

**Brunswick Hills Township
Zoning Commission
Public Hearing Meeting Minutes
January 4, 2018**

Continued Public Hearing from December 7, 2017

PUBLIC HEARING MEETING

Call meeting to Order: Chair Fulkerson called the Brunswick Hills Township Zoning Commission Public Hearing Meeting to order at 7:05 p.m.

A Roll Call of the Board was Executed

- **Board Members in Attendance:** Al Fulkerson, (Chair), Sandra Jenkins (Vice Chair), Barb Porter, Matthew Mickas, Linda Kijek (arrived shortly after hearing began)
- **Others in Attendance:** Evelyn Czyz, Zoning Inspector; Michael Esber, Zoning Liaison; Trustee Christina Kusnerak, Brian Richter, Medina County Prosecutor's Office

Continued Business: Continued Public Hearing on Proposed Text Amendments to the Brunswick Hills Township Zoning Resolution Effective August 10, 2017:

Proposed text amendments are on the following pages of the Brunswick Hills Township Zoning Resolution:

Pages 11, 15, 16, 20, 22, 24, 25, 26, 28, 29, 30, 32, 34, 37, 39, 41, 48, 53, 55, 59, 60, 61, 71, 72, 73, 75, 78, 82, 83, 88, 91, 92, 93, 94, 95, 105, 106, 107, 108, 110, 111, 113 and 114

Mr. Fulkerson stated we will be reviewing the Medina County Planning Commission staff report and the comments by Mr. Brian Richter, Medina County Prosecutor's Office. Mr. Fulkerson stated we will start with the Prosecutor's report.

Review of the Prosecutor's Letter on Proposed Text Amendments

Mr. Brian Richter, Medina County Prosecutor's Office stated he was in attendance this evening because the Board still had questions on his comments. Mr. Fulkerson stated that everyone reviewed his report and asked the Board for questions. Mrs. Porter stated the question that needs clarified the most is on page 2 of Mr. Richter's letter that references Conditionally Permitted Uses (in all zoning districts). Mrs. Porter stated to Mr. Richter that you recommended we not amend those sections because it changes the context and the Board was not quite sure what you meant by that. Mr. Richter stated all of those sections I mentioned not to change, each section of your code that appears in the different zones, all they do is simply outline what the conditional uses are allowed in that zone because the BZA can't really grant a conditional unless it is outlined in the code. Mr. Richter stated those sections just simply outline what conditionals are allowed in each zone.

Mr. Richter stated the way it used to read is "*The Board of Zoning Appeals may issue a zoning certificate for uses listed herein subject to the requirements of Article XIII*" – which Article XIII is the full hearing in essence on how the BZA will go about granting the conditionals. Mr. Richter stated I think "*Upon approval by the Board of Zoning Appeals, the Township Zoning Inspector may issue it*" – I don't believe that is the intent of those sections for the Zoning Inspector to really issue under those. He stated it is issued by "grant" of the BZA and I just didn't feel like it needed that sentence because all you are doing is outlining the conditionals in those specific areas. Mrs. Porter stated that makes sense and said we thought they both meant the same thing, but we see your point on that. Mr. Richter stated he can see where the Board was coming from, but he doesn't think it's necessary because all they do is outline in that. Mr. Richter stated

there may also be additional conditions that the BZA puts on a conditional certificate, which may not be outlined in these specific items/sections.

Mrs. Porter stated so you are recommending that we leave the wording as it is currently stated. Mr. Richter stated yes, however, you may wish to make some other changes because I noticed in here you say “may issue” and I kind of left that alone, but really the statute reads that the BZA “may grant”. Mr. Richter stated so they can “grant” the conditional, but I can see what you are trying to do, but the BZA grants the conditional in accordance to Section VIII of your zoning resolution and then at that point they would direct the Zoning Inspector to issue it. Mrs. Porter asked if in those sections Mr. Richter suggests that we change our wording from “may issue” to “may grant”? Mr. Richter stated he would use the statute language but he wasn’t going to get that picky with it because it has been listed that way in our code for years. Mr. Richter stated and you will notice in some of the other sections, I did use the word “grant” on things I was recommending changes on.

Mr. Mickas stated he did think that was the main question in those sections and stated in Sec. 802-5 we use the term the “Zoning Inspector shall issue” and then in every other section it says the “Board of Zoning Appeals may issue” so maybe we should change the word “issue” to “grant”. Mr. Richter and the Board reviewed Sec. 802-5. Mr. Mickas stated it says the Board of Zoning Appeals may issue and the contradiction we saw was that we were saying the “Board of Zoning Appeals may issue” in all of the other sections. Mr. Richter stated it should say “grant” is the way I would recommend you do it based on the statute Ohio Revised Code Sec. 519.14 which states one of the duties the Board of Zoning Appeals can do is “grant conditional zoning certificates”.

Mrs. Porter asked about Sec. 303-E – Flood Plains and stated she believed that the Township had no control over that and could not issue permits. Mr. Richter stated he did not make a comment on that section and would have to look into it further. Mr. Richter stated he knew there was a comment from the County Engineer on that section, but he was only looking at it from the context of the proposed changes the ZC was making to the section. Mrs. Porter stated we will probably have to re-word that per the County’s recommendations on the *Flood Reduction Regulations* information. Mrs. Jenkins agreed and stated that Evelyn Czyz (Zoning Inspector) was going to look into that as they are recommending that we tie the language to the *County’s Flood Reduction Regulations* per Andy Conrad’s comments. Mrs. Czyz stated that she did contact the Medina County Engineer’s Office regarding the comment in the Planning Commission report and they could not specifically pin-point what Andy Conrad meant in his comments. Mrs. Czyz stated she has a message into Andy Conrad to see if can give us more information, but she is waiting for him to contact her back. Mr. Richter stated we can look into that in more detail because amendments you proposed is to change “Zoning Inspector” to “Township Zoning Inspector”. He stated this is something you can work on and we can look at what language should be in that section (Sec. 303-E Flood Plains) by contacting Andy, but that would be a separate process.

→Secretary Milanko noted for the record that Sec. 303-E. Flood Plains will be put on hold for further consultation with the Medina County Engineer’s Office and the Prosecutor’s Office.

Mrs. Jenkins stated the proposed amendment of “Zoning Inspector” to “Township Zoning Inspector” was for consistency throughout the book.

Mr. Mickas referenced page 2 of Mr. Richter’s letter regarding Sec. 703 on page 91 of the Zoning Resolution and asked if they needed to change the word “issue” to “grant” where it says the Board of Zoning Appeals may “issue”. Mr. Richter stated no; that whole section didn’t make any sense to me in the way it was written because what you say in here is “All uses existing at the time of the passage of this Resolution or amendments thereto and conditionally permissible in their respective districts under this Resolution shall be issued Conditional Zoning Certificates within one (1) year after the passage of this Resolution or

amendments thereto.” Mr. Richter asked if the intent by the Board of that section to re-issue every single zoning certificate that was granted? Mr. Richter stated that is how it reads and that you are re-issuing the Zoning Certificates within one year of any change. Mr. Richter asked, is it the intent of the Board to have the BZA re-hear every single conditional? Mr. Richter stated it doesn’t seem like that make sense because they would be grandfathered if the BZA granted a Conditional Zoning Certificate; and it would be very difficult to take that away. Mr. Richter asked why it wouldn’t say something to the effect “*All uses that were permissible prior shall remain valid uses*” or something to that effect.

Trustee Esber asked if the wording related to the Madden Brothers because they were under one-year conditional reviews every year to review their 10 conditions. Mr. Richter stated that can be part of a conditional, but the way this section reads he doesn’t know why it was put in that way. Mr. Fulkerson also used the hypothetical example of the Madden Brothers and asked if they were to sell their business and leave the area, is that conditional zoning certificate issued to them transferable to the new owner? Mr. Richter stated he would have to look at that but if they were doing the same business..... Mrs. Czyz, Zoning Inspector, interrupted and stated “no”. Mr. Richter said you are stating no? Mrs. Czyz stated a variance went with the property. Mr. Richter stated he would have to look at that but it has nothing to do with the amendment we are talking about. Mr. Richter stated Sec. 703 Continuation of Existing Uses Conditionally Permissible Under this Resolution says if there is an amendment you can continually use the conditional zoning certificate that was issued or granted. Mr. Richter stated we are talking about the continuous business and used the example using the Madden Brother: you are going to make an amendment and by the amendment their conditional use isn’t allowed anymore; that’s really going to be grandfathered in. Mr. Richter stated you changed something and then that conditional can’t be used in that District anymore – he said you would have a tough time saying “Madden Brothers, your conditional certificate is no longer valid in this zone anymore so we are telling you that you have to close”. Mrs. Jenkins stated so if we are hearing you correctly, we should look at the wording of Sec. 703. Mr. Richter stated yes, you need to determine what the intent of the Board is with this paragraph. Mr. Richter stated that it seems like you may wish to indicate uses granted shall continue because it reads right now that conditional zoning certificates shall be issued within one (1) year after the passage of this Resolution or amendments thereto. Mr. Richter asked, how are you going to re-issue them? Are you just going to write out a new conditional zoning certificate and re-issue the same thing?

➔The Board agreed to put Sec. 703 Continuation of Existing Uses Conditionally Permissible Under this Resolution on hold for further research on intent.

The Board Review Sec. 401-2. B. on Page 2 of the Planning Commission Report. The Planning Commission recommended changing the word “may issue” to “shall issue”.

Sec. 401-2. B. Conditionally Permitted Uses

~~The Board of Zoning Appeals~~ **Upon approval by the Board of Zoning Appeals, the Township Zoning Inspector** may issue Conditional Zoning Certificates for uses listed herein subject to the requirements of Article VIII.

Mrs. Czyz stated the Board of Zoning Appeals does not issue the certificate, she does. Mr. Fulkerson stated that started the crux of all of this. Mr. Richter stated that it doesn’t matter who issues it under this section. He stated all it is saying is that the Board of Zoning Appeals may issue or grant Conditional Zoning Certificates for uses listed herein. Mr. Richter stated this isn’t the hearing procedure, that’s listed in Article VIII. Mr. Richter stated that there is a separate hearing procedure for the BZA. Mr. Richter stated if you are caught up on the word “issue” because the Zoning Inspector technically issues it instead of the BZA then what you would do is say: “*The Board of Zoning Appeals may grant Conditional Zoning Certificates.*” Mr. Richter stated that way you are getting rid of the word issue and you are stating they grant it; and then in Article VIII when you get to the hearing procedure, it states in Sec. 802-5 that Upon approval by the

BZA, the Zoning Inspector will issue the Certificate, so that is the section where you are stating in. Mr. Richter stated statutorily the BZA can only grant, and the word is “grant”, the conditionals listed in the book and he didn’t think they would get into some kind of litigation over the word “grant”, verses “approve”, etc. Mr. Richter stated if you are modifying the Conditionally Permitted Uses sections then you should use the word “grant”. Mr. Richter stated it is pretty clear in Sec. 802-5 that once it’s granted, the Zoning Inspector issues the certificate.

Sec. 802-5 Issuance of Certificates

Upon approval by the Board of Zoning Appeals, the **Township** Zoning Inspector shall issue a Conditional Use Certificate setting forth the specific use approved by the Board and the terms and conditions of such approval.

The Board reviewed the language in Sec. 401-2. B. Conditionally Permitted Uses, which appears in each Zoning District throughout the Resolution. Mr. Mickas noted that per Mr. Richter’s recommendation, it was recommended that we (1) remove our amendment of “*Upon approval by the Board of Zoning Appeals, the Township Zoning Inspector*” may issue; and (2) change the word “issue” to “**grant**”. Upon discussion, it was agreed that Sec. 401-2. B. Conditionally Permitted Uses – and Conditionally Permitted uses in all zoning districts throughout the book shall be amended to read as follows:

B. Conditionally Permitted Uses

The Board of Zoning Appeals may ~~issue~~ **grant** Conditional Zoning Certificates for uses listed herein subject to the requirements of Article VIII.

→The following sections (Conditionally Permitted Uses) were approved to be amended per Mr. Brian Richter’s recommendation. *Pursuant to R.C. Sec. 519.14 the Township Board of Zoning Appeals may (c) Grant conditional zoning certificates. P. 32 (B), P. 34 (B), P.37 (B), P.39 (B), P. 41 (B), P. 53 (B), P55 (B), P. 59 (B) and P. 61 (B):*

End of discussion on Conditionally Permitted Uses. Chair Fulkerson asked if there were further questions for Mr. Richter.

Trustee Kusnerak stated in her notes, she had a note to hold Sec. 902-2E. for further review. The Board reviewed the proposed text amendments to Sec. 902-2.E.:

- **Sec 902-2.E.** Upon receipt of an application which requires submittal of a site development plan in conformance with Subsection C above, the **Township** Zoning Inspector shall refer the application to the Zoning Commission for review and approval as set forth in Section 904-3. The **Township** Zoning Inspector shall issue a Zoning Certificate within ~~ten (10)~~ **thirty (30)** days after approval of a site development plan by the Zoning Commission.

Planning Commission comments: According to the Township Zoning Inspector, this timing increase is to allow the site development plan to be reviewed and approved by the Trustees prior to issuance of the Zoning Certificate; however, Sec. 904-3 states that it is the Zoning Commission that approves, disapproves or approves with modification the Site Development Plan. There is no requirement that the site plan be referred to the Trustees.

Zoning Commission comments: The ZC is just a “recommendation” Board. All site plans are sent to the Brunswick Hills Township Trustees for final approval, modification or denial decisions. Hold for revised language amendment.

Mr. Richter stated this is the Section the Planning Commission made a comment on. Mr. Mickas stated correct and at the last meeting we said we would put this section on hold for further review. Secretary

Milanko stated the reason we put that on hold is because it did not make any reference to the fact that the Zoning Commission is just a recommendation Board and the recommendations are forwarded to the Board of Trustees for final approval for site plans. Vice Chair Jenkins agreed and stated we were putting that on hold for further review.

→The Board put a hold on **Sec 902-2.E** for further review.

Mr. Mickas asked Mr. Richter if the Board could make recommendations on the sections that were advertised for text amendments this evening. Mr. Richter stated that the Board advertised those sections and can make a decision/recommendation on them tonight. He stated the other sections on hold: the Flood Plain, the paragraph on the grandfathering and some of these other issues that have come up or comments, will have to go through the separate process and re-advertising again. Mr. Richter stated the Board may send their recommendations on changes from this evening to the Board of Trustees and they will have a public hearing on the recommendations. Trustee Kusnerak stated so what the Board can do tonight if they wanted to is make the motion to send certain changes to the zoning code to the Trustees. Mr. Richter stated yes, certain changes that are within the spirit of what the advertisement is. Secretary Milanko asked if we had to make note of the sections we are holding back for further review. Mr. Richter asked what are you holding back? Secretary Milanko stated we are holding Sec. 303-10.E on Flood Plains; Sec. 902-2E.; Sec. 703. Mr. Richter stated you really can't make changes to those sections at this point because the Board is really going to have to do a more in-depth analysis. No further questions for Mr. Richter.

Public Comment: None

Motion to Forward Recommended Zoning Amendments to the Board of Trustees

Motion: Mr. Mickas made a motion to send the recommended changes that we have approved on changing the word “issue” to “grant” (Conditionally Permitted Uses) and changing “Zoning Inspector” to “Township Zoning Inspector”; minus the Sections that we are holding out which would be Sec. 303-10E, Section 703 and Section 902-2E, to the Board of Trustees. Mrs. Jenkins seconds the motion. **Roll Call:** Mrs. Kijek-yes; Mrs. Porter-yes; Mr. Mickas-yes; Mrs. Jenkins-yes; Mr. Fulkerson-yes. The motion carries to forward recommended text amendments by a vote of 5 yes votes to 0 no votes.

Motion to Close the Public Hearing

Chair Fulkerson asked again for public comment. Being none, he called for a motion to close the public hearing. **Motion:** Mrs. Jenkins made a motion to close the public hearing. Mrs. Porter seconds the motion. **Roll Call:** All in favor. Public hearing officially adjourned at 8:05 p.m.

Respectfully Submitted,

Mary Jean Milanko, Zoning Secretary

Sandra Jenkins, Chair

Date