

**MINUTES
FOX CHAPEL BOROUGH COUNCIL MEETING HELD JANUARY 21, 2019**

PRESENT: Walter A. Scott, III, Mayor; Andrew C. Bennett, President; Thomas A. Karet, Harrison S. Lauer, Frederick C. Leech, Ann R. Meyer, James M. Royston, Councilmembers; A. Bruce Bowden, Solicitor; Gary J. Koehler, Borough Manager; Joy A. Hardt, Treasurer; David M. Laux, Police Chief; Dana A. Abate, Borough Secretary.

ABSENT: Jay S. Troutman, Councilmember.

Mr. Bennett called the meeting to order at 6:05 P.M.

Upon a motion duly made and seconded, the minutes of the Borough Council meeting held December 17, 2018 were approved as submitted.

ENVIRONMENTAL ADVISORY COUNCIL

The following land disturbance applications were reviewed by the EAC at its January 14, 2019 meeting:

Springfield PRD: Hammock Beach Partners, LLC
251 & 305 Old Mill Road
Construction of an 11-unit Planned Residential
Development

Application No. 19-01: Paul Buncher & Cristina Borrero
1 Whispering Pines Lane
Construction of a New Single-Family Dwelling

Mayor Scott reported that the EAC recommended approval of the Springfield PRD and tabled action on Application 19-01.

PLANNING COMMISSION

Mr. Lauer reported that the Planning Commission met to review Conditional Use Application 19-01 and the Springfield PRD.

Public Hearing

Mr. Bennett called the Public Hearing to order at 6:07 PM and asked for questions from the audience regarding Conditional Use Application 19-01. There being none, the Public Hearing was closed at 6:07 PM.

Conditional Use 19-01

Mr. Lauer stated that the Planning Commission reviewed Application 19-01 and found that it met the requirements of the Zoning Ordinance, Section 400(H) 1 through 9, and recommended approval. Mr. Lauer moved for approval of Conditional Use Application 19-01 that was duly seconded and passed by unanimous vote.

MINUTES/COUNCIL MEETING

January 21, 2019

Page 2

Springfield PRD

Mr. Lauer reported that the Planning Commission reviewed the Springfield Plan and recommended Tentative Approval of the non-environmental aspects. He indicated that the Planning Commission recommended the reduction in the front setback from 50' to 20' to reduce the environmental disturbance and create a larger buffer between the development and the abutting properties. He noted that the Board also recommended that the governor's driveways for three of the lots be permitted that will allow the garages to be screened via landscape islands.

There were residents in attendance who spoke against the development and questioned the definition of a twin home which resulted in a discussion between the Planning Commission, the developers' representatives and the Borough's professional and soils engineers. Following discussion, Mr. Bennett closed the Public Hearing for the Springfield PRD.

The Borough Solicitor gave a lengthy summary of the Decisions, Findings, Conclusions and Conditions previously circulated to Council as follows:

COUNCIL OF THE BOROUGH OF FOX CHAPEL

Application of Hammock Beach Partners, LLC for Tentative Approval of Springfield, a planned residential development (the "Development")

Decision

Council hereby grants with the conditions listed below tentative approval to the Development and in support thereof makes the following findings of fact and conclusions:

Findings

1. The Borough has a Zoning Ordinance (Chapter 400 of its Code of Ordinances) which contains a Part relating to planned residential developments (the "PRD Ordinance") as required by the Pennsylvania Municipalities Planning Code (the "MPC") and a storm water management ordinance (Code Chapter 375) patterned after a model promulgated by the North Hills Council of Governments and approved by the Pennsylvania Department of Environmental Protection ("DEP"). The Zoning Ordinance includes community development objectives in §400-3 and the PRD Ordinance contains statements of its purposes in §400-56. The PRD Ordinance also contains long lists of requirements and standards. The storm water management ordinance provides, among other things, that the post-development peak storm water discharge rate shall not exceed the pre-development peak discharge rate multiplied by the sub-basin release rate (100%) for events to and including the 100-year twenty-four-hour storm event [Borough Code §375-13.C. (2)(b)]. Subsequent to the filing of the Application here, the Borough advertised for enactment a new storm water management ordinance in a new form promulgated by DEP. The new storm water management ordinance does not apply to the Application here, which Application was filed before the new ordinance was advertised for enactment. The Borough's engineers believe that the Application would also satisfy the new ordinance.
2. The Borough has a Comprehensive Plan which includes the following:
 - a. "Recent revisions to the Borough's zoning ordinance have been designed to add flexibility and incentives for natural resource protection and a broader choice of dwelling types." (page 32)
 - b. "There has been a decline in the percentage of residents moving into and out of the Borough, along with trends toward aging of the population and an increase in the number of two-person households. These changes in the residential profile of the Borough could lead to adjustments in housing need and demand." (*Id.*)

MINUTES/COUNCIL MEETING

January 21, 2019

Page 3

At the time of the Comprehensive Plan, approximately 19% of the Borough was open space, with 5% being public park land. There has been relatively little new land development and the amount of open space has increased slightly in the years since the adoption of the Comprehensive Plan.

3. The Site of the proposed Development is a 19.88-acre tract of land (the "Site") north of Old Mill Road, east and north of Haverford Road, and southwest of Millview Drive in the Borough. The Site is zoned "A" Residence District.
4. Old Mill and Haverford Roads are public roads of the Borough. Millview Drive is a private lane located generally southwest of and paralleling a public road of the Borough having the same name. After the historic storm on and just after July 4, 2018, the westerly edges of Old Mill Road slid downhill at locations north and south of the Site. The slide damage to the south appeared to be the result of a water main break and has been repaired. The Applicant's haul route to the Site is from Dorseyville Road via Squaw Run and Old Mill Roads, including the portion of Old Mill south of the site but not the portion to the north.
5. All public services are available in the rights-of-way of Haverford and Old Mill Roads.
6. The Site is virtually surrounded by detached single family dwellings on three-acre lots and just across Old Mill Road from and a bit northeast of the Trillium, a PRD with dwellings comparable to those proposed for the Development. The Trillium includes dwellings which are connected only by low walls and their foundations. Farther north on Old Mill Road is Millstone Drive, where there are three clusters of multi-family dwellings.
7. As one neighbor pointed out during the public hearing discussed below, there is currently an oversupply of detached single-family dwellings on the market in the Borough whereas demand for PRD units, as in the nearby Trillium development, continues to be strong.
8. The Applicant is the owner of the Site, Hammock Beach Partners, LLC of Allison Park, PA.
9. On June 11, 2018, Applicant applied for tentative approval to develop the site under the PRD Ordinance.
10. The Application proposes (a) ten twin dwellings, in five sets of two, each set joined by a low wall, in English arts and crafts style intended to emulate an English hamlet, and (b) one detached single-family dwelling. The twin dwellings and the private road connecting them generally follow the natural ridge line running through the middle of the property in a generally southeast to northwest direction. The architectural design avoids back-of-dwelling and deck views from nearby roads. The 100-foot perimeter setbacks in the Development are greater than the 20-foot side and 40-foot rear yard setbacks of the detached single-family dwellings in the adjoining plans. The detached single-family dwelling in the Development is on its own 4-acre lot in the easterly corner of the Site and has direct access to Old Mill Road.
11. Alternative permitted uses of the Site are detached single-family dwellings on three-acre lots, density development with detached single-family dwellings on one and one-half-acre lots, a farm, and a Borough-owned park, playground or recreation area. The Developer has provided an illustration of six detached single-family dwellings on three-acre lots on the Site. Development of the Site for three-acre lots for detached single-family dwellings would require disturbance of most of the Site, require more impervious surfaces, and leave virtually no open space.
12. The Site is to be served by an internal road to be called Georgian Court which is to be private from its intersection with Haverford Road to its end. The Applicant's Traffic Report concludes that there will be acceptable levels of service at the intersection of Georgian Court and Haverford Road, that sight distances there are adequate, and that there will be no significant impacts on traffic there. A supplemental letter dated October 24, 2018 discusses the intersection of Haverford and Old Mill Roads and determines that sight distances there are adequate at posted speeds but confirms one resident's observations that the sight distance for a motorist traveling

MINUTES/COUNCIL MEETING

January 21, 2019

Page 4

northeast on Old Mill Road and turning left into Haverford Road could be improved to deal with actual travel speeds.

13. During the public meeting process, the Applicant has agreed to mill 1 ½" of asphalt, crown the roadway and pave 1 ½" of top coat of asphalt on Haverford Road along the frontage of the Springfield PRD property and correct any damage as determined by the Borough to the roadway as a result of construction activities.
14. The Site has a north- and a south-flowing area or watershed. Storm water from the developed portion of the north-flowing watershed containing the ten twin dwellings is to be collected and piped to a detention basin northeast of those dwellings. A 2-year storm will be infiltrated on Site. The basin is to be designed to contain a 500-year, 24-hour storm and to release it at a rate less than 10% of the pre-development rate from that area. When combined with an un-detained area farther north, post-development flow from the entire north watershed will be about 68% of the pre-development rate in a 100-year storm. Flow from the south watershed will also be detained and the outflow decreased by approximately 13%. The total area of the site is approximately 0.4% of the entire Squaw Run watershed.
15. 8 core borings were performed in the portion of the Site to be affected by cuts and fills. Although the Borough geologic hazards maps suggested the presence of red beds in this area, none were encountered in the drilling.
16. More than half of the Site will be open space after development and 37% will be undisturbed open space, consisting of meadows and woodlands. The open space is intended for passive use except for maintained walking paths (a) through the Site for use by the residents of the Development and (b) along Old Mill Road for use by the public. The Developer's plan provides for sidewalks along Georgian Court in the area of the twin dwellings and an open area with gazebo between Lots 6 and 7 providing views over the meadow area.
17. The Application was accompanied by a statement of PRD Public Interest & Benefits, a Project Narrative, a Notice of Proposed Environmental Disturbance, an Environmental Report, an Erosion and Sediment ("E&S") Pollution Control Report, a Post Construction Stormwater Management ("PCSM") Report, and a set of Drawings. The Application was revised October 9, 2018. The Environmental Report was revised October 9 and December 4, 2018. The PCSM Report was revised December 21, 2018.
18. Early in July, the Application was supplemented with a request for Modifications and a Traffic Report.
19. The Modifications requested by the Applicant were
 - a. Disturbance of 0.73 acres of very steep slopes (25% or greater grade);
 - b. Disturbance of 1.8 acres of steep slopes (15% to 25% grade) with moderate landslide risk;
 - c. Use of high density plastic rather than reinforced concrete pipe for storm sewers under roadways;
 - d. Two curb cuts each for three lots having less than 175 feet of frontage on Georgian Court; and
 - e. Front setbacks of the twin dwellings from the edge of Georgian Court of 20 feet.

Borough Council may grant modifications or waivers of requirements of the PRD Ordinance "where a rational and reasoned basis for such modification is shown, provided that such modification will not be contrary to the public interest and that the purpose and intent of the planned residential development provisions of this chapter are observed." In fact, cuts and fills are required to be approved if they will result in stable slopes not subject to slides and other detrimental effects (Borough Code §363).

MINUTES/COUNCIL MEETING

January 21, 2019

Page 5

20. In September, a Geotechnical Investigation report of ACA Engineering was added to the Application as were draft Covenants establishing a homeowners' association ("HOA"). The HOA would have responsibility for maintaining the storm water detention facility and the other infrastructure and common elements of the proposed development. Draft HOA by-laws were subsequently provided.
21. It is uncontradicted that (a) the measures the Applicant proposes to take will minimize or eliminate the risk of unstable slopes resulting from the proposed cuts and fills on the Site, (b) plastic pipe for storm sewers under roads will be at least as strong as reinforced concrete pipe, will facilitate those being curved sewers, and is in fact consistent with pipe called out in Standard Details adopted by the Borough and used under its roads, (c) landscaped islands will provide screening and mitigate any negative effect of the three governor's driveways along Georgian Court, and (d) locating the twin dwellings an additional 30 feet from the edge of Georgian Court would increase considerably the portion of the site which would be disturbed.
22. As required by its Ordinance, the Borough referred the Application to a number of entities, including its Planning Commission, Engineer, and Environmental Advisory Council. The Borough's Engineer, Lennon, Smith, Souleret Engineering, Inc. ("LSSE") in turn sought review by consulting geotechnical engineers, Garvin Boward Beitko Engineering, Inc. ("GBBE").
23. The Borough Planning Commission reviewed the Application as amended from time to time at public meetings held on June 18, July 16, August 20, and October 15, 2018.
24. Members, in each case less than a quorum, of the Borough's Environmental Advisory Council ("EAC") visited the Site on June 27 and 30 and the EAC reviewed the Application as amended from time to time at public meetings on July 9, September 10, October 8, 2018, and January 14, 2019.
25. Borough Council discussed the Application as amended from time to time at its public meetings on July 16 and September 17, 2018 at the latter of which, responsive to the Applicant's request, Council postponed the start of the public hearing on the Application to October 15.
26. As the Application was evolving in response to their comments, each of LSSE and GBBE performed several reviews, to each of which the Applicant's landscape architects and land planners, Victor-Wetzel Associates, and engineers, Gateway and ACA Engineers, responded with comments and revised documentation. The most recent set of drawings is dated December 21, 2018. LSSE's review letters are dated June 28, August 27, September 7, and October 4, 2018 and January 7, 2019 [typographical error shows 2018]. GBBE's review letters are dated July 25, August 31, September 26, September 28, and October 19, 2018. Responses from the developer's consultants are dated July 6 and September 24, 2018 from Steven Victor, August 27, October 11 and December 21, 2018 from Gateway Engineers, and September 7 and October 4, 2018 from ACA Engineering.
27. The Borough's consulting engineers concluded that, except for the matters as to which Modifications were requested, the Development plans meet the requirements of the applicable ordinances. Specifically,
 - a. GBBE concluded in its last review letter dated October 19, 2018 that all its geotechnical engineering concerns had been addressed by the Developer and recommended approval of the Site Development; and
 - b. LSSE concluded in its last review letter dated January 7, 2019 that, other than content missing from the environmental report (which has since been provided) and documents which must be included in the application for final approval, the application for tentative approval conforms to the applicable Borough ordinances.

MINUTES/COUNCIL MEETING

January 21, 2019

Page 6

28. At 6 PM on October 15, 2018, Council opened the public hearing required by the Borough's Zoning Ordinance and the MPC. A stenographic record was made of the proceedings on the evening of October 15, 2018.
29. A resident presented written statements from several individuals who did not attend the hearing:
 - a. Based on "obtained information," Emily Mercurio, PhD, a professional geologist and President and CEO of CivicMapper, warned of the "potential to exacerbate flooding for properties downstream and mass wasting [slope movement] at several locations along Millview Drive, Old Mill Road, and Haverford Road."
 - b. Matt Graham of Landbase Systems presented data of rainfall in the Borough. His summary conclusion was that "[r]unoff generated by increased rainfall volumes and intensities are not well managed by current stormwater ordinances or existing stormwater infrastructure."
 - c. Barton Kirk, PE, who identifies himself as "an ecological engineer and an established stormwater management and green infrastructure design expert," concludes that "[t]he request for variances, however, give the borough an additional responsibility to ask whether a proposed variance does not impose undue risk or hardship on the borough and its residents."
 - d. Ian Lipsky, Senior Hydrologist at eDesign Dynamics, "advise[d] against the landform changes [cuts and fills] proposed for the Springfield site as they will have an unpredictable and potentially catastrophic effect on properties downstream."
 - e. Larry Schweiger, President Emeritus of PennFuture, discussed climate change and global cures, commenting relevantly that "historical 100-year floods are no longer a relevant land planning standard."

These individuals warn of potential risks and the inadequacy of current laws and ordinances but there is no indication that they considered the reports of either the developer's or the Borough's geotechnical or stormwater engineers and thus didn't challenge those reports or offer opinions specific to the planned Development.

30. Sworn testimony was received from 6 representatives of the Applicant, 7 Borough residents, and 3 representatives of Borough residents. Comments included
 - a. Climate change/global warming is resulting in more severe weather with heavier precipitation; planning around a 100-year storm is no longer appropriate
 - b. The Applicant's traffic study doesn't deal with the Haverford/Old Mill intersection or traffic when school buses are present; turning left (north) onto Haverford from Old Mill is hazardous
 - c. There is a history of landslides along the side of Old Mill Road opposite the Development and north and south of it
 - d. Trees on the Site along the private Millview Drive serving four (4) residences are in bad shape and there is a threat that they will fall across the road and block emergency access
 - e. Questioning the Applicant's storm water calculations
 - f. The Site should be acquired by the Borough and/or others for public park purposes

When all spoken statements had been received, Council closed the spoken testimony portion of the hearing and adjourned the hearing to a future meeting. Witnesses were allowed 10 days to submit written statements supplementing their testimony at the October 15 hearing.

31. The following supplemental statements were provided during the 10 days following the October 15 hearing session:
 - a. Ms. Johanna Smith Sisteck provided a letter dated October 22, 2018 challenging the Developer's statement that 10 of the dwelling units in the plan are twin multifamily dwelling units.

MINUTES/COUNCIL MEETING

January 21, 2019

Page 7

- b. Gateway Engineers provided an additional traffic assessment dealing with the Haverford/Old Mill Roads intersection and concluded that “traffic volumes are well below the capacity of the intersection” and “sight distance . . . was found to be adequate for all movements based on the posted speed limit.” Recognizing that the posted speed limit is not observed by traffic southbound on Old Mill Road, the Borough is working on improving the sight distance northbound on Old Mill Road turning left into Haverford Road by having Verizon move its utility box and itself removing the embankment on the side of Old Mill Road opposite the development.
 - c. Developer’s attorney, Steven M. Regan, Esq. , provided a supplement to the record dated October 24, 2018 which attached supplemental statements from
 - i. ACA Engineering dated October 24, 2018 responding to the statements described in paragraph 29 above
 - ii. The GBBE October 19 Review No. 5 discussed above
 - iii. Gateway Engineers response dated October 23, 2018 to the statements described in paragraph 29 above
 - iv. The Gateway traffic assessment referenced immediately aboveThe supplement purports to refute the opinions of the individuals discussed in finding 29 above.
32. As amended to date, the Application consists of the documents listed in paragraphs 9, 12, 17 through 20, 26 and 31 b and c above. All Application documents are and have been available for public inspection at the Borough office as have the reports and reviews of the Borough’s engineers, responses from the developer’s representatives, and written comments received from residents and other members of the public.

Conclusions

- 1. The Development is consistent with the Borough’s Comprehensive Plan.
- 2. The 10 twin homes along Georgian Court meet the substance and spirit of the definition of twin dwelling in §400-5 of the Zoning Ordinance in that “two dwelling units . . . [are] connected by a . . . connecting wall . . .” They are comparable to similar dwellings in the Trillium plan.
- 3. The Borough Engineers at Lennon Smith have confirmed the Developers’ engineers’ assertion that the Development will decrease significantly the pre-development rate of stormwater leaving the Site. The amount of stormwater detained by the Developer’s stormwater facilities will be well in excess of what’s required by Borough and County standards and, in the case of the detention basin serving the improved northerly portion of the Site, will exceed the amount generated by a 500-year 24-hour storm.
- 4. The development plan departs from the Borough’s subdivision and zoning ordinances only to the extent of the Modifications discussed above. Because
 - a. The Borough’s geotechnical engineer, GBBE, has determined that there is no landslide risk or adverse effect on slope stability arising out of the cuts and fills shown on the drawings,
 - b. The plastic pipe Applicant proposes to use for storm sewers under roadways is comparable to reinforced concrete pipe and pipe used by the Borough in similar applications, and described in the Borough’s Standard Details,
 - c. The landscaped islands mitigate any negative effect of the three governor’s driveways, and
 - d. 20’ rather than 50’ setbacks of the twin dwellings from the edge of Georgian Court are preferable to the increase in the impervious and disturbed areas that would result from applying the 50’ setbacks, and will result in those new dwellings being farther away from

abutting properties and permitting a planted buffer between the proposed dwellings and existing neighboring dwellings,

there is a rational and reasoned basis for the Modifications and they are not contrary to the public interest or the purpose and intent of the PRD Ordinance.

5. The purpose, location and amount of the common open space (including the undisturbed open space) exceed the requirements of the PRD Ordinance and are adequate for a Development of this density and type. Proposals for the maintenance and conservation of the common open space (including the undisturbed open space) set forth in the HOA documents are reliable.
6. The physical design of the Development plan meets the requirements of the PRD Ordinance (as varied by the Modifications) and makes adequate provision for public services, provides adequate control over vehicular traffic, and furthers the amenities of light and air, recreation, and visual enjoyment.
7. The Development has a beneficial relationship to the neighborhood in which it is proposed to be established because, among other things, more than half of the Site will be open space served by trails, one of which is available to neighbors and others, and two trees will be planted for every one removed. Conventional three-acre-lot development would provide no open space.
8. The Development is consistent with the purposes of the PRD Ordinance.
9. The Development's impact on the environment will be positive in that it decreases the pre-development flow rate of storm water off the Site and the cuts and fills on steep and very steep slopes result in no loss of stability.
10. The Development satisfies the requirements of the Borough's stormwater management ordinance which meets the standards set by the Pennsylvania Department of Environmental Protection. By detaining a 500-year storm, it actually exceeds those requirements.
11. The Borough has repaired the damage to Old Mill Road south of the development and is in the process of repairing the damage north of the development. No connection has been established between conditions on the Site and the damage to Old Mill Road.
12. The Developer and the residents served by the private Millview Drive have resolved their disagreements relating to trees bordering the Drive.

Conditions

1. The application for final approval must include the following items, in forms acceptable to the Borough:
 - a. A final landscaping plan meeting the requirements of the Borough's Grounds Maintenance Guide (§400-73.C) including the plant species in the planting strip along the perimeter of the development.
 - b. Construction details meeting the requirements of the Borough's Standard Details (§380-10.A.7)
 - c. An E&S Control Plan meeting the requirements of §363-16.D and approved by the Allegheny County Conservation District, and an issued NPDES permit
 - d. Storm water pipes satisfying the requirements of §375-15.F.12 except to the extent modified by Borough Council with the concurrence of LSSE
 - e. An executed Storm Water Management Operations and Maintenance Agreement in form satisfactory to the Borough
 - f. An approved street opening permit covering storm water and sanitary facilities to be placed in the rights-of-way of Haverford and Old Mill Roads
 - g. A developer's agreement in a form satisfactory to the Borough and including provisions for inspection and bonding of the construction vehicle travel route, which meet the requirements of General comment 1 in the October 23 LSSE review letter, and restoration of Haverford Road adjacent to the Site

MINUTES/COUNCIL MEETING

January 21, 2019

Page 9

- h. An approved sewage planning module
2. Trees to be removed, footprints and limits of disturbance shall be marked as required by Code §363-18.A.(1) and approved by the Borough.
3. Notice of proposed environmental disturbance application for Lot No. 11 must be submitted and approved when plans for development of that Lot are submitted.
4. The environmental report shall be expanded to include details and dimensions regarding size, square footage, number of rooms, and building height of the dwellings in the Plan.

Upon completion of the reading of Findings of Facts, a motion was called for on the development. It was moved by Mr. Lauer to grant Tentative Approval to the Springfield PRD with the conditions noted in the aforementioned Findings of Facts and to require submission for final approval no less than three months from the approval date. The motion was duly seconded and passed by unanimous vote.

FINANCIAL

Mrs. Hardt reviewed the December 2018 financial statements.

Approval of Bills

It was moved by Mr. Lauer that the payment of bills for December 2018 (General Fund Vouchers 24189-24269 - \$292,185.41) be approved. The motion was duly seconded and passed by unanimous vote.

NEW BUSINESS

Garbage Contract

It was moved by Mrs. Meyer that the Borough award the Option Years under the current garbage contract with Vogel Disposal, said approval also reflecting the change in the Borough's recycling guidelines that glass is no longer considered a recycled item at this time. The motion was duly seconded and passed by unanimous vote.

2019 Ford Explorer

It was moved by Mr. Leech that the purchase of a 2019 Ford Explorer for the Code Services Director from Day Ford via CoStars Contract #026-104 in the amount of \$31,621 be approved. The motion was duly seconded and passed by unanimous vote.

2019 Ford F-150

It was moved by Mr. Lauer that the purchase of a 2019 Ford F-150 for the Police Department from Koch 33 Ford via CoStars Contract #013-084 in the amount of \$37,904 be approved. The motion was duly seconded and passed by unanimous vote.

At 7:45 PM, Borough Council adjourned into Executive Session to discuss a personnel matter. At 7:50 PM, the meeting was reconvened.

There being no other business to come before the Board, it was duly moved and seconded that the meeting be adjourned at 7:50 PM. The motion carried unanimously.

MINUTES/COUNCIL MEETING

January 21, 2019

Page 10

DANA A. ABATE
Borough Secretary