

BERLIN TOWNSHIP ZONING COMMISSION (BZC)

OF DELAWARE COUNTY, OHIO 43015

REGULAR MEETING

TUESDAY, JULY 14, 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, Martin Johnson.

11

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

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

17

AGENDA ITEM: APPROVAL OF MINUTES

18 Mr. Flaherty made a motion to approve the minutes as submitted from the 6/23/20 BZC
19 meeting. Mr. Bardash seconded the motion.

20

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

21

21 Motion carried, minutes were approved.

22

23 Mr. Flaherty made a motion to approve the minutes as submitted from the 6/30/20 BZC
24 special meeting. Mr. Johnson seconded the motion.

25

25 Vote: Flaherty, yes; Johnson, yes; Kaplan, yes; Valentine, yes; Kaplan, yes; Bardash,
26 abstain.

26

27 Motion carried, minutes were approved.

28

DISCUSSION

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29 Ms. Littleton said that she attended the virtual trustee meeting, where the trustees said
30 they were closing the hall for rentals through the end of the year and they will continue to
31 have virtual meetings. She asked whether Mr. Flaherty intended to do the same. Mr.

32

32 Flaherty said that the trustees have closed the hall until further notice for the rest of the
33 year for rentals and activities. The BZC meetings will continue to be virtual. This is a
34 fluid situation but legislative action could change that and that could be determined later.

35

35 He has extended the township's zoom subscription for a year.

36

37 Mr. Johnson asked whether BZC members need to be located at a certain location during
38 BZC meetings. Mr. Flaherty said they did not, and the legislature has given the authority
39 to conduct all meetings including decision making via virtual sessions.

40

41 Ms. Littleton said that after the Berlin Farms meeting, she felt she needed to do some
42 reflection and research and educate herself further. She had been making an argument to
43 make the development one unit per acre as proposed in the township's Comprehensive
44 Land Use Plan (CLUP). She used incorrect language that implied her arguments were
45 based on emotion. Since 2017, when she first got involved in township matters, she
46 understood that zoning decisions cannot be made on emotions.

47

48 Ms. Littleton said her comments were based on her understanding of the CLUP and her
49 understood duty to hold all development in Berlin Township to those standards. In
50 further discussion that night, she was reminded to follow the text of the CLUP, not just
51 the map. She did not have proper knowledge of the CLUP text and so she relied upon
52 information provided by others.

51

52 information provided by others.

53

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54 Ms. Littleton said after further educating herself, she learned that the CLUP calls for 1
55 unit per acre without sewer, or 1.25 unit per acre with sewer. Her suggestion that the
56 parcel remain as such creating a desirable stepdown aligns with it completely from her
57 understanding. It's true that a person has a right to request a rezone from FR-1 to PRD,
58 R-2, R-3 or R-4, and people have the right to develop their land, but existing residents
59 also have the right to a way of living they have come to expect from the CLUP.
60

61 Ms. Littleton said that as extensions of the elected officials, the BZC has a responsibility
62 to give those rights great weight as well and to follow the guidelines required by the
63 CLUP. She knows they all want great things from the CLUP, and she is honored to be a
64 part of the BZC and working with everybody, and she looks forward to seeing how the
65 township evolves. She thanked everybody for hearing her out.
66

67 Mr. Valentine said that annexation is a concern. The township went through this with
68 what is now Glen Ross and used to be in Berlin Township. That was very rural but some
69 of the trustees decided to demand too much of the property owner, and it went to the City
70 of Delaware. He does not want that to happen. He is now afraid for the property along
71 36/37 as he knows the City of Delaware could annex it. He uses his heart when making
72 decisions, but he also considers the township's pocketbook, and the township needs
73 commercial development.
74

75 Mr. Valentine said there appears to be residents on the zoom call and he asked whether
76 Mr. Flaherty would ask for public comment. Mr. Flaherty asked if anybody would like to
77 speak.
78

79 Meghan Raehll, 4935 State Route 37 East, thanked Ms. Littleton for the candor and the
80 conversation.
81

82 Shadd Parker asked when the trustee meeting to completely ratify the Berlin Farms
83 application is. Mr. Flaherty said they have 30 days after approval to set a date for that
84 hearing. Ms. Rippel said she would turn it over to them after the minutes are approved
85 and they will set a date for the hearing.
86

87 Mr. Parker said he appreciated that people are looking out for the community. He said
88 that with the continued rezoning of different parcels throughout the township, is the plan
89 to keep the level of homes per acre at the 1.85 units/acre if that is requested, or are there
90 other parcel in the township that they are looking to keep at the existing 1 or 1.25
91 units/acre without any type of rezoning.
92

93 Mr. Flaherty said each application is separate and they are considered on a case by case
94 basis. The CLUP is a snapshot in time and it's like a sales forecast; it is how it is
95 projected moving forward at that time. It is subject to change dependent on market
96 conditions and dynamics.
97

98 Mr. Johnson said the CLUP is non-binding; it's a strategic vision statement. He said the
99 township or the BZC are not doing the development; it is the property owner. By the
100 time they have come to the BZC with their application, they have agreed with a developer
101 on the financial structure and rough plans that justify selling the property for whatever it
102 is they are going to sell it for. That has been laid out by the property owner and the
103 developer. The township is not doing any active development planning or trying to sell
104 property; that is all coming from the property owners.
105

106 Mr. Johnson said he believes everyone on the BZC would most likely prefer a standard of
107 a maximum of one house per acre. That is why he moved up here, but the challenge is
108 that the BZC doesn't have any legal standing to make any official decision; their vote is
109 just a recommendation to the trustees. Also, it has to be balanced with the fact that even

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110 if it violates the CLUP, it's the zoning regulation itself that is the legally binding
111 definition of what development in Berlin Township is supposed to be.

112

113 Mr. Johnson said if a developer comes to the BZC in compliance with those regulations,
114 even if they vote to deny it, they do not have legal standing to prevent it. The residents
115 can file a petition for referendum and it can be placed on the ballot if they disagree with
116 the trustees' decision. Unfortunately, those types of developments are legally permitted
117 within Berlin Township, and the township must balance the fact that the property owners
118 have rights as well. The BZC does their best to try to find ways to strike some balance.

119

120 Mr. Johnson said residents ask sometimes why the BZC just can't say "no" to developers.
121 Mr. Johnson said that even if they do, it doesn't prevent anything because they are not a
122 legally elected board; they are a filtering mechanism for the trustees to try to ensure that
123 the applications meet the primary requirements. Residents should contact the trustees,
124 but they need to understand that as long as there are no major deviations from what's
125 legally allowed, they have to approve it. If they don't, the township will get sued and
126 will spend a lot of money to defend those lawsuits.

127

128 Mr. Johnson said likely the township will lose in court. Major deviations from the zoning
129 resolution are the only thing that allows the BZC the ability to put a lot of pressure back
130 on the developers. The densities being requested are allowed by statute, and the BZC
131 doesn't have a lot of legal authority to deny applications. They try to strike as much of a
132 balance as possible.

133

134 Ms. Kaplan said the BZC can work with each developer to help put together the best
135 possible scenario. It's a matter of negotiation to help maintain the rural character, to
136 provide buffers for neighbors, etc.

137

138 Mr. Flaherty said it's a compromise; there cannot be no development, but there also
139 cannot be obnoxious development, which sometimes is a developer's first pitch. The
140 CLUP is a forecast; it's a 5-year plan of how the township envisions developing. They
141 come back to analyze it every few years to see whether the scope and map have changed.
142 Dynamics change, schools are built, and many things change over the years.

143

144 Mr. Flaherty said everybody on this BZC are residents of Berlin Township. They all love
145 the rural charm and moved here for that reason. They like the accessibility of everything
146 but also the feeling of being out in the country. As fields are changed into homes, that is
147 tough, but they do the best they can. The BZC is here to serve the residents and to be the
148 mediators and balance between high density and the rural charm and character of Berlin
149 Township.

150

151 Ms. Rippel said years ago, the CLUP was developed. Things really started changing
152 when Berlin high school was built, but was just a matter of time. She feels the BZC does
153 a good job of maintaining the feel of each community. She has lived here for 33 years on
154 an acre of property, and she now has large subdivisions being built all around her. That
155 makes her sad, but she is thankful for the 33 years of farm fields that she has had.

156

157 Ms. Brown said regarding landowners being able to make their own decisions and do
158 what they want: now Ms. Rippel's property is going to be worth less than it was. Fewer
159 people will desire her home now that it is surrounded by homes. Her market value will
160 absolutely be reduced. She said the BZC needs to remember that it's both sides of the
161 coin; it's not only the landowner who desires to sell the field, but also the landowners
162 around them. All of their market values will go down.

163

164 Ms. Rippel said she has heard the opposite of that and that her value will increase if a
165 developer buys it. Mr. Flaherty said that is correct and the land value would be
166 increased. Mr. Loveless said Ms. Rippel's property is actually going up in value because

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167 \$500,000 homes are being built around her. Ms. Brown said it depends on how her
168 property compares to those properties. If the home doesn't compare to the area, it will
169 not increase in value.

170
171 Mr. Parker said he agrees with Ms. Brown because a big selling point of his property is
172 that he is off the road and his home currently cannot be seen in almost any direction. The
173 Berlin Farms development could possibly raise his property values, but real estate agents
174 have told him the property value will be drastically reduced by that. That is why he has
175 been at odds with a number of members of the BZC.

176
177 Mr. Parker said Ms. Brown explained the heart of the matter as to why he and others have
178 been so vocal in trying to assert the rights of the existing property owners versus the
179 people selling the property and making a profit. They are entitled to do that, but it is the
180 protection of the community by the BZC and the trustees that ensures the existing
181 property owners are protected, not just the property seller.

182
183 Mr. Flaherty said the minimum requirement in the zoning text was more than met with
184 Berlin Farms. The BZC asked for more than is required, including additional buffering
185 and mounding. They also modify the standards in the zoning resolution periodically
186 based on resident feedback. There is a balance though; if the demands are too high, the
187 property will just annex and end up with extremely high density in the city of Delaware.
188 It is a legal process and the BZC does take into consideration the needs of the
189 neighboring property owners.

190
191 Mr. Parker said he appreciates the BZC's efforts. He asked whether the process of
192 rezoning a property to a higher density includes provisions that such a request must be
193 approved by the BZC, or do they or the trustees maintain the ability to deny that request
194 and maintain the existing zoning.

195
196 Mr. Flaherty said that decision was made in 1989 when Berlin Township enacted a
197 zoning resolution. That opened the rights to property owners. Prior to that, property
198 could not be rezoned. An acre could be developed by obtaining a building permit from
199 the county and a septic permit from the sanitary department. In 1989, the township
200 realized zoning was creeping up from the city of Columbus, and they decided to be
201 proactive and establish a plan for how the properties will be zoned. That plan has
202 changed numerous times over the years based on existing conditions.

203 Mr. Flaherty said that from a legal standpoint, if it does not specifically state that a
204 township can do something, then it is not permitted to do so. The township has the right
205 to deny an application if variances or divergences are requested. The parameters are very
206 clear. Some applications ask for excessive and absurd divergences and the BZC does not
207 allow that.

208
209 Mr. Flaherty said divergences such as for signs or measurements are minor, but
210 divergences such as for setbacks and densities are considered to be major and
211 applications can be denied for those requests. The BZC needs to be reasonable.

212
213 Mr. Parker asked whether it was correct that a property owner could request any kind of
214 rezoning for a property as long as they do not request a variance or divergence. Mr.
215 Flaherty said the BZC's vote is just a recommendation and the trustees do not have to
216 adopt it. Technically by law, any property that is FR-1 has the right to apply for a
217 rezoning to any other zoning. They could apply for commercial development, but that's
218 when the CLUP comes in it. Technically the township could be sued, but the court would
219 also consider the CLUP.

220
221 Mr. Parker said it seems that the trustees have the legal obligation to approve every
222 request. He asked whether, if an application does not include any variances, do the

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223 trustees have the legal obligation to approve it? Mr. Flaherty said that is correct if it
224 meets the requirements of the zoning resolution because Ohio is a right to develop state.

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226 Ms. Littleton said that Ohio Revised Code appeared to state that an application can be
227 turned down based on the CLUP.

228

229 Mr. Flaherty said that technically it could be, although there is case law that goes both
230 ways. It is in the best interest of the township to find common ground for developments
231 that the township can live with and that also protect the residents.

232

233 Mr. Flaherty said the trustees can state that an application doesn't fit the CLUP and it
234 doesn't fit in the township, and deny it. The Regional Planning Commission thinks about
235 the area as a whole and they will state whether they think it's a good fit or not. The BZC
236 takes note of their recommendation, but they are the local board in charge of making the
237 recommendation. The trustees then make the final decision.

238

239 Mr. Flaherty thanked everybody for their discussion and comments. He said the BZC
240 members try their best to take the existing property owners' positions into account.

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242 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

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Mike Bardash, member

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Martin Johnson, member

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Christina Littleton, 1st alternate member

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Angela Brown, 2nd alternate member

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Attest: _____

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Lisa F. Knapp, Berlin Township Zoning Clerk