

BERLIN TOWNSHIP ZONING COMMISSION (BZC)

OF DELAWARE COUNTY, OHIO 43015

REGULAR MEETING

TUESDAY, APRIL 26, 2022: 7:00 PM

CALL TO ORDER

The meeting was held at Berlin Township Hall, 3271 Cheshire Road, and was called to order by Chairperson Steve Flaherty at 7:00 PM.

BZC members present: Chairperson Steve Flaherty, Vice-Chairperson Christina Littleton, Darcy Kaplan.

Also present: Zoning Secretary Cathy Rippel, Zoning Clerk Lisa Knapp, Assistant Zoning Inspector Sherry Graham.

Not present: Members Jerry Valentine and Angela Brown, 1st alternate member Jenny Sloas.

PROOF OF PUBLICATION

Ms. Knapp stated that this meeting was advertised as a regular meeting in the Delaware Gazette in December of 2021.

AGENDA ITEM: APPROVAL OF MINUTES

Mr. Flaherty made a motion to approve the minutes from the 4/12/22 BZC meeting, as presented. Ms. Littleton seconded the motion.

Vote: Flaherty, yes; Littleton, yes; Kaplan, yes.

Motion carried, the minutes were approved.

AGENDA ITEM: INFORMAL DISCUSSION REGARDING 5229 CHESHIRE ROAD

Mr. Flaherty said that tonight's meeting is for an informal discussion with Kari Lindberg for a potential agrihood development at 5229 Cheshire Road. No decisions will be made tonight.

Kari Lindberg said she is in contract to close soon on the property. Everybody who has seen the plan really like it and want to be involved with it. She said she presented the concept to the BZC back in February, and that this is for everybody's futures.

Kari Lindberg said this will be good for the neighborhood and she desires to keep it rural with fields, ponds and trees. It is currently zoned neighborhood commercial (NCD) and she is hoping to not have to change that.

Kari Lindberg said she would like to discuss the phases informally, including the garden side, which is commercial and will eventually be a 501 (c) (3). There will be a common drive and will probably go the condo route so there will be an association and foundation that will own everything, and each person will own their own home. The association will be responsible for taking care of the rest.

Kari Lindberg said to the east of the main drive is the commercial area, and on the left is a barn that she has already purchased in Utica and is waiting to be taken down and assembled here. She displayed a conceptual layout. She would like to get the elementary school involved in the planning as well. She is working with the Ohio Ecological Food and Barn Association, which has been around since the late 1970's. They hook up farmers with land who want to farm but don't have the money to buy the land. She is looking for farmers who would like to come in and set that up.

BERLIN TOWNSHIP ZONING COMMISSION (BZC)

OF DELAWARE COUNTY, OHIO 43015

REGULAR MEETING

TUESDAY, APRIL 26, 2022: 7:00 PM

53 Kari Lindberg said she will keep the emergency access to the bike trail. There will be a
54 workshop and a smaller reclaimed barn. She said there would be security during
55 construction, and she referenced the 6 month permit to park a camper during that time for
56 that purpose.

57

58 Kari Lindberg said the first house will be the guesthouse, which she wanted to be a
59 double that does not look like a double. She said it would have a large screened in porch
60 that looks to the south towards the pond and it would help to camouflage the two
61 entrances. There would also be a private screened porch on each side for each individual
62 user.

63

64 Kari Lindberg said there would be two ponds and a large enough turnaround for
65 emergency vehicles. She displayed a woods and stream that is under the control of the
66 Army Corp of Engineers. She said the barn would be built for handicapped access and
67 will be wheelchair accessible. There will be a screened in porch on the east side of the
68 kitchen, and on the other side there will be two guest suites and a treatment room for
69 massage and acupuncture.

70

71 Kari Lindberg said that regardless of one's situation, this will enable them to live and
72 enjoy a beautiful country setting. Her sister Lisa Lindberg, who is present at this
73 meeting, and she grew up in Delaware County, in the middle of where the Delaware
74 County reservoir is located now, and her family had to move when it was put in.

75

76 Mr. Flaherty said it seems that the NCD would fit in here. He asked whether they had
77 pulled in the text in the NCD. Kari Lindberg said it is a lot to take in. Mr. Flaherty said
78 when the NCD was put in there, it was all designed around the Village of Cheshire,
79 which is a mixture of commercial and residential. He said he thought this concept fits in
80 and would allow the variation. The bed and breakfast would be a commercial entity,
81 which can be done on R-1, but it is easier to have a commercial district/multi-use in there.

82

83 Mr. Flaherty asked whether there were any parameters in the NCD that would prevent
84 this proposal. Ms. Graham read from the zoning resolution, "*The Neighborhood
85 Commercial district was intended to encourage groupings of small retail establishments
86 to promote convenient shopping to residential neighborhoods in the time before the
87 township adopted Planned Commercial zoning. The Neighborhood Commercial District
88 is retained only for the benefit of land already so zoned. It is a standard district, not a
89 Planned Unit Development.*"

90

91 Mr. Flaherty said it would allow the commercial development, and the question is
92 whether it will allow the residential.

93

94 Ms. Kaplan said the density and the distance between the existing homes in that area are
95 much different than the developments being approved now. She said that seems
96 comparable to what is being proposed. Mr. Flaherty said those were not part of the NCD.
97 Ms. Kaplan said if that is not part of the cloud, then the question regarding residential
98 development is an important one.

99

100 Mr. Flaherty said some of the allowable uses include greenhouse, nursery, retail bakery,
101 and has NAICS codes. The zoning resolution language states that, "*Permitted
102 construction in the district shall contain no more than 3,000 SF gross leasable area.
103 Second floor apartments, when included as part of a neighborhood commercial structure,
104 are exempted.*" He said the barn is over 3,000 SF. Ms. Littleton said it is indicated as
105 4,690 SF.

106

BERLIN TOWNSHIP ZONING COMMISSION (BZC)

OF DELAWARE COUNTY, OHIO 43015

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TUESDAY, APRIL 26, 2022: 7:00 PM

107 Mr. Flaherty said it may have to be a multi-use such as a TPUD (Transitional Planned
108 Unit Development) and the BZC would need to determine whether that rezoning would
109 be appropriate. He feels it is the appropriate use of a TPUD.

110

111 Mr. Flaherty read from the zoning resolution:

112

113 *“Within the Transitional Planned Unit Development (TPUD) the following uses, when*
114 *approved...shall be permitted:*

115

116 *A.) Multi-family residential structures of any type, attached or detached units, including*
117 *but not limited to attached, modular, patio, common wall or any reasonable variation on*
118 *the same theme.*

119

120 *B.) Accessory buildings and accessory uses incidental to the principal building or use.*

121 Mr. Flaherty said the workshop would fall under this section. Kari Lindberg asked
122 whether the market garden would as well. Mr. Flaherty said that would fall under the
123 following provision:

124

125 *D.) Non-residential uses of a religious, cultural, education or recreational nature or*
126 *character to the extent that they are designed and intended to serve the residents of the*
127 *Transitional Planned Unit Development. Said facilities may be designed to serve*
128 *adjoining neighborhoods or residents if they are located in such proximity to the major*
129 *thoroughfares as to permit access without burdening residential streets.*

130

131 Mr. Flaherty said the following language would allow for the security camper.

132

133 *E.) Temporary structures such as manufactured/mobile offices and temporary buildings*
134 *of a nonresidential character may be used incidental to construction work on the*
135 *premises or on adjacent public projects or during a period while the permanent structure*
136 *is being constructed.*

137

138 Ms. Littleton asked whether the security camper would be present only while the first
139 home is being built. Kari Lindberg said yes, and that would be until people are living
140 there.

141

142 Mr. Flaherty asked whether TPUD would allow commercial development or whether a
143 PCD would need to be approved. At Evans Farm, separate PCD and PRD zonings were
144 required. The bed and breakfast would be a commercial use.

145

146 Ms. Littleton asked whether the barn would be available for rent, such as for weddings.
147 Kari Lindberg said it probably would not be. Ms. Kaplan asked where parking would be
148 available for the barn. Kari Lindberg said the driveways will be wide and a loop that
149 comes off the main drive and goes under the overhang, and there will be parking on that
150 as well.

151

152 Ms. Littleton asked whether there would be room for school buses. Kari Lindberg said
153 there would be. Ms. Rippel asked whether it could fall under OCPUD (Old Cheshire
154 Planned Use Development) and be rezoned as such. Mr. Flaherty thought it currently was
155 as it is in the cloud (overlay district), and that under that cloud the properties are currently
156 zoned FR-1, NCD, PRD, and R-3.

157

158 Ms. Graham suggested doing more research and getting some more definitive answers.
159 Mr. Flaherty agreed that more clarification was necessary. Ms. Rippel suggested that
160 perhaps Scott Sanders, executive director of the Delaware County Regional Planning
161 Commission (DCRPC), may be able to help.

BERLIN TOWNSHIP ZONING COMMISSION (BZC)

OF DELAWARE COUNTY, OHIO 43015

REGULAR MEETING

TUESDAY, APRIL 26, 2022: 7:00 PM

162 Mr. Flaherty said he did not know how the OCPUD is interpreted. It is an overall district
163 outline with uses such as NCD, R-3, PRD and FR-1. There is a larger map with a color
164 legend that needs to be examined. It is a district, and inside that district is currently
165 NCD. There are other permitted uses in the district. He asked whether it was all one
166 parcel. Kari Lindberg said it was.

167
168 Mr. Flaherty said he was thinking beyond the proposed use and what future users could
169 do with the property. A bed and breakfast is considered commercial activity, which
170 would require a commercial zoning component.

171
172 Kari Lindberg said if this causes a big issue, she could reconsider. Mr. Flaherty said that
173 he did not know how a house that is used as an Air B & B would be interpreted because
174 that is not addressed in the zoning resolution.

175
176 Mr. Flaherty said he did not feel that NCD fits for the proposed use as it is designed for a
177 use such as a commercial market and the language is very particular. The TPUD is multi-
178 family, which would require a common wall. The double would qualify. If they were all
179 built that way, it would conform. However, the applicant wants some single-family
180 homes. Kari Lindberg said there would be two duplexes and 4 single-family homes.

181
182 Mr. Flaherty said that perhaps zoning it FR-1 again would allow for this use. It would
183 not violate the one unit/acre density. FR-1 would allow agricultural activity and the
184 workshop. Ms. Kaplan said she didn't think that would allow the duplex.

185
186 Ms. Graham said that single-family dwelling is defined in Article 4. She said that
187 permitted would be "*B.) Accessory buildings and accessory uses including private*
188 *garages and one apartment for full time domestic help employed on the premises or full*
189 *time farm labor.*"

190
191 Kari Lindberg said the doubles would be for somebody such as a nurse who could live
192 there and help out with the residential.

193
194 Ms. Graham said per the zoning resolution, a bed and breakfast is included as a permitted
195 use in FR-1, as well as "*Conversion or alteration of any existing residence to permit*
196 *occupancy by two (2) families.*"

197
198 Courtney Wade, with A to Z Zoning, said she is helping the applicants with the zoning
199 portion. She said the site is on septic currently. She asked whether condos would be
200 permitted in the FR-1 district.

201
202 Mr. Flaherty asked what the benefit was of having a condo association. Kari Lindberg
203 said there would be just one driveway and the utilities would run off of that drive so the
204 houses do not have to run their own utilities to the street.

205
206 Ms. Graham said the FR-1 route would not allow a CAD (common access drive) as only
207 three lots would be permitted. They would need to be separate parcels.

208
209 Kari Lindberg asked whether the requirements for a country road are different than for a
210 condo road. Mr. Flaherty said they were. Kari Lindberg said it would be a private drive.
211 Mr. Flaherty said this would be more complicated than originally thought. He will have
212 to talk to the prosecutor regarding the details of the project and where that would fit into
213 the code. There may need to be different districts.

214
215 Mr. Flaherty said he likes the intent of the project and feels it would be a nice asset to the
216 community. However, he cannot adjust the code to conform. Kari Lindberg asked
217 whether adjustments could be made to the plan. Mr. Flaherty said that is what would

BERLIN TOWNSHIP ZONING COMMISSION (BZC)

OF DELAWARE COUNTY, OHIO 43015

REGULAR MEETING

TUESDAY, APRIL 26, 2022: 7:00 PM

218 need to happen and it may need to be two separate districts. Evans Farm was done as two
219 separate applications: one was residential, and one was commercial.

220

221 Ms. Graham asked whether this could be treated as a shared driveway. Mr. Flaherty said
222 a maximum of three are allowed on a CAD. Ms. Graham said there is one further up on
223 Africa Road with 4-5 homes on a single driveway. Mr. Flaherty said that was set up as a
224 subdivision.

225

226 Ms. Wade said the county allows three on the CAD, and two on any that have road
227 frontage, so she could have a maximum of five. Otherwise, she would have to request a
228 variance.

229

230 Ms. Rippel said that there are 18 houses in the Maple Glen FR-1 subdivision. She said
231 that is a private road. Mr. Flaherty noted that it did not come before the BZC for
232 approval.

233

234 Ms. Wade asked if a request to rezone the property as FR-1 is filed, would the township
235 need to see a plan? There was a discussion. Mr. Flaherty said the privatization of the
236 street would need to be handled with the county. It would be a private plotted
237 neighborhood under FR-1 standards.

238

239 Lisa Lindberg asked whether the utilities would not need to come from the road. Mr.
240 Flaherty was not sure. Ms. Wade said they would also want to have individual lots or
241 parcel numbers versus one big plot. She said perhaps a part of the parcel could be
242 parceled off and rezoned. Perhaps each lot could have their own frontage and an
243 easement that would allow for driveways later and perhaps that could be used as a utility
244 easement.

245

246 Kari Lindberg said she would really like to figure out a way to not have to have utilities
247 run to each one as they would have to run through trees and ponds. Mr. Flaherty said a
248 trunk line could be run and each individual lot would come off of that. The county
249 would most likely treat them as separate parcels.

250

251 Kari Lindberg said she plans to have a longterm plan where it becomes a foundation and
252 it is funded so it never needs to be sold.

253

254 Ms. Graham noted that if the property is zoned FR-1, the setback standards would need to
255 be complied with. With the TPUD, the setbacks are different. Mr. Flaherty said the
256 TPUD is multi-family. Ms. Wade asked what the multi-family cluster housing is. Mr.
257 Flaherty that is a patio or townhomes type structure with individual units.

258

259 Ms. Wade said she has been spinning her wheels trying to figure out the proposal. She
260 asked who to contact when she has questions. Ms. Graham said it would be her and she
261 would try to get any information she needed. Ms. Graham asked how far set back the
262 workshop would be. Kari Lindberg said it would not be on the property line.

263

264 Ms. Graham asked what the rectangles to the top and the left of the workshop. Kari
265 Lindberg said that would be the place for the camper to plug in and be located.

266

267 Ms. Graham said she sees 6 main units plus the bed and breakfast, and a barn, which
268 would be 8 dwellings.

269

270 Mr. Flaherty said nobody is questioning the concept or the use of the land or the fit, but
271 the zoning classification needs to be determined zoning-wise. Kari Lindberg said perhaps
272 a new zoning district could be created. Mr. Flaherty said the BZC would need to consider
273 whether things like this would be coming in over the next decade. Kari Lindberg said

BERLIN TOWNSHIP ZONING COMMISSION (BZC)

OF DELAWARE COUNTY, OHIO 43015

REGULAR MEETING

TUESDAY, APRIL 26, 2022: 7:00 PM

274 there is an agrihood to the north. Mr. Flaherty said that is correct, but that is a plotted
275 PRD with individual lots.

276
277 Mr. Flaherty asked whether there would be an LLC commercial entity over top of this.
278 Kari Lindberg said there would be. Mr. Flaherty said it may be possible to have a PCD
279 that the LLC develops. Perhaps it could be condominiumized. Kari Lindberg said that
280 may be possible and then each person owns their individual house. Mr. Flaherty said
281 they should consult with the county prosecutor and the DCRPC.

282
283 Lisa Lindberg asked whether there was anything they could start to do on the land prior
284 to an official designation of zoning. Kari Lindberg asked if a temporary drive would be
285 allowed. Lisa Lindberg said currently they have to walk down Cheshire Road because
286 there is no access. Mr. Flaherty said a gravel driveway would probably be fine but they
287 should verify that.

288
289 Ms. Graham said they would probably need a driveway permit from the county as well as
290 a right-of-way permit and they may require asphalt in the right-of-way. Mr. Flaherty said
291 they could do anything permitted under NCD without a rezoning. Lisa Lindberg asked
292 whether that would include utilities. Mr. Flaherty said it would. However, building
293 permits would be required for any construction. The barn could be constructed under the
294 uses of the district such as a farmer's market, greenhouse nursery, miscellaneous store
295 retailers, consumer goods, etc. Lisa Lindberg asked about the workshop barn Mr.
296 Flaherty said that should be fine if it was a designed as a commercial activity under the
297 NCD.

298
299 Mr. Flaherty said he did not know how zoning or the county would interpret a
300 commercial use with a shopkeeper's quarters. Ms. Littleton asked whether that could be
301 a rental unit. Mr. Flaherty read from the NCD uses: "B.) Apartments in areas over or
302 adjacent to the commercial store-room or office facility, provided that apartments
303 constructed within this district shall contain the following minimum living area, exclusive
304 of porches, basements, or garages: One (1) bedroom unit 800 square feet, Two (2)
305 bedroom unit 900 square feet, Three (3) or more bedroom unit 1000 square feet."

306
307 Mr. Flaherty said if the barn is designed as a commercial entity as permitted, there could
308 be an apartment adjacent to that commercial activity as provided. Lisa Lindberg asked
309 whether a guest bedroom could be rented. Mr. Flaherty said they would be allowed to
310 have an apartment under the current zoning for the owner or somebody else to live at.

311
312 Ms. Wade asked whether the barn could be considered agricultural purposes so it may be
313 exempt from the 35' maximum height and the size requirement. Mr. Flaherty said that
314 any deviations from the approved zoning would require a variance or a re-zoning of the
315 property. The building size can be no more than 3,000 SF. However, per the zoning
316 resolution, "*H.) Building Size: Permitted structures in this district shall contain no more
317 than three thousand (3000) square feet gross lease-able area. Second floor apartments
318 when included as part of a Neighborhood Commercial structure are exempted from the
319 maximum square footage measurement.*"

320
321 Mr. Flaherty said it would not be on the second floor and that may need to be addressed
322 in the zoning resolution. If adjacent apartments are permitted in one area, but second
323 floor apartments here are not included, second floor apartments could be stricken when
324 included as part of an NCD or not included in the gross. Ms. Littleton said that could
325 create a huge footprint and that is what the language was trying to avoid.

326
327 Ms. Graham said the township should try to work with the plan to make it fit into the
328 zoning resolution, but that will take some work. There is nothing glaring that is a
329 problem. Mr. Flaherty said the concept is there. Mr. Flaherty said if the zoning

BERLIN TOWNSHIP ZONING COMMISSION (BZC)

OF DELAWARE COUNTY, OHIO 43015

REGULAR MEETING

TUESDAY, APRIL 26, 2022: 7:00 PM

330 resolution is conformed to this, that would also apply to future projects, so they need to
331 be careful when making any adjustments. If there is ambiguity, it is always to the right of
332 the ambiguity because Ohio is a right-to-develop state.

333

334 Mr. Flaherty suggested presenting this concept to Mr. Sanders for his input. The
335 applicant is the driver of the situation. The township can speak with the prosecutor's
336 office for help with interpreting the zoning resolution.

337

338 Ms. Wade thanked the BZC for coming in just for this informal hearing.

339

340 Ms. Littleton asked whether they planned to install a multi-use path along Cheshire Road.
341 Kari Lindberg said she heard that the township or county had planned to build a path
342 along that road. Mr. Flaherty said that would be the east to west corridor for bike paths,
343 and the township has a newly formed trails and paths committee as part of the township
344 now. The township has no budget for that so typically the developer installs the paths.

345

346 Kari Lindberg asked whether that is on the north or south side of the development. Mr.
347 Flaherty said it would be on both sides and is the obligation of the developer as their
348 plans come in. The township may have to connect some of the paths in the future. The
349 10' wide multi-use path would be constructed by the developer in the right-of-way.

350

351 Ms. Littleton said the island in the cul-de-sac will probably have to be removed. Kari
352 Lindberg agreed to do so.

353

354

AGENDA ITEM: OTHER BUSINESS

355

356 The next regular BZC meeting will be on Tuesday, May 10, 2022 at 7:00 PM, when a
357 hearing for The Greenery will be held.

358

359 There was no further business to come before the BZC. Motion to adjourn and second.
360 Meeting was adjourned.

361

362

363 Steve Flaherty, Chairperson

364

~~365~~

367 Christina Littleton,, Vice-Chairperson

368

369

370 Jerry Valentine, member

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372

373 Darcy Kaplan, member

374

375

376 Angela Brown, member

377

378

379 Jenny Sloas, 1st alternate member

380

381

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