

**Brunswick Hills Township
Zoning Commission
Regular Meeting Minutes – August 2, 2018**

REGULAR MEETING

Chair Jenkins called the August 2, 2018 Zoning Commission Regular Meeting to order at 7:03 p.m.

- **Board Members in Attendance:** Mrs. Jenkins (Chair); Mr. Mickas (Vice Chair), Mrs. Porter,
- **Alternate Board Members in Attendance:** Trica Murphy, Ed Kelly
- **Others in Attendance:** Trustee Michael Esber, Zoning Liaison
- **Not In Attendance:** Al Fulkerson (excused absence); Linda Kijek (unexcused absence)

Swearing in of New Board Members: Trustee Esber swore in Ed Kelly and Trica Murphy as Alternate BZA Board members and they were seated to represent a full Board.

Approval of the Minutes -

1. **July 5, 2018 Continued Public Hearing Minutes** – Mrs. Porter noted an edit on page one to remove the word “is” from the following sentence: *Site Conditions: The site is relatively flat and developed as a residential site. The site is contains a single-family home, an accessory building, and turf and trees.* She also noted on Page 2 under the Roll Call vote to change “Mr. Porter” to “Mrs. Porter”. **Motion:** Mr. Mickas made a motion to approve the Zoning Commission Continued Public Hearing Meeting Minutes for July 5, 2018. Mrs. Porter seconds the motion. **Roll Call:** Mrs. Porter-yes; Mr. Mickas-yes; Mrs. Jenkins-yes; Mrs. Murphy-abstain; Mr. Kelly-abstain.

2. **July 5, 2018 Regular Meeting Minutes** – Mr. Mickas noted an edit on page one under Sec. 703 to change the word “we” to “he” where it says *Sec 703 Continuation of Existing Uses Conditionally Permissible Under This Resolution Chair Jenkins asked Vice Chair Mickas if ~~we~~ he was able to research additional information since our last meeting.* **Motion:** Mr. Mickas made a motion to approve the Zoning Commission Regular Meeting Minutes for July 5, 2018. Mrs. Porter seconds the motion. **Roll Call:** Mrs. Murphy-abstain; Mr. Kelly-abstain; Mrs. Porter-yes; Mr. Mickas-yes; Mrs. Jenkins-yes.

Continued Business:

1. Review of the Brunswick Hills Township Zoning Resolution

A. **Sec 303-10E. Conditionally Permitted Uses In Intermediate Regional Flood Plains**

a. → Also under review in relation to Flood Plains: **Sec. 303-11 Riparian Setbacks**

B. **Sec 703 Continuation of Existing Uses Conditionally Permissible Under This Resolution**

C. **Sec. 902-2.E. Submission of Applications**

D. **Sec. 904-3 Referral to Zoning Commission**

E. **ORC: Agriculture/Equine/ Equestrian Activities**

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| • Open Space Conservation District; Sec. 401-2, B#2; pg.32 | • R-2; Sec. 404-2, B#3; pg. 39 |
| • RR; Sec. 402-2, B#1; pg. 34 | • R-3; Sec. 405-2, B#5; pg.41 |
| • R-1; Sec. 403-2, B#3; pg. 37 | • Specific Standards for Conditional Uses; 804-17, pg. 104 |

Chair Jenkins stated items A., B., C., and D., above we have been reviewing per the recommendations of the Medina County Planning Commission. Mrs. Jenkins stated that Mr. Kelly may be able to help us with Sec. 303-10E. Conditionally Permitted Uses in Intermediate Regional Flood Plains and said there has been some changes to the name of the flood plains and we are just trying to bring it up to date. Mrs. Jenkins asked the Secretary to forward the Planning Commission Staff Report recommendations on this section as far as the new term for “Intermediate Flood Plains” and noted Mr. Kelly has extensive experience in Storm Water Management. Chair Jenkins stated this has been on-going review of these sections.

Vice Chair Mickas referenced the sections above and summarized for new Board members that in Sec. 703 Continuation of Existing Uses Conditionally Permissible Under This Resolution there was a question from Mr. Richter (Prosecutor's Office) regarding when we changed the book we state that any existing Conditional Use Permits need to be reissued within one year and there is a lot of confusion around that. Mr. Mickas said he was asking if it is our intention to reissue the certificates or not, so we have been trying to find verbiage to help clarify that section.

Mr. Mickas referenced Sec. 902-2.E. Submission of Applications and said we are reviewing this language because we (ZC) give our recommendation to the Board of Trustees and we want to make sure the process is right. Sec. 904-3 Referral to Zoning Commission doesn't list the requirement that site plans must be sent to the Board of Trustees for final decision because the ZC is only a "recommendation" Board. Chair Jenkins confirmed this is continuation of reviewing our Zoning Resolution to make sure we have the correct verbiage.

ORC: Agriculture/Equine/ Equestrian Activities – Chair Jenkins stated at our last meeting Evelyn, our Zoning Inspector had us refer to ORC Sec. 519.21 Powers not conferred on township zoning commission by chapter. Mrs. Jenkins stated "equestrian activities" is listed in several sections of our code and our Zoning Inspector is recommending we remove that from our book because it falls under agriculture. Vice Chair Mickas stated that our Zoning Inspector stated it is defined in the agriculture section of the Ohio Revised Code and that we as a Township we cannot limit that as a conditionally permitted use. Mrs. Jenkins said yes, for equestrian. Secretary Milanko stated there were also questions at our last meeting with reference to "commercial activities". Mrs. Porter stated what about a racetrack; that would be an equestrian activity, but does that fall under "agriculture"? Chair Jenkins stated "equestrian activities" is pretty broad. Mrs. Porter agreed and said it could fall under that if they are actually breeding horses there. Mrs. Porter asked if someone wanted to come into the Township and wanted to put is a Thistle Down type racetrack, does that mean we can't regulate that because it's agricultural? Mrs. Porter asked if a racetrack applies as "agricultural"? Chair Jenkins stated that is a good question as our Zoning Inspector stated "horses or anything to do with horses" at our last meeting. Mrs. Porter stated a racetrack does involve horses. Mrs. Jenkins referred to the Ohio Revised Code and read: *A horse farm owner's construction of a lake, a track to be used for the training of his horse. Horses are incidental to the agricultural purpose of breeding, raising and training of horses and is thus exempt from 519.21 for any requirement existing in a Township Zoning Resolution.* Chair Jenkins noted it says breeding, raising and training of horses. Chair Jenkins stated Trustee Esber also questioned this at our last meeting. Trustee Esber stated he thinks this should be referred to Mr. Richter (Medina County Prosecutor's Office) for an opinion. Trustee Esber stated he would contact Mr. Richter tomorrow to ask about this. Chair Jenkins stated again equestrian activities is pretty broad and does not mention racing or betting on horses. Chair Jenkins noted for the record that Trustee Esber will contact Mr. Richter at the Prosecutor's Office for clarification on equestrian activities.

New Business:

Chair Jenkins stated on Friday, July 27, 2018 our Zoning Inspector received a Zoning Map application for rezoning and we are just receiving it tonight. Chair Jenkins asked Trustee Esber if he has seen the application. Trustee Esber stated he saw it in the Zoning Inspector's Office and she had a few questions on it for the Prosecutor. Chair Jenkins asked if there was a representative for the rezoning request present.

1. Brian James, Developers Management LLC, 943 Wye Drive, Akron, OH 44303 approached the podium and stated he was here for observational purposes as he didn't know if this was on the agenda tonight. Chair Jenkins stated the application has just been put in our hands now and it is not on the agenda tonight. Chair Jenkins stated a memo from our Zoning Inspector states she had some questions for the Prosecutor that we don't think have all been answered. Mrs. Jenkins said per the application these properties are asked to be rezoned from RR (Rural Residential) to R1 (Residential) and if you look through the application there are 32 parcels. Mr. James stated there are 32 residences but it's on the order of 40 some parcels.

Mr. James stated we have under contract the Hejduk property down on W. 130th. Mrs. Jenkins asked how many acres it is. Mr. James stated about 55 acres and we would like to put about 40 lots on that property and it is currently zoned RR (Rural Residential) and we are under the impression that just requesting that parcel

to be rezoned would be a Spot Rezoning and that would be a little bit more difficult. Mr. James stated he summarized most of this in his letter but when you look at that section of the Township, which is Sleepy Hollow up to Laurel Road and I-71 over to W. 130th, it's really is not a Rural Residential area. He said there are 32 residences on the properties; the I-71 northbound rest stop partially sits on that parcel of land and there is a church on the Corner of Sleepy Hollow and Laurel Road. Mr. James said on that entire block there are 32 residences and over half of them don't meet the minimum requirements for an RR Residential lot so it's just really not RR anymore.

Mr. James stated there is water on Laurel Road at W. 130th Street, there is sewer on the west side of the highway which is also zoned R-1 and we just feel that it would be best if that whole quadrant could be rezoned to R-1 to bring the non-conforming lots into conformance and it would allow us to bring the sanitary sewer from the other side of the highway and bring water down as opposed to if it was developed as Rural Residential. He said you would have 20 or so homes that have septic's, which are on-site sewage disposal systems, and you would have probably 20 more wells which would possibly affect the existing residence's water wells. He said when we took a look at the whole picture, your Comprehensive Land Use Plan calls for that whole area to be Industrial, which there is Industrial Zoning to the north in the City of Brunswick. Mr. James said on the map you are looking at there we have highlighted the Riparian corridors and potential wetland areas. He said the areas shaded in red are the lots that are non-conforming. He said to the north side of the property is an absolutely gorgeous riparian corridor and about two-thirds to three-quarters of the 55 acre Hejduk property is wooded and if that were to be rezoned Industrial, obviously they couldn't encroach on the riparian corridors, but all of the woods right up to them would be cleared. Mr. James stated there would be additional heavy traffic coming down W. 130th which we don't feel is well suited for that and we just feel that a rezoning to R-1 would be the best reasonable use for that. Mr. James said we feel it would be much more reasonable than rezoning it Industrial and we really don't feel that being Rural Residential is reasonable either. Mr. James summarized that is where we are coming from.

Discussion on 32 Additional Properties Not Under Contract

Chair Jenkins said you stated you had under contract the Hejduk property, do you also have under contract the Frank property of 39.6 acres? Mr. James stated no we don't; we have met and spoken with them and they have no interest in selling. Mrs. Jenkins said so you are just looking at the Hejduk 55 acres. Mr. James said yes. The property to the north, they've been there about 30 years and it doesn't appear they have any plans of going anywhere. Mr. James said we had some discussion about the potential impact to them if the Hejduk property was developed RR as opposed to R-1 and we haven't gotten their support but we don't believe they will oppose it. Mr. James said that is our hope; we stated our case and they seemed to understand our points, but they have no interest in selling.

Chair Jenkins said so have you as Developers Management asked for rezoning for quadrants like this before in other Townships or Cities. Mr. James said never this many parcels so we understand this is a bold undertaking since there is so many properties involved. He said we just felt asking for the Township to rezone a section cutting through the middle of the Rural Residential just would not be the responsible thing for the Township to do – just to rezone that one parcel. Mr. James stated we feel there are valid arguments that the entire block should be rezoned to R-1 and those are spelled out in our letter and application, and he is sure there will be more discussion at the public hearing and at the Trustee's public hearing.

Discussion on Access to Water

Mrs. Porter asked Mr. James where he said he was bringing the water in from. Mr. James said it will come from Laurel Road and W. 130th. Mrs. Porter asked if that is City water there or County water? Mr. James said there is City water and Township water, but in discussions we are under the impression we can bring in Township water down W. 130th. Mrs. Porter stated that would be County water because there isn't Township water. Mr. James stated that is what he meant; not City water, it is their intent to bring County water down. He said that would also give the benefit of allowing the property owners along the way to tap into that water also. Mr. Jenkins asked, at a reasonable fee or an outrageous fee? Mr. James stated he has no knowledge of what those fees would be, and that would not be up to me but I would assume they would be reasonable. He did not know how Medina County works their payback, but in many places the developer is entitled to recoup

some of his costs per the portion of his owner's frontage when they tap in. Mr. James stated we are too preliminary to look into that now; and said we are not counting on many taps up there or funds from those. However the rules work, the rules work, but we have not researched that yet.

Mrs. Jenkins stated and 40 lots is what you are trying to develop? Mr. James stated approximately 40; we have a preliminary layout that I will have when I am formally on the agenda. He said he was here tonight to see if it came up, to see if it was on the agenda and if a public hearing is scheduled. Chair Jenkins stated this is not on our agenda tonight because as I said our Zoning Inspector had some questions for Mr. Richter at the Medina County Prosecutor's Office and I don't think he has responded completely and asked Trustee Esber if that was a fair statement. Trustee Esber stated that is a very fair statement; he's answered a few of the questions. Mrs. Jenkins stated this application was just dropped in our laps tonight. Mr. James stated he understood as he just dropped it off with Evelyn (ZI) on Friday. He said he must have misunderstood because he thought she said this meeting was bumped a week. Secretary Milanko stated the BZA meeting was moved a week later due to the July meeting being on the 4th of July. Chair Jenkins stated so we are waiting on Mr. Richter's comments and we are a recommendation Board to the Trustees on what we feel should happen after the public hearing. Secretary Milanko stated this also has to go to the Medina County Planning Services to be put on their agenda. Mr. James stated he assumed that one of the 15 copies he supplied would go to Planning. Secretary Milanko stated that is correct. Chair Jenkins stated so we will get their feedback and get some of Evelyn's questions answered so this should be on the agenda for next month.

Mr. James stated as I read your Zoning code, the public hearing has to be no less than 20 days nor more than 40 days after our submittal which was last Friday and that puts the 40th day to the day before, I believe, your next scheduled ZC meeting. Mr. James said so I would assume we will have had the public hearing by the time of your next ZC meeting so hopefully at that meeting you can send your recommendation to the Trustees; hopefully. Trustee Esber questioned the order of the recommendation and public hearing. Secretary Milanko stated once the application is formally accepted it has to go to the Medina County Planning Commission and depending on their submission deadline will determine when we get on their schedule. She stated the application has to go to the Planning Commission and then the Planning Commission has to put it on their agenda and at their meeting they make their recommendations. Mr. James stated it was his understanding that you send this to the Planning Department for their input, not to the Planning Commission. Secretary Milanko stated it goes to the Medina County Planning Services and they put it on the agenda for the Medina County Planning Commission to review and they send a Staff Report on their recommendations and comments that has to be reviewed by the ZC at a public hearing before they can send any recommendations to the Board of Trustees. Mr. James stated I understand what you are saying; I may have misunderstood the process so I am just stating for the record that it was my opinion that the Township Zoning Commission sends one of the copies to the Planning Department for their comments, not to the Planning Commission for their recommendation; I have not seen that anywhere and all I know is your Zoning Code clearly states you will schedule a public hearing no less than 20 days nor more than 40 days from the date of submittal, which was last Friday. He said we summarized this in a letter that we emailed to your Zoning Inspector this morning as he believes there may have been some confusion on her part, and possibly on our part, when we dropped off the application Friday. Chair Jenkins stated it is a lot of parcels. Mr. James stated the Zoning Inspector made reference to needing an application and \$500 for every parcel and I don't read that anywhere in your Zoning Code or in the Ohio Revised Code. He said she did make reference, and this is in just passing conversation, that we needed every property owner's signature, which your Zoning Code and the Ohio Revised Code both clearly state an application may be made by one or more owner of the property and we do have one of the Hejduk's signature on the application. Mr. James stated those are the two things I summarized in my letter emailed to Evelyn this morning. He said she wouldn't give me a receipt for my \$500 dollars but it is a check so it's no big deal, but wanted it noted for the record. Mr. James stated I would ask that you try to get those questions to the Prosecutor answered promptly because I think as of tomorrow as we read it, you have 33 days left to schedule the public hearing and you need a certain amount of lead time for your advertising and notification. Mrs. Jenkins stated yes because we have to notify every one of these people.

Ohio Revised Code – Sec. 519.12 Zoning Amendments – (Exhibit 1 Attachment)

Secretary Milanko stated she will read from the Ohio Revised Code Sec. 519.12 Zoning Amendments and will provide Mr. James with a copy because he is questioning sending the application to the Medina County Planning Commission. Secretary Milanko stated he is correct on the number of days to schedule a public hearing once the ZC “formally accepts” the application; but there are other requirements. Secretary Milanko asked how many parcels he is requesting to rezone. Mr. James stated 40. Secretary Milanko stated so it is more than ten (10) parcels and read ORC Sec. 519.12 D. and E. which clearly states within five days of the adoption of the motion that the Township ZC shall transmit a copy of it together with text and map pertaining to it to the county or regional planning commission, if there is such a commission.

Ohio Revised Code Sec. 519.12, D. and E.

(D) If the proposed amendment alters the text of the zoning resolution, or rezones or redistricts more than ten parcels of land as listed on the county auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing and include all of the following:

- (1) The name of the township zoning commission that will be conducting the hearing on the proposed amendment;*
- (2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;*
- (3) The time and place where the text and maps of the proposed amendment will be available for examination for a period of at least ten days prior to the hearing;*
- (4) The name of the person responsible for giving notice of the hearing by publication;*
- (5) A statement that, after the conclusion of the hearing, the matter will be submitted to the board of township trustees for its action;*
- (6) Any other information requested by the commission.*

(E) Within five days after the adoption of the motion described in division (A) of this section, the certification of the resolution described in division (A) of this section, or the filing of the application described in division (A) of this section, the township zoning commission shall transmit a copy of it together with text and map pertaining to it to the county or regional planning commission, if there is such a commission.

The county or regional planning commission shall recommend the approval or denial of the proposed amendment or the approval of some modification of it and shall submit its recommendation to the township zoning commission. The recommendation shall be considered at the public hearing held by the township zoning commission on the proposed amendment.

Secretary Milanko stated so per the Ohio Revised Code, the Zoning Commission must submit the application to the County Planning Commission and as far as your questions on Planning Department vs. the Planning Commission and what makes up the Planning Commission, you should contact them personally on what their procedure is. A copy of the ORC Sec 519.12 and a copy of his receipt for the \$500 application fee was given to Mr. James at the meeting.

Chair Jenkins confirmed this application will have to go to the Medina County Planning Commission and hopefully Mr. Richter will get back to Evelyn’s questions because there were some valid questions on this application request and that is why I asked if you have done this quadrant rezoning before. Mrs. Jenkins said so we will work with Mr. Richter on these questions. Mr. James stated he understood as he is your legal counsel. Mrs. Jenkins stated so as soon as we hear from him, you should be hearing from Evelyn and this will be on our agenda for next month. Mr. James said so it’s the Zoning Commission’s interpretation of your Zoning Code that the no less than 20 nor more than 40 days is from the date the Zoning Commission formally accepts the application even though the Zoning Code says submittal. Mr. James said he understands what you are saying and what you have to do but he didn’t bring the Zoning Code with him which refers to the

submittal and believes the Ohio Revised Code also refers to submittal. Chair Jenkins stated again, this was not on our agenda tonight and just getting information from you tonight will help us move forward. Trustee Esber stated it will be on the next agenda September 6, 2018. Mr. James stated that is about four weeks, the first Thursday of the month.

Mr. James stated there are three different ways in your code listed on initiation and stated the first two don't pertain, but the third one pertains, which is my submittal of the application. Mr. Mickas noted BHT Zoning Resolution, Sec. 1102 Initiation of Amendments

SEC. 1102 INITIATION OF AMENDMENTS

- A. Amendments to the Zoning Resolution may be initiated by:
1. Motion of the Township Zoning Commission, or
 2. Passage of a resolution by the Board of Township Trustees and certification to the Township Zoning Commission, or
 3. Filing of an application with the Township Zoning Commission by one (1) or more owners of property within the area proposed to be changed or affected by the proposed amendments to the Township Zoning Resolution.

Mr. James stated it was pretty clear that the clock started when he submitted the application last Friday and wasn't sure if our Code mentions the Planning Commission but he understands it is in the Ohio Revised Code but wanted on the record his interpretation. Chair Jenkins stated hopefully when Evelyn is in tomorrow we can get clarification on this and hopefully the questions to Mr. Richter are answered and then we will have Evelyn contact you and we'll have clarification on motion, filing vs. submittal. Mr. James thank the Board for the opportunity to speak and get his interpretation of the Zoning Code on the record.

Old Business: None

Public Input: None

Announcement of Next Meeting Date: Thursday, September 6, 2018 @ 7 p.m.

Motion to Adjourn the Meeting: Mr. Mickas made a motion to adjourn. Mrs. Murphy seconds the motion.

Roll Call: All in favor to adjourn. Meeting officially adjourned at 7:55 p.m.

Respectfully Submitted,

Mary Jean Milanko, Zoning Secretary

Sandra Jenkins, Chair

Date