

MINUTES FOR THE REGULAR MEETING OF THE CHESTER TOWNSHIP BOARD OF ZONING APPEALS HELD MONDAY, AUGUST 12, 2024, IN THE TOWN HALL MEETING ROOM. AUDIO RECORDING ON FILE.

Chairman Barton Ziganti called the Regular August 12, 2024, Chester Township Board of Zoning Appeals meeting to order at 7:05 p.m.

Roll Call

Members present: Ms. Denamen (serving as voting member), Ms. Fadorsen, Ms. Klemm, Mr. Ziganti

Members absent: Ms. Muehling, Ms. Sritalapat

Zoning inspector: Mr. Alusheff

Admin present: Ms. McCarthy

Mr. Ziganti led the audience in reciting the Pledge of Allegiance.

Mr. Ziganti read the public hearing process of the Board of Zoning Appeals.

Approval of Minutes

Motion to approve the minutes of July 1, 2024

Ms. Fadorsen made a motion to accept the July 1, 2024, minutes as modified. Ms. Denamen seconded the motion.

Ms. Denamen/yes; Ms. Fadorsen/yes; Ms. Klemm/yes; Mr. Ziganti/yes. Motion passed.

All persons wishing to testify at tonight's meeting were sworn in.

**APPEAL ZU-2024-4
Chesterland Memorial Park
B'nai Jeshurun Congregation
Jay Ross
Conditional Use
11535 Chillicothe Road**

Mr. Alusheff – Research has indicated that this property was never identified as needing a conditional permit. That is why this is the first hearing for a conditional permit for this parcel. There is additional information submitted with dimensions on the monument sign out front.

Mr. Ross – B'nai Jeshurun is a synagogue located in Pepper Pike, OH. This property was bought in the 1970's for the purpose of building a cemetery. It has been used over the years as a cemetery only. Monuments are in the ground. We have a private landscaper that regularly cares for the property. That is the plan that we continue this process into the future. We have four properties across the greater Cleveland area so

our members have the ability to make a choice where they would like to be buried. When we were initially contacted asking about a Conditional Permit, I asked the staff if they could help me find a Conditional Permit. They all looked at me with, "What Conditional Permit?" I've been executive director for 14 years approximately and my assumption is this was an oversight. Once we were contacted, it has been our intention to get in compliance with what the township is asking for. This property has plenty of room and it certainly won't be filled in my lifetime.

Mr. Ziganti – We appreciate you being here and getting this requirement taken care of. In our Zoning Resolution, we have Article 6 which has to do with Conditional Uses. Section 6.05.0 lists the General Standards we are supposed to have the applicant address. The ones we will need to concentrate on are D, E and H. More specifically, there are requirements for Memorial Parks in Section 6.06.03. I'd like to start with 6.06.03 which is the Memorial Parks. My first concern is Parking. But the most important part is Section H. Fiscal Plan. We ask if a Perpetual Care Trust Fund has been established.

Mr. Ross – Yes, we have a Perpetual Care Trust Fund established. In the Jewish religion a preservation cemetery is one of the highest things you can do. The Jewish Federation of Cleveland actually maintains cemeteries that no longer have synagogues to maintain them. If we (B'nai Jeshurun) ever went under as a synagogue, the Jewish Federation of Cleveland is going to be the first one that will call because that is their role. The Federation takes care of cemeteries that were owned by synagogues that have now gone under. We have our own Perpetual Care Fund. It has between \$750,000 - \$1,000,000 in it. We also sell plots in the cemetery and collect fees. We've also implemented a voluntary cemetery fund and our members who choose will also contribute to that as well. At some point, that fee may become permanent. We know our responsibilities. Our members would not want a Jewish cemetery taken over by the Township because our members would want this cemetery maintained according to our strict requirements of Judaism. It is only Jewish people who can be buried at this cemetery. We intend to maintain this cemetery forever.

Mr. Ziganti – This is a requirement of the State of Ohio.

Mr. Ross – According to my council, that is not a requirement because we are a non-profit. I can give you a report with certain items redacted.

Ms. Denamen – Has the Perpetual Care Trust Fund been established?

Mr. Ross – Yes

Ms. Denamen – And that is the requirement, right?

Mr. Ziganti – We don't know the Perpetual Care Trust Fund has been established by the requirements of the State of Ohio.

Ms. Denamen – It doesn't say "by the State of Ohio," that's why I am asking.

Mr. Ziganti – It's something filed with the state. We reviewed that for Western Reserve Memorial Garden. We were able to verify that they had the fiscal wherewithal to handle taking care of the property. More importantly, it is a fund established with sufficient funds to do that should they not be able to take care of the property.

Mr. Ross – We have a fund. We just never submit anything to the State.

Mr. Ziganti – Thinking of the township, we have to follow the Zoning Resolution. There needs to be some sort of indication that there is the wherewithal to maintain that property.

Ms. Fadorsen – A couple of years ago we had this discussion with Western Reserve cemetery about financial responsibility. We decided that we as a Board should not be privy to what their funds are. I would think that Mr. Ross, being on record that he has it should be enough.

Mr. Ziganti – the difference is, we knew it had been filed with the State. So, it existed. The question is, I don't know if there is the same requirement for a non-profit.

Ms. Denamen – As I read it from the Zoning Resolution, it says to "have" a fund. It doesn't say, to be filed with the State. If Mr. Ross is able to supply something from a legal representative that says it doesn't have to be filed with the state, is that sufficient?

Mr. Ziganti – Perhaps, I don't know the answer.

Mr. Alusheff – As I read, "they shall" which means "must" furnish the Board with a Fiscal Plan which documents the applicant's financial responsibility. I think what Mr. Ross just stated is, their plan to document their financial responsibility is possible. "Toward this end, the board of zoning appeals 'may' require" is permissive. I think everyone is in agreement that his statement stating it's established, means it is established. Mr. Ross is telling us that more than 6,000 years of religious dogma regulates how these cemeteries operate which is stricter than what the township may require.

Ms. Fadorsen – {Addressing Mr. Ross} So, you're willing to give us a letter saying you have the financial strength?

Mr. Ross – I can include our 2022-23 Perpetual Care letter. I thought you only take it over if the cemetery is totally full?

Mr. Alusheff – Western Reserve's plan is when they are totally full, as they will no longer have a revenue source, they plan on turning the Perpetual Care fund and the responsibility for maintenance over to the Township.

Mr. Ziganti – It's my recommendation that we ask the county prosecutor this question.

Ms. Denamen – If it helps, on the IRS website, it says a Perpetual Care Fund is the income which is turned over to a profit-making cemetery company – if that helps.

Mr. Ross – Do you want me to wait until you have that before doing anything?

Mr. Ziganti – We're going to require that that be presented.

Ms. Fadorsen – I actually don't think we need to have that presented.

Mr. Ziganti – I am going to require that that be presented.

Ms. Klemm – Can we have a vote on that?

Ms. Fadorsen – Can we vote because I personally feel that it is perfectly acceptable if he gives us a letter saying he did this.

Mr. Ziganti – No.

Ms. Denamen – Well, should we hear the rest of this since we have 30 days before it can be officially approved?

Mr. Ziganti – Well, we do have other questions. I suggest we put together a letter stating to what degree your organization takes responsibility for maintaining the property. We're also going to have to put that question to our county prosecutor to find out how this is handled.

Ms. Klemm – Perhaps Mr. Ross would like to get an extension and move this to the next BZA meeting.

Mr. Ziganti – I have other questions which he may have to get additional information for. So, we go to Section B of 6.06.03 – Parking. Addressing Mr. Alusheff – according to the information in the file, there are three parking spaces. It says for memorial gardens, we need 20 spaces. We need to discuss that.

Mr. Alusheff – It says that private roads within a memorial park may be used for parking if they are of sufficient width. I was out there today, and I believe it is of sufficient width.

Using Nearmap, the private road was displayed on the monitor and measured to indicate sufficient width and length to accommodate more than 20 parked vehicles.

Mr. Ziganti – So that answers parking concerns which was a General Standard requirement. The next question is directed to the Zoning Inspector. Is EMS aware of this memorial garden?

Mr. Alusheff – That is a good question. I did not reach out to them specifically about this, however, Asst. Fire Chief, Andy Nagy has access to this information in iWorQ.

Mr. Ziganti – So now we look at signage. The sign that is there is 52 ½ square feet.

Mr. Alusheff – That includes the structure that the sign is on. If you look at Section 9.10.0 (A), it states that is not included in the sign face area as long as it doesn't exceed 40% of the sign face area.

Mr. Ziganti – So do we meet that requirement?

Mr. Alusheff – No, it is exceeded by 2.8%.

Mr. Ziganti – Do we have any idea when that sign was installed?

Mr. Ross – I'm assuming that was put up when the cemetery was put in place in the 70's or 80's.

Mr. Ziganti – So, please know that we could say that sign is grandfathered for the sake of the Zoning Resolution.

Mr. Alusheff – I think that would be fair. Another point is that in Section 6, especially churches and memorial parks in residential districts, it doesn't address signs you would expect to see at a memorial park or a church. What happens for signage is, every church or memorial park needs a variance or it's pre-existing, non-conforming. Basically, what I'm seeing is the signs that are going up are conforming to what is allowed in the "C" Commercial District. To add a layer of uniformity to the Conditional Use, Standards for signs permitted with a conditional use for a memorial park or a church would wrap the sign part into this process rather than it being a different process. That way, if they want to change their sign in the future, they could mention how they would like to change it during the Conditional Use portion of the hearing rather than opening another case for a sign variance.

After a group discussion about signage for other Conditional permits, Mr. Ziganti asked Mr. Ross to initial and sign the sheet of paper, "B'nai Jeshurun Monument Sign" which he did and is included in the file.

Mr. Ziganti asked if there were any further questions from Board members. There being none, he asked Mr. Ross if he would consider continuing this hearing to next month so he could present information on the B'nai Jeshurun Congregation Perpetual Care Fund. Mr. Ross agreed and said he would get the letter and bring it to the next meeting on September 9th.

The Board also asked for the following question to be sent to the County Prosecutor – "Per Section 6.06.03 (H) memorial gardens must indicate that they have the wherewithal to maintain the property with sufficient capital to insure proper maintenance of their property." B'nai Jeshurun Congregation is a non-profit organization. Does the Board need to handle that differently than how we've handled it in the past which has been to have an indication that this plan does exist and has been filed with the State of

Ohio. If that is not required for this religious organization, that will be fine, but we need an indication.”

Mr. Ross has asked for a continuance to the September 9th meeting.

Ms. Denamen made a motion that Appeal ZU-2024-4 be continued to the September 9th meeting. Ms. Klemm seconded the motion.

Ms. Denamen/yes; Ms. Klemm/yes; Ms. Fadorsen/yes; Mr. Ziganti/yes Motion passed

New Business

Ms. Denamen asked Mr. Ziganti where does it say in the Zoning Resolution that the Perpetual Care Fund needs to be filed with the State?

Mr. Ziganti - It does not. This question has come up with Western Reserve Memorial Gardens in the past. The Board at the time determined that we did not have the expertise to evaluate the Perpetual Care Trust Fund. We were given some direction that if it was filed with the state, it was good enough for the Township. We requested that that phrase be removed from the Zoning Resolution – that didn't happen.

Ms. Denamen asked again where does this need to be filed with the State?

Mr. Ziganti indicated that the Board at this time needs to know that sworn testimony would be enough documentation that the Perpetual Care Trust Fund exists and is sufficient per the requirements of the Zoning Resolution.

Mr. Alusheff updated the Board on his work with the Zoning Commission and identifying zoning issues that need to be addressed in the Zoning Resolution.

Ms. Denamen also asked if B'nai Jeshurun Congregation cemetery be registered in Google Maps for the sake of Chester Fire and Police.

Mr. Ziganti asked Mr. Alusheff if that is the system they use?

Mr. Alusheff didn't think so but would check and call attention to it.

Ms. Denamen – Thank you. All I am saying is there should be a separation of the 911 address so they can respond quickly and now seems like a good time to correct it.

Mr. Ziganti called the meeting to close at 8:15 p.m.

Approval Date September 12, 2024

Kathleen McCarthy, Admin. Assistant

Barton Ziganti, Chairman

Absent

Deana Sritalapat, Vice-Chair

Alternate

Mindy Denamen

Kathy Fadorsen

Christina Klemm

Absent

Margaret Muehling