

MINUTES BZA 12/19/2023

MINUTES FOR THE SPECIAL MEETING OF THE CHESTER TOWNSHIP BOARD OF ZONING APPEALS and BOARD OF TRUSTEES HELD TUESDAY, DECEMBER 19, 2023, IN THE TOWN HALL MEETING ROOM. AUDIO RECORDING ON FILE.

Board of Trustees Chairman, Craig Richter called the December 19, 2023, Chester Township Special Meeting of the Board of Trustees and Board of Zoning Appeals meeting to order at 7:01 pm.

Board of Trustees Roll Call

Members present: Mr. Richter, Mr. Mazzurco, Mr. Radtke

Board of Zoning Appeals Roll Call

Members present: Ms. Fadorsen, Ms. Klemm, Ms. Muehling, Ms. Sritalapat, Mr. Ziganti, Ms. Denamen

Members absent: None

Mr. Richter led the Board members and audience in reciting the Pledge of Allegiance.

Mr. Richter explained the purpose of the Special Meeting to do some BZA training. Mr. Ziganti distributed a list of *Congruent Topics* (attached) the BZA would like to see addressed. Ms. Lorrie Benza distributed the document she would be presenting from, Township Board of Zoning Appeals Overview (attached). At that point the PowerPoint presentation, BZA Training (attached) was brought up on the monitor.

Ms. Benza started the meeting having the Chester Township BZA members introduce themselves.

Enabling Legislation for Board of Zoning Appeals comes from: US Constitution, Ohio Constitution, Ohio Revised Code (ORC) and the Chester Township Zoning Resolution. In Ohio, the difference between townships and municipalities is municipalities pass ordinances, townships pass resolutions. Townships cannot do anything unless the ORC gives you the authority to do it. In the ORC, the Title 5 Section relates to townships. Chapter 519 sets out township zoning rules and regulations. The Zoning Resolution uses that authority to write the Zoning Resolution and the BZA interprets those rules and regulations.

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Duties of BZA – Chapter 519 – Township Zoning Regulations cover four areas:

1. Appeals –
2. Variances – Use and Area
3. Granting Conditional Uses – Can grant conditions subsequent
4. Revocation of Mineral Extraction

Ms. Muehling asked about additional requirements for a conditional use. Conditional uses need to be rational and specific.

Mr. Richter asked, if a supplemental condition is added to a conditional use application, is that grounds for the appellant to appeal? Ms. Benza said it may be grounds. It is possible to request a variance from a conditional requirement.

Mr. Ziganti said we have 15 conditional requirements. Those are called, conditions precedent. These are the conditions they need to meet when completing a conditional permit application.

The three levels of government were reviewed and how township duties align with those levels. While the Zoning Commission is responsible for the language in the Zoning Resolution, the Board of Zoning Appeals may certainly make the Zoning Commission aware of a potential need for change in the Zoning Resolution. The BZA responsibility is to grant permission for “special circumstances.”

Ms. Benza told the story of how the Bainbridge Zoning Commission reached out to their Assistant County Prosecutor and asked for a review of four potential zoning amendments. It was a great meeting!! Potential legal concerns and any planning concerns were discussed. She encouraged the Zoning Commission to do this moving forward. The Zoning Commission should always be adjusting things in the Zoning Resolution.

Ms. Benza brought up the difference between “morals” being used in township zoning resolutions and “general welfare” being used in municipalities zoning resolutions. Several years ago, the Ohio General Assembly took out morals and, in several situations, used general welfare instead. Recently morals is being re-inserted into Zoning Resolution language.

Process of filing an appeal by an appellant through the Zoning Admin was reviewed. The Board of Trustees has the responsibility of deciding if they should get involved.

Job responsibilities in Zoning Departments in the township were reviewed. BZA members were encouraged to work with and rely on these people.

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The time frame for an appeal to go forward was discussed as it relates to maintaining records. Mr. Richter reviewed the Chester Township Records Retention Policy. When a case is appealed, the recording would be given to a court reporter to transcribe. Per Ms. Benza, what is necessary is “absolutely, rock-solid minutes.” They do not have to be verbatim.

BZA members need to consider, “can I do the work?” Three factors include:

1. Conflicts of interest – various examples were given. That is why we have alternates. It is enough to say you have a conflict – the reason for conflict does not need to be identified.
2. Ex-parte communications – there should be absolutely no conversation with the appellant or anyone else involved in the case that is about to be heard. Various examples were brought up. Site visits are allowed and even encouraged. The key point to remember is NO communication with the appellant/property owner.
 - a. Consider adding an initial line to the application of a variance for the appellant to approve BZA members coming onto the property to see firsthand what the hearing is about. Make sure the appellant understands that BZA members may actually stop by.
 - b. If you can't stop by, use other tools e.g. – Google Earth.
 - c. If stopping by a property and the owner is speaking to you about the case, and you cannot get them to stop speaking about the case, just leave.
 - d. If a BZA member feels they may be “tainted” by a conversation that occurred, excuse yourself and ask the Alternate member to take your place.
 - e. Always call the Prosecutor if you have ANY question.
3. Public meetings – Sunshine Law – Open Meetings Act
Sets the parameters of the hearing. Also refer to ORC 519.15. Ask your Prosecutor if any questions. Bottom line – do your work in public.

Prepare – Do your homework. Never walk into a meeting and see the evidence for the first time. It takes time and preparation. Rely on Zoning Admin and Zoning Inspector.

Omnibus bill – currently pending – looks to amend the notice requirements of a public meeting. Requirement to publish in a local publication may be adjusted. If it passes, consider passing a Zoning Amendment to the Zoning Resolution to reflect the current law.

Once an application is received, a Board of Zoning Appeals member should always refer to their Zoning Resolution. Make a list of questions as you go through the application for the hearing. Make sure those questions are asked.

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Additional information may be submitted by the appellant just prior to the start of the hearing. If the Board feels too much information was submitted just prior to the hearing, the hearing may be continued to the next month. The Board also has the right to adjourn into an executive session to discuss the case, but decisions must be made in public session. A motion is needed to enter executive session along with a roll call vote.

If an appellant declares in the beginning of a hearing they have no hardship or practical difficulty, politely listen to the basics of the case and then ask the appellant, why continue with the hearing? If answers on application and testimony indicates no hardship or practical difficulty, there really is no reason to grant the requested variance.

If petitions (or letters) are submitted as evidence in a court, and the prosecutor does not have the opportunity to cross-examine the persons submitting the letter, the petitions (or letters) cannot be used as evidence.

Discussion on length of time of a BZA hearing. In Bainbridge, although each hearing takes its own time, hearings tend to be about 45 minutes long. If a hearing ever seems to be getting out of control, suggest a five-minute recess or the chair can do a gavel to regain control. Take careful control of who was sworn in at the beginning of the meeting. If not sworn in at the beginning of the meeting, take care to swear them in before they testify.

Once the hearing is closed, the Public portion is closed. No further testimony may be given. The BZA members may ask questions of the plaintiff, through the chairman. Use the review standards of your Zoning Resolution. Use Variances look at unnecessary hardships, Area Variances look at practical difficulties. Use Variances change the use of a property. Sometimes a Use Variance could be done as a Zoning Resolution amendment. In a Use Variance – ALL standards/criteria need to be met.

Practical difficulty does not require all criteria be met. Variances relate to the land.

It can be a good idea to either attend meetings or read minutes of other township BZA's. Remember, you are going to have to do Findings of Fact. It's not unusual to do Findings of Fact at the next meeting. Practical tip: phrase motions in the positive. For example, if a motion is to deny – how does one vote? Double negative could cause problems. The motion does not require reference to the standard being ruled on. However, it is a good idea to include the standard in the Findings of Fact.

Should we be calling out each of the Duncan factors in our Findings of Fact? Yes.

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Attaching conditions to a variance. Those conditions need to be rationally related to the variance. If conditions are violated, it shall be considered a violation and then a complaint is filed in court. As long as the enabling legislation is in the Zoning Resolution, conditions can be added to the variance. Also, be careful not to add new law.

Mr. Radtke asked for clarity on the need for a person to be present at a BZA hearing. Do I only have standing if I was present at the hearing? Yes, show up or send your representative to offer your testimony. Everything must be contained in the record.

Meeting called to close at 9:20 p.m.

Approval Date April 15, 2024

Kathleen McCarthy, Admin. Assistant

Barton Ziganti, Chairman

Deana Sritalapat, Vice-Chair

Mindy Denamen

Kathy Fadorsen

Christina Klemm

Margaret Muehling