

BERLIN TOWNSHIP ZONING COMMISSION (BZC)

OF DELAWARE COUNTY, OHIO 43015

**REGULAR & ORGANIZATIONAL MEETING, & HEARING
TUESDAY, DECEMBER 12, 2023: 7:00 PM**

1 **CALL TO ORDER**

2 This meeting was held at Berlin Township Hall, 3271 Cheshire Road, and was called to
3 order by Chairperson Darcy Kaplan at 7:00 PM.

4
5 **BZC members present:** Chairperson Darcy Kaplan, Vice-Chairperson Angela Brown,
6 Jenny Sloas, Keith Goshia, Jasper DeChristopher. (Note: Mr. Goshia was not seated for
7 BZC 23-005).

8
9 **Also present:** BZC 1st alternate member Tara Shields, Zoning Secretary Cathy Rippel,
10 Assistant Zoning Inspector Jerry Valentine, Zoning Clerk Lisa Knapp, Zoning Inspector
11 Jake Bon.

12
13 Ms. Kaplan read the adopted policy of the BZC. She asked that public comments be
14 limited to 3 minutes.

15 **AGENDA ITEM: LEGAL NOTICE**

16 Ms. Knapp said this meeting was advertised as a regular meeting in the Delaware Gazette
17 in December of 2022, and BZC 22-005 was tabled to tonight from the prior hearing on
18 11/14/23.

19 **AGENDA ITEM: APPROVAL OF MINUTES**

20
21 Mr. DeChristopher made a motion to approve the minutes from the 11/28/23 BZC
22 meeting, as presented. Ms. Sloas seconded the motion.

23
24 Vote: DeChristopher yes; Sloas, yes; Brown, yes; Kaplan, yes. Motion carried.

25
26 **AGENDA ITEM: BZC 22-005 CHESHIRE MILLS (CONT. FROM 11/14/23)**

27 **Applicant Presentation**

28
29 Attorney Bryan S. Hunt, with Loveland Law, LLC 3300 Riverside Drive, Suite 125,
30 52 Upper Arlington, Ohio 43221, legal counsel for the applicant, and applicant John
31 Burke, owner of JiAngelo Builders, LLC., presented the amended application and
32 answered questions.

33
34 Mr. Hunt distributed a copy of a Powerpoint presentation. He said he wanted to respond
35 to issues brought up at the last meeting. He said regarding fundamental zoning
36 principles, it is well established that all zoning decisions should be based upon the
37 principal that zoning resolutions deprive the property owner of certain uses of their land
38 that they are otherwise lawfully entitled to, and that they are a derivation of common law.

39
40 Mr. Hunt said that as such, the zoning resolution is to be supposed to be construed in
41 favor of property owners, and while Ohio political subdivisions can zone and re-zone
42 properties and can regulate the use of land, they may not do so in a capricious, arbitrary
43 or unreasonable manner.

44
45 Mr. Hunt said that townships in Ohio are unique because they are known as creatures of
46 statute, so they only possess the authority that is granted to them by the Ohio
47 Legislature. Townships have no inherent or constitutional interest or zoning power, and
48 they may only do so through chapter 519 of the Ohio Revised Code (ORC).

49
50 Mr. Hunt said that ORC 519.02 states that townships can regulate zoning in its
51 boundaries, but is required to do so in accordance with the comprehensive land use plan

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52 (CLUP). Zoning regulations that are not in accordance with the CLUP are typically
53 invalid and could constitute unlawful spot zoning.

54

55 Mr. Hunt said CLUPs are necessary and, for townships, are required. Courts have said
56 that CLUPs serve to prevent piecemeal or unlawful spot zoning, and allow persons
57 purchasing property to determine in advance what use that property can be zoned for, and
58 to prevent zoning regulations from being exercised in arbitrary or unreasonable manners.

59

60 Mr. Hunt said the CLUP is typically just a policy document that's not law, but it may
61 become a part of the law and relied upon by decision makers when it is incorporated into
62 the code of ordinances. He said the township's CLUP was recently amended in
63 September 2023, with the most prior version before that being adopted in 2010.

64

65 Mr. Hunt said the intention behind the September 2023 update of the CLUP included
66 reviewing recent changes to land use, reviewing recent changes in economic, legislative,
67 judicial and regulatory conditions, reviewing the various goals and policies of the
68 township, amending those to make sure that they align with the township's future
69 objectives for growth, etc. Mr. Hunt said the plan also states that the CLUP is the
70 policies, goals and the recommended plan for future development, and it is intended to be
71 the township's vision for growth and development.

72

73 Mr. Hunt said the subject property is located in Planning Area 9 of the CLUP, which is
74 the historic village of Cheshire and surrounding areas. It is recommended for
75 redevelopment as a mixed-use planned district, downtown area with historic architectural
76 syntax, on-street angled parking, sidewalks, street trees and shallow and zero
77 setbacks. He said these factors were attempted to be met when they designed this project.

78

79 Mr. Hunt said the zoning resolution does incorporate the CLUP in two sections including
80 Section 3.01, which states that the zoning board and the township trustees will, when
81 appropriate, refer to all plans, master plan studies and treatises affecting the township
82 area. Article 4 defines the CLUP as, among other things, the goals, objectives, and
83 policies of the community.

84

85 Mr. Hunt said within the resolution, the Old Cheshire Planned Unit Development
86 (OCPUD) was adopted in June 2004. Several things have happened since that time, he
87 noted. The zoning resolution has undergone 15 revisions since then, and to his
88 knowledge, the OCPUD has not been modified since then. The purpose of this type of
89 district is to provide flexibility in the design, arrangement and setbacks of the land uses to
90 offer alternatives to standard tract development, establish more efficient use of land, and
91 encourage creativity through a process of review and approval.

92

93 Mr. Hunt said that under the zoning resolution, if an applicant meets the criteria of
94 Article 18, then this commission should approve the application. He included a quote
95 from Ohio Justice Stratton, from a recent decision she made in the case of Buckeye
96 Community Hope Foundation vs. the City of Cuyahoga Falls. "Predictability and
97 stability are important to the survival of our system. Homeowners must be secure in the
98 knowledge that the deed to their home will survive the election, businesses must be able
99 to rely upon the stability of contracts, zoning laws, tax laws and laws governing
100 relationships, whether their business is to build factories or to operate a beauty salon. The
101 loss of stability can result in chaos."

102

103 Mr. Hunt said that many people in this room have an interest in and concerns about this
104 property, but ultimately, they are bound by the laws of this township, the zoning
105 resolution and the CLUP and those should be the documents that guide the commission's
106 decisions.

107

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TUESDAY, DECEMBER 12, 2023: 7:00 PM**

108 Mr. Burke said that mistakes in his application notwithstanding, the most frustrating part
109 was to find that everything in his application was what has been done in three other
110 subdivisions in this township. He understands the community prefers 2-3 dwelling units
111 per acre, but this is different and what he is asking for is what is allowed. However, he
112 said, he does not live in a world where he gets to do exactly what he wants to do and
113 damn the torpedoes for everybody else. He always tries to get people together and come
114 up with something that works for everybody.

115
116 Mr. Burke said he concentrated on answering deficiencies and he thought of requesting
117 the 45 units on 7 acres. However, he is trying to find a balance that works for everybody
118 in the new packet. He said regarding rights-of-ways and the bike paths, the master plan
119 states that Cheshire is an on-the-road trail, which means there should not be bike paths
120 taken from developers for a bike path there. This is just like Glenn Parkway and Piatt
121 Road, and like the county engineer expects it to be located.

122
123 Mr. Burke said he reviewed other subdivisions and their minutes and found that they had
124 the same setbacks that he was requesting or less. For example, The Greenery has a 5'
125 rear load garage setback and he was asking for 10'. Some of the front porches are just
126 7.5' from the curb while he was requesting 15'. He asked, what is the Village of
127 Cheshire? He responded to himself that it seems to be a collection of tan and red barns.
128 He was trying to complement The Shires with the barn-type structures and pavilions, but
129 then he thought his buildings may be too large for what is there.

130
131 Mr. Burke said for the 4 acres, he considered a series of barns in the commercial area and
132 perhaps sitting farther back from the road. He said the county engineer said it is possible
133 to split each of the lots into smaller lots that need to be at least 150' wide and need to net
134 out at a minimum of 1 acre. He would be limited to just two entrances, he noted.
135 However, there could still be a cross network of streets within the property.

136
137 Mr. Burke said he turned the building sideways, and they required 100' setbacks. One
138 advantage is that he will have more green space and a less-intensive use. Many of the
139 trees were to be removed and replanted with new trees. He said it could be split into
140 three lots and meet the setbacks. He displayed several concepts.

141
142 Mr. Burke said some property owners in the area have joined lots together and built
143 something new, although he did not think that met the zoning requirements, so he would
144 like some latitude. He reviewed other parcels in the area that he said did not meet the
145 requirements.

146
147 Mr. Burke said he did not want a decision by the Commission for his PUD because he
148 thinks he can achieve his goals, as well as some of the township's goals, by going back
149 and simply applying the existing NCD. The only variance he would need is for a 100'
150 setback. He said he could just build one building and a second one on the same lot; he
151 said the county said he does not even need to split it initially if he builds it in the corner.
152 Later, he can split it and sell each one of those sections off individually.

153
154 Mr. Burke said many of the questions tonight will be for something he has no intentions
155 of doing any longer, but he will answer them. He hoped that this alternative appeases
156 many of them. He said he is closing on the land on Tuesday, so it will be developed and
157 they will be neighbors with the nearby property owners. He is going to buy the land and
158 take 2-3 months to think about what he wants to do; he may want to request a PUD in
159 that section.

160
161 Mr. Burke said he has developed barndominiums in the past. The third floor will have
162 two, 800+ SF apartments, the second floor may have offices that are 800-1600 SF, and
163 perhaps offices or restaurants on the first floor.

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164 Ms. Kaplan said if he intended to withdraw his application, he needs to formally request
165 that. Mr. Burke requested that it be withdrawn. He said his first conceptual meeting did
166 not seem to matter as when he got to the next meeting, it seemed that the rules had
167 changed. He asked how he could get guidance on what he is permitted to do on the
168 property. Ms. Kaplan suggested he speak with Mr. Bon to discuss the code and then he
169 can come back in for an informal meeting if he would like.

170
171 Commission Consideration

172
173 Ms. Sloas said she did not think that Mr. Burke looking at what the neighboring property
174 owners have done to see what he is allowed to do is a good idea, as there may be some
175 non-conforming uses or litigation going on for some that were not approved by the
176 Commission.

177
178 Mr. Burke asked whether the 50% impervious surfaces rule is hard and fast, as he may be
179 able to put the parking under the buildings.

180
181 Mr. DeChristopher said what was discussed was very different than what was submitted,
182 so it would be difficult for the Commission to give feedback on it.

183
184 Ms. Sloas asked whether there would be any condos. Mr. Burke said the NCD does not
185 allow condos. He does have a series of houses that are 30' by 27' with garages on the
186 first floor, stairs to the first floor, and sleeping in the attic area. Those can be done with a
187 flat roof to remain below the maximum of 35' height, and gables could be done.

188
189 Ms. Kaplan welcomed Mr. Burke as a neighbor and said she looked forward to what is
190 next. She said community dialogue and questions could still be entertained although the
191 application is being withdrawn.

192
193 Public Comment

194
195 Jacob Rinehart, 5256 Finch Lane, Galena, said the red and tan barns are warehouses and
196 they were not approved by either the township or zoning commission. There is an
197 ongoing investigation and, had they gone through the process, they would not be there.
198 The developers purchased the land and built the barns with no input. He said regarding
199 preserving the wooded areas, he asked that there be a tree line that is parallel with the
200 wooded area between the arbors and the Meadows of Cheshire so there is an area for
201 animals to cross.

202
203 Dan Loudono, 8791 Burnett Drive North, asked how many apartments there would be and
204 asked why the developer planned to build them here. Mr. Burke said he was not sure
205 how apartments got equated with convicts, drug dealers or section 8 housing. People
206 spend \$2,000-3,000/month even in the homes they build. He said not everybody needs a
207 house or yard. Many of his friends run Air B&Bs in the county and there are no issues.
208 There is a need for apartments and more places for people to live and stay.

209
210 Chet Delong, 2417 East Cheshire Road, Galena, and 21667 Wolford Moskill Road,
211 Marysville, said he lives next door. He has three areas of concern. 1) The lot line comes
212 over 3-6' onto his property per a survey he had done. Mr. Burke said he is fine with
213 losing footage if it turns out his information is wrong. He said he would like to keep that
214 tree line there. 2) Mr. Delong said the original plan in November had a 10' setback off of
215 a property. Mr. Burke said it was 10' on the back of the property and 8' on the other
216 side. Mr. Delong said that would affect the property line. 3) Mr. Delong was concerned
217 about the density and the number of people in the original plan, and the amount of traffic
218 it would generate. It appears that they are back to the original density.

219

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**REGULAR & ORGANIZATIONAL MEETING, & HEARING
TUESDAY, DECEMBER 12, 2023: 7:00 PM**

220 Mr. Burke said the density will come later: there is no density limitation in the NCD.
221 The amount of building and impervious surface can be no greater than 50% per the
222 current code. If they have a net of three acres of the four acres, he could build 1.5 acres
223 of buildings 25', 30' or 130' away from the road, as long as it fits into that red box and it
224 is under 35' in height. Mr. DeLong asked about the runoff that would be generated. Mr.
225 Burke said that was addressed in the original plan as the waters from both his property
226 and other people's lands were being diverted to an open pond detention area. He will not
227 be addressing any of that until they get to that land.

228
229 Barry Baney, 5650 Greenfield Drive, asked why he was developing this project here in
230 Old Cheshire. Mr. Burke asked whether Mr. Baney was from here. Mr. Baney said he
231 was not, and that he was from Marion. Mr. Burke said he has lived on Africa Road for
232 over 20 years, and he is not going anywhere. He said he would like to leave the area
233 better than he found it.

234
235 Mr. Baney said his presentation seemed to indicate that he planned to build the
236 development and sell it. Mr. Burke said he will probably keep it; he is at the time in his
237 life where it is time to retire. This is a commercial piece, and he can get the residual
238 rental income, which is why apartments appeal to him.

239
240 Mr. Baney said the rules allow 25% of the units to be held back. He will probably keep
241 6-10% of the subdivision he is building now in Delaware as rentals. For this property, he
242 will keep the commercial and the rentals above the commercial, and sell the homes. Mr.
243 Baney asked if he had any tenants lined up. Mr. Burke said that happens after the
244 building is built.

245
246 Mr. Baney said the rendering shows just a two-story building. Mr. Burke said it looks
247 like two because he removed the second floor to leave it as a loft. Mr. Baney asked
248 whether it was correct that it won't look anything like it was presented. Mr. Burke said
249 that was the original building that was to be placed along Cheshire Road. However, he
250 has come to feel that the massing is out of place with the rest of the village. It may be 30
251 years before someone else builds a building that close to the street. By placing it back
252 there, he saves 30' of trees between him and the Van Loons.

253
254 Mr. Baney asked whether he was opposed to anything other than single-family homes on
255 the 7 acres. He said Mr. Burke had discussed apartments on that property. Mr. Burke
256 said he planned to have single-family homes there, small ones like The Greenery but
257 larger. He showed twin singles and triplexes on the plan originally and those are not
258 apartments. Mr. Baney said those are higher density than single-family homes.

259
260 Tara Shields, 5222 Finch Lane, speaking as a resident, said that during the informal
261 meeting, there was more of a neighborhood consideration than the big warehouses that
262 were built without approval in the area. They thought they were getting bakeries,
263 taverns, restaurants, and that there would be three commercial buildings, three barns, etc.
264 and that there would be a Cheshire Village feel/walkabout. The application that was
265 actually presented was a complete flip-flop from the informal meeting; there was no set
266 plan, and it did not adhere to what was required in the OCPUD as there was no firm
267 development plan.

268
269 Ms. Shields said the applicant has referenced the CLUP many times. She asked whether
270 the applicant was working with the Delaware County Regional Planning Commission, as
271 they had the original informal plan but it did not seem as though they had the revised
272 plan. The undefined nature of the plan and the unknowns was what was making people
273 uncomfortable, she opined.

274

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TUESDAY, DECEMBER 12, 2023: 7:00 PM**

275 Mr. Burke said for the PUD, he would state what could be built there and provide some
276 specifics. He would provide the rules that must be followed but not all of the details. He
277 said he thought he stayed true to the informal plan. He does not know who will want to
278 be in the building and what use they will want, so the details would be worked out later.
279 Ms. Shields said he is adding so much and there are so many unknowns that the
280 neighbors are uncomfortable.

281
282 Ms. Shields said that in the zoning resolution, the OCPUD indicates that the specific
283 NAICS codes need to be included in the development plan. Mr. Burke said it does not
284 say that. Ms. Shields said it does. Mr. Burke said it states that the developer can simply
285 provide the building envelopes of where they plan to build those buildings, and there
286 does not need to be a concrete design for that. It is impossible to know who will rent that
287 space. She said this has changed dramatically from the informal process.

288
289 Mr. Burke said under the OCPUD, selecting the envelope where the buildings will be
290 built is the whole purpose of it. Once that is defined, he would be turning in an
291 application with that building for them to review to ensure it meets those standards.

292
293 Kim Trackler, 5210 Finch Lane, said Mr. Hunt made a statement that the zoning
294 resolution rules. However, the application indicates that the development plan and text
295 would override the resolution if there was any difference and that was a huge red flag for
296 her. Mr. Burke said that the text is written that is tailored to one's development and if
297 that is approved, that is the zoning for the property. Ms. Trackler said the plan was very
298 vague and it would be very helpful to lock in what will be developed for NCD. There are
299 many conflicts between the text and drawings in the existing plan and that is a problem
300 because he is able to select which one he wants to follow. She will go line by line to
301 examine the next application, she noted.

302
303 Mr. Burke said he does not need to be precise inside the building envelope until he is
304 building it. The township does not get to learn whether the siding will be vertical or
305 horizontal or how many bedrooms are in the building until the day he submits the plan.
306 What the township needs to know is that it is under 35' and meets the required setbacks.
307 Ms. Trackler said if the application meets everything on the list, they are fine. Mr. Burke
308 said the PUD does not have to follow the zoning resolution; what they have to do is come
309 to an agreement that he does not need to follow it. If they come to an agreement that they
310 do not have to follow that, it becomes law for that PUD.

311
312 Amy Torrey, 5256 Finch Lane, said she appreciates the applicant taking their thoughts
313 into consideration. She would like to see a stand of the woods remain for not only
314 wildlife but as a buffer between the residents and the development. She still has a
315 problem with a road off East Road, which is a single-lane road. This is a safety hazard
316 for the neighborhood. Regarding apartments, typically they are thought to lower property
317 values, burden the schools, and bringing in crime. Also, retirement income can be had
318 from renting commercial buildings.

319
320 Adonna Baney, 5650 Greenfield Drive, asked that the buildings all have accessibility for
321 visitors of all kinds. Mr. Burke said that typically, they do not build all of the residences
322 entirely accessible. Every home is 17.5-22" above outside grade. The first floor has to
323 be handicapped accessible, and the use of the second floor dictates whether or not it
324 needs to be handicap accessible.

325
326 Ms. Baney said the neighbors are not trying to be snobby by saying they do not want
327 multi-family units. They are not; this is a rural area with farms and animals and multi-
328 family does not fit into that.

329

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**REGULAR & ORGANIZATIONAL MEETING, & HEARING
TUESDAY, DECEMBER 12, 2023: 7:00 PM**

330 Ben Hartson, 5779 Cloverdale Drive, said he has heard comments about other developers
331 who have broken the rules, and he asked whether that means the BZC must also accept
332 divergences to this plan. Ms. Kaplan said they do not have to.

333
334 Julie Roddy, 5639 Greenfield Drive, said she backs up to the development. She asked for
335 the timeline. Mr. Burke said he does not have a timeline, the same way the prior owner
336 did not have a timeline.

337
338 Ms. Kaplan said there were several letters sent by residents but she is not going to read
339 them into the record since the application is being withdrawn.

340
341 Fred Thivear, who lives in the City of Delaware, said he cannot locate relatives in the
342 township cemetery. Ms. Kaplan advised that he contact the township cemetery sexton.

343
344 There was a five-minute break and the meeting was returned to session.

345
346 Mr. Goshia was seated.

347
348 **AGENDA ITEM: SET 2024 BZC REGULAR MEETING DATES**

349
350 Mr. Goshia made a motion to adopt the 2024 BZC calendar as presented below for
351 regular meetings.

- 352 • Jan. 9 & 23.
353 • Feb. 13 & 27.
354 • March 12 & 26.
355 • April 9 & 23.
356 • May 14 & 28.
357 • June 11 & 25.
358 • July 9 & 23.
359 • Aug. 13 & 27.
360 • Sept. 10 & 24.
361 • Oct. 8 & 22.
362 • Nov. 12 & 26.
363 • Dec. 10

364 Meetings will be held at the Berlin Township Hall, on the second and fourth Tuesday of
365 each month at 7:00 PM, with the exception of December, when there will be a single
366 meeting on December 10.

367
368 Ms. Kaplan seconded the motion.

369
370 Vote: Goshia, yes; Kaplan, yes; Sloas, yes; Brown, yes; DeChristopher, yes. Motion
371 carried.

372 **AGENDA ITEM: ELECTION OF BZC CHAIRPERSON AND VICE-CHAIRPERSON, 2024**

373 Mr. Goshia nominated Ms. Kaplan for BZC Chairperson 2024 and Ms. Brown for BZC
374 Vice-Chairperson for 2024. Ms. Sloas seconded the motion.

375
376 Vote: Goshia, yes; Sloas, yes; DeChristopher yes; Brown, yes; Kaplan, yes. Motion
377 carried.

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BERLIN TOWNSHIP ZONING COMMISSION (BZC)

OF DELAWARE COUNTY, OHIO 43015

**REGULAR & ORGANIZATIONAL MEETING, & HEARING
TUESDAY, DECEMBER 12, 2023: 7:00 PM**

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AGENDA ITEM: OTHER BUSINESS

Mr. Valentine said that the second draft of the zoning resolution is scheduled to be approved at the January 23, 2024 BZC meeting. He asked for comments prior to that time. A copy will be reviewed by an attorney very soon, he noted.

Mr. Valentine said there is a white building along Alum Creek reservoir that is used for weddings etc. and there is a rumor that the property owners would like to enhance it for agritourism.

Mr. Valentine noted that the trustees are interviewing for a zoning alternate.

RESOLUTION 2023.12.12.#A: ACCEPT WITHDRAWAL OF BZC 23-005

Ms. Kaplan made a motion to accept the request of the applicant to withdraw BZC 23-005. Ms. Brown seconded the motion.

Vote: Kaplan, yes; Brown, yes; DeChristopher; Sloas, yes. Motion carried.

AGENDA ITEM: OTHER BUSINESS

Ms. Kaplan said the next regular BZC meeting will be on January 9, 2024 at 7:00 p.m.

There was no further business to come before the BZC. Ms. Kaplan adjourned the meeting.

Darcy Kaplan, Chairperson

Angela Brown, Vice-Chairperson

Jenny Sloas, member

Keith Goshia, member

Jasper DeChristopher, member

Tara Shields, 1st alternate member

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