

**BERLIN TOWNSHIP ZONING COMMISSION (BZC)**

*OF DELAWARE COUNTY, OHIO 43015*

**REGULAR MEETING**

**TUESDAY, JUNE 9, 2020 7:00 PM**

1 This meeting was held virtually.  
2

3 **CALL TO ORDER**  
4

5 The meeting was called to order by Steve Flaherty at 7:00 PM.  
6

7 Chairperson Steve Flaherty led meeting attendees in the pledge of allegiance.  
8

9 BZC members present: Chairperson Steve Flaherty, Vice-Chairman Jerry Valentine,  
10 Darcy Kaplan, Martin Johnson, Mike Bardash.

11 Also present: Zoning Inspector David Loveless, Zoning Clerk Lisa Knapp, Zoning  
12 Secretary Cathy Rippel, BZC 1<sup>st</sup> alternate member Christina Littleton, BZC 2<sup>nd</sup> alternate  
13 member Angela Brown.  
14

15 Mr. Flaherty introduced BZC 2nd alternate member Angela Brown, who the trustees  
16 recently appointed, and gave her a warm welcome.  
17

18 Mr. Flaherty reviewed the adopted policy of the BZC, and noted that public comments is  
19 limited to three minutes each.

20 **AGENDA ITEM: LEGAL NOTICE**

21 Ms. Knapp said this hearing was advertised as a regular meeting at the end of last year in  
22 the Delaware Gazette, and this hearing was tabled from 5/12/20 to this evening.

23 **AGENDA ITEM: APPROVAL OF MINUTES**

24 Mr. Flaherty made a motion to approve the minutes from 5/12/20 as presented. Mr.  
25 Bardash seconded the motion.

26 Vote: Flaherty, yes; Bardash; Johnson, yes; Kaplan, yes; Johnson, yes; Valentine, yes.  
27 Motion carried.  
28

29 Mr. Flaherty made a motion to approve the minutes from 5/27/20 as presented. Mr.  
30 Valentine seconded the motion.

31 Vote: Flaherty, yes; Valentine, yes; Kaplan, yes; Johnson, yes; Bardash, yes.  
32 Motion carried.

33 **AGENDA ITEM: BZC 20-001**

34 Mr. Flaherty said on May 12, the applicant requested a tabling to this evening. On May  
35 27, a Zoom meeting was held by the developers and the neighboring property owner, and  
36 the applicant has provided some updates.

37 Josh Barkan, vice-president of land for M/I Homes, 3 Easton Oval, Columbus Ohio  
38 43219, presented the application and answered questions from the BZC.  
39

40 Mr. Barkan said that since the community meeting, on 6/1/20 he met with 5-10 neighbors  
41 on site as well.  
42

43 Mr. Barkan said he has provided a revised text that incorporated some of the comments,  
44 as well as a couple revised exhibits yesterday, which was short notice. He said he wanted  
45 to talk through those changes a bit and then table the application to the next meeting in  
46 two weeks. That would allow the BZC to digest the comments and changes and finalize  
47 everything in 2 week.  
48

49 Mr. Barkan said he had a very productive meeting in May and also in June. He heard  
50 many suggestions and comments loud and clear. There are many items such as

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51 mounding and landscaping that he was able to introduce to buffer the surrounding  
52 properties. There are still a few remaining issues he needs to research.

53  
54 Mr. Barkan said the first changes since the last meeting included that lots 17 and 18 were  
55 able to be cut back and shortened so the landscaping buffer could be worked in. For lots  
56 15 and 16, he was able to add landscaping including trees on the back on the lots. The  
57 big difference is the landscaping buffer to the north and east property owners.

58  
59 Mr. Barkan pointed out the buffering that included a 4-6' tall mound that would be  
60 heavily landscaped with trees and other plantings. He also added additional tree and  
61 landscaping buffer on the pond. Mounding was not added in one area because it's an  
62 engineering issue due to having mounding on the ponds. The slopes, heights and depths  
63 of the ponds are heavily regulated.

64  
65 Mr. Barkan said on the north side, he was able to get in-between the back of the lots and  
66 the easement, including mounding with trees and other landscaping. He wrapped it  
67 around as much as possible. He feels that this satisfied the bulk of the neighbors'  
68 concerns.

69  
70 Mr. Barkan said the exhibit was revised to ensure that the path ran all the way to the  
71 property line east on Berlin Station Road. He also removed the lighting on the sign at the  
72 peanut roundabout due to concerns about it causing problems to drivers.

73  
74 Mr. Barkan said down lighting will be required in the parking lot next to the model. He  
75 wrote specifically into the text the requirements for the landscaping buffer. He clarified  
76 that no air conditioning units will be required in the side yards and all will be behind the  
77 house. He added language for distributing side load garages throughout the community  
78 as requested. The divergence for the sign lighting was removed, and he added a  
79 requirement that at a minimum there will be two CDU locations if not three or more,  
80 depending on what is proper.

81  
82 Mr. Barkan said he still owes some answers to neighbors from meeting including whether  
83 it would be possible to switch the location of the cul-de-sac and the road, moving the  
84 second entrance. After review with his engineers, there were two issues that he is not able  
85 to make that change. 1) Due to the alignment as proposed by the county, it veers towards  
86 the west and he doesn't have property rights to get out there. 2) The location of the  
87 second access point was carefully selected by the engineers because it's exactly halfway  
88 between the southern entry point and the northern entry to the Longhill development that  
89 was previously approved. That location ensures there are no issues with left turn  
90 movements on Piatt Road and it prevents stacking.

91  
92 Mr. Barkan said the neighbors also asked about not fronting as many homes as possible  
93 onto Piatt Road and whether they could be backed to Piatt Road instead. He said this was  
94 not a great option because it wouldn't give any relief to the homeowners to the north, and  
95 it wouldn't gain much to the property owners to the east. It would simply result in adding  
96 room down in the southeast corner.

97  
98 Mr. Barkan said the third question from the group was the continued screening of the  
99 property so it cannot be seen as much as possible, and that was addressed several times.  
100 He said he would be happy to take questions or ask to table until the next meeting.

101  
102 BZC Consideration

103  
104 Mr. Valentine thanked the applicant for listening and doing so much. He is concerned  
105 about the drainage on the Webb property on the northeast corner that was raised at the  
106 last meeting.

107

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108 Mr. Barkan said he didn't make any changes to that, but he did discuss with his engineers  
109 and EH&T that as engineering is done with the county, that the neighbors' drainage  
110 situation is not only not made worse, but hopefully would get better. They assured him  
111 that the basin sizing etc. is getting worked out. He noted that the county peanut  
112 roundabout outlet for drainage will be through his property, and some of Longhill  
113 development will also drain through the subject property as it drains down to the  
114 southeast.

115

116 Mr. Barkan said his engineers are working hard to make sure that the depth of the  
117 detentions ponds are taken into careful consideration and they don't impact the  
118 neighboring property owners. There was not a visible change to the plan because it is  
119 underground and will be handled during engineer. He is working on that issue and will  
120 ensure that is not negatively impacted. It's illegal to make the drainage situation worse  
121 than it is.

122

123 Aaron Underhill, attorney for the applicant, said it is well established in Ohio law that the  
124 developer must either maintain or improve the current condition. Aside from the  
125 engineering and permitting stage, the final development plan will come before the BZC  
126 and the engineering plans will be much more detailed.

127

128 Mr. Flaherty said he wanted to ensure the trustees are aware of situations that have  
129 occurred in the past and make corrections there, and use their influence to ensure that the  
130 Delaware County Engineer as well as the Bureau of Soil & Water are doing their jobs.

131

132 Ms. Kaplan said she appreciated the applicants meeting with the neighbors. She  
133 understands the changes and looks forward to hearing the neighbor's viewpoints.

134

135 Mr. Bardash said he reviewed the revised plans briefly; it appears there are only a couple  
136 of divergences right now and they are not spectacular. It appears that the applicant has  
137 done the right things, and solved some issues with the additional buffering.

138

139 Mr. Johnson said one of the major updates on the text was describing the additional  
140 mounding and buffering on the eastern side, but there wasn't anything explicit about the  
141 additional buffering on the north side. He said in all honesty, they are not talking about  
142 all the buffering and mounding on the west and the south either. It appears as though the  
143 applicant added that to provide additional assurance about the additional buffering on the  
144 eastern lots. He said per the last meeting, the bigger buffering issues were for the eastern  
145 and northern properties. He said if the intent is to add additional assurance about the  
146 buffering on the east, he requested additional text regarding the northern section as well.  
147 Mr. Barkan agreed to do so.

148

149 Mr. Johnson said the mailboxes being near the tot lot was discussed at the last meeting,  
150 and the update indicates that at least 2 have been added. He asked whether the locations  
151 had been defined yet. Mr. Barkan said Exhibit J-1 includes three proposed optional  
152 locations; he has not made a final decision yet but that will be in the final development  
153 plan as well. He encouraged less congestion around those areas.

154

155 Mr. Johnson said he hasn't had time to look through the rest, but he echoed Mr.  
156 Bardash's comment that the appreciated some divergences being removed.

157

158 Ms. Littleton said that one of her biggest concerns was the buffering and she appreciated  
159 the additional buffering. However, she was hoping to see more. If she was one of those  
160 residents, she would want a wall that she couldn't see through. She is aware there is a  
161 pond and distance between the buildings, but from a personal level, she would want a  
162 wall of trees and a mound all the way across. She knows that would throw off the  
163 applicant's entire design, but that's something that she would want.

164

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165 Mr. Barkan asked which location she was specifically referring to. Ms. Littleton said she  
166 is referring to the north end of the pond where it is open, as well as at the break of the  
167 trees on the southeast of that pond. Mr. Barkan said he believed the latter item had to do  
168 with the distance to the pond but he will ask about that for clarification.

169  
170  
171

Public Comment

172 Beverly Rodeheffer, 1360 Dale Ford Road, said she is the lot on the northeast corner of  
173 the pond and she would like to see some more trees if possible. She would like to have  
174 the view of the houses blocked. She appreciated Mr. Barkan coming to talk to the  
175 neighbors, but she was surprised that the Longhill development is 400 houses, and now  
176 this will be close to 100 more. That is 500 additional homes in a small area.

177

178 Ms. Rodeheffer said when she enters Berlin Township and she sees the green “Berlin  
179 Township, Zoning Enforced” she thinks, “that’s a lie, it’s not enforced.” She said she  
180 cannot understand why the developers come in and get exactly what they want, and the  
181 residents do not. She said it sounds as though this is a done deal and they will be  
182 approved.

183

184 Mr. Rodeheffer said people come to Olentangy because of the schools, and the 500 new  
185 homes will require a new elementary school. She is concerned about higher taxes and  
186 asked whether the developer plans to pay for a new school. She would like the BZC and  
187 the trustees to listen to the residents and she would like to see them stay with a maximum  
188 of 1 home per acre. She said she needs to “follow the money” because the developing  
189 corporations are the ones who seem to be respected, but the residents don’t.

190

191 Mr. Flaherty was concerned about the accusations about money and he stated that she  
192 will find that the representatives at this level are very dedicated and honest. Ms.  
193 Rodeheffer said she was not referring to the BZC but that the developer will get a lot of  
194 money for developing this while the taxpayers get stuck with increased taxes.

195

196 Mr. Flaherty said the reason that zoning was established was so they could deviate from  
197 the one acre per lot and be able to control the process. Otherwise, a township has no say  
198 over zoning. He noted that the green “zoning enforced” signs refers to the zoning  
199 violations and the zoning resolution.

200

201 Mr. Flaherty said the BZC is the enforcement of the rezoning process. Land owners have  
202 the right to submit their property to be rezoned so they can sell it for a higher value to a  
203 developer. This is not a done deal and this is a hearing. They are listening to the  
204 residents and noting their concerns. This will come back to the BZC and then go for a  
205 vote, then it gets passed onto the trustees, who will have the final say.

206

207 Jim Flannery, 1460 Dale Ford Road, said the property is currently zoned at one acre per  
208 house, and he feels the BZC is being condescending to the residents. They are aware that  
209 it’s a right to build state, but it’s a right to build within the current zoning. He said Mr.  
210 Loveless said at the last meeting that if 60-70 houses are put down there with septic  
211 tanks, it will be the existing residents’ problem when it rains and the septic tanks flood  
212 and the overflow comes down their way.

213

214 Mr. Flannery said that’s just not true. He appreciated Mr. Barkan talking to them, but  
215 99% of the surrounding residents within this area all want one house per acre, which is 67  
216 acres. They do not want 91 homes, regardless of the amount of buffering. To build 91  
217 homes on top of the 400 Longhill homes adds over 2,000 vehicles to this area, and that  
218 cannot be handled. He has more traffic on Dale Ford Road right now than he has seen for  
219 the 20 years he has lived here. He has grandkids who play while the high school drivers  
220 are hot rodding. The police have issued tickets, but it’s not stopping.

221

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222 Mr. Flaherty said the property owner has a right to request a rezoning, and the BZC  
223 cannot turn down and application unjustly and subjectively; there must be a valid reason.  
224 The township has been sued in the past when they tried to block zonings. The BZC has  
225 to examine the designs that are brought forward with the township's Comprehensive  
226 Land Use Plan.

227

228 Mr. Flaherty said regarding hot rodding and policing, the township attempted to  
229 implement home rule a few years ago, which would have allowed Berlin Township to  
230 establish their own policing. However, that did not pass and the sheriff's office is in  
231 charge of policing. Traffic and safety issues cannot be taken into consideration during  
232 the BZC process. He said everybody needs to keep pushing the county engineering and  
233 the trustees to ensure they are taking the necessary actions and allocating the appropriate  
234 budgets for the design of the roads as development occurs.

235

236 Mr. Flannery said that M/I Homes does not currently own the property; Trinity Homes  
237 does. The current owner tried to build many homes and they were told no, and now they  
238 want to unload the property. Mr. Flaherty said he believes they have an option to acquire  
239 the property from Trinity Homes, who has given the right for Mr. Barkan to represent  
240 them in this rezoning application.

241

242 Shadd Parker, 1362 Dale Ford Road said Mr. Flaherty stated that the property owner has  
243 the right to request a rezoning on this property and to put forth their request to the BZC to  
244 rezone the property so M/I Homes can build homes. He asked at what point the rights of  
245 the surrounding property owners comes into play with the BZC being able to state that  
246 this doesn't fit into the feel of the community that the neighbors moved out here to have.  
247 The community's voice is unified at this point and is stating that this development is not  
248 what this community wants, needs or has any desire to see go into this property. At what  
249 point do their voices count for anything other than background noise on a process that  
250 will just happen and must be accepted with the mounding and landscaping. He asked at  
251 what point the BZC stands up for the neighbors and tells the developers that is not what  
252 they want.

253

254 Mr. Flaherty said the BZC members are appointed by the trustees to handle the zoning  
255 process on applications prior to them coming to the trustees. He is not stating that they  
256 do not take their voices into account; that is where the triple check system of Ohio  
257 development comes in. Then it goes to trustees who make the final call. The ultimate  
258 voice is the residents, who can file a petition for referendum for it to be placed on the  
259 ballot.

260

261 Mr. Flaherty said the BZC examines whether the plan meets the CLUP, does it require  
262 divergences that deteriorate from the CLUP or requests that are not normally granted in  
263 context.

264

265 Mr. Flaherty said the properties in Berlin Township that are fields and farms have the  
266 right to move to something else. The BZC understands things are changing and he is  
267 trying to abide by the statute of the law and the property owner's right to change those,  
268 and how can that happen under a development plan. The trustees are the elected officials  
269 who represent the people.

270

271 Mr. Flaherty said also considered is what has been allowed in the past and being fair to  
272 different areas, and also the right of the people to have the ultimate say via referendum.

273

274 Mr. Flannery said the trustees do not have the best interests of this area in mind; the fact  
275 that they approved 450 homes adjacent to this area that completely destroys the look and  
276 feel of this entire area, over floods our school system and does not benefit the neighbors.  
277 Everybody needs to get to the voting booth and vote them out. This is a gross misuse of

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278 their power and it does not reflect the community that they are supposed to be  
279 representing.

280

281 Mr. Johnson said he appreciates the angst and he moved to Berlin Township for the same  
282 reasons as the neighbors did. However, suggested tabling some of the enthusiasm to  
283 simply vote the current trustees out and everything will change. He said the trustees are  
284 also beholden to the zoning regulations that were legally adopted by the township and  
285 voted upon by the residents. There may be some misunderstanding that one house per  
286 acre is the only zoning regulation and that everything else is a divergence. There are  
287 actually higher-density zonings that are defined in the regulations, and without  
288 divergences, even the trustees will be in a difficult position to reject or request because it  
289 is legally allowed.

290

291 If the residents of Berlin Township want to remove anything less than one house per acre,  
292 the only way to do that is to request the trustees to revise the entire township zoning  
293 resolution to remove the R-2, R-3, R-4 and PRD designations. That is the only way to  
294 enforce one house per acre.

295

296 Mr. Parker said “angst” is an appropriate terms for how he feels because all of the zoning  
297 they keep seeing is taking the land to the maximum limit allowed. There is never a  
298 rezoning that is less than the maximum permitted. There are better places such as along  
299 Route 36/37 where high rise apartments can be built, away from existing homes on larger  
300 properties. Packing 100’s of homes into the existing communities is a major issue.

301

302 Mr. Johnson said that many comments involve building something next to somebody  
303 else’s property. Mr. Parker said he is not opposed to growth in the communities but they  
304 should be put in other areas where people don’t currently live.

305

306 Mr. Johnson said the BZC may feel a bit defensive because they are not abusing  
307 anything. These are legally allowable zonings, and they are not in a position to deny the  
308 application just because the neighbors don’t like it. The job of the BZC is to determine  
309 whether the zoning request complies with the regulation.

310

311 Mr. Johnson said the BZC has zero legal authority and their approval or disapproval of a  
312 plan is only a recommendation to the trustees regarding whether or not they feel they  
313 have complied closely enough to the regulation zoning to let it proceed. The trustees  
314 make the final decision.

315

316 Jim Moyer 152 Dale Ford Road, said he is south of what is shown on the current screen.  
317 He supports one house per acre and not increasing density. He asked whether there was a  
318 plan for additional buffering coming all the way down the east side. There are existing  
319 trees on the property and he asked how many would remain.

320

321 Mr. Barkan said the illustrative plan shows that many trees are being saved. There are a  
322 few that will come down. There is some topography in the area and the houses will sit up  
323 higher so he has not planned additional buffering there because there will be two sides of  
324 street trees and all homes fronting. Mr. Barkan said he wasn’t sure whether the topo  
325 would allow additional buffering in that area.

326

327 Mr. Parker said he would like to see something on that side including the Webbs. Mr.  
328 Barkan displayed more information and said he would be happy to see if there was  
329 anything else that could be done.

330

331 Amanda Bowling, 1232 Dale Ford Road, said she understands the difficult situation the  
332 BZC is in, juggling the zoning law but also listening to the neighbors and the work and  
333 time it has taken to work through, listening and making adjustments. She said her  
334 property isn’t necessary affected by this development, but she backs up to a property that

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335 may develop in the future to the north of this. She understands the predicament they are  
336 all in and she would support the one home per acre as it sets a precedent. She said The  
337 Pines is a nice development but also it most likely experienced less resistance because  
338 there were no close neighbors.

339  
340 Ms. Bowling said she recently moved here and asked for some background information.

341  
342 Mrs. Rodeheffer said the 550 new homes will affect Ms. Bowling in the future. She asked  
343 about sidewalks and pathways connecting and whether that had been planned for. Mr.  
344 Flaherty said the township has no jurisdiction over sidewalks or paths except when a  
345 property is being rezoned. Mr. Flaherty said regarding other pathways, that is up to the  
346 county.

347  
348 Jay Neff, 1368 Dale Ford Road, thanked Mr. Barkan for meeting with him and said he  
349 appreciated it. The residents have done a great job speaking on this and he supports  
350 everything they are saying, including a maximum of 1 home per acre. He just doesn't  
351 think they fit in with Berlin Township, as it changes the culture of Berlin Township.

352  
353 Mr. Neff said M/I Homes is willing to pay for the sewer, and he asked whether whoever  
354 builds here would be responsible for paying for sewer. Mr. Flaherty said they would be.

355  
356 Mr. Flaherty made a motion to table BZC 20-001 to June 23 at 7:00 PM. This will be a  
357 Zoom virtual meeting and it will be streamed live to Facebook. Mr. Bardash seconded  
358 the motion.

359 Vote: Flaherty, yes; Bardash, yes; Johnson, yes; Valentine, yes; Kaplan, yes.

360 **OTHER BUSINESS**

361 Mr. Loveless said there are a lot of road closures, boats and campers parked in  
362 driveways. Mr. Flaherty asked him about what the green zoning signs meant. Mr.  
363 Loveless said the zoning inspector's duties include making sure new homes are built in  
364 the correct location. He also enforces the zoning resolution.

365  
366 Mr. Flaherty said the next BZC meeting will be on Tuesday, June 16, 2020 at 7:00 PM  
367 for BZC case #20-001 M/I Homes/Berlin Farm.

368  
369 Motion to adjourn. Meeting adjourned.

370  
371  
372  
373 \_\_\_\_\_  
Steve Flaherty, Chairperson

374  
375  
376 \_\_\_\_\_  
Jerry Valentine, Vice-Chairperson

377  
378  
379  
380 \_\_\_\_\_  
Darcy Kaplan, member

381  
382  
383  
384 \_\_\_\_\_  
Mike Bardash, member

385  
386  
387  
388 \_\_\_\_\_  
Martin Johnson, member

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390

391

392 Attest: \_\_\_\_\_

393 Lisa F. Knapp, Berlin Township Zoning Clerk