

# WESTTOWN TOWNSHIP PLANNING COMMISSION MEETING

Stokes Assembly Hall  
1039 Wilmington Pike, Westtown Township  
Wednesday October 4, 2017 – 7:30PM

## **Present**

Commissioners – Embick, Adler, Pomerantz, Hatton, Lees, and Yaw. Also present were Township Planning Director William Ethridge and those mentioned below.

## **Call to Order**

Mr. Pomerantz called the meeting to order at 7:30pm and Ms. Adler led those present in the Pledge of Allegiance.

## **Adoption of Agenda**

Mr. Pomerantz moved New Business before Old Business. The Agenda was approved 5-0.  
(JE/JL)

## **Approval of Minutes**

Mr. Lees asked that the size of a two car garage as indicated at the bottom of page three, be changed from “10’x20” to “20’x30”. Mr. Hatton asked that on page one, under Announcements, the dates of the last item be changed from “Monday” to “September 28” and “9/28” be changed to “10/11”. With the noted changes, the minutes of the previous meeting were approved 5-0.  
(JL/EA)

## **Announcements**

Mr. Ethridge commented that the Comprehensive Plan Task Force (CPTF) would be holding a public forum at Rustin HS from 6pm to 8pm on Wednesday October 11, 2017. Mr. Pomerantz added that the meeting dates for the CPTF were changing in November and December to November 8th and December 13<sup>th</sup>. He also noted that October 24<sup>th</sup> would be the Conditional Use hearing for Crebilly at Stetson MS.

## **Public Comment – Non-agenda items**

None.

## **New Business**

A Joint Discussion of Zoning Ordinance and Subdivision Regulation Updates with members of the Zoning Hearing Board:

Ron Agulnick, solicitor for the ZHB introduced himself, followed by David Scaggs, Chair of the ZHB, and lastly Jeff House, member introduced himself. Mr. Agulnick started the conversation with an opening statement and wanted it known that the ZHB did not intend to interfere with the work of the PC. He expressed to the PC that there were issues and regulations in the Zoning Ordinance (ZO) that were not working. For example, he noted that the ZO requires a 75’ setback from the top of the bank from a stream, no matter what. He noted that in communities with large lots, this doesn’t present a problem, but in communities with smaller lots, this setback requirement can considerably hamper the ability of a homeowner to develop their property. He added that the 75’ setback requirement far exceeds the floodplain to said stream. He and other

members of the ZHB have routinely granted variances to this setback for these reasons and believe it's a real hardship for many homeowners.

Mr. Agulnick then discussed the use-definitions in the Commercial and Industrial zones in the Township, suggesting that many are unnecessarily narrow. He suggested that the PC consider making the definitions of permitted uses more broadly defined.

Regarding Accessory Uses, and Accessory Dwelling Units in particular, Mr. Agulnick would like the PC to offer some guidance to the ZHB. He asked the PC to examine some additional constraints for ADUs, particularly what happens to them after their original use is no longer necessary. He stressed that the conditions should not prevent the structure from being used in the future or require it be demolished after a sizeable investment has been made to build it.

Next, Mr. Agulnick addressed the topic of setbacks, their purpose, and intent. He asked the PC to clarify the purpose of setbacks and indicate to the ZHB to what degree setback variances should be awarded. He indicated a preference for allowing some setback variances under certain conditions such as when a neighboring property owner indicates their support or no one is being affected. Mr. Scaggs agreed with the latter statement.

Mr. Agulnick then addressed the sign code and the effect of a recent SCOTUS case that determined that regulating the size of signs in the same zoning district was determined to be a regulation of content and determined to therefore be unconstitutional. He hoped that the Township Solicitor would hopefully examine the current and proposed Sign Ordinance language for the Township to determine if it meets the SCOTUS standards.

Mr. Agulnick then addressed the lighting standards in the zoning code, offering that the ZHB was ill equipped to regulate lighting, intensity, placement, lumens, etc., and would like the PC to consider moving lighting regulations from the ZO to the Subdivision and Land Development Ordinance.

Next, there was discussion regarding fences. Specifically, Mr. Agulnick proposed allowing fences to a height of 8' as 6' was too low to keep deer out. He did stress the need for balance as 8' fences everywhere would not be preferable. Mr. Scaggs agreed with this point as well.

Lastly the ZHB and the PC discussed the issue of home occupations. Mr. Agulnick commented that he was in favor of the tier or class 1 minor home occupations, but took issue with the class 2 home occupations as he believed some of the allowed home businesses in the 2<sup>nd</sup> tier are intrusive and have more impacts than were imagined when the code was written.

Mr. Pomerantz thanked Mr. Agulnick and the ZHB for commenting on these issues. He asked Mr. Agulnick if the current Home Occupations code needs to be updated. Mr. Agulnick replied that he believes it does, but that it should be written as broadly as possible. Mr. Scaggs and Mr. House both concurred with Mr. Agulnick.

Mr. Pomerantz then polled the members of the PC for their views on the issues that were brought forth by the ZHB. Mr. Yaw asked the ZHB members, of the eight issues that have been discussed, which they believed were the top three.

Mr. Agulnick replied that he believed the top three issues were signs, home occupations, and setbacks to streams. Mr. Scaggs indicated that setbacks for sheds and accessory dwellings

were the biggest issue in his mind, particularly on smaller lots where the setback was 15' and the neighbor didn't have an issue with that. He also added that signage, and accessory uses should be looked at. Mr. House agreed with Mr. Scaggs.

Mr. Lees asked about the status of the sign ordinance. Mr. Ethridge commented that both the current and proposed Sign Ordinances were written before the latest decision from the SCOTUS and that the Township Solicitor would need to review the updated language prior to any action by the Board so that the Township does not adopt unconstitutional language. Mr. Agulnick then offered some insight into the details of the case and why the sign ordinance may be unconstitutional.

Ms. Adler asked if it would be possible to have a different size sign in different zoning districts. Mr. Agulnick believed that was possible. Mr. Pomerantz expressed concern that a sign related issue might occur in the near term.

Mr. Embick asked if the case was Reed v. Gilbert. Mr. Agulnick indicated it was. He indicated that he did not have issue with home occupations and signs. He did take some issue with the stream setbacks, particularly streams of exceptional or high quality water. He offered no objections to de minimis variances.

Ms. Adler suggested that the Township Engineer might comment on this issue of stream and slope setbacks and why they were established at the distances they are. She also noted that nuisances related to the intensity of home occupations have been an issue that has come up even during her time working for the Township.

Mr. Hatton thanked the ZHB members for coming to the meeting. He indicated his desire to get a copy of any ZHB decisions once they are rendered. Mr. Agulnick suggested that Mr. Ethridge forward copies of their decisions to the PC going forward. Mr. Hatton then discussed the issue of hardships as they apply to variance decisions.

Mr. Agulnick explained the definition of a hardship in the context of a variance, and how it has to apply to the land and not the applicant and his or her personal condition.

Mr. Pomerantz then asked what are the three most frequent kinds of variance requested in the Township. Mr. Agulnick replied that he sees mostly requests for ADUs, dimensional variances, and home occupation variances. Mr. Pomerantz replied by summarizing that the ZHB recommends the PC take a closer look at signs, setbacks (and for streams), and home occupations and the reasons for each. He asked other PC members if they had any more questions or comments.

Mr. Lees commented that the ADU issue is a very large problem and that the PC has debated several times about what to do about this issue in light of the investment that many families make in creating them. He emphasized that the PC should prioritize what to do about them and how to handle the potential nuisance issues related to them becoming rental dwelling units as their prevalence is only going to increase. He added that this issue is closely related to Home Occupations also.

Mr. Embick asked the ZHB if they had an opinion on the issue of allowing "granny cottages" to become rental units after the family use ceases. Mr. Agulnick replied by asking if the PC had considered what the Township would look like if they were allowed to become rental units. He

emphasized that he did not intend to instruct the PC or encroach on the PC's role in the process of updating the ZO.

Mr. House commented briefly on the proliferation and popularity of "granny pods.". Mr. Embick acknowledged their popularity but noted that such structures are, by definition, mobile homes.

Ms. Adler asked about a previous variance decision where the ZHB's order included the requirement that the kitchen be removed after the family use of the additional dwelling unit ceased. Mr. Agulnick replied that this condition had been added to similar decisions in the past to avoid the proliferation of unused second dwelling units and because the ZHB was of the opinion that interior changes were less disruptive than exterior changes.

Mr. Pomerantz asked if the ZHB had considered the cost of removing a kitchen from a dwelling. Mr. Agulnick replied that the ZHB had considered that a relatively minor cost. Mr. Pomerantz revealed that in his discussions with residential builders, that the cost to remove a kitchen can run many thousands of dollars depending on what is removed, for example; wiring, pipes, etc. Mr. Agulnick submitted that the ZHB would have to take a closer look at this issue going forward.

Mr. Pomerantz asked the other members of the PC if they had any questions and they replied that they did not. He then thanked the members of the ZHB for attending the PC meeting and sharing their views.

### **Old Business**

Mr. Pomerantz asked Mr. Ethridge to discuss the updated Project Status & Ordinance Status spreadsheet. Mr. Ethridge explained this document was started by his predecessor and that as new projects are started, or old projects progress, he has updated information within this document, specifically in red text to indicate what has changed over time. He also noted that two columns were added on the right hand side to indicate the start and end of the 90 day clock for projects.

Mr. Hatton suggested removing Westtown Woods from the list as the project was granted final approval in August. He also suggested to Mr. Ethridge that this document be provided to the PC before the first meeting of every month.

Mr. Pomerantz asked the PC and the ZHB if they would entertain the idea of meeting annually. Everyone agreed that it would be beneficial and asked that Mr. Ethridge schedule a meeting with the ZHB annually every October.

The PC then discussed the Proposed Accessory Structures & ADUs worksheet prepared by Mr. Ethridge based on the PC's comments from the 9/20 meeting. Mr. Ethridge explained that he has summarized the positions the PC has taken with respect to the changes the PC has stated they would like to make to Accessory Structure setbacks, as well as a process for converting an approved ADU into a legal rental unit. Additionally, Mr. Ethridge recommended four additional conditions to the conversion language based on a similar process as outline in 170-1608 of the ZO (Conversion of Dwellings).

Lastly Mr. Ethridge provided the PC with copies of Chapter 154: Article VI, which discusses Rental Status and Occupancy Reporting in the Township. He expressed that while these regulations are written and in effect, the Township currently lacks the manpower to administer

and enforce its provisions. PC members discussed the potential for allocating the fees collected from this program to allow the Township to hire additional staff to administer and enforce it.

Mr. Pomerantz commented that the code requires the ZHB in variances and special exceptions, and in some cases the Planning Director in others, to judge the aesthetic character of the surrounding community and determine if new dwelling construction is in keeping with that character. He and Mr. Ethridge agreed that this was highly subjective work with few guidelines provided in the ZO.

Mr. Pomerantz suggested that the BOS might have to examine who makes up the ZHB to ensure that someone with an architectural skillset and background is on it. Mr. Ethridge agreed noting that without a qualified person to judge, the onus might be left to either the applicant to hire someone, or the Township, to determine what is in keeping with the surrounding neighborhood.

Ms. Adler asked other members if there was a way to cap the number of persons who could occupy an ADU if it were allowed to become a rental unit. Mr. Hatton noted that the ZO has a definition of a family. Ms. Adler noted that it allows for no more than 3 unrelated persons to reside in a dwelling unit, and asked if the other members believed that would be enough.

Mr. Embick asked the PC if rentals to non-family members be controlled by the Township. He noted the existence of the Rental & Occupancy requirements but the fact that it is not enforced is a problem. He suggested that enforcement would have to be possible to enforce a limit to the number of non-family members who could occupy an ADU rental.

Mr. Pomerantz spoke briefly about a home in his neighborhood where 6 college students had rented an entire house and agreed that both strong regulations against this type of scenario be in place, but that a holistic approach that addresses enforcement be central to the conversation. He noted that someone had asked how many rentals were in the Township and because there was no enforcement of the Rental and Occupancy Ordinance, no one could say, and that no taxes were presumably being collected on them.

Mr. Embick suggested that the BOS should weigh in on the issue of allowing ADUs to become rentals, to which Mr. Pomerantz agreed.

Mr. Yaw reiterated that he was still not on board with the idea of allowing an ADU to be rented by non-family members, particularly due to the effect it would have on the character of the neighborhood, the neighbors especially, but added emphasis that the Township's manpower may not allow it to properly enforce the conditions. He was also concerned about the Township's inability to collect earned income tax on the existing rental units and would like to get an idea of how many rentals there are in the Township.

### **Public Comments**

Tom Foster – 734 Westbourne Rd – Regarding the issue of delinquent fees, he suggested the Township consider using an outside law firm to pursue these fees. Regarding apartments, he suggested that there were probably over a thousand of them, and that a self-reporting requirement was not practical for enforcement. He suggested the Township consider using some leverage. He suggested there was an ordinance in place that requires a rental unit be inspected when a renter moved out. He also suggested that the PC not move toward allowing ADUs to become rental units and that the 3 acre minimum lot size not be relaxed.

## **Reports**

### **Board of Supervisors meeting 10/2/17 – Jack Embick**

The BOS expressed several concerns regarding the Brewer subdivision. The 1<sup>st</sup> was a concern about the easement for the driveway for use by the original home and whether or not that created a nonconforming lot. They also expressed some concern about the language that would control the use and maintenance of the driveway. The applicant will have to return in two weeks with language addressing the driveway easement and the conditions of its maintenance.

The BOS would like the Township to develop an ordinance which addresses bi-directional antennas. Several Township buildings do not allow for radio signal transmissions to be made or received.

The last item discussed was the Sign Ordinance. Russ Hatton commented that he was in attendance at the last two BOS workshops to discuss this. He noted that one Board member was concerned that the Sign Ordinance did not regulate the type of flag an individual could fly. The other issue discussed was the effect of the SCOTUS Reed decision. The Board opted to refer the ordinance back to the Township Solicitor for comment. The new ordinance will also address billboards.

Regarding the issue of bi-directional antennas, Mr. Pomerantz suggested to Mr. Ethridge that he reach out to Mr. Matson at McCormick Taylor, Mr. Pingar, and Chief Bernot for technical expertise on how to address the Ordinance.

## **Adjournment**

Mr. Pomerantz adjourned at 9:32pm. (JL/SY)

Respectfully submitted,

William Ethridge  
Planning Commission Secretary