

MINUTES FOR THE REGULAR MEETING OF THE CHESTER TOWNSHIP BOARD OF ZONING APPEALS HELD MONDAY, MARCH 10, 2025, IN THE TOWN HALL MEETING ROOM. AUDIO RECORDING ON FILE.

Chairman Barton Ziganti called the Regular March 10, 2025 Chester Township Board of Zoning Appeals meeting to order at 7:07 p.m.

Roll Call

Members present: Ms. Denamen/yes, Mr. Enger/yes; Ms. Fadorsen/yes, Ms. Klemm/yes, Ms. Muehling/yes; Mr. Ziganti/yes, Mr. Dobrzynski/no
Zoning inspector: Mr. Alusheff
Admin present: Ms. McCarthy
BoT liaison present: Mr. Radtke

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

Approval of Minutes

Motion to approve the minutes of February 10, 2025

- Ms. Fadorsen motioned to accept the February 10, 2025, minutes as presented. Ms. Denamen seconded the motion.
Ms. Denamen/yes, Ms. Fadorsen/yes, Ms. Klemm/yes, Ms. Muehling/yes, Mr. Ziganti/yes, Mr. Dobrzynski/absent
Motion passed.

Mr. Ziganti welcomed Mr. Justin Enger to the Board of Zoning Appeals as an alternate with term expiring December, 2027.

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

**APPEAL ZA-2025-1
Sharon Bennett
Area Use
8275 Wilson Mills Road**

All persons wishing to testify at this hearing were sworn in.

Mr. Alusheff reviewed the Staff Summary for this requested Area use variance. It was important to note that when the home was built in 2019, the permit was for an attached garage. It has come to light through this permitting process that the garage is not attached and an open sided breezeway connects the garage to the home.

The combined square footage on page 6 says it will be 3,816 for the three buildings. Actually that should read: 3,736 square foot making it a 49.4% variance instead of a 52.6% variance.

Mr. Ziganti – How many variances are required for this applicant?

Mr. Alusheff – One for the existing garage, originally labeled attached, but it's not. It is detached and not to the rear of the primary structure. This would be two variances.

After group discussion regarding how many variances this hearing should be, the page was modified to reflect the following variances in the *Additional Information for Variance* Section.

2 A – Maximum square footage exceeded for out buildings.

2 B – Building is to be located in front of house.

2 C – To maintain attached existing accessory building in the west side yard.

Mr. Ziganti asked Ms. Bennett to initial Form 4 listing the three modified variances as listed above. This was completed on the original document in the file.

Ms. Bennett gave the following testimony – We plan on building a 30 x 40 storage barn on our property. The way our property lays out, our house is way to the back of the property. We would like to have this barn centrally located to be less to maintain. After the tornado we had a lot of property damage that needed to be taken care of and we need a place to store that equipment. Where we would like to put it is one of the few flat spots where we can put it.

Mr. Ziganti – My first question has to do with the structure you are putting in. Will it have gas, electric, insulation? Is this intended just for storage or to be modified to a living space?

Ms. Bennett – No, we also want to use it as a workshop area. Paints and stains need to be kept in a heated structure, so we need to heat it. It will have gas, electric and insulation.

Mr. Bennett – Part of it is getting close to that driveway. This would give us greater access.

Mr. Ziganti asked Mr. Alusheff for a topographical map. (Later identified to be on pg. 20 and 34 of the packet and displayed on the monitor.)

Ms. Muehling – Questioning the size of the lot. The affected lot is 1160 feet in depth. The map only shows about 600 feet.

Mr. Ziganti – So we can look at the current contour map of the affected lot displayed on the monitor. So, (addressing the appellant) what are you using the existing building on the south side of the property for?

Ms. Bennett – We have recreational fishing boats in there.

Ms. Muehling – How far would you say it is from your house to the corner of the pole barn?

Mr. Bennett – Probably 60 feet.

Ms. Muehling – It's 66 feet from corner to corner.

Mr. Ziganti – Would it not be advantageous to locate this new structure on the highpoint as indicated on the contour map?

Ms. Bennett – We would have to run driveway over there which would be really difficult to do.

Ms. Klemm – Asking about other areas...

Ms. Bennett – Indicated areas to have septic, well and a gas well.

Mr. Ziganti – Would you consider enlarging your existing access road? That way we wouldn't have to look at variance for putting a structure where it doesn't belong.

Ms. Klemm – How far is the house from the road?

Mr. Bennett – 700-800'

Mr. Robert Johnson – the only thing I see (pointing to an area on the map) is putting to the rear would be very difficult.

Mr. Ziganti – We're trying to minimize the number of variances and the size of the variances.

Ms. Muehling – I did not see an elevation or a drawing with your proposal. Was one included? (Drawing was in Staff Summary, but not immediately after the proposal. In the future – this drawing needs to also be attached to the builder's estimate.)

Mr. Ziganti – Could you expand the existing accessory building to the south?

Mr. Bennett – We've thought a lot about it, but it just doesn't seem practical for us.

Ms. Muehling asked what the dimensions of the principal dwelling are.

Ms. Bennett – It's 3,057 square feet.

Ms. Muehling – It's 131' from front to back.

Ms. Denamen – If you attached the existing garage, would that become an attached garage and therefore the square footage would not be considered toward the total 2,500 SF allowed?

Mr. Bennett – We are not interested in enclosing the breezeway.

Ms. Muehling – Did you know you had to establish a practical difficulty in order to get approval for your area variance? There are certain standards you have to meet. (The applicant acknowledged Form, *Sheet 1 – Zoning Information Sheet – Variance Application* was given to applicant.) Those are the things that we have to judge your answers by.

Ms. Bennett – We’re just trying to explain why we need this extra storage space and why we need it located where we have asked for it.

After group discussion, Mr. Bennett started answering the following questions while reading them from the monitor.

1. Will the property yield a reasonable return or can there be a beneficial use of the property without the variance?
No, I think we proved that we live there.
2. Is the variance substantial?
Not in my eyes, it’s 18 acres and this thing will be built 400’ off the road, guarded by woods. Most houses are within 250’ of the road and it will not be noticeable. Just like my garage.

Ms. Denamen – explained how “substantial” is calculated. Ms. Muehling explained they are not all weighted evenly. There is not a “right” answer to all of them.

Mr. Bennett – OK, so in your eyes, this would be substantial.

3. Will the essential character of the neighborhood be substantially altered or will adjoining properties suffer a substantial detriment if the variance is granted?
No.
4. Will the variance adversely affect the delivery of governmental services?
No.
5. Did the property owner purchase the property with knowledge of the zoning restrictions?
Probably not. Obviously our builder didn’t know either. That is a no.
6. Can the problem be resolved by some manner other than the granting of the variance?
I don’t think so. An 80’ long building is not practical.

7. Will the variance preserve the “spirit and intent” of the zoning resolution and will “substantial justice” be done by granting the variance?
You’re talking about an 18 acre property. There is a big difference between an 18 acre property and a ½ acre property.

Mr. Ziganti - - The reason this is important is because if these variances are granted, they run with the property forever.

Ms. Fadorsen – If you take out the 936 feet of what is really not a garage out of the variance, what % of variance would that be?

Mr. Ziganti – It would be about a 13% variance if the square footage of the garage were not considered.

With there being no more information to be added, the public portion of the meeting was closed.

Deliberations and decision

1. Whether the property in question will yield a reasonable return and whether there can be any beneficial use of the property without the variance;

Denamen Yes; Fadorsen Yes; Klemm Yes; Muehling Yes*; Ziganti Yes

*With or without the variance, the property would yield a reasonable return. The property with it’s home and existing accessory buildings has value. The lot without the proposed building has been in use since 2019.

Positive- Majority of Board: Yes

2. Whether the variances are substantial;

Denamen Yes; Fadorsen No; Klemm Yes; Muehling Yes; Ziganti Yes

Negative - Majority of Board: Yes

3. Whether the essential character of the neighborhood would be substantially altered or whether the adjoining property owners would suffer a substantial detriment as a result of the variance;

Denamen No; Fadorsen No; Klemm No; Muehling No*; Ziganti No**

*No evidence has been presented that the essential character of the neighborhood would be substantially altered or that adjoining properties would suffer substantial detriment.

**However, I will indicate that there were no neighbors in attendance that voiced they were against this project.

Positive - Majority of Board: Yes or No

4. Whether the variance would adversely affect the delivery of governmental services;

Denamen No; Fadorsen No; Klemm No; Muehling No*; Ziganti No

*No evidence has been presented that the variance would affect any governmental services.

Positive - Majority of Board: No

5. Whether the property owner purchased the property with the knowledge of the zoning restriction;

Denamen No; Fadorsen No; Klemm No; Muehling No; Ziganti No

Positive - Majority of Board: No

6. Whether the property owner's predicament feasibly can be obviated through some method other than a variance;

Denamen Yes; Fadorsen No; Klemm No; Muehling Yes* Ziganti Yes**

*A possible adjustment to the existing non-conforming pole barn that is enclosing the 10 x 40 lean-to would add 400 feet of completely enclosed detached storage and also bring the non-conforming pole building into compliance. The existing pole barn is in a compliant area with room for expansion if desired. The building has access to the {concrete} driveway; is 66 feet from the principal dwelling and is only slightly further from the "3-bay detached garage."

**The problem can be resolved by some other manner for example placing the desired building south and behind the existing residence.

Negative - Majority of Board: Yes

7. Whether the spirit and intent behind the zoning requirement(s) would be observed and substantial justice be done by granting the variance;

Denamen No; Fadorsen Yes; Klemm Yes; Muehling No* Ziganti No**

*The spirit and intent behind the zoning requirement would not be observed if the variances were granted. They provide extensions that do not take into account the larger planning of the community.

**There are additional manners that could be taken so that a variance required to build a proposed accessory building could be done without a variance requirement without the proposed location.

Negative - Majority of Board: No

Mr. Ziganti – Now we ask for a summary of the majority of the Board. The above regulations were read again and a “Positive or Negative” indicator was assigned to each regulation for the “Majority of Board” decision.

Ms. Muehling – I believe the appellant has not demonstrated any unique characteristics of the lot nor shown that other compliant areas do not exist. Personal conveniences are not a practical difficulty. Disagreement with an existing zoning regulation is not a practical difficulty unless it deprives the appellant of all reasonable use. The appellants have reasonable use of their lot. I believe they have not demonstrated a practical difficulty.

Ms. Fadorsen – I believe they have demonstrated practical difficulty in the fact that their house was built in 2019. It had what they thought was a garage. That’s what it’s being used for. It houses cars – not equipment. To them it is a garage. They have the one building in the back yard which was built at the same time as the house and it is conforming in all ways except it doesn’t have a zoning permit for it. The builder, I would assume, didn’t ask for the permit. To put the proposed building attached to the one they already have would make a huge structure and it would be hard to move things in and out of – even to work in it would be difficult. To put it further in the backyard – it would take away their backyard. 400 ft off the main road is quite a ways back and it’s not going to be seen. If you take the square footage of the current garage out of the equation, it comes down to a 14% variance for that building which I do not feel is substantial.

Ms. Klemm – The previous garage is permitted and I feel that the square footage of that building should not be included in the total square footage of the requested variances.

Ms. Denamen – From the square footage perspective, yes, it is substantial. I’m in agreement that I cannot hold them entirely responsible for that. Area wise, we’re sticking with it being in front of the house?

Mr. Ziganti – I agree with, “something went awry with the accessory building being permitted to be attached to the residence with a breezeway.” I am in favor of going forward to allow that building to remain. Going to over 3,700 square feet is substantial and we address that in the modifications that were made being that they could build up to 2,500 square feet.

I have a problem with the size. I also have a problem with the location because part of the proposal was to do site prep and looking at the topographical maps, I think an area to build the building they wish to build could be put to the south. Where the proposed location is, they're going to have to be taking down trees anyways. They could prepare another area behind the house for an additional accessory building.

Ms. Denamen – (addressing the appellants) – Instead of up front, can you help me understand why it cannot be placed in the rear of the house?

Ms. Bennett – There is very little yard back there. There's tile drainage that goes through there that keeps the basement dry. We'd have to add additional concrete and drainage to put the building back there. It's a significant cost.

Mr. Robert Johnson – Because of the tornado, there is now a substantial clearing where they would like to put this building. There is still site preparation, but very minimal tree work to be done there.

Mr. Ziganti – There is new information there. I'm going to say they don't have to add a concrete driveway. I don't have a concrete driveway going to an accessory building. This is a 17+ acre property and there is more than enough room to locate it behind the house.

Ms. Fadorsen – Isn't most of the property in front of the house?

Mr. Ziganti – Perhaps.

Ms. Muehling – The proposed building is about 418 feet from the principal building. 347 feet south from Mayfield Road and 378 feet from the principal building to the rear of the property.

Voting on the three variances as listed below and shown on modified Form 4

Mr. Ziganti – Now we will vote on the three variances, 2A, 2B and 2C.

Ms. McCarthy –

2A is the maximum square footage exceeded for outbuildings.

2B is the building to be permitted in the proposed location.

2C is maintain the existing accessory building in the side yard. (936 square feet)

Motion to approve variance 2C made by Ms. Denamen; Ms. Fadorsen seconded. Denamen Yes; Fadorsen Yes; Klemm Yes; Muehling Yes; Ziganti Yes

Majority of Board – Yes; Motion Passes

Motion to approve variance 2B made by Ms. Fadorsen and seconded by Ms. Klem

Denamen No; Fadorsen Yes; Klemm Yes; Muehling No; Ziganti No

Majority of Board – No; Motion denied

Motion to approve variance 2A made by Ms. Denamen and seconded by Ms. Muehling

Denamen Yes; Fadorsen Yes; Klemm Yes; Muehling No; Ziganti No

Majority of Board – Yes; Motion passes

Ms. Denamen – For the record, I would like to say I voted yes because once you take out the 936 square feet, I don't feel that is a substantial request for the requested building.

Group discussion on whether or not the Duncan Factors need to be reviewed again for Form 18. Agreed and understood that the above vote and discussion would be included in Form 18.

Group discussion on need for completing the Findings of Fact. An audience member identified himself as Greg Mersol, a lawyer. Mr. Mersol stated, Findings of Fact go before Conclusions of Law.

Group determined tonight we are not approving Findings of Fact. Those will be approved at the next Board of Zoning Appeals meeting.

**APPEAL ZA-2025-2
David Walter of Castle Energy
For Solar Panels to be installed at
8029 Sherman Road**

Mr. Alusheff - reviewed the Staff Summary for this requested variance seeking to install solar panels on the rooftop of a residential structure. The application fails to meet Section 5.01.02 because solar panels are not listed as a permitted use for structure.

I am unable to determine which standards to apply if this is a Use Variance or an Area Variance. The argument could be made is the solar panel a structure or is the use of it to draw solar energy. ORC gives townships the authority to regulate wind and solar energy on a small scale with generations less than 50 Megawatts. Chester Township has not addressed this regulation, so by default, they are not permitted.

Ms. Muehling – Our first order of business is if we have jurisdiction to hear this case at all. There is a court case which says, a township board of zoning appeals is an administrative body and is without jurisdiction to grant a variance which would in effect amend the use provisions of the zoning ordinance. In the absence of showing the usual hardship caused by the use restrictions imposed by the ordinance; Fox v. Shriver-Allison, 28 Ohio App. 2d 175. We are usurping a legislative duty if we move forward on this request.

Mr. Ziganti – We allow for a use variance, when a use is not permitted.

Ms. Muehling - Not permitted in the district where it is being applied, but it is permitted within the zoning resolution. This is not permitted in the residential district where they are applying nor is it in the resolution anywhere.

Mr. Ziganti – Zoning Inspector, what do you have to say about this?

Ms. Muehling - This is our decision, not the Zoning Inspector.

Group discussion within Board of Zoning Appeals.

Ms. Muehling – In order to address the desired request, perhaps the appellant should turn to the legislative body, the zoning commission, and request it pursue a text amendment to the Chester Township Zoning Resolution or the owner may initiate an application for a zoning amendment and withdraw the variance from the board.

I think you should at least ask for a legal opinion before we proceed. We just don't have jurisdiction and it would be foolhardy to hear these arguments when we don't have jurisdiction.

Group discussion within Board of Zoning Appeals to determine if the BZA has jurisdiction.

Mr. Mersol – I do dispute that this is a Use as it is still a residence. Let me go further, I'm not selling this stuff commercially, this is prompted by two things. The desire to do the right thing environmentally and secondly, we've been creamed the last two years in storms. It's either this or a backup generator. We're not changing the use at all.

We are not changing this property at all. It is a residence and should solar panels be installed, there will be no change to the use of the residence. We will simply have an alternate source of power. It's no different from changing incandescent bulbs to LED's. All we are doing is taking advantage of technology.

Group discussion within Board of Zoning Appeals continued.

Ms. Muehling – We should have a recommendation before we proceed.

Mr. Mersol – If you're going to do that, I suggest you also need to get an opinion if you do not have the jurisdiction, you may also not have the power to prohibit this under state law.

Ms. Denamen – If we don't have the power to say that he can, what gives us the ability to say that he can't?

Ms. Muehling – District regulations 5.00.01 Prohibited Uses – Any use not specifically listed in this resolution shall not be permitted.

Ms. Denamen – At what point does the State take precedence over our Zoning Regulations?

Ms. Muehling - If it's in the ORC, it takes precedence over any law we have.

Several simultaneous group discussions on solar panels and back-feeding to the grid.

Ms. Muehling volunteered to write the County APA asking if the Board of Zoning Appeals has the right to hear this case.

Ms. Muehling moved that this hearing be continued until we are able to write a request to the prosecuting attorneys office to determine if we have jurisdiction over this matter (which she will write) and receive a response. Mr. Ziganti seconded the motion.

Denamen No; Fadorsen No; Klemm Yes; Muehling Yes; Ziganti Yes
Motion passes

Mr. Mersol – I strongly urge you to put this in your resolution. Whether you have any power to stop me pursuant to Ohio RC 519.211 which specifically states the Township shall have no zoning authority in respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any public utility... If you're concerned about selling it back to the grid, which by the way, on a good day approximately 2% of my production, then you are barred from doing what you are doing.

I appreciate what you are doing, let me propose something else as well. How do I get this in front of the Zoning Commission? Mr. Mersol was informed that the next Zoning Commission meeting is March 19th and he will attend that meeting.

Next meeting scheduled for April 14, 2025

Meeting closed at : 10:22 p.m.

Approval Date April 14, 2025

Kathleen McCarthy, Admin. Assistant

Barton Ziganti, Chairman

Mindy Denamen, Vice-Chair

Alternate

Mark Dobrynski

Kathy Fadorsen

Christina Klemm

Margaret Muehling