

Berlin Zoning Commission - Regular Meeting

7:00 PM: April 8, 2008

1 This meeting was held at the Berlin Township Hall, 3271 Cheshire Road, Delaware, Ohio
2 43015.

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4 **CALL TO ORDER/ROLE CALL**

5
6 The meeting was called to order by Chairman Rick Sedlacek at 7:20 PM.

7
8 Chairman Sedlacek led meeting attendees in reciting the Pledge of Allegiance.

9
10 Present: Rick Sedlacek, Bob LeBlanc, Jerry Valentine, Kristin Yorko, Betty Bringardner
11 (1st alternate seated)

12 Absent: Jim Hahn

13
14 Zoning Inspector Ray Armstrong and BZC 2nd alternate Rae Kerlin were also present.

15
16 Mr. Sedlacek read the adopted policy statement as printed in the agenda for the meeting.

17
18 **PROOF OF PUBLICATION**

19
20 Zoning Clerk Lisa Knapp provided proof of publication for the legal notice, which was
21 published in the March 27, 2008 Delaware Gazette, providing notification of the meeting
22 date and time and items for discussion.

23
24 **APPROVAL OF MINUTES**

25
26 Mr. Valentine made a motion to accept and approve the March 11, 2008 BZC minutes as
27 presented. Mr. LeBlanc seconded the motion. All in favor say, "aye," all opposed same
28 sign. No opposition, motion carried.

29
30 **WELCOME**

31
32 Mr. Sedlacek welcomed new Zoning Clerk, Lisa Knapp. He noted that two residents
33 were recently appointed to the Commission, including Kristin Yorko as a regular
34 member, and Rae Kerlin as an alternate member, and he welcomed them. He also stated
35 that Alternate Member Betty Bringardner was present at this meeting due to Mr. Hahn's
36 absence.

37
38 **AGENDA ITEMS**

- 39
40 1) BZC 08-003, adoption of Articles 5, 6, and 21-30 of the Berlin Township Zoning
41 Resolution, as recommended by the Zoning Resolution Committee.
42 2) Review draft Rules of Procedures for the BZC provided by Mr. Hahn.

43
44 **AGENDA ITEM #1: BZC 08-003**

45 **ADOPTION OF ARTICLES V, VI, AND XXI-XXX OF THE BERLIN**
46 **TOWNSHIP ZONING RESOLUTION, AS RECOMMENDED BY THE ZONING**
47 **RESOLUTION COMMITTEE.**

48
49 **ORIGINAL FILE EXHIBITS**

- 50
51 1. Motion BZC #03-11-08-04 by Bob LeBlanc dated March 11, 2008 to initiate
52 Articles V,VI and XXI-XXX .
53 2. Draft copy Berlin Zoning Amendments Articles V,VI and XXI-XXX with
54 prosecutor changes, with updated date of 03-13-08 & 3-14-08.
55 3. Proof of request via email in the *Delaware Gazette* dated 03/24/08.
56 4. RPC minutes from meeting of 03/27/08.
57 5. Proof of publication in the *Delaware Gazette* dated 03/27/08.
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DISCUSSION

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63 Mr. Sedlacek noted that Articles 21-30 of the zoning resolution were amended, and
64 during those amendments subsequent changes were made to Articles 5-6.

65

66 Mr. Armstrong said that changes were made to definitions and purpose statements in
67 those sections of the code. The Article with the most changes was Article 21, General
68 Development Standards, which included changes involving health, safety and welfare,
69 including separation of structures. Article 22, Sign and Billboard Regulations, was also
70 changed, much of it to now similar to the existing Orange Township zoning resolution.
71 The revised language includes changes to the size and location of signs, and it also clears
72 up some ambiguous areas. All of the articles were reviewed but in some cases no
73 changes were made.

74

75 Mr. Armstrong said that comments were received from the Delaware County Regional
76 Planning Commission (DCRPC) Executive Director Scott Sanders, in an email dated
77 4/1/08. Mr. Sanders suggested creating a definition for gazebos and pavilion uses which
78 uses the words, "permanent," or, "foundation," so that the township isn't attempting to
79 regulate temporary or seasonal items. He also suggested adding a height limit as part of
80 the definition. "Gazebo," and, "pavilion," should also be added to the definition of
81 accessory structure.

82

83 Mr. LeBlanc asked him to describe a pavilion. Mr. Armstrong said it was similar to a
84 shelter house, with a roof and no walls. Ms. Kerlin asked if a pavilion could be attached
85 to a home. Mr. Armstrong said that if it is attached to a primary residence, it is regulated
86 in the zoning resolution as a covered porch. Like a gazebo, it is a stand-alone structure.
87 Mr. Sedlacek said that the new definition would also regulate temporary, flimsy stand-
88 alone carport-type uses.

89

90 Mr. Armstrong said that Mr. Sanders also provided suggested language for portable
91 storage units, which would apply to, "PODS," and other similar uses. He suggested that
92 such units be allowed as a temporary use for no more than 30 days within a one-year
93 period, that the units should be located on a paved surface and outside the right-of-way,
94 and the size should not exceed 1,200 interior cubic feet. A permit would be required for
95 such a unit to be placed on a premises for greater than 7 days. The maximum is proposed
96 to prevent the use of shipping containers, which can be up to 45' long. Also included
97 was exception language in case of a major calamity such as a fire or flood, where the
98 zoning inspector could extend the time period allowed for such a unit. A permit would
99 be required, and any fee for that would be established by the board of trustees. Mr.
100 Armstrong noted that this is simply recommended language, and the Commission can
101 change it as desired.

102

103 Mr. Armstrong said the Commission could include these final changes with the current
104 resolution rewrite if desired, rather than making the changes later.

105

106 Mr. Valentine asked how portable storage units differed from storage trailers. Mr.
107 Sedlacek said a permit would be required for a construction trailer. Mr. Valentine asked
108 if the portable storage units were a more residential-type use than construction trailers.
109 Mr. Sedlacek said, "yes," and that the items are typically used for a few weeks after a
110 new resident moves into their home. When he was zoning inspector, he would work out
111 a reasonable agreement with the resident, and there were no problems. However, there
112 was no official definition on the code and the units were treated as trailers. This language
113 will help clear the issue up.

114

115 Mr. Sedlacek asked why a 7-day grace period was suggested for the portable storage
116 units, and he asked if perhaps a permit should be required from day one. Mr. Armstrong
117 said the language was taken from an existing zoning resolution and can be modified by
118 this Commission if desired.

119

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120 Mr. Sedlacek asked if there was any language available regarding gazebos and pavilions
121 yet. Mr. Armstrong said that had not been received yet. Ms. Yorko asked about
122 pergolas, which are freestanding items which have support structures and which provide
123 intermittent shade over a deck, hot tub, etc.

124
125 Ms. Bringardner asked if the zoning resolution provided for any regulation of playhouses,
126 as they are becoming more popular in the township. Mr. Sedlacek said that in the past,
127 the township has considered them in the same manner as buildings or sheds, and any such
128 structure under 100 SF did not require a permit. He said he didn't want to create more
129 problems than necessary. Mr. Armstrong agreed that there have been few issues with
130 playhouses in the past. He noted that playhouses must meet the required setbacks, just
131 like sheds must, whether they exceed 100 SF and require a permit or not.

132
133 Ms. Kerlin asked if residents are made aware of new regulations which may affect them,
134 such as those for portable storage units, playhouses, etc. and she asked if the information
135 was included in the township newsletter. Mr. Armstrong said that has been done in the
136 past. He asked about the requirements in Orange Township. Ms. Knapp responded that
137 there is a 7-day grace period and a permit with a fee is required after that period.

138
139 Mr. LeBlanc said that portable storage containers are needed by residents sometimes and
140 he didn't want to "over regulate" them; however, some regulation is probably required.
141 Mr. Sedlacek said perhaps a permit should be required from day one for portable storage
142 units, to make them easier to regulate and to track them.

143
144 Mr. Valentine advised that the township may wish to discourage the units from remaining
145 on the premises too long. Mr. Sedlacek said a 30-day permit with a fee would require
146 that residents re-apply and pay a new fee if the unit was not removed after 30 days. He
147 suggested perhaps a \$25.00 fee. Mr. Armstrong did not object that that proposal.

148
149 Mr. Armstrong said that the language seemed to indicate that a unit can be on the
150 premises for only a maximum of 30 days in any one year time. Ms. Kerlin expressed
151 concern that seven days would be enough time to load and unload the units. Mr.
152 Sedlacek said that would provide an incentive to have the unit removed from the
153 property, or the permit would be necessary.

154
155 Mr. Sedlacek said that changes to Articles 5, 6, and 21-30 were initiated last month by
156 the Zoning Resolution Committee, and the changes were sent to the DCRPC, who heard
157 the changes at its meeting and issued a report. The report had some corrections, so it was
158 corrected and heard again by DCRPC on 3/27/08. The Commission is in receipt of a,
159 "clean," copy of these articles, and it could vote on that language now, and vote on the
160 new language regarding gazebos, pavilions, and portable storage units at a later meeting.
161 He suggested having a Commissioner work with Mr. Armstrong to create proposed
162 language to be reviewed by the Commission at its next meeting, so the other articles
163 aren't held up. Mr. Armstrong agreed.

164
165 Mr. Sedlacek asked if Mr. Armstrong's believed that the revised Articles 5, 6, and 21-30,
166 BZC Case 08-003 received by the Commission were clean copies, which the Commission
167 could vote on at this meeting. Mr. Armstrong said, "Yes." There had been some
168 pagination errors on the copy from the DCPRC, but the content is the same as that
169 initiated by the Commission.

170
171 Mr. Sedlacek asked if the Commission would be amenable to voting to accept the revised
172 articles to be forwarded to the trustees for further consideration.

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174

PUBLIC COMMENT

175
176 There were no comments from the public.

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MOTION TO ACCEPT BZC #08-003

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Mr. Sedlacek made a motion to accept BZC #08-003, consisting of Articles V, VI, and XXI-XXX, of the Berlin Township Zoning Resolution, as originally recommended by the Zoning Resolution Committee, as amended to include the typographical, minor, and pagination corrections made by the Delaware County Regional Planning Commission. Mr. LeBlanc seconded the motion.

VOTE: Sedlacek, yes; LeBlanc, yes; Valentine, yes; Bringardner, yes; Yorke, abstain. Motion carried, revised language will be forwarded to the board of trustees for further consideration.

Mr. Sedlacek asked for a volunteer from the Commission to work with Mr. Armstrong to review the language for pavilions, gazebos, and portable storage units, and to create a definition of gazebos and pavilions. There was a consensus that this was a good idea. Mr. LeBlanc volunteered to work with Mr. Armstrong on this project, and the information will be brought back to the Commission at its next meeting.

AGENDA ITEM #2: REVIEW DRAFT RULES OF PROCEDURE FOR THE BZC

Mr. Sedlacek said that Commissioner Hahn sent an email on 9/12/07 to zoning officials regarding a draft of proposed BZC procedures, and that everybody has had ample time to review the proposal. He reviewed the language with the Commission.

Article I, Section 1: Mr. Sedlacek said this section referred to a, “secretary,” and he asked if that should be changed to, “zoning clerk,” or whether that is a common position which would automatically apply to the zoning clerk. Ms. Knapp noted that the term, “secretary,” is referenced in the Ohio Revised Code.

Mr. Sedlacek said he appreciated the reference in this section to conducting business according to the Roberts Rules of Order.

Article I, Section 2: Mr. Sedlacek noted that this section indicated that all regular and special BZC meetings are to be held at the township hall at 7:00 PM, or at such other time or place which may be fixed by the BZC, or as specified in the legal notice for the meeting. Mr. Armstrong noted that this language doesn’t preclude having a meeting in another location when necessary when large attendance is expected, such as in the fire department truck bay. Ms. Knapp noted that meetings could also be held at a different time as long as the correct notice is provided.

Article I, Section 3: Mr. Sedlacek said this section was modified to indicate that regular meetings will be held by the BZC on the second Tuesday of each month. He was concerned because the BZC does not typically meet in June, July, or August, unless an application is received that is required to be heard during this time, or there is some other issue. The language will be modified to indicate that meeting will be held on the second Tuesday of each month except that meetings in June, July, and August will be held only when necessary.

Article I, Section 4: Mr. Sedlacek said that Special Meeting provisions were included in this section. Such meetings are very rare, but could possibly held in the future. Currently, the process to have hearings is lengthy, including advertisement, etc. Mr. LeBlanc said that there wouldn’t appear to be any reason for an emergency meeting of the BZC. Mr. Sedlacek asked if Orange Township Zoning Commission has ever had an emergency meeting. Ms. Knapp responded that it has held one or two such meetings for the purpose of pending litigation, where the Commission was named as a party and needed to provide a response. However, she agreed that this type of situation is very rare.

Mr. Sedlacek said that this section also indicates that each BZC member will provide his/her telephone number and mailing address to the Secretary, and that notice of each special meeting will be given to BZC members by the chairman, the vice-chairperson, the persons calling the meeting, or the secretary. He noted that, “and, if available, a facsimile

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240 number and e-mail address," was deleted from this section, and he asked why. Mr.
241 Armstrong said that official township emails opened or kept on a personal computer may
242 open up that computer to the public records law, which has recently been changed. Also,
243 some BZC members do not have computers. Mr. Sedlacek noted that the language
244 stated, "if available," which indicated that if that method was not available, a different
245 method of communication would be used, such as mail or telephone.

246
247 There was a discussion regarding how members would prefer to be notified about
248 meetings/hearings. Mr. LeBlanc preferred that email be kept as an acceptable
249 notification method. Mr. Valentine thought maybe the language was removed because
250 such methods of communication may be considered too personal. Ms. Kerlin said
251 perhaps the language was standardized so as not to confuse. Ms. Yorko suggested that
252 the language state that the notice would be furnished via telephone, but they followed up
253 with an email. Mr. Sedlacek noted that emergency meetings should be notified via
254 telephone due to time constraints. He suggested that contact could be made either via
255 email or a follow-up telephone call.

256
257 This section later indicates that notices can be made via telephone, email, facsimile, or
258 cablegram. It was unclear to the Commission why Mr. Hahn requested the modifications
259 to this section, and the matter will be discussed with Mr. Brosius.

260
261 Article I, Section 5: Mr. Hahn's email suggested that the number of people required for a
262 quorum be changed to four, rather than a majority of three members. This would keep a
263 minority of two members from calling a meeting and then passing a resolution contrary to
264 the wishes of the true majority of the BZC.

265
266 Mr. Armstrong said that zoning training was held last night for township officials by
267 attorneys Don Brosius and Peter Briggs, of the Loveland and Brosius law firm. The
268 attorneys examined the draft of the proposed BZC procedures, as well as procedures for
269 the BZA which were adopted in January 2008. The attorneys did not agree with the
270 proposed change in quorum number and asked that these procedures not be adopted
271 tonight so the Loveland and Brosius law firm could have additional time to review these
272 procedures and inform the township of its legal opinion recommendation in this matter.

273
274 Mr. LeBlanc said that he believed that legally, only three are required to vote on an issue,
275 and Mr. Sedlacek agreed. He suggested reviewing the document tonight and discussing
276 any other concerns the Commission may have, which could also be brought forth to the
277 attorneys. There was a discussion about two members being able to control an outcome
278 in some situations, such as if there were 3 members present, with two voting to approve
279 and one to deny, or vice versa. Ms. Bringardner said that three members would have to
280 vote, "yes," to approve. There was additional discussion.

281
282 Ms. Bringardner suggested language stating that three members would constitute a
283 quorum, and that all three members would have to vote the same for a matter to be
284 approved or denied. Ms. Yorko suggested that if the three do not agree, the matter would
285 be tabled to the next meeting or a date certain. Mr. Armstrong said that would probably
286 not be an enforceable regulation because if a quorum is present, all business must be
287 conducted. There was additional discussion and various scenarios were discussed.

288
289 Mr. Sedlacek said this was a two-fold issue upon which the attorneys should be
290 consulted: 1) the language is reverted so that a quorum is constituted by just three
291 members, and 2) how can the possibility of two members meeting and forcing an issue in
292 some way be prevented?

293
294 "Mr. LeBlanc said that theoretically, the language could be rewritten so it states that five
295 members should be seated for a meeting to occur. This shouldn't be a problem now that
296 alternates have been appointed for the BZC. However, it is only necessary to have a
297 quorum three members in attendance and voting for an issue to be decided."

298

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299 Ms. Yorko said that the language on pages 20-21 of Roberts Rules of Order states that,
300 "A quorum in an assembly is the number of voting members who must be present in
301 order that business can be legally transacted. The quorum refers to the number of such
302 members present, not to the number actually voting on a particular question."
303

304 Mr. Sedlacek read Article I, Section 7 of this document, which was interpreted by the
305 Commission to indicate that if only three members were present, a vote of the majority,
306 which would be only two in that case, would be necessary for a motion to pass. He said
307 it may not be possible to adequately address Mr. Hahn's concern via revised language.
308

309 Article I, Section 9: Mr. Sedlacek said that this section referred to a tabling fee which
310 would be paid by an applicant who requested to table its hearing because extraordinary
311 circumstances prevented its attendance. He said the township doesn't have a, "tabling
312 fee;" however, if any applicant requests a tabling that is handled in a common-sense
313 manner. For example, if the Commission had issues with the application, and the hearing
314 was recessed so the applicant could make requested changes to the application, and all of
315 the concerns were addressed, the applicant would not be charged a fee. However, if the
316 issues were not addressed and another hearing had to be held, the applicant would be
317 charged a fee for that meeting. Mr. Armstrong agreed but said such a situation occurs
318 rarely and he was fine with the proposed language.
319

320 Article II, Section 1: Mr. Sedlacek said this indicates that the trustees may appoint,
321 "alternate(s)." He said that the maximum number of alternates is two per the township
322 code and Ohio Revised Code. It was agreed that the language was acceptable as is. Mr.
323 Sedlacek said the last line of this section stated that each member shall serve on the BZC
324 until the member's successor is appointed and qualified. It was agreed that the language
325 was acceptable as is.
326

327 This language had also been modified to allow for the removal of BZC members per the
328 Ohio Revised Code.
329

330 Article II, Section 4: This was discussed and determined to be acceptable by the
331 Commission.
332

333 Article II, Section 5: This language has been modified to allow for the removal of BZC
334 members per the Ohio Revised Code.
335

336 Article I, Section 7: Mr. Sedlacek noted that this language was modified and he reviewed
337 the modifications. The language was determined to be acceptable by the Commission.
338

339 Article II, Section 8: Mr. Sedlacek said this was modified to insert the ability for the BZC
340 Chairperson to temporarily step down. Thus, if the chairperson and vice-chairperson are
341 aware they will be absent for the next meeting, a temporary chair can be nominated for
342 the next meeting.
343

344 This section, line 3 contains a typo: "memeber," should be changed to, "member."
345

346 Article III, The Secretary: Mr. Sedlacek said that this section was modified to indicate
347 that the secretary shall keep the minutes of all meetings of the BZC in a written form and
348 also be custodian of the BZC's records. He asked if the Secretary really should be the
349 custodian of these records. In Berlin Township, the Secretary is not the custodian of the
350 minutes; the zoning office is. Mr. Armstrong said that legally, the Secretary is the
351 custodian of the records, but they are stored in the zoning office. Ms. Bringardner said
352 that tapes of meetings must be stored in the zoning office, per a meeting with township
353 officials which she had attended.
354

355 Mr. Sedlacek said a mini records retention meeting was held at 5:30 PM today, with the
356 Fiscal Officer, the Zoning Inspector, the Zoning Secretary, the BZA and BZC Chairmen,
357 and the Zoning Clerk, and he asked Ms. Knapp to review the conclusions of this meeting.
358

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359 Ms. Knapp said that that since there were questions about how long recordings of zoning
360 meetings must be held, she requested that the County Prosecutor's Office opinion
361 regarding this from November 2004 be revisited. The Prosecutor's response was that if
362 the township has no records retention schedule it must keep recordings of meetings
363 indefinitely. However, since the township does have a records retention schedule, which
364 was approved by the trustees and used by the fiscal officer, that process can be followed.
365 The township records retention schedule provides that recordings of meetings are kept for
366 just one year, after which they may be destroyed.

367
368 Ms. Knapp said her intention is to provide a copy of each meeting's recording to the
369 Township Fiscal Officer for her records. Mr. Sedlacek noted that the records retention
370 procedure is very important for the township.

371
372 This section had also been modified to allow some secretary duties to be reassigned.

373
374 Article V: Mr. Sedlacek said that there is a typo in this article: "addoted," should be
375 replaced with, "adopted."

376

LIST OF AMENDMENTS

377

378

379

Mr. Armstrong reviewed the revisions to the document as follows:

380

381

- 1) Article I, Section 3: The language will be modified to indicate that BZC meetings
382 will be held on the second Tuesday of each month, except that meetings in June,
383 July, and August will be held only when necessary.

384

385

- 2) Article I, Section 4: Mr. Armstrong will check with the attorney Don Brosius to
386 see if notification of hearings to members via email is appropriate.

387

388

- 3) Article I, Section 5: It was recommended that this language be modified so that a
389 quorum will consist of only three members, not four as proposed. Mr. Brosius
390 will be consulted in this matter regarding concerns that two members could
391 possibly attempt to control the Commission's decisions.

392

393

- 4) Article I, Section 8: The language will be modified to indicate that meetings will
394 be held on the second Tuesday of each month except that meetings in June, July,
395 and August will be held only when necessary.

396

397

- 5) Article II, Section 8: Replace, "memeber," with, "member."

398

399

- 6) Article III, Secretary: Clarification will be requested regarding whether the BZC
400 Secretary is the legal custodian of the BZC records.

401

402

- 7) Article V: It was noted that in this section, replace, "addoted" should be replaced
403 with, "adopted."

404

405

Mr. Sedlacek said that these issues will be researched by Mr. Armstrong before the next
406 meeting, and more information regarding pavilions, gazebos, pergolas, and PODS will be
407 available. At the next meeting, the procedures document can be modified and possibly
408 accepted by the BZC.

409

410

PUBLIC COMMENT

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There were no comments from the public.

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413

414

OTHER BUSINESS

415

Mr. Armstrong said that two re-zoning applications are expected to be filed with the
416 township soon, and one may be filed in time to be heard at the next regular BZC meeting
417

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418 on May 13, 2008. Mr. Sedlacek said that if an application is to be heard that day, it
419 should be heard first prior to discussion on the issues heard tonight.

420
421 Mr. Sedlacek said that the next regular meeting would be held on May 13, 2008 at 7:00
422 PM, at the Berlin Township Hall.

423
424 Mr. Sedlacek asked Commission members to keep the following dates open on their
425 calendars, if needed: June 10, 2008, July 8, 2008, and August 12, 2008.

426
427 Motion to adjourn. Meeting adjourned at 8:45 PM.

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429
430 _____
Rick Sedlacek

431
432 _____
Bob LeBlanc

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434 _____
Betty Bringardner, 1st Alternate

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436 _____
Jerry Valentine

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438 _____
Kristin Yorko

443
444 Attest: _____
445 Township Zoning Clerk Lisa F. Knapp

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447