

BERLIN TOWNSHIP ZONING COMMISSION (BZC)

OF DELAWARE COUNTY, OHIO 43015

REGULAR MEETING

TUESDAY, JUNE 23, 2020 7:00 PM

1 This meeting was held virtually.

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CALL TO ORDER

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

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7 Mr. Flaherty led meeting attendees in the pledge of allegiance.

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9 BZC members present: Chairperson Steve Flaherty, Vice-Chairman Jerry Valentine,

10 Darcy Kaplan, Mike Bardash.

11 Also present: Zoning Inspector David Loveless, Zoning Clerk Lisa Knapp, Zoning

12 Secretary Cathy Rippel, BZC 1st alternate member Christina Littleton, BZC 2nd alternate

13 member Angela Brown.

14 Not present: BZC member Martin Johnson

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16 Mr. Flaherty noted that Ms. Littleton is replacing Mr. Johnson for this meeting

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18 Mr. Flaherty reviewed the adopted policy of the BZC, and noted that public comments is

19 limited to three minutes each.

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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 6/9/20 to this evening.

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AGENDA ITEM: APPROVAL OF MINUTES

24 Mr. Valentine made a motion to approve the minutes from 6/9/20 as presented. Ms.

25 Kaplan seconded the motion.

26 Vote: Valentine, yes; Kaplan, yes; Bardash, yes; Littleton, yes; Flaherty, yes

27 Motion carried.

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AGENDA ITEM: BZC 20-001

29 Mr. Flaherty said this application was tabled and continued to this evening from June 9

30 and is a request to approve a preliminary development plan.

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32 Josh Barkan, vice-president of land for M/I Homes, 3 Easton Oval, Columbus Ohio

33 43219, presented the application and answered questions from the BZC.

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35 Mr. Barkan thanked the BZC for hearing this, and he said language was added to the text

36 per Mr. Johnson. Also Mr. Webb, who lives to the east, had questions regarding what the

37 buffer would look like next to his home and which trees would survive. Mr. Barkan said

38 he has adjusted the illustrative plan and it shows additional trees.

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40 Mr. Barkan said he met with township officials as well as the fire chief, and there have

41 been three BZC meetings, a community meeting, and an on-site meeting with the

42 residents as well. There have been many comments received that have been incorporated

43 into the plan, and he requested approval.

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45 Ms. Kaplan said she appreciated the applicant meeting with the neighbors and attempting

46 to satisfy them.

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48 Mr. Valentine said he appreciated the work the applicant has done, but he thinks there is a

49 privacy issue for the existing residents that has not been resolved, on the north and east

50 side. He asked whether there was a way to reduce the size of those ponds and put a tree

51 line up for those people. That would gain his support.

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52 Mr. Barkan said the ponds are just a sketch at this time and they have not been
53 engineered yet. He has a meeting with the county tomorrow on the Piatt Road peanut
54 roundabout engineering and how the Longhill site drains through his site. If the pond
55 sizes shrink, he is open to additional buffering and mounding. He is willing to add
56 language that indicates this.

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58 Ms. Littleton said she has the same concerns and she would like to see the buffers
59 revisited in the final plan. She would like to see a visual buffer and she would like to see
60 what the applicant could provide. She said after considering residents' comment and
61 looking at the township map, she feels that Piatt and Berlin Station Roads create a natural
62 border where lower density such as R-1 development could be built. That area is in the
63 middle of existing homes with 1 acre or more and half of them are 2 acres or more.

64
65 Ms. Littleton said keeping the property R-1 or maybe even R-2 would be a better
66 stepdown to the higher density on the west side of Piatt Road. She knows the tot lot
67 could be lost but there should be plenty of space for playgrounds on their own property.
68 She knows the required multi-use path would be lost along the two roads.

69
70 Ms. Littleton said the path on Berlin Station Road doesn't connect to anything at this
71 time, although there is an opportunity to connect to that at some point. With the right
72 recreational plan in place, multi-use pathways could still be built through there. She said
73 she would like to hear more about this from the other BZC members or others to see
74 whether her feelings are inaccurate.

75
76 Mr. Flaherty said BZC applications are not decided on feelings. The BZC has an
77 application to rezone that property from FR-1. The BZC has to consider whether they are
78 adhering to the comprehensive land use plan (CLUP), and whether the requested
79 divergences are reasonable compared with what the township has granted in the past
80 based on precedent set in case law. Opinion aside, no one is saying they wouldn't agree
81 with her, but the BZC has to make a decision on a rezoning application, whether this
82 meets the criteria of the township for an R-3 PRD and whether it meets the allowed use
83 under the CLUP.

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85 Ms. Littleton said the CLUP shows FR-1 and it doesn't have a plan. Mr. Flaherty said
86 that the current zoning is FR-1, but the CLUP map indicates it is permitted R-3 and PRD.
87 Ms. Littleton said this area is still shown as white, which is FR-1. Mr. Flaherty said any
88 property that is FR-1 has the right to go to a PRD R-2, R-3 or R-4; that's what the
89 rezoning application and this process is for. The CLUP shows the commercial and the
90 residential areas as well as the TPUD as well. Anything that is FR-1 is permitted to be
91 rezoned

92
93 Ms. Littleton asked whether if somebody is requesting R-2, 3 or 4, the BZC cannot say
94 no as long as there are no divergences. Mr. Flaherty said the question is whether the
95 township can live with the divergences as requested. They have to analyze the
96 divergences as presented and whether the application has met the criteria that is set forth
97 in the PRD with an overlay and what are the divergence or variances requested. The
98 application is then approved or denied based on that.

99
100 Ms. Littleton asked whether because there are just a few divergences and they aren't
101 major, does that mean there is no wiggle room? Mr. Flaherty said that is not necessarily
102 true, and the BZC can vote on whether to allow a divergence or variance at any time. It is
103 what has been set as a precedent as the township for the areas involved and that it is
104 always subjective.

105
106 Aaron Underhill, attorney representing M/I Homes,` said he appreciated his explanation
107 of the process. He said when M/I Homes evaluated this site, it appeared to him that the
108 1.5/1.85 per acre was the permitted up-zoning and he rolled up his sleeves to try to

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109 eliminate as many divergences as possible. Compared to other projects that he has been
110 involved in, this is the closest to meeting the code in its entirety that he has ever seen.
111 That is a difficult task, especially because every site is a little different.

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113 Mr. Underhill said every township calculates density a different way; Berlin Township
114 calculates it on a net developable acres, but other townships and municipalities calculate
115 it on a gross acreage. Mr. Underhill said on a gross density basis, it is 1.5/units acre.

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117 Ms. Littleton asked whether it was the BZC's job to ensure the divergence aren't
118 exceeding the township's expectation. Mr. Flaherty said that any project that comes in
119 without a divergence or variance is more difficult to not approve. It also depends on the
120 severity of any requested divergence, and the BZC is very careful regarding the
121 precedents that are set. Each application does play off of each other. Each plan is unique
122 and it's a give and take; the design, elements, buffering and sense of community are all
123 considered along with the requested divergences.

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125 Ms. Littleton asked how density played in the BZC's decisions. Mr. Flaherty said if the
126 density meets the allowed usage under the PRD that is a criteria.

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128 Mr. Bardash said he understands Ms. Littleton's comment about feelings, and that she
129 would love to see Berlin Township all one acre lots with a house on each lot, but that is
130 not something that the BZC can dictate. The FR-1 zoning encompasses everything, and it
131 gives the landowner the right to develop their land as an R-2, R-3 or R-4 based on what
132 the BZC has determined that area fits best in the CLUP. Decisions cannot be made based
133 on feelings that they still want one acre per house. He said that is truly not an option,
134 unfortunately.

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136 Mr. Bardash said the plan shows that the applicants have done everything they can to
137 accommodate the township and to make the plan fit the township's guidelines. There are
138 just one or two minor divergences. Other than that, there is nothing here that doesn't
139 meet the standards. He agreed it would be nice to have additional buffering, the BZC
140 cannot dictate the size of the ponds and that will be determined during final engineering.
141 The applicant has indicated that they are willing to provide additional buffering if they
142 are able to do so. If they are not, the buffering is being provided by the ponding.

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144 Mr. Flaherty said he believes that R-1 is the zoning currently, but he also believes that
145 that families make investments and have the right to capitalize on those investments. The
146 requested divergences do not exceed similar requests approved before. He said once final
147 engineering is done, if there is any additional chance for buffering along those ponds, he
148 would like that to be done by the applicant.

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150 Mr. Flaherty said he went out to look at the property.

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152 Ms. Brown said she knows the BZC has the ability to monitor the green space and she
153 said it seems like people want active recreational. She said there is 15.8 acres off of Dale
154 Ford Road. She likes the tree line behind the lots, but it seems that the 15.8 acres would
155 be difficult to access from the community. There is no trail going to it.

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157 Mr. Flaherty said there is a difference between active and passive green space. The BZC
158 usually requires passive green space because if it becomes active green space, it could be
159 ball fields etc. and that becomes a park-like setting. The point is the open area simply has
160 no houses.

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162 Mr. Barkan said the neighbors were very clear that they wanted that area shielded and
163 mounded off. Ms. Brown asked if the trees could be placed on the other side of the green
164 space. Mr. Barkan said that was discussed, but they cannot do that because that is in the
165 electric easement and they could tear it out at any time.

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Public Comment

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Beverly Rodeheffer, 1360 Dale Ford Road, said she agrees that the pond is a buffer, but it is not a visual buffer and she would like a visual buffer such as evergreen trees so she doesn't have to be looking at all the homes.

Ms. Rodeheffer said she is concerned about traffic from the 450 homes on the other side and over 90 homes from this project. She did not know how all of that would be accommodated by Dale Ford Road. Mr. Flaherty clarified that was regarding the most northern pond.

Mr. Underhill said that these ponds involve quite a bit of work including by the county engineer and the project engineer and many times they don't have the answers at this point. They will do their best to accommodate it, or to plant trees at the end of the lots on the existing properties with the permission of the property owners.

Mr. Flaherty said the township shares the traffic concerns, but the BZC has no control over that and the residents can petition elected officials for their traffic concerns.

Dr. Megan Raehll, 4935 S. R. 37 East, said she appreciated JB's candor and in speaking with him, it has become apparent that it is the applicant's proposal is an attempt to place a square peg into a round hole and it is not a good brand fit for this particular parcel. She is in disagreement with this proposal. There has been some really great work with the CLUP and it is her understanding that members of this BZC were involved in that years ago. It has created a positive vision and a model for growth, one that was for our residents, not in spite of them. That plan set expectations for growth in this area.

Ms. Raehll said the BZC should use this land as approved by the trustees as the baseline. She said members of the BZC are free to vote in alignment with its preservation. This proposal does not align with the CLUP, which was clearly intended to attach this parcel to the Dale Ford community as an FR-1, and it doesn't match residents' expectations. Because of that, the application can be denied by the BZC. She encouraged each member to look at comparable townships and why zoning members did deny applications.

Ms. Raehll said one of the major reasons is alignment with the CLUP, which this does not do. As a result, this proposal is not only subject to disapproval by the BZC but is also subject to referendum if approved by the very same criteria under which zoning commission members can disapprove it. She said she feels for the neighbors and what is going on around them. She said it is a tragic irony that M/I Homes has done so much positive with creating great new communities, but not in this case. She asked that the BZC adhere to the CLUP, preserve the transition and the density, avoid the awkwardness, and preserve the Dale Ford community. She thanked the BZC for their time.

Mr. Flaherty said the BZC is hearing an application for rezoning and that the CLUP map and text are two different things. The map doesn't always match what the text says, but the text is the law.

Mr. Barkan requested a vote and he proposed two conditions: the first is to finalize that at final development plan, depending on the size of the pond, M/I Homes is willing to reconsider some of the buffering and help enhance it, and 2) he committed to at least one tree in the backyard of lots 18-30 as a condition.

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RESOLUTION 2020.06.23 #A: APPROVE BZC 20-001

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Mr. Bardash made a motion to approve BZC 20-001 as submitted and modified via later submissions, and send it to the trustees with the following conditions:

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- 1) Additional buffering will be added to the outsides of the ponds to the engineering/final development plan as permitted.
- 2) Trees will be added to the backyard to lots 18-30 that abut the existing residences.

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Mr. Valentine seconded the motion. Vote: Bardash, yes; Valentine, yes; Kaplan, yes; Littleton, yes; Flaherty, yes.
Motion carried.

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AGENDA ITEM: OTHER BUSINESS

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Mr. Flaherty said there is an issue that is working through the prosecutor's office right now that pertains to Evans Farm and the realignment of North Road as provided by the engineer. They went to the trustees initially and they deemed it a major deviation, which would send it back down to the BZC.

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Mr. Flaherty said the applicant found part of the zoning resolution that applies to when the modification is not their choice. The modification was something that Delaware County decided to do based on the other neighborhood that is part of the other side of the North Road extension and they have submitted a request to come into the BZC directly with that deviation. The BZC is waiting to hear from the prosecutor's office regarding how they view that.

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Mr. Flaherty said he would like to set a tentative special meeting date for 6/30 and he would send out the information. The BZC will make the decision now after 2 trustees voted that it was a minor deviation and one felt that it was a major deviation. It takes a unanimous trustee vote to be deemed a minor deviation.

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Mr. Flaherty said it appears to be due to a phasing plan and not because of the road or any other changes which in his opinion is a very dangerous precedent to set. Phasing plans can be changed based on market conditions. However, he is reserving judgment until he has all of the information.

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Ms. Rippel said she would deliver the paperwork to the BZC members tomorrow. She said the trustees are having a special meeting next Monday night and they will be approving the minutes from that meeting.

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There was a discussion about flashing lights at Hollenback and South Old State Roads, which is a discussion that has been ongoing for 5 years, about general zoning resolution issues and annexation.

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Mr. Flaherty said the next BZC meeting will be on Tuesday, July 14, 2020 at 7:00 PM.
Motion to adjourn. Meeting adjourned.

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Steve Flaherty, Chairperson

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Jerry Valentine, Vice-Chairperson

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Darcy Kaplan, member

Mike Bardash, member

Martin Johnson, member

Christina Littleton, alternate member #1

Angela Brown, alternate member #2

Attest: _____
Lisa F. Knapp, Berlin Township Zoning Clerk