

## MINUTES BZA 2/13/2023

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### **MINUTES FOR THE REGULAR MEETING OF THE CHESTER TOWNSHIP BOARD OF ZONING APPEALS HELD MONDAY FEBRUARY 13, 2023, IN THE TOWN HALL MEETING ROOM**

Chairman Barton Ziganti called the February 13, 2023, Chester Township Board of Zoning Appeals meeting to order at 7:05 pm.

Chairman Ziganti: I would like to request that all adults present have signed in at the lectern with their name and address.

#### Roll Call

Present: Ms. Fadorsen, Ms. Klemm, Ms. Sritalapat, Ms. Muehling, Mr. Ziganti

Absent: None

Zoning Inspector: Mr. Purchase

Admin Assistant: Ms. McCarthy

Chairman Ziganti requested that Board members and audience members stand and recite the Pledge of Allegiance.

Mr. Ziganti welcomed everyone to the regular meeting of the Chester Township Board of Zoning Appeals, explained the purpose and procedures of the Board of Zoning Appeals and had anyone wishing to testify or participate stand and be sworn in.

Mr. Ziganti instructed Ms. McCarthy to read Form #5, Notice of Appeal Requesting a Use Variance which was done and attached. Mrs. Saric agreed with everything that was said.

Application 2023-1  
Jamie and Steven Saric  
7880 Mayfield Rd.

Applicants seeking a Use Variance to allow them to continue to reside in the home on the property where they intend to also operate their business from Section 10.00.0 of the Chester Township Resolution. The property is located in a C-Commercial district. Applicants are seeking a 100% variance to be allowed to live in the home while they run their business from the property.

Mr. Ziganti had BZA members turn to Section 12, pg 12-9 of the Zoning Resolution. On that page, eight standards for a Use Variance are listed. Form #5 as completed by the appellant listed seven standards. It is noted that the standard, "Whether the hardship was created by actions of the applicant" was missing. The appellant chose to sign the addendum (Attached as Exhibit 5-A) and answered the missing standard/question as "No".

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Mr. Steven Saric and Mrs. Jamie Saric were present to represent themselves with this application, both were duly sworn in.

Mrs. Saric – (Introduced herself and husband as the owners of the jewelry store in the West Geauga Plaza across the street.) During Covid, we had time to reflect on our expenses and our business and what we wanted to do. We felt that we had paid a lot of money in rent over the past 33 years and felt it was time to make a decision to look for an investment property that would help consolidate our home and business into one property. This property was “sold” to us as residential and commercial. It wasn’t historically registered, so things could be altered. It was just right and it was on Mayfield Road and we could afford it, so – we did it. Then we decided we were going to build a garage, and we came to Zoning. That’s when this all started. We got the applications, we didn’t understand them, so we met with Galina [Berglund, former Zoning Inspector]. She stepped us through the process, we asked a lot of questions because we wanted to make sure we did it right. We got a permit to build the garage. She said it wasn’t a problem. The only restriction she mentioned was the 20-foot setback. We were starting to move forward with our vision and then this Complaint was filed on us so we just halted things. We weren’t sure what was wrong. The ad for the home showed pictures of a bed in a bedroom, a bathroom with a shower, washer and dryer, kitchen... it was a home to be lived in. That’s why we are confused. The denial reason is 10.00.0 talking about the property being abandoned for 10 years and our interpretation was it had never been abandoned for that long. It was being used as a rental. We weren’t sure why we needed a variance because we thought we were doing all the right things.

Galina approved it, gave us the paperwork and showed it. She also showed us how it had been zoned dually (Attachment One). The hardship we have is, we have sold our home and put everything into this property and to have all this happen in the last year has been very upsetting.

Mr. Ziganti asked for some clarification. To set up a timeline, he asked when the property was purchased.

Mrs. Saric – December, 2021

Mr. Ziganti – when did see Galina, the Zoning Inspector?

Mrs. Saric – March, 2022

Mr. Ziganti – Held up Form #1, (Certificate 22-011, dated March 2022) and asked what it was for.

Mrs. Saric - For building a garage for personal vehicles. Our prior home had a 2-car garage and we needed space.

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Mr. Ziganti – So the permit was issued for Residential?

Mrs. Saric – Yes, it was for Residential detached which she approved.

Mr. Ziganti – and who filled this out?

Mrs. Saric – Steven filled it out with Galina.

Mr. Ziganti – You're indicating what?

Mrs. Saric – Galina said we could build the garage.

Mrs. Muehling asked for the date which was March, 2022.

Mrs. Saric – So then I looked it up and our home is classified as 441 which is a Funeral home. I'm just very confused with the coding.

Mr. Ziganti – Back to the timeline. When did you sell your house?

Mrs. Saric – I sold my house in May, 2022.

Mrs. Muehling – Just for clarification. The Property Classification by the Auditor is for payment of Property Taxes. It does not necessarily reflect permitted Zoning uses as listed in Chester Twp. Zoning. There is little or no correlation between the Auditors classification and the Township's Zoning.

Mrs. Saric – Is the coding coming from the county or from Chester?

Mrs. Muehling – The coding comes from the Auditor's Office and it's for Geauga County. It's for property taxation purposes.

Mrs. Saric – I just don't want any one thinking we are going to put in a funeral home.

Mr. Ziganti – Back to what was presented. You indicated purchasing the property and it is an active house? What indicates it was an active home?

Mrs. Saric – Zillow and Realtor.com both mentioned it as a 3-bedroom home. (Articles attached.) It was not called a shop.

Mr. Ziganti – When did you sell your home?

Mrs. Saric – May, 2022.

Mr. Ziganti – This is the information you had for purchasing?

Mrs. Saric – Correct.

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Mr. Ziganti – Where was your other home that you sold?

Mrs. Saric – Sherman Road

Mr. Ziganti – How about if we let some of the Board members ask questions.

Ms. Klemm – Should the Chester Twp. Land Use Plan be considered here?

Mr. Ziganti – We've had discussions about Land Use at the last meeting. They got this information from somewhere. The data is from records of that time period. In all my time doing this, I do not recall a property losing its status of being grandfathered to have in this instance a residential and commercial capability.

Ms. Klemm – So, the previous owners, the Chapics resided in the house?

Mrs. Saric – I'm really not sure. I am not a life long resident of Chester. I just know they retired and moved to North Carolina. That is when they began renting it.

Mr. Ziganti – What we're being presented is an actual residence.

Ms. Muehling – Do we have any Zoning Certificates on record indicating someone rented that house?

Mr. Ziganti – We only have what is in front of us.

Ms. Muehling – Does the Zoning Inspector know how the home was used?

Mr. Purchase – Here's a little bit of history on the property. I worked for the Chapic family as a subcontractor for a short period of time. The Chapic family purchased the property from Dorothy Kendle in 1995. Jack Chapic shows up in Zoning records in 1996 to get permits to convert the garage into his construction business and the home was converted to his wife's interior design business. What's important to note, the home was in bad shape and was converted back into good shape as a home. In 2000 an addition was built to the back of the house for their business. I believe the Chapics moved to North Carolina about 2011. The property was constantly for sale or rent. Zoning does not keep records on rentals of a property. The next Zoning permit we see is in 2020 when another business applied for a commercial permit. I don't know for sure if he even occupied the building before the Sarics bought the property.

Ms. Muehling – There was an amendment in 2005 where the Zoning Commission wrote the definition for a Zoning District. In that amendment, there was what was called a 500' mark. The Commercial District did not extend past the 500' mark. In many cases, there was a small strip where the Commercial District ended and where the lot actually ended. There was a test that said, if it was 50' or less, the depth was increased to the property line on this property. In 2005, it was C-Commercial.

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Ms. Sritalapat - For an R3, the property needs to be 3 acres?

Ms. Muehling – Yes.

Mr. Ziganti – Directed the Board members to look at form 7-CTa. The reason for denial, was because Zoning changed it to Commercial by Section 10.00.0. The problem I see is we are being asked to give a variance on a piece of property that allows a property to be used as a residence and commercial. If we grant a variance, that goes into perpetuity. If the property had been used as a residence up until its recent sale, that would mean the property could continue as a residence in the commercial district until that property is sold and that residential usage would lapse which is two years. Getting a use variance would run with the land forever which I think is not in the best interest of the township.

Mr. Ziganti – Are there any more questions from the Board members?

Ms. Muehling – I just want to get my facts in a row. Addressing Mrs. Saric, she said, so you formerly lived on Sherman. Are you now living on Mayfield?

Mrs. Saric – Yes

Ms. Muehling – And you’ve been living there for how long?

Mrs. Saric – Since we sold our home.

Ms. Muehling – Did you know the lot was classified Commercial when you purchased it?

Mrs. Saric – We knew it was Commercial, but we also knew it was a residence. That’s why we talked to Galina in March.

Ms. Muehling – That was my next question. You wrote on Form 5, “Purchased under advisement of Galina, Zoning 3/10/22. We could live on the property, have retail without issues.” Did you get that advisement in writing?

Mrs. Saric – No, she referred to something on her computer. Later on, I found that page that said, R3/Commercial is what she had referenced. That was on the Chester website. That was where she was getting her information.

Ms. Muehling – Are you presently conducting your business on Mayfield Rd.?

Mrs. Saric – We are not.

Ms. Muehling – You’re conducting your business in the shopping center?

Mrs. Saric – We are.

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Ms. Muehling – And how long have you been conducting your business there?

Mrs. Saric – 33 years.

Mr. Ziganti asked the Board if they had any more questions. There being none, he then opened the floor to the audience members who had been sworn in to ask any questions.

Ms. Carole Cialella – Supported the Sarics in living in the Commercial District. They did everything in their power to make sure they were doing everything right before buying this piece of property.

Mr. Ziganti – We as a Board do our best to look at each case based on its own merits and not hearsay.

Ms. Jessica Zatroch – When does Zoning change from Residential to Commercial and should the Sarics have known that?

Mrs. Saric – I asked about grandfathering and where I could find it. We were told certain things were grandfathered and I don't know where things that are grandfathered are kept.

Mrs. Zatroch – That's where I'm trying to go since someone entered a complaint, with references to REALink. I feel like not granting this would be a lose-lose. We have a business that has a real interest in growing here and not going elsewhere. If the variance is granted, it could be a win-win. Chesterland would keep a long-standing business and keep a nice home in the area. Would it be possible to offer a Use Variance to just the owner of the property and not keep it moving forward after that?

Mr. Bob Mekruit – Representing Marshall Equipment properties next door. Will granting the variance adversely affect the adjacent lot? My understanding is they intend to use the property as a residence and not a business.

Mr. Steven Saric – No, our plan is to eventually move the business to this location.

Mr. Mekruit – Did you have to apply for a Conditional Use of that property?

Mrs. Saric – No, because it is zoned Residential and Commercial. The building in the back is our personal garage.

Mr. Mekruit – Since your intention is to reside there with a business next door, is it going to affect you when Marshall potentially begins servicing equipment on second shift and making noise?

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Mrs. Saric – It hasn't yet. You've been discharging illegal fluids onto our property. The county has reported this to the Health Dept. and that's why you had to put in a separator and other equipment.

Mr. Mekruit – I'm not talking about that stuff that we have already taken action on. I'm talking about if we expand our hours...

Mrs. Saric – I don't have a problem with your hours.

Mr. Mekruit – I'm trying to get this question answered for the future. Will granting this variance adversely impact adjacent property?

Mrs. Saric – You are worse than a jewelry store, so we're not going to adversely affect you.

Mr. Mekruit – Precisely, our concern. If you were not living on that property, you've chosen to live on that property, --If we're going to grow our business, we're going to have to do things differently. We might have to change our hours to be later ...

Mrs. Saric – This isn't about you, this is about us. This is about our concerns. We're not going to be loud. We're not to a nuisance.

Mr. Ziganti – This is not part of the discussion this evening. Your question to the Sarics is, will granting the variance adversely impact adjacent lot owners?

Mrs. Saric – No!

Mr. Ziganti – Any other questions for the Sarics?

Mr. Mekruit – I don't have a question, I have a statement. We have no problem with their variance. As long as this statement is true.

Mr. Saric – If anything, I may be staying open longer myself and we'll both be together.

Mr. Ziganti – Any other questions for the Sarics?

Ms. Linda Nissen – My comment is, the Sarics were probably misinformed by the realtors and by Zoning. The hardship, if this is not granted, is that the township may lose a resident and a business because they cannot live there. They'll end up moving out of this town, along with their business. This is a long-established business that we want to keep.

Mr. Ziganti – Seeing no other questions, I will move the discussion back to the Board members and the Sarics. Are there any other questions?

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Ms. Muehling – I have some questions for the Zoning Inspector. Is it proper to ask them now?

Mr. Ziganti – Absolutely.

Ms. Muehling – When you examine these lots, how do you find 7880 Mayfield is currently zoned?

Mr. Purchase – It is currently zoned Commercial.

Ms. Muehling – What are the uses available on that lot? Whoever owns it, do they have economically viable uses for that lot?

Mr. Purchase – Yes, there are.

Ms. Muehling – Has this lot had the same zoning classification for at least two years?

Mr. Purchase – Yes

Ms. Muehling – Is using the lot as a residence currently a permitted use?

Mr. Purchase – Only if it can be proved that it is grandfathered.

Ms. Muehling – Are there other examples of residences converted to retail who are in compliance in the Commercial district?

Mr. Purchase – Probably. Just west of the Sarics, there is an insurance company. Going the other way, there is Nolan Plumbing and Heating Company in what was a home.

Ms. Muehling – Do you know of any other history of the lot that has not yet been presented tonight?

Mr. Purchase – I've offered everything that I know of.

Ms. Muehling – OK, let's go to the lot then. Does the lot itself have any unusual conditions like steep contours or wetlands or conditions on adjoining lots that are not normally found in the district?

Mr. Purchase – Sarics have a water issue in the back of their property. They're at the bottom of a slope and the water is in the back. They're trying to dry out that part of the property.

Ms. Muehling – In other words, there are no unusual factors that would weigh in on this variance?

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Mr. Purchase – No, because the house is upfront.

Ms. Muehling – I hear you say many times, there are other people doing this in the township. Is this a relative question to ask the Zoning Inspector if how he would deal with another lot where it is suspect that we have someone living on a commercial lot?

Mr. Ziganti – In my opinion, no. The reason why is that I think we need to focus on what was put forward in this particular appeal.

Ms. Muehling – Thank you.

Mr. Ziganti – (Addressing the Board) Any other questions for the Sarics?

Ms. Klemm – (Addressing the Zoning Inspector) If we grant this variance, that will go with the property?

Mr. Purchase – Yes, it would.

Ms. Klemm – Is there a way we can avoid getting a variance and allowing them to continue grandfathering them in? Two years, if they decide to move on, then the property returns to being strictly commercial? How do we do that?

Mr. Purchase – Trust in the fact that Zoning is new to me for about six months. I exhausted looking into a lot of questions. I tried speaking with a lot of Zoning attorneys. In the end, it was requested this go before the BZA because the way it was presented to them, this is a home and they began their life with that belief in that capacity, regardless of how it was zoned. The only other option is if they should not be granted a variance, they have the opportunity to pursue the matter in the courts at which point there may be a provision to work with the Board of Trustees and have a judgement entry given to allow them to live in the home.

Mr. Ziganti – That would be should we not grant the variance and they wish to continue to live in the home. This is my opinion, if we were to vacate this Use Variance, and it is just my one opinion, we have a lot of conflicting information. I see the fact that what was presented, that a meeting was had with the previous Zoning Inspector (I don't know how many times) and a plan was laid out what the Sarics wish to do. Everything was at that time indicated to be permissible and they moved forward with selling their home after purchasing the property based upon the fact that perhaps the previous Zoning Inspector was looking at, "Oh, it's a residence – even though it's in the Commercial District." Based upon the concept of grandfathering, that building can continue to be used as a residence. I'm thinking, what if we were to indicate that this property can continue on with this grandfather permission of 10.00.0 in the commercial district which would allow the Sarics to have the business on the property as discussed with the previous Zoning Inspector. Then we as a Board, if we grant this Use Variance, then that building can always be a house and is that a problem for this community? Then the idea behind our resolution, if we grant this variance, that piece of property will forever be

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non-conforming. We as a Board are charged with trying to move all the properties in Chesterland to a conforming situation. Is it possible we have considered that entity? We would have to ask the Sarics if they would want to follow this course? They are looking for this variance to allow them to do these things. I'm saying, perhaps we don't need to go that step and instead continue forward with how it was presented and approved by a previous Zoning Inspector. All the information presented by the real estate company should be considered as well.

Ms. Fadorsen – I actually agree with you.

Ms. Klemm – So, what happens if there is another complaint? Do we go through all this again?

Ms. Fadorsen – No, because a final decision is made and it is grandfathered in. Nobody can prove someone was living there or not living there. If we knew for a fact that nobody was living there, then we couldn't do it. But, nobody knows.

Ms. Klemm – If we could go the grandfathered way, I think we owe that to the Sarics. My opinion right now is that we in many ways, the Township, has been negligent because there is so much conflicting information. Part of these issues would be solved if we had up to date information on our website. I think people's understanding of these forms would be improved. I think all of this does create a hardship.

Ms. Sritalapat – I think there were multiple items creating a hardship for the Saric's. I can see how it is difficult when people try to purchase a property and the way it is marketed and also how that may or may not be accurate. The process of the accessory building is what brought this to our attention. I am in agreement with you all.

Ms. Muehling – Something is being ignored as we take a look at this. That is, the courts have dictated that the Duncan statement of, if you go for a Use Variance, that comes very close to the line of creating almost a Zoning change. They (Sarics) have listed factors and the fact of the matter is, the people wanting a Use Variance, regardless of who they are, have to comply with all of the conditions – not some – but all of them. There was a lot of misinformation in this and a lot of hear-say, so it's a matter of what we get down to. Can they comply with all of the conditions on the Duncan Factors? The Duncan Factors are on pg 12-9. It cannot be hear-say. If you will allow me, there is a type of zoning called Pyramid Zoning.

Ms. Muehling – In Pyramid Zoning, the zones are tiered. From the most restrictive which would be residential to the least restrictive which is Industrial in Chester. In that case, the uses are automatic. If you're in a Commercial lot, all the uses pass down. Chester does not, and to my knowledge, never has had pyramid zoning. In Chester, specific uses are listed for each specific zone. To give you an example, in Section 5.01.01, which is Permitted Principal Buildings, Structures and Uses in residential districts, there is an item, section E which lists townships and other government offices. Building structures and uses of the Federal or State Government or any political subdivision

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thereof is listed as a specific use in Residential districts. If you then go to Section 5.02.01, which is Permitted Principal Buildings, Structures and Uses in the Commercial District, there is a section in there which specifically states, buildings structures and uses permitted in Section 5.01.01 E. In other words, that has to be relisted in the Commercial Section in order to be a use. There is a similar statement in the Shopping Center and Industrial District. In other words, Chester specifically wants each use listed in each district. They cannot slide down.

This Use Variance is not really a request for a change in Zoning District. A simple one would be, if the Sarics wanted the Commercial District to now become Residential, that would be a simple change and you would vote simply on that change. They want a mixed-use – they want it to be Residential and Commercial. That is a very difficult test. Because if you grant a variance like that, it goes on in perpetuity. And it will be very difficult – well, it's a creation of a use that does not exist. Therefore, it has no regulations. So, how in the world do you regulate it if it has no regulations in it?

Ms. Sritalapat – Margaret, I was wondering about that point right there. Looking at our current Zoning map and how our Commercial district overlays along Mayfield. It looks like the Commercial zone doesn't follow along some of these lot lines. In that case, wouldn't it be a multi-purpose district?

Ms. Muehling – No, it just means that section which is colored Commercial may be used as Commercial.

Ms. Fadorsen – All they have to do is call to find out if there was a renter in there.

Ms. Muehling – Who would they call?

Mr. Ziganti – We are to use the information we have in front of us. If I could put this in a nutshell what you are saying is, if we grant a Use Variance, we are creating a mixed use.

Ms. Muehling – Exactly.

Mr. Ziganti – And that is a conundrum in and of itself.

Mr. Ziganti – Do you think we could consider vacating the Use Variance request and acknowledging that the property is still within 10.00.0 which has the *grandfathered* use of being a residence in a Commercial district that will continue until that property or building is abandoned for residential use and it just becomes strictly Commercial?

Ms. Muehling – I'd point out to you that it does not mean the Sarics have to be renting there. If they leave and someone else rents, it continues.

Mr. Ziganti – Correct.

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Ms. Muehling – I believe this is asking for a change of Use and unless

Mr. Ziganti – What is?

Ms. Muehling – Their Variance.

Mr. Ziganti – The Variance request.

Ms. Muehling – Unless it can be documented that people have lived in that house continuously since the Chapics left, (addressing Mr. Purchase) do you have any evidence that people have lived in it?

Mr. Purchase – No, neither way.

Ms. Muehling – It's a conundrum.

Mr. Ziganti – We don't even know if the Sarics would be interested in what we are saying. But we have to figure out if we can come up with a different option.

Ms. Fadorsen – My feeling is, eventually we will get to the point where it will convert to a Commercial property.

Mr. Ziganti – So you're in favor of having this discussion with the Sarics?

Ms. Klemm – Yes

Ms. Muehling – When you say, vacate, that means they would withdraw their Use Variance request?

Mr. Ziganti – We would find that they would withdraw based upon the fact – or we could indicate that it was unnecessary because we're recognizing the property still falls within the Zoning Resolution and 10.00.0. The reason why we are here for this variance request is, there is an indication that it doesn't meet 10.00.0. So the property will be like other properties in Chester where residential and commercial use are on the same piece of property.

Ms. Muehling – and if that were to occur, then the Duncan Factors would no longer apply because there is no variance.

Mr. Ziganti – Our Zoning Inspector is able to enforce rules for the community when no one is making the variance request. People can't do certain things with their property because of the Zoning Resolution stipulating what's possible within that district.

Ms. Muehling – Understand, I think they got a lot of misinformation. I think that is very clear. I'm worried about the consequences. How then does the Zoning Inspector...

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let's just say we go with the grandfathered thing. How does the Zoning Inspector apply the standards involved? We have two sets of standards.

Mr. Ziganti – It would be, any changes made to a grandfathered structure for a given purpose, any changes made require a variance request. A while back we had a residence in the Commercial district right now on 306. They just wanted to extend the back of their home away from the main road. It was a non-conforming building and since they wanted to change a non-conforming building, they had to come before us to do any kind of changes. The Zoning Inspector is able to review any structure and the purpose it is being used for and know if something is awry.

Ms. Muehling – Recently, there was an amendment passed. It was a rare thing – an extension of the Commercial District. A car business that had existed for many years on a residential piece of property. There was a judgment entry from an appeals court that said, since this use has been grandfathered, that person had a right to continue the business on the residential piece of property. Kind of the reverse of this case. In doing so, it was a mess for the owner and for any Zoning Inspector trying to decipher what set of rules were to be used. In other words, on setbacks, did he use the residential setbacks or did he use the commercial setbacks? On usage, did he use the residential or commercial usage? We should not create a situation where there is a double set of standards. If any changes are to be made in the business, how does the Zoning Inspector judge that on this land which has a mixed use now? That's what's being created here.

Ms. Sritalapat – So you're saying there are no mixed-use properties?

Ms. Muehling – I'm saying, there shouldn't be.

Ms. Sritalapat – In double checking the map on the Auditor's site, I think it is confusing looking at the commercial properties along Mayfield, with some of them being partially residential, what rules do you apply?

Mr. Ziganti – If the building that is presently being used as a house, and it's a grandfathered structure, any changes to that structure would have to come before the board. They put up a garage in 2022. There's an existing building on the property now that they want to put their jewelry business in. That is a building used for a specific purpose. So, that purpose would dictate what would be permissible. The setbacks for a grandfathered structure, they can't add onto the house unless they come before the Board and get a variance. So, the purpose of the given building would determine what the possibilities would be. I feel like the usage of the building determines what rules would apply.

Ms. Muehling – If we drop the variance aspect, it continues to be grandfathered. We don't know what's going to happen in the future in terms of that lot.

Ms. Fadorsen – If we accept the variance, it will always be residential and commercial.

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Ms. Muehling – My last point is, let's suppose that happens. Let's suppose it's vacated. Are real estate ads going to be used as proof on what the property is being used for? Real estate ads are in the control of the real estate agent. They don't have to be accurate.

Ms. Fadorsen – Our website has inaccurate information.

Ms. Muehling – Which website?

Ms. Fadorsen – Our website said R3/C.

Ms. Muehling – That was prior to 2005. That was corrected then.

Ms. Klemm – What about the Land Use Plan?

Mr. Ziganti – My understanding is the value of property is higher when designated Commercial. It seems the likelihood of this property being all Commercial is realistic. So, it seems reasonable that properties that are grandfathered will eventually move toward being Commercial. Again, our discussion is whether or not we think we can offer that option to the Sarics.

Ms. Muehling – You say the creation of the variance, but a denial of the variance would not. You're saying a denial could produce a mixed usage. I'm saying only if it's approved.

Mr. Ziganti – Are we in agreement that we can offer that option to the Sarics? We the Board of Zoning Appeals think it is reasonable, if you would wish to remove your variance request, we would have a finding that there is still a grandfathered purpose to the property and allow them to live there as planned. (All five members were in agreement to pursue this option.)

Ms. Muehling – Go ahead and pursue it.

Mr. Ziganti – OK, and the Zoning Inspector had some information he would like to offer.

Mr. Purchase – The question about the property. There's a great example at the corner of Valley View and Mayfield. Just like Margaret said, the first 500 feet of that property is Commercial and it stretches all the way back to Sherman Rd. and it's Residential back there. That happens quite often. That total use of what really happens to that back residential part of the property. That mixed use happens. For example, the Notarian property. We have Commercial use in the front and someone living in the back. We were able to show people that someone has been living in there for more than 50 years. So, it happens. To Margaret's point, it just makes it a bit more difficult if someone wants to do something to the property and what standards apply.

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Even the Saric's home would not be able to meet some of the setbacks because of when it was built 100 years ago. It would still need help from Zoning to meet some of those standards.

Ms. Muehling – I would like to clarify one other point. What Mark is saying is, it's possible to have the front of a property Commercial and the back part Residential. In the case I was stating, the business was on a Residential site. That does not occur on the map. That's not a mixed use.

Mr. Ziganti – So, (addressing the Sarics) you do have the right to go forward with this variance. The Board members believe we have a second option to offer to you. That is whereby this variance could be withdrawn with your understanding that the Board members believe that based upon the hardships you stipulated and the evidence you have about how you went about purchasing the property and the purposes you intend for the property, we believe you are presently in a hardship – not of your making. That being said, we believe it would be in the best interest of Chester Township, if instead of us granting you a variance, we would allow you to have your property continue to operate with the understanding you first had which was where you could use the front building that looks like a house as your house. You could use the converted garage as a future location of your business if indeed that business is permitted in Chester Twp. Commercial district. Are you comfortable with that kind of a situation?

Mrs. Saric – Will that be documented in case of any future complaints?

Mr. Ziganti – We are a quasi-judicial board which means we are the judiciary branch of the township government. When we come to a decision it is supposed to be enforced by the Zoning Inspector and we are comfortable with offering you that option. Again, this is trying to have a win-win situation where we think it would not be in Chester Township's best interest to have this variance with the land in perpetuity. We would have that property grandfathered in a way we can gradually move toward all the properties of Chesterland following our Zoning Resolution which is the goal of the Board of Zoning Appeals – help people get what they want, but at the same time minimize the impact to the community. We think this would allow you to move forward with your plans and a variance would not be granted which would have a negative impact on the community.

Mrs. Saric – Yes, I accept that.

Ms. Muehling – In answer to your question, everything is being documented right now.

Mr. Ziganti – Our secretary will supply you with this information and this will be the evidence you are looking for. I think it would be good if you would make an audible statement of your understanding of what has been presented – just for the record.

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Mrs. Saric – I believe that we will continue doing what we thought we were doing properly which is living on the property and building our business. We would have dual buildings for doing different things on our property.

Mr. Ziganti – Are you in agreement you will be using 10.00.0 non-conforming use of the land and you understand any changes made to your property will need to come before the Board?

Mrs. Saric – I understand.

Mr. Ziganti thanked the public for attending.

Ms. Fadorsen made a motion that the property is grandfathered in per Section 10.00.0 and they will withdraw their Use Variance.

Ms. Klemm seconded the motion.

Mr. Ziganti opened up the discussion to the Board.

Ms. Muehling – I think it is the solution. My reservation is that we seem to be assuming it was grandfathered, based on real estate ads rather than concrete information as it pertains to zoning. It seems to be a solution. The Sarics seem to have received a lot of poor information. Again, my reservation is to how grandfathering was determined.

Ms. Klemm – I think this is probably a pretty good solution. I agree there was lack of information on points that relate to this situation.

Ms. Sritalapat – I think this information coming from the R3/C district was information that we needed to make sure we got clarified. I am in agreement that real estate advertising should not be a factor. Misinformation from the R3/C was a factor.

Mr. Ziganti – This is what convinced me. I think the misinformation was much more than real estate ads. I think it started with building the garage and having discussions with our previous Zoning Inspector indicating that the purpose and plans of the Sarics was OK. By whatever information was used by the previous Zoning Inspector to make that determination. I think that this is a hardship. My understanding is a Use Variance is very much dependent upon showing the hardship and I think the hardship now is 1) bad information was given, but 2) the reality is that we'd be throwing them out into the cold. I think this proposal here, still meeting the spirit of the Zoning Resolution which is to have properties comply.

There being no further discussion the vote on the motion to approve the appeal was taken.

Ms. Muehling/No; Ms. Fadorsen/Yes; Ms. Klemm/Yes; Ms. Sritalapat/Yes;

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Mr. Ziganti/Yes      Motion passed for Z-2023-1.

Findings of Fact for Z-2023-1  
Jamie and Steven Saric – Owner  
7880 Mayfield Road

Steven and Jamie Saric of 7880 Mayfield Road came before the Board of Zoning Appeals seeking a Use Variance to allow them to continue to reside in a home on the property where they intend to also operate their business. The Use Variance was required in the belief that the provision of the Zoning Resolution, 10.00.0 *Nonconforming use of buildings and land not affected by zoning* was not being met. Upon the findings of our present Zoning Inspector, a Use Variance was being applied to allow them to utilize the property for the intended purpose of 1) a residence and 2) an adjoining business location for their established Chester Township business. It was determined by looking at the evidence presented that there was conflicting information as to whether or not one of the buildings on the property had been in continuous use as a residence. Information was given showing that the property was advertised to the Sarics as being an active residence. This was shown in real estate information both in print as well as photographs. Additionally, the Sarics were able to show that the building of a garage for storing personal vehicles was approved by the previous Zoning Inspector. The Sarics indicated in testimony that during their discussions with the previous Zoning Inspector, they laid out their plans to use the property for both personal residence as well as the aforementioned business.

The Board discussed at length the issues that might occur for the Township if a Use Variance would be granted in that such an approval would produce a mixed use in the established Commercial District of the township. Therefore, the Board believes that a better solution for both the Sarics and the Township would be to ask the Sarics if they would be interested in withdrawing the Use Variance request and utilize the property under the provisions of 10.00.0. This was because a granting of a Use Variance would continue into perpetuity creating the aforementioned mixed use in a Commercial District.

The Sarics accepted the option of continuing to operate the property under 10.00.0 of the Chester Zoning Resolution understanding that any changes to any of the structures on the property would require them to come before the Board of Zoning Appeals for approval of any changes.

We the Board incorporate into these Findings of Fact the applications and exhibits of the appeal including all corrections, clarifications and additions.

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Motion to accept Findings of Fact Z-2023-1

Ms. Fadorsen moved to accept the Findings of Fact. Ms. Sritalapat seconded.  
Ms. Sritalapat/yes; Ms. Klemm/yes; Ms. Fadorsen/yes; Ms. Muehling/yes; Mr.  
Ziganti/yes

Mr. Purchase talked about a probable April BZA hearing for Mr. DiNardo who has put in a Use and Area Variance request to build 37 homes on his 11-acre property just north of the Recycle Park. (Just north of the old Chester School.)

Minutes of January 9, 2023 reviewed

Ms. Fadorsen made a motion to approve the minutes of the January 9, 2023 meeting.  
Ms. Klemm seconded it.

Ms. Sritalapat/yes; Ms. Klemm/yes; Ms. Fadorsen/yes; Ms. Muehling/yes; Mr.  
Ziganti/yes Motion passed

### **New Business**

March 1, 2023 is a joint meeting with the BZA and the Zoning Commission. Using the Priority Matrix, Mr. Ziganti will send an email to the Zoning Commission suggesting the items that the Zoning Commission should put a priority on addressing. Open discussion ensued.

Conditional Use permits need to be addressed. Need a system put in place to follow up with those who have received Conditional Use permits. The process of putting conditional permits in front of the BZA is initiated by the Zoning Inspector.

Meeting was called to a close at 10:15 p.m.

Approval Date March 27, 2023

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Kathleen McCarthy, Admin. Assistant

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Barton Ziganti, Chairman