage and for workshop equipment, and the second floor was intended to be used as an additional living space with a bathroom, but no kitchen facilities. Mr. Petrosa referenced the Section 170-1502.F of the Code, which permits accessory structures to be located within side, and rear yards provided that the proposed footprint did not exceed 50% of the footprint of the house and the height of the structure did not exceed the height of the primary residence. He confirmed that the proposed structure complied with those requirements, but did not meet a side yard setback requirement, which is required to be equal to the height of the accessory structure. He noted that the side yard setback as proposed was approximately 8.5 feet, while the height was about 17.67 feet.

Mr. Embick noted that the reason the PC recommended the accessory structure setbacks ordinance amendments to allow a different side yard dimension was to avoid any structures potentially falling on adjacent property.

After a brief discussion, the PC made a motion to recommend to the ZHB to approve the side yard variance request as proposed by the applicant. **(RH/EA 5-1) Mr. Embick voted against. His minority report is attached.**

## **Old Business**

### **1. 2019-01 Toll Brothers-Crebilly Farm II CU Application – Preparation of recommendation for Alternative Plan**

Kristin Camp explained that the PC wanted to focus on their comments in response to the alternative plan. Gregg Adelman pointed out that the alternative plan would not be possible without approval of numerous waivers.

Mr. Adelman responded to the question raised by Mrs. Camp at the previous meeting regarding the sidewalks and walking trails. He confirmed that the revised plan proposed 3.6 miles of sidewalks and 3.6 miles of trails.

PC had a discussion regarding their vision for W. Pleasant Grove Rd as a part of the proposed development. Main points included trails along the south side and a roundabout near the intersection with Orvis Way and Westminster Presbyterian Church. Al Federico recapped that several potential roundabout locations were previously discussed, including where the Connector Rd would intersect W Pleasant Grove Rd, and he strongly advocated for something like that for ease of access and other safety considerations. Mr. Embick recommended the trail to be extended along the northern portion of the tract (south side of W. Pleasant Grove).

PC discussed their desire that land development being moved further east, away from the Brandywine Battlefield Swath. The consensus among PC members was that the alternative plan was an improvement from the existing plan; however, the PC felt that the preservation of the Swath was preferable.

Kristin Camp went through the draft of the PC recommendations (52) in response to the alternate plan prepared by ESE consultants dated January 7, 2020. The discussion involved several items that needed to be clarified by the PC and the applicant. The main highlights included:

- Gregg Adelman felt strongly that if Toll was to shift the land development more towards east, it would violate numerous natural resource protection standards under the Township zoning ordinance.
- Mr. Adelman agreed that the development could be pulled more east of the Battlefield Brandywine Swath line, which would result in fewer housing units.
- PC recommended Toll explore options to shift the development more east of the Swath line.
- Some traffic-study related items were still pending review by the Township traffic engineer. Comments from the applicant's traffic consultant were recently submitted.
- PC requested Toll present sketches of potential roundabout locations and realignment of the Collector Rd with existing Orvis Way, while recognizing the need for collaboration with the Westminster Presbyterian Church.
- Mr. Embick emphasized the importance of encouraging Thornbury Township (Chester Co.) to cooperate regarding the potential traffic signal installation along SR 926 and other issues surrounding proposed land development.
- PennDOT was moving forward with the design of the improvements at Routes 926 and 202, scheduled for construction spring 2021-2022.
- PennDOT would like to see left turn lanes on both approaches of Route 926. There was a potential impact to the structures on the northwest and southeast quadrants,

and concern relayed by Thornbury on cooperation from some of the property owners. Toll was in the process of preparing design layout plans to PennDOT.

- PC recommended keeping Road N as an emergency access road only.
- PC emphasized their agreement with John Snook, that the proposed trails to be connected to each other or to sidewalks.
- Mr. Embick stressed that at a minimum, significant historic and scenic resources or values were present on the property and, in his opinion, Art. 1, Sec. 27 of the Pennsylvania Constitution requires the township to preserve and maintain those values for future generations in connection with land development proposals. In order to comply with this mandate, the Township must require the applicant to identify and evaluate all of the constitutionally protected values associated with the proposed development, and identify any harm or degradation to the protected values that would be caused by the proposed development. If harm is identified, the applicant must propose ways in which the harms will be reduced to insignificant levels. Such measures might include, but are not limited to, reconfiguration of the proposed development; reduction in the number of dwelling units, or the application of other measures to reduce harm to the protected values.
- Mr. Adelman emphasized that Toll would submit a structural integrity report to the Township for review before moving forward with Westtown Inn/Darlington Tavern relocation.
- Mr. Adelman stated that Toll would not seek to include the Westtown Inn/Darlington Tavern on the National Register of Historic Places, but would be open to further discussions.
- Mr. Embick raised a question as to whether the fiscal analysis provided by Toll included the analysis of connecting to public sewer. Mr. Adelman confirmed that it did not as the property was not included in the Township's public sewer service area.
- Mr. Scanlon, the WCASD superintendent, confirmed that if WCASD received permission from the HOA, they could take school busses onto private roadways. He noted that the location of bus stops would depend on bus routes.
- PC continued discussion on whether or not internal roadways within the proposed development should be private or public, maintenance associated with that and safety questions about school bus stop locations. Mr. Scanlon stated that the bus stops would more likely be on the proposed Collector Rd, a future public roadway.

### **Public Comment**

- *Q: Is an overpass and underpass being considered for Routes 926 and 202?*  
Mr. Federico confirmed that it was no longer considered as a part of the PennDOT project. He further explained that PennDOT eliminated that plan 10 years ago, and the current plan was to have a southbound right turn lane and another eastbound lane.
- *Q: There is continued discussion about the potential widening of Pleasant Grove Rd. I'd like to understand why we think it needs to be widened.*  
Mr. Federico explained that there were several reasons for that. He noted that the existing road was very narrow, and with the completion of the connector road that provided the people in that area a different opportunity to travel to work without having to go back down to Route 926, there was a change in the travel patterns. He added that the code required the roads to be widened to a certain level when the

properties along them were developed. He also pointed out that the trees along the road were not in a good shape and cost the Township a substantial amount of money in removal and maintenance over the years. Mr. Federico provided that the new roadway would be 20-24 feet wide.

- *Q: (To Mrs. Adler and Mr. Lees) Why are you not in agreement with your peers to move the development closer to Route 202?*

Mrs. Adler clarified that she was not against it, but she would like to see if it could be done without creating greater problems somewhere else.

- *Q: Comment on Routes 202 and 926 intersection that it had been discussed since 1960s, and the resident felt it was more beneficial to get rid of the section where the old bypass met Route 202, where there was the bottleneck.*

- *Q: Are you planning to plant the trees in place of those being taken down?*

Mr. Hatton confirmed that the applicant would have to include that information on landscaping plan.

### **Reports**

Mr. Embick summarized his observations of the BOS meeting for 03/02/20.

### **Adjournment (RH/JE) 5-0**

Meeting was adjourned at 9:50 pm.

Next PC Meeting:

March 18, 2020, 7:30 pm – Township Bldg

PC Representative at next Board of Supervisors Meeting:

March 16, 2020 – Jim Lees/Elaine Adler

Respectfully submitted,

William Ethridge,

Planning Commission Secretary

Attachment 1: Bump Variance minority report, Jack Embick (2 pgs)

## Minority Report.

In 1998, the Pennsylvania Supreme Court, in its decision in Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 721 A.2d 43 (Pa. 1998), announced a less stringent standard for the granting of dimensional variances, which include relief from setback, minimum lot size, and building height requirements.

In Hertzberg, the court stated:

“[W]e now hold that in determining whether unnecessary hardship has been established, courts should examine whether the variance sought is use or dimensional. To justify the grant of a dimensional variance, courts may consider multiple factors, including the economic detriment to the applicant if the variance is denied, the financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements and the characteristics of the surrounding neighborhood. To hold otherwise would prohibit the rehabilitation of neighborhoods by precluding an applicant who wishes to renovate a building in a blighted area from obtaining the necessary variances.”

Although not statutorily authorized by the MPC, it has been my experience that many zoning hearing boards also grant “de minimis” variances, which are small deviations from the dimensional standards of a zoning ordinance. I consider this to be more of a custom, more in keeping with the statement made by Mr. Petrosa that “any variance is OK if nobody objects.” I would tend to favorably consider such variances if I were convinced that rigid compliance is not necessary to protect the public concerns inherent in the zoning ordinance, and if compelling reasons are presented justifying a variance. I do not believe that there is any set of criteria upon which de minimis variances are granted; instead, they are evaluated according to the particular circumstances of each request for relief, or on an ad hoc basis. However, I am not convinced that such variance approvals are strictly “legal.”

With respect to the presentation last night by the Bumps, I am not convinced that the presentation meets the Hertzberg standard. I don’t think the Bumps proved that:

1. That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and

not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located (it is true that the lot is irregularly shaped, but the “hardship” is caused, in my opinion, by the initial decision to construct the type of house that was built);

2. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable reasonable use of the property (in my view the Bumps did not establish that they could not develop the property in an alternative fashion – they chose to propose a variance because they prefer the proposed garage to something else);

3. That such unnecessary hardship has not been created by the appellant (in my opinion, the hardship (if it is a hardship at all), was created by the decision to build the existing house in the position it is on the lot);

4. That the Bumps would suffer any economic detriment; and

5. That the Bumps would suffer any financial hardship to build a complying structure or addition;

-John R. Embick, Esq.

3/4/2020