

MINUTES FOR THE REGULAR MEETING OF THE CHESTER TOWNSHIP BOARD OF ZONING APPEALS HELD MONDAY, SEPTEMBER 9, 2024, IN THE TOWN HALL MEETING ROOM. AUDIO RECORDING ON FILE.

Chairman Barton Ziganti called the Regular September 9, 2024, Chester Township Board of Zoning Appeals meeting to order at 7:00 p.m.

Roll Call

Members present: Ms. Denamen (serving as voting Alternate), Ms. Fadorsen/yes, Ms. Klemm/yes, Ms. Muehling/absent; Ms. Sritalapat/absent, Mr. Ziganti/yes
Zoning inspector: Mr. Alusheff
Admin present: None

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

Approval of Minutes

Motion to approve the minutes of August 12, 2024

Ms. Fadorsen made a motion to accept the August 12, 2024, minutes as written. Ms. Denamen seconded the motion.

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

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

Mr. Ziganti read the request for a continuance requested by Mr. Allan Szczepinski for Z-2024-10 from tonight's meeting to next month, October 14, 2024.

Ms. Fadorsen moved that request for a continuance for Z-2024-10 be accepted. Ms. Denamen seconded it.

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

**APPEAL ZU-2024-4
(Continuance from August 12, 2024)
B'nai Jeshurun Congregation
Jay Ross
Conditional Use
11535 Chillicothe Road**

Mr. Ziganti – Mr. Ross, we have received your letter and it's been reviewed by all four board members. I'll just ask that you understand your testimony is given under oath from last meeting?

Mr. Ross – Yes, I do.

Mr. Ziganti – Would you like to add anything to your testimony of last month?

Mr. Ross – We understand the requirements and we plan on maintaining this cemetery for many years to come and we have the resources to do that. Our intention is to maintain this property with the fees that we collect. The Jewish religion maintains cemeteries as one of the highest mitzvahs you can do. I would not anticipate turning this cemetery over to Chester Twp. at any time in the future.

Mr. Ziganti – At our last meeting there was concern that your Perpetual Care Trust was not falling under the same processes and procedures that are used for for-profit memorial gardens in the community. An email was sent to our county prosecutor and the question was asked if a not-for-profit memorial garden was required to file a perpetual care fund with the state and the answer was no.

Mr. Ziganti presented the letter received from B'nai Jeshurun documenting their perpetual care fund.

Mr. Ziganti – I had a meeting with the township administrator and the fiscal officer, so I am going to ask for a bit of clarification. I understand that it is not likely that the cemetery would ever be turned over to Chester Twp., but should that occur, those funds will be turned over to the township. What you are indicating to me is that this is a fund for maintaining the property presently. It's my understanding that the perpetual care trust fund is separate from the funds that are used for the day-to-day operations of the cemetery. So, there is some concern on the part of some of the officers of the township.

Mr. Ziganti asked Mr. Ross if this fund was for the maintenance of the four properties held by B'nai Jeshurun congregation.

Mr. Ross – Yes.

Mr. Ziganti – The concern is that this fund must take care of four different properties.

Mr. Ross – The budget is for all four cemeteries

Mr. Ziganti – We do have an indication from our county prosecutor that this letter can be considered sufficient. It is my opinion that there is some ambiguity here. This does not represent what is considered a perpetual care fund.

We can move forward with the opinion of the county prosecutor and discussing your conditional zoning certificate tonight, or I can request if you will consider a continuance to allow for our fiscal officer and township administrator to ask some additional questions. Not necessarily of B'nai Jeshurun Congregation, but of the state of Ohio and how these funds are handled.

Mr. Ross – I don't know what to tell you. We don't fall under the state requirements because we are a not-for-profit organization. I have absolutely zero concerns that we will give up this cemetery.

Ms. Denamen – Mr. Chair, may I ask a question?

Mr. Ziganti – Please do.

Ms. Denamen – If we approve this variance, in five years can we give them a list of questions or concerns they can bring back? There's more than enough money in there now to handle all four cemeteries at that operating budget.

Mr. Ziganti – We don't know that.

Ms. Denamen – If he says, it's \$100,000, there is more than enough according to that letter to cover the next five years.

Mr. Ziganti – We don't need to talk about the specific dollar amounts in the letter.

Ms. Denamen – What I'm saying is there is a five-year continuance that has to come before the board. If there's additional questions or research that we need, can that be part of what they need to present the next time?

Mr. Ziganti – Indeed they can. First of all, if they wanted to move forward, it was my plan to ask for only one year. We should make a request so in that year of time, they can come up with the answers.

Ms. Denamen – So he can ask for a one-month continuance, a one-year conditional or we can grant the original five-year requested permit.

Ms. Fadorsen – Right, it's from one to five years. Sometimes we don't give the five because they might be remodeling something and we want to make sure that it is done right. But five years is the most you may grant.

Ms. Denamen – Thank you.

Mr. Ziganti – We will move forward if the appellant is not interested in asking for a continuance.

Mr. Ross – We appreciate the consideration, but we would like to move forward. We are very comfortable that there is no intent in the foreseeable future to relinquish ownership of this cemetery. We plan to operate this cemetery ourselves.

Ms. Fadorsen – I make a motion to approve case ZU-2024-4 for a three-year conditional permit. Ms. Klemm – Seconded the motion.

Mr. Ziganti – I don't agree with that. I had a discussion with the township officers and I did discuss a one-year conditional zoning certificate.

Ms. Fadorsen – The reason I am thinking three years is because Mr. Ross made it clear last time he was here that there is a Jewish Federation group that would take over the cemetery should there be any reason the B'nai Jeshurun Congregation could not maintain it.

Mr. Ross – The Jewish Federation also has a fund of "X" amount of dollars to maintain any cemetery that would need financial help. I don't expect us ever getting there.

Ms. Fadorsen – In three years we would have more history of what is going on there. One year may not supply us with enough history.

Ms. Denamen – I would be good with the three years. I look at it as five and Mr. Ziganti is looking at one, so I look at it as a compromise.

Mr. Ziganti – Well, the fiscal officer and the township administrator that looked at this felt that wasn't sufficient to take care of the maintenance needs as a perpetual care fund is supposed to do.

Ms. Denamen – I didn't say that it did. I just don't see any risk of Chester Township having to take over that property in the next three years.

Ms. Fadorsen – {addressing Mr. Ross} How long has the cemetery been there?

Mr. Ross – We've been operating since the 1970's.

Mr. Ziganti – So for 50 years, we haven't taken care of this business. At the last meeting, we had to go through all of the requirements that a memorial garden is supposed to have. Last month we made sure that they met the requirements. The perpetual care trust fund is a requirement that hasn't been given a lot of consideration. We've had the benefit of the for-profit cemetery helping educate us on the requirements of the State of Ohio and the perpetual care fund.

Ms. Denamen – Mr. Chair, I would like to recognize our zoning inspector.

Mr. Alusheff – I would like to point out two points from the Zoning Resolution. The first one is 6.06.03 (H). It says the applicant shall furnish - which means they must submit a fiscal plan, which they have done. It says the BZA may – which is permissive – they can or don't have to require a perpetual care fund. The main difference is that Western Reserve acknowledges that they are going to fill their property up, cease to make revenue off of it and turn it over to the township. The testimony of Mr. Ross has been adamant that turning over to the township would be the absolute worst case that could happen given their religious beliefs.

Ms. Denamen – I go back to my original statement that nothing is going to happen in the next three years and I feel that we need time to get together whatever that list is to bring to the next meeting.

Mr. Ziganti – I think one year would be a reasonable time frame so that this issue is understood.

Mr. Ziganti - We need to call the roll on the three-year use certificate motion.

Ms. Denamen/yes; Ms. Fadorsen/yes; Ms. Klemm/yes; Ms. Muehling/absent; Ms. Sritalapat/absent; Mr. Ziganti/no. Motion passed.

Mr. Ziganti – So in three years, hopefully someone will have done something to figure out what the answer is.

Mr. Ross – I'm not sure what they are looking for, but if there are questions, please let me know.

**Conclusions of Fact
ZU-2024-4**

B'nai Jeshurun Congregation memorial park came before the board at the August 12, 2024 meeting to request a Conditional Use Zoning Certificate. Mr. Jay Ross presented information on the cemetery located at 11535 Chillicothe Road. This was the first time the cemetery management came before the BZA to request a Conditional Use Zoning Certificate due to oversight on the part of the township.

The BZA went through the requirements of Section 6 to verify that basic requirements of a conditional use for operating a Memorial Garden were met. There was concern that the perpetual care trust fund requirements of Section 6.06.03 (H) were not met. This cemetery is operating as a non-profit and not required to meet the requirements of this section. The information of the funds set aside by the congregation were reviewed with the county prosecutor who indicated the information provided was sufficient to meet the requirements of Section 6.06.03 (H).

A Conditional Use certificate was granted for a period of three years. It is understood that further concerns of the plan presented may not meet the requirements of the Chester Township as voiced by the township administrator and fiscal officer. It is our expectation that this situation will be investigated further and answers will be available to the board three years from now when the applicant comes before the board for a renewal of the conditional use certificate.

We the Board of Zoning Appeals incorporate into these Conclusions of Fact the application forms, documents, and exhibits including all corrections, clarifications and additions discussed or presented at this hearing.

Ms. Denamen noted the need for coming up with the questions the B'nai Jeshurun Congregation needs to answer at the next hearing three years from now.

Mr. Ziganti – We're doing the Conclusions of Fact right now, but you can do that if you wish.

Ms. Denamen – What we're saying is he needs to bring answers in three years, but we don't have any questions for him to answer.

Mr. Ziganti – No, I indicated we were going to be putting together some of those questions for him to answer.

Ms. Fadorsen – She's saying they should know the questions before they get here.

Mr. Ziganti – insert the phrase, "prior to the applicant appearing before us again" into the Conclusions of Fact then.

The Board of Zoning Appeals recommends the congregation contact the zoning inspector prior to the next renewal hearing three years from now to determine the questions needing to be answered.

Ms. Fadorsen made a motion to approve the Conclusions of Fact in case #ZU-2024-4. Ms. Klemm seconded the motion.

Mr. Ziganti – Roll call vote

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

**APPEAL ZA-2024-9
Edward Zirzow
Area Variance
9620 Shadow Hill Trail**

Mr. Ziganti swore in all those that wished to testify in this case.

Mr. Ziganti asked the zoning inspector if there was anything additional to be included in this case.

Mr. Alusheff – No.

Mr. Ziganti asked Mr. Zirzow to make his presentation.

Mr. Zirzow – In 2019, I asked the township to consider the structure that was there. Then Covid hit and I asked what's the plan. In April of 2020 I asked Zoning what to do as my materials had arrived and were sitting outside getting ruined in the weather. The township said, go ahead and build it and we will deal with it later as we are not doing inspections right now. I constructed it on the only level ground available on my property. I didn't know there were areas I couldn't build. Here it is 2024 and I'm just trying to close it out and do the right thing.

Mr. Ziganti – We're going to review the Duncan Factors now.

Mr. Ziganti - {Reference Section 4- Area Variance, of Form No, 4 for the written responses of the appellant.}

1. Does the current zoning requirement that you seek a variance for unreasonably deprive you of a permitted use of the lot? Appellant answer Yes. No questions from the Board.
2. Will the lot in question yield a reasonable return without the variance? Appellant answered, N/A. Mr. Ziganti asked what was meant by that. Appellant said – I thought that meant return on investment. I didn't understand the question.

Ms. Fadorsen – If you sell the house, will it make a difference?

Mr. Zirzow – Oh, yes it would. It replaced the storage that was already there. So, I would say No.

3. Is there any beneficial use of the lot without a variance? Appellant answered, No.

Mr. Ziganti – So you do have a residence on the lot, so you live there?

Mr. Zirzow – Yes.

Mr. Ziganti – The issue here is you have already built the structure.

Mr. Zirzow – There was another building already built on the lot. But I didn't know there was a permit for that structure. It was replacing what was there.

4. Is the variance substantial? Appellant answered, Yes.

Mr. Ziganti – What do you mean by yes?

Mr. Zirzow – It is substantial for storage and having that area to store my things.

Mr. Ziganti – This question has to do with the variance you are seeking. Let's think about if you wanted to build this building, before you erected it, it is in the wrong place. The location is not permitted. In your mind, would it be substantial to build it where you wanted to build it?

Ms. Denamen – When did you build the structure and what is the size of the new structure?

Mr. Zirzow – I built it in 2020 and it is 40' x 60'.

Mr. Ziganti – The plans indicate it is 30' x 40'.

Mr. Zirzow – It's 30' x 40'. I'm sorry.

5. Will the essential character of the neighborhood be substantially altered or will adjoining lots suffer a substantial detriment as a result of the variance? Appellant answered No. No questions from the board.
6. Will the variance adversely affect the delivery of governmental services? Appellant answered No. No questions from the board.
7. Did the lot owner purchase the lot with knowledge of the zoning restriction? Appellant answered No. No questions from the board.
8. Can the lot owner's predicament feasibly be obviated through some method other than a variance? Appellant answered No. No questions from the Board.
9. Will the spirit and intent behind the zoning requirement be observed and substantial justice done by granting the variance? Appellant answered Yes.
10. Other criteria that is related to determining whether the zoning regulation is equitable: Appellant answered – it is the only area that is somewhat level and can be away from the septic and well.

Mr. Ziganti – So where is the septic and your well?

Mr. Zirzow – There are two wells on the property. One is abandoned and the other one is 35 feet from the current structure. My septic is in the green shaded area down the hill from the home.

Mr. Ziganti – So is your septic to the south or to the north?

Mr. Zirzow – To the north. Where the pool is.

Mr. Ziganti – The leach field is directly behind the pool?

Mr. Zirzow – Not directly behind the pool. It's to the left of the pool. The other alternative would be way to the left, but that is where the leach field exits the property.

Mr. Ziganti – Is that structure by the pool 96 sq. ft.? 8' x 12'?

Mr. Zirzow – No, it's 8' x 5'.

Mr. Alusheff displayed the structure by the pool on Nearmap on the monitor. From Nearmap it looks like 8' x 12'.

Mr. Ziganti – What zoning district is this property in?

Mr. Alusheff – It's zoned R5A.

Mr. Ziganti – On the third photograph, it shows the new accessory building. Is that 13 ½ feet? Is there a structure behind it?

Mr. Zirzow – Yes, it's a tree house.

Ms. Klemm – When you built the structure we are discussing now, it was permitted by the building department, right?

Mr. Zirzow – Yes, my verbal discussion said it was a good location. That was when I was still in my planning stages of this potential building.

Ms. Klemm – So you have something verbally from the building department that this structure was OK.

Mr. Zirzow – Yep.

Ms. Denamen – Is this 196 feet from the easement and 178 feet from either road?

Ms. Klemm – I think this is a sticky situation as he was given a verbal OK from the building department.

Mr. Ziganti – Was it the building department or the zoning department?

Mr. Zirzow – It was the building department. I didn't know there was a zoning issue at that point.

Ms. Klemm asked the zoning inspector the order of permits.

Mr. Alusheff said the zoning department should be first and then to the building department. However, the building department does not require the applicant to supply proof of zoning approval before issuing a permit.

Mr. Ziganti opened the floor to anyone wishing to comment that was sworn in.

Ms. Kelly Bentoski – We received the letter in the mail and I wanted to speak on Mr. Zirzow's behalf. I drive by his house multiple times a day. It's not an eyesore. There's trees and shrubs hiding it. I've never heard anyone in the neighborhood complain about it.

Mr. Josh Sherman – I'm the next-door neighbor. There is not one level spot on our properties. The only level spot is where his house and my house stand. Where he put that building, is the only level area on his property.

Ms. Denamen – What are we looking at for total square footage?

Ms. Ziganti – We are looking at 1,296 square feet which is 16 square feet more than allowed. It's also the location of the structure that is an issue. It looks like some of the structure is visible from the road and would you consider planting some conifer trees in the front of that structure.

Mr. Zirzow – Yes, I would.

Ms. Denamen – motioned case # ZA-2024-9 be approved due to a minimal size variance and the lack of clarity on whether or not this is a 100% variance or significantly less on size and because of Covid hardship and without a live screening requirement being put in place. Ms. Fadorsen seconded the motion.

Mr. Ziganti – I am in total disagreement with what was presented by the zoning inspector. A line is made by connecting two points. The rear line of the structure is the line that is to be used. Indeed this is a 100% variance request for location. The reason we talk about live screening, and specifically conifers is they are screen that goes on for many years. I would consider a motion to approve this variance of 100% considering the fact that it's just over the allowable 1,280 square feet and the fact that it's already been built. I think it would be reasonable for us to request that bit of consideration of the property owner that they make the impact on the community as minimal as possible.

Ms. Denamen – So are we voting on what you just said?

Mr. Ziganti – Only if you pull your proposed motion.

Mr. Zirzow – So I did change the color of the siding to make sure I blended in.

Ms. Klemm – Due to testimony from neighbors, I assume the home has been viewed during many times of the year and the neighbors who testified, I would say that the additional screening would not be necessary.

Mr. Ziganti – So that is the opinion of one individual, and I think that goes a lot for saying it is in a location it is not even allowed for. I think it is a minimal request of this owner to maintain that structure. I am not in favor of taking this structure down, although it is completely within our right to request that. So, anything we can do to minimize the impact on the community, certainly after it is built, should be a requirement. Perhaps another neighbor in the future will find that to be obtrusive. It should be our due diligence to minimize the impact on the community.

Ms. Denamen – I do not wish to pull my motion.

Mr. Ziganti – Roll call vote

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

**Conclusions of Fact
ZA-2024-9**

Mr. Edward Zirzow of 9620 Shadow Hill Trail came before the board having already constructed a 1,200 square foot accessory building in the side yard of his property located approximately 14 ½ feet of the western property line. The construction of the accessory building was done in April/May of 2020 and finished in 2023. It was done without a building permit or a required variance for location and square footage.

The new accessory building replaced a dilapidated 15' x 30' accessory building. It's noted that in addition to this new structure, an existing shed of 96 square feet is presently located just north of the inground pool. The total square footage for accessory building on the property is 1,296'. Testimony was given that the site for the 1,200 square foot accessory building was selected for several reasons. One, replacing the dilapidated structure. Two, it was the most level area of the parcel. Three, an area behind the rear line of the house is devoted to the septic and well.

Testimony was given by neighbors that they were in favor of the variance. Testimony by Mr. Zirzow was that he had been given verbal approval in 2019 by the Geauga County Building Dept. to go ahead and replace the dilapidated building with a new accessory building.

We the Board of Zoning Appeals incorporate into these Conclusions of Fact the application forms, documents, and exhibits including all corrections, clarifications and additions discussed or presented at this hearing.

Ms. Klemm made a motion to approve the Conclusions of Fact. Ms. Denamen seconded the motion.

Mr. Ziganti – Roll call vote
Ms. Denamen/yes; Ms. Fadorsen/yes; Ms. Klemm/yes; Ms. Muehling/absent; Ms. Sritalapat/absent; Mr. Ziganti/yes. Motion passed.

General Discussion

Mr. Alusheff asked what would happen if the BZA had denied B'nai Jeshurun Congregation their conditional use certificate.

Mr. Ziganti – They would go to the Court of Common Pleas first to file for relief. Prior to the hearing, they would talk to the Chester Township Trustees. If it can't be resolved with them, the case goes to court.

We would then have to show due diligence that we went through all the requirements and verify we have standing for that position.

Ms. Denamen – Aren't we at risk saying they don't have enough money if we don't have any criteria for determining if they do have enough money?

Mr. Ziganti – That's why we need to look at this further. I am totally befuddled with the response of the County Prosecutor. Mark Purchase indicated it costs approximately \$15,000 for Chester Township to maintain the township cemetery. The Road Department indicated it's approximately \$25,000 to maintain the cemetery each year. The cost to maintain an additional cemetery would impact the general welfare of the township.

As the fiscal officer said today, anyone can run a non-profit. They can take an exorbitant salary to run that non-profit and then they can bankrupt that non-profit. We may be at an even greater exposure with a not-for-profit entity.

Ms. Denamen suggested getting the parameters from the State of Ohio for the annual cost of upkeep of a cemetery and how much funds should be held in reserve for perpetual care of that cemetery. With that information, we can apply those parameters to the fund available from a not-for profit cemetery and make a reasonable determination of enough money is held in that fund.

The question came up with why cemeteries are even conditional uses in the Zoning Resolution. Logically, how can we deny a conditional use of a cemetery that is already in operation? If we considered making cemeteries a non-conforming use and subject to Article 10 where it is non-conforming where they must come before the BZA in matters of size and location for monuments or mausoleums – that would be something the BZA is more equipped to handle.

New Business

Ms. Denamen spoke about live screening may be required if the board deems it necessary to protect health, safety and general welfare of our residents. Our ability to see something from the road doesn't seem to be necessary to protect the health safety and general welfare of our residents.

Mr. Ziganti We still need to consider people in the future who might have a problem with viewing an accessory building in a side yard.

Ms. Denamen - With the appearance of a shed, that is not health, safety and general welfare.

Mr. Alusheff asked if a legal opinion has ever been sought about requiring live screening?

Mr. Ziganti said it is permitted because it is in the Zoning Resolution under Supplementary Condition on Variances.

Mr. Alusheff said the only place he knows where live screening is mentioned is in the Commercial and Industrial district. The fact that it is there, does that mean that it can applied to the residential districts?

Mr. Ziganti said yes, according to the Board of Trustees.

Mr. Alusheff reiterated yes; it is in there. In the Residential district we just need to know this is enforceable in court.

Meeting closed at 9:05 p.m.

Approval Date October 14, 2024

Kathleen McCarthy, Admin. Assistant

Barton Ziganti, Chairman

Deana Sritalapat, Vice-Chair

Alternate
Mindy Denamen

Kathy Fadorsen

Christina Klemm

Margaret Muehling