

**MINUTES FOR THE REGULAR MEETING OF THE CHESTER TOWNSHIP BOARD OF ZONING APPEALS HELD MONDAY, APRIL 14, 2025, IN THE TOWN HALL MEETING ROOM. AUDIO RECORDING ON FILE.**

Chairman Barton Ziganti called the Regular April 14, 2025 Chester Township Board of Zoning Appeals meeting to order at 7:04 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/yes  
Zoning inspector: Mr. Alusheff  
Admin present: Ms. McCarthy

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

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

**Review of Form 18**

- Ms. Fadorsen motioned to approve Form 18 from March 10, 2025; Ms. Klemm seconded the motion.
  - Ms. Denamen/yes, Ms. Fadorsen/yes, Ms. Klemm/yes, Ms. Muehling/yes, Mr. Ziganti/yes  
Motion passed.

**Approval of Minutes**

Motion to approve the minutes of March 10, 2025

- Ms. Fadorsen motioned to accept the March 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  
Motion passed.

**Appeals to be heard**

**ZA-2025-2 (Continuation from March 10, 2025)  
Dave Walters/Castle Energy  
8029 Sherman Road**

Mr. Alusheff let the BZA Board know that the applicant has submitted a citizen initiated amendment for solar panels and the Zoning Commission Public Hearing is scheduled for April 16, 2025.

As requested, Ms. Muehling wrote to the APA asking, “Does the Chester Township Zoning Board of Appeals have jurisdiction to grant a [Use] variance in this case ZU-2025-2.” The response came back, “The BZA does have jurisdiction and should hear the application for a Use variance for solar panels. The fact that it is not a use that is in the Chester Zoning Resolution (as either a permitted or a conditional use) does not affect the BZA’s jurisdiction to hear the matter. Although it would obviously most likely affect the BZA’s decision on the matter.”

Group discussion on renaming appeal ZA-2025-2 to ZU-2025-2 as the appeal was requesting a Use variance. Also, discussion on how long the case should be continued. Chairman asked Secretary to write to appellant asking for a written response if they wish to continue with the Use Variance.

Ms. Fadorsen motioned and Ms. Denamen seconded Appeal ZA-2025-2 to be changed to ZU-2025-2.

Ms. Denamen/yes, Ms. Fadorsen/yes, Ms. Klemm/yes, Ms. Muehling/yes, Mr. Ziganti/yes

Motion passed

Ms. Fadorsen motioned and Ms. Denamen seconded Appeal ZU-2025-2 be continued for one year.

Ms. Denamen/yes, Ms. Fadorsen/yes, Ms. Klemm/yes, Ms. Muehling/yes, Mr. Ziganti/yes

Motion passed

**APPEAL ZA-2025-3  
Greg Baggott  
Area Use  
11692 Cambridge Dr.**

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

**Staff Report presentation**

Mr. Alusheff reviewed the Staff Summary for this requested Area use variance. This is to replace an existing garage. Existing garage is in a non-conforming location as it is not to the rear of the house. The non-conforming structure was there when Mr. Baggott bought the house. In the course of a drive-by in preparation for the Staff Summary, a shed was noticed between the garage and the street. When Mr. Baggott was informed of the violation for the shed, he submitted an application for the shed permit. That is why the application numbers are not in numerical order. Total accessory buildings will be 1,325 square feet. Limit on that property would be 2,000 square feet.

### **Applicant's Case presentation**

Mr. Baggott testified the shed at the end of his driveway is on a skid and he had no idea it needed a permit or should be in a specific location. The garage on the property was damaged during the August, 2024 storm. It will have to come down so he can have a building to store his lawn care equipment. He worked through a garage builder to come up with the design. The location where it would be properly zoned is not good as the electrical box is in that spot. He would have to have the electrical company physically move it to another location.

The board asked Mr. Baggott if he was aware he needed to present a practical difficulty in order to receive this variance. He replied, yes. Then he was asked if he knew what constituted a practical difficulty. He did not, and the board discussed the Duncan Factors with the applicant.

Mr. Baggott restated his practical difficulty is the location of the main electrical box. The board informed Mr. Baggott that it is the site that determines the practical difficulty, not something that was done to the property.

### **Applicant rebuttal/cross-examination**

Board asked for a review of location of electrical box. Appellant indicated spot on map displayed on monitor.

He has owned the property since September, 2023. Current location of existing garage was pointed out along with existing landscaping. He will be putting a golf simulator in the new garage.

The electrical box controls electrical power from the street.

The rear line of the home was reviewed, and the appellant was made aware that any accessory buildings need to be located to the rear line of the home. A detailed drawing of front, side and rear yard measurements was done on Nearmap during the meeting and displayed on the monitor. That drawing is attached to these minutes.

Mr. Ziganti indicated the proposed structure could be placed properly behind the home.

Mr. Baggott indicated a drainage issue on the property.

Mr. Ziganti asked for the topographical map to be displayed. The board reviewed the drainage on the property.

Mr. Baggott confirmed there is a 3-car garage attached to the home. He also confirmed that all wires in the neighborhood are buried and not overhead.

Review/discussion on the location of the front yard for this home. (Indicated on Nearmap attached to minutes).

Mr. Ziganti – confirmed page 6 of the Staff Summary indicating the rear line of the house. Mr. Baggott confirmed he was aware of the determination of the rear line. Confirmed the rear of the house faced south.

Mr. Baggott confirmed the building to be built is a pole structure.

Mr. Ziganti asked Mr. Baggott, “What is the practical difficulty of locating the new structure to the east of the electrical transformer which would keep it in the rear yard?”

Mr. Baggott showed on the monitor, the natural creek running along the side of the property along with the drainage creek.

Mr. Baggott showed on the monitor where his leach field and well head are located. He wasn't sure where his septic tank was.

Mr. Baggott was asked again to consider putting the proposed garage to the east side of the electrical transformer.

Mr. Baggott replied, this is an odd lot, it's not lending itself for a great location for a car to move into a garage, and I am far back from the road on a wooded lot and I'm not understanding...

Open discussion between the board and the applicant on various placements for the proposed garage. The topography of the lot was reconsidered.

The board offered the suggestion for Mr. Baggott to speak with his builder about the options he heard about at this meeting and the board would continue his hearing until next month. Open discussion amongst the board members and the applicant continued.

### **Public Comment closed and deliberations**

Ms. Klemm motioned and Ms. Muehling seconded a one-year continuance be given to Mr. Baggott

Ms. Denamen/yes, Ms. Fadorsen/yes, Ms. Klemm/yes, Ms. Muehling/yes, Mr. Ziganti/no

Motion passed

Mr. Ziganti offered Mr. Baggott a continuance to one-year which he accepted.

Ms. Fadorsen motioned to continue the Area Variance appeal for Mr. Baggott and Ms. Klemm seconded.

Ms. Denamen/yes, Ms. Fadorsen/yes, Ms. Klemm/yes, Ms. Muehling/yes, Mr. Ziganti/yes

Motion passed

Mr. Ziganti asked Mr. Baggott before leaving if he was a bit clearer on the standards the board has to measure his appeal on. Mr. Baggott said yes, and he would talk to his builder about it.

### **New Business**

Mr. Ziganti asked the group if they could/would agree to changing the July 14<sup>th</sup> scheduled meeting date to July 7, 2025. Group was in unanimous agreement with the date change.

Ms. Muehling presented her concern with the form, *Sheet 1 – Zoning Information Sheet – Variance Application*. Handout with email she sent BZA Board suggesting change to form regarding Use Variance. (Attached to minutes).

She suggests adding the following to the form, *Sheet 1*:

- “The variance sought is the minimum which will afford relief to the applicant;” and
- “There is no other economically viable use which is permitted in the zoning district.”

After group discussion, determined there are three sets of standards for a Use Variance – Margaret’s proposal, Geauga County Model Zoning and what used to exist in the Chesterland Zoning Resolution. It was also identified that the items should all be written in the positive so that a “yes” response from the appellant would work to the benefit of the applicant.

It was decided the Secretary will provide the Board with a summary sheet for review to be discussed at the next meeting regarding changes to Sheet #1.

**Need for bylaws per ORC 519.15 and Chester Zoning 12.02.03 (A)**

Will help with little questions that come up if approved bylaws are in place. There is no dated version readily available. The one version found in Zoning files will be sent to all BZA members with potential adoption date at the next meeting of May 12, 2025.

**Next meeting scheduled for May 12, 2025**

Meeting closed at : 9:07 p.m.

Approval Date May 12, 2025

\_\_\_\_\_  
Kathleen McCarthy, Admin. Assistant

\_\_\_\_\_  
Barton Ziganti, Chairman

\_\_\_\_\_  
Mindy Denamen, Vice-Chair

Alternate  
\_\_\_\_\_  
Mark Dobrynski

Alternate  
\_\_\_\_\_  
Justin Enger

\_\_\_\_\_  
Kathy Fadorsen

\_\_\_\_\_  
Christina Klemm

\_\_\_\_\_  
Margaret Muehling



127.93 ft  
282.3°

469.93 ft  
64.7°

350.12 ft  
71.5°

248.06 ft  
88.6°

410.8 ft  
97.6°

24.89 ft  
1042.06 ft<sup>2</sup>  
33.1 ft

28.58 ft  
182.4°

156.18 ft  
96.3°  
24.89 ft  
98.2°

BAGGOTT



# CHESTER TOWNSHIP

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CHESTERTWP.COM  
ZONING@CHESTERTWP.ORG

## Sheet 1 – Zoning Information Sheet – Variance Application

### What is a variance?

A variance is a request to deviate from current zoning requirements. If granted, it permits the owner to use the land in a manner not otherwise permitted by the Zoning Resolution. It is not a change in the zoning law. Instead, it is a specific waiver of requirements of the zoning resolution.

### What is required to be submitted for a variance application?

1. Signed Application
2. Application Fee - \$450
3. Variance statement – including responses to the following:
  - Briefly explain the requested variance.
  - Address the review criteria found on the backside of this information sheet (either Area or Use variance)
4. Site Plan showing the following:
  - North arrow and bar scale.
  - Boundaries and dimensions of the lot.
  - Sizes and locations of existing and proposed structures, accessways, walks, off-street parking and loading spaces, and landscaping.
  - Existing and proposed uses of all parts of the lot and structures.
  - Any other information that the BZA deems necessary to make a decision on the application.
5. Building plans and/or elevations, as applicable
6. Other maps, plans, letters, photographs, or information relevant to the case.

In deciding whether to grant a variance the BZA shall consider the following review criteria:

### Area Variances

**Definition**                      The applicant is seeking relief from a dimensional requirement such as area, size, and setbacks as established in the Zoning Resolution. For example, a homeowner wants to construct an addition to their home which will result in a 12' side yard setback as opposed to the required 15' setback.

**Standard of proof**            A practical difficulty exists in conforming to the Zoning Resolution. This is less stringent than a use variance.

*Practical difficulties exist whenever an area zoning requirement unreasonably deprives the landowner of a permitted use of their property.*

(Continued on back)

**Criteria** The Ohio Supreme Court set forth the “Duncan Factors” when considering area variances. There are seven (7) factors, all of which must be considered during the review process. All factors do not have to be satisfied; rather they shall be weighed together in the analysis.

1. Will the property yield a reasonable return or can there be a beneficial use of the property without the variance?
2. Is the variance 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?
4. Will the variance adversely affect the delivery of governmental services?
5. Did the property owner purchase the property with knowledge of the zoning restrictions?
6. Can the problem be resolved by some manner other than the granting of the variance?
7. Will the variance preserve the “spirit and intent” of the zoning resolution and will “substantial justice” be done by granting the variance?

### Use Variances

**Definition** The applicant is seeking relief for a particular land use not permitted in the district (residential, industrial, commercial). For example a doctor wants to construct a doctor’s office in a residential zone and where the office would not otherwise be permitted.

**Standard of proof** A necessary hardship must exist. This implies no economically viable or reasonable use of the property exists under the current zoning classification.

*It should be noted that you are not required to give the best, most profitable use of the site, simply a viable use is sufficient.*

### **Criteria (6)**

1. Will the literal enforcement of the resolution result in an unnecessary hardship?  
*To show unnecessary hardship, the owner must show that there is no viable use of the property under the zoning resolution, not simply that their desired use is not permitted.*
2. Will the spirit of the resolution be observed and substantial justice done if the variance is granted?
3. Was the hardship condition created by the actions of the applicant?  
*Self-imposed hardships for use variance requests are not sufficient grounds for variance approval.*
4. Is the condition unique to the property and not ordinarily found in the same district?
5. Will the variance adversely affect the rights of adjacent property owners?
6. Will the variance adversely affect the public health, safety, or general welfare?

GCMTZR Criteria: Unnecessary Hardship Standard of Proof & Criteria for a Use Variance:

In the email sent March 27, 2025 (referenced above) perhaps it was not clear that the “Standards for a “use” variance” in the Geauga County Model Township Zoning Resolution (GCMTZR) have been thoroughly reviewed by the Office of the Geauga Prosecuting Attorney.

Prior to the review, pertinent references to the Ohio Revised Code (O.R.C.) enabling law and relevant court cases were thoroughly analyzed by attorneys experienced in Land Use Planning and experienced Certified Land Use Planners.

Only then were the recommendations placed in the Geauga County Model Township Zoning Resolution:

2. Standards for a “use” variance: The unnecessary hardship standard shall apply to a use variance and the factors to be considered include, but are not limited to, the following:
  - a. The variance requested stems from a condition which is unique to the lot at issue and not ordinarily found in the same zone or district;
  - b. The hardship condition is not created by actions of the applicant;
  - c. The granting of the variance will not adversely affect the rights of adjacent owners;
  - d. The granting of the variance will not adversely affect the public health, safety or general welfare;
  - e. The variance will be consistent with the general spirit and intent of the zoning resolution;
  - f. The variance sought is the minimum which will afford relief to the applicant; and
  - g. There is no other economically viable use which is permitted in the zoning district.

(Source: Model Township Zoning Resolution, Page X-10) Highlighting shows missing language.

The changes to Sheet 1 and the Staff Report that were suggested in the previous email are in keeping with the seven that are listed above – the order of the listing is not important. Some Ohio townships list additional criteria, but these seven are critical.

The suggested changes were (and still are):

- As listed above, add GCMTZR item f, since it is missing; and
- Replace Item 1 on Sheet 1 (and subsequently the Staff Report) with GCMTZR item g, as listed above.

Unnecessary Hardship Standard of Proof & Criteria for a Use Variance:

**The Staff Report for BZA Case ZU-2025-2, page 5, should be edited to reflect the criteria that formerly existed in the Chester Township Zoning Resolution.**

There are seven (7) criteria which are normally listed. In the Staff Report, Items No. 2 through No. 6 are five of the seven that are normally listed and in the usual language.

However, Item No.1 states “Will the literal enforcement of the resolution result in an unnecessary hardship?” This is not the usual language.

The source of the problems seems to be Sheet 1 – Zoning Information Sheet – Variance Application (discussed as a new Form). On this Sheet, under **Use Variances**, Criteria (6), Item No. 1 had an additional comment:

1. Will the literal enforcement of the resolution result in an unnecessary Hardship?  
To show unnecessary hardship, the owner must show that there is no viable use of the property under the zoning resolution, not simply that their desired use is not permitted.

The language in **GREEN** matches the more usual language and is clearer.

My suggestion is to replace Item No. 1 with the language from the Geauga County Model Township Resolution:

- g. **“There is no other economically viable use which is permitted in the zoning district.”**  
(Standards for a “use” variance, Factors to be considered, a – g, page X-10.)

Since seven (7) factors are repeatedly used in a listing of unnecessary hardship criteria, it is also suggested that the following missing item be inserted as well:

- f. **“The variance sought is the minimum which will afford relief to the applicant.”**  
(Same source as above.)

These changes are in keeping with the seven factors that are usually listed – the order of the listing is not important. Some Ohio townships list additional criteria, but these seven are critical.

**The list on Sheet 1 – Zoning Information Sheet – Variance Application, and on the Staff Report should be edited to reflect the two recommended changes.**

(Sources: Geauga County Model Township Resolution; Auburn Township Zoning Resolution; Bainbridge Township Zoning Resolution; APA Planning & Zoning Workshop, 13 Nov 2015; Model Worksheet for BZA Use Variance, R. Todd Hunt; Boardman Township Zoning Resolution.)