

**Brunswick Hills Township Zoning Commission
Regular Meeting Minutes
March 7, 2019**

REGULAR MEETING

Chair Jenkins called the March 7, 2019 Zoning Commission Regular Meeting to order at 7:03 p.m. A roll call of the board was executed.

- **Board Members in Attendance:** Mrs. Jenkins, Chair; Mrs. Porter; Mrs. Murphy; Mrs. Kijek
- **Board Members Not in Attendance:** Mr. Mickas, Vice Chair, (Excused Absence)
- **Others in Attendance:** Evelyn Czyz, Zoning Inspector; Trustee John Witthuhn, Zoning Liaison; Matt Payne, Fire Prevention Officer, Brunswick Hill Fire Department; Mary Jean Milanko, Zoning Secretary

Approval of the Minutes

1. Approval of the February 7, 2019 Regular Meeting Minutes

Chair Jenkins called for a motion to approve the February 7, 2019 meeting minutes. **Motion:** Mrs. Murphy made a motion to approve the February 7, 2019 minutes. Mrs. Porter seconds the motion. **Roll Call:** Mrs. Porter-yes; Mrs. Murphy-yes; Mrs. Kijek-abstain; Mrs. Jenkins-yes. **Motion carries to approve the minutes.**

New Business:

1. BHT Fire Department Request (Fencing around Commercial Bodies of Water): Matt Payne, Fire Prevention Officer

Request from Fire Chief Anthony Strazzo for ZC to consider adding language to the Zoning Code regarding fencing around bodies of water (commercial). Reference: Plain Township (Stark County) language.

Chair Jenkins asked Matt Payne to address the board on the request to consider fencing around commercial bodies of water. Officer Payne stated the Plain Township language is only a reference they found and they are still doing additional research for other sample language. Officer Payne stated we are only looking at this for commercial areas and not residential. He said our main concern is nursing homes where people have autism and dementia because they are drawn to areas with water so we are just trying to make these areas safer. He said they would also be looking at basins near nursing homes or that are in the area. Chair Jenkins stated so retention basins or anything that contains over 36 inches of water? Officer Payne said correct.

Mrs. Czyz, Zoning Inspector, stated that is what he is saying, but we need to remember that the County Engineer's Office also has regulations which over-rule ours. She said this would not pertain to a retention basin, but for a lake, pond or body of water, all they have to do is put one fish in there and then it is agricultural and you can't touch it and they would not have to adhere to any of our regulations. Officer Payne stated I can't speak to that part on retention basins but we are looking at sources that have cattails, weeds, etc. and a deterrent is the goal for people with dementia and children with autism. Chair Jenkins stated so you are looking at commercial properties only. Officer Payne said yes and the only one I can think of now is Plum Creek and they have a detention basin close to the building. He said there are many places in the city where they do have fences around bodies of water, i.e. the fire station on the corner of Grafton Road and Carpenter Road has a fence around the pond/retention area.

Chair Jenkins said so what Evelyn is saying is that in Plain Township it says any bodies of water containing over 3 feet (36 inches) of water requires a zoning permit and must conform to all yard setbacks. Mrs. Kijek said so that would be residential wouldn't it? Mrs. Czyz said not necessarily, residential has to adhere to this because it is in our regulations under ponds. She referred the board to page 25 of the BHT Zoning Resolution on Ponds.

Sec. 303-6 General Regulations of Structures and Construction (O.) - Ponds

O. Ponds - Pond(s) shall be constructed such that its surface area and embankments are located on a single lot and is not larger than twenty-five percent (25%) of the total lot square foot free area not encumbered by structures. Pond(s) and embankments associated with a pond(s) shall be located at least twenty-five (25) feet from all property lines and fifty (50) feet from any road right-of-way except as specified in Section 303-5-E. In no case shall a pond(s) be located closer than twenty-five (25) feet to a main building. For the purposes of setback and yard requirements, the point of measurement for the pond(s) shall be the point from the toe of the slope, as depicted on the submitted plans, or the base of any embankment where it reaches the normal grade line. Pond(s) shall also comply with the regulations established below:

1. Pond(s) shall meet standards and specifications of the Medina County Engineer's Office and Chapter 1521 of the Ohio Revised Code. Pond(s) used for domestic water service shall also meet the requirements of the Medina County Sanitary Code.
2. Upon making application for a zoning permit, the applicant is required to submit to the Zoning Inspector a copy of the proposed pond(s) plans which have been reviewed and stamped by the Medina County Engineer's Office; also in the cases of pond(s) used for domestic water service, reviewed and stamped plans by the Medina County Health Department.
3. The Zoning Inspector shall inspect all pond(s) during their construction and shall require that all construction conforms to the approved and submitted plans. The Zoning Inspector may request a review by the Medina County Engineer's Office or by a registered civil engineer to ensure conformity with the approved plans. Any extra cost shall be borne by the applicant.
4. If the pond(s) is to be fitted with a dry hydrant for use by the Fire Department, the Zoning Inspector will schedule a representative of the Fire Department to be present at the time of application of the permit to discuss the location of the hydrant.
5. Pond(s) utilizing more than ten (10) acres of drainage shall have plans prepared by a professional engineer.

Mrs. Czyz stated in the subdivision checklist it states if there is a pond in the development, the fire department will respectfully ask developers to put in a dry hydrant system and access road to that hydrant. Trustee Witthuhn said that is for a development not a commercial property. The fire department is only referring to commercial properties.

Chair Jenkins asked the Zoning Inspector to share the language on ponds with Officer Payne. Mrs. Czyz said I think I agree to some point on the fire department's recommendation, however, the county is also

going to regulate a lot of that. She said I think we might want to run the thought process Matt Payne is giving us by Dan Wilhoite from Storm Water Management/Medina County Engineer's Office and the Prosecutor's Office to see what they think about this. Officer Payne reviewed the zoning regulations and said I see something on swimming pools, walls and fences and on ponds but I don't see anything mentioning retention basins. Mrs. Czyz stated that is because we don't have any control over that; it falls under Medina County. Mrs. Murphy asked for clarification by asking if we are just talking about retention basins and not ponds? Mrs. Jenkins stated I think we are talking about both. Office Payne confirmed and said we are talking about man-made water sources or basins, but we would like to see this for ponds if they are on a commercial property. Mrs. Murphy stated commercial is campgrounds, churches, golf courses, etc. Mrs. Czyz said if emergency vehicles had to get in there they would crash right through that fence. Officer Payne said it would have to be gated and it would be more around nursing homes, as I can't see putting a fence around a pond at a golf course. Officer Payne said this is meant to be a deterrent for more heavily populated areas. Mrs. Kijek said so residential areas that have lakes or ponds would not be required to put a fence around them? Officer Payne stated correct.

Officer Payne stated we have just started to look into this and we will do more research, but wanted to start the dialogue. Chair Jenkins stated we would have to look into whether we can just single nursing homes out. Officer Payne stated you also have some commercial apartments that have detention basins, so that might be another defined area. Officer Payne stated they would be doing more research on this and said Plain Township is just one they found but they tied everything into it. Mrs. Czyz stated if they are a home-ruled township, they can set forth ordinances and they follow their own engineering guidelines such as a city; but we have to go by whatever the county specs dictate. Chair Jenkins asked the ZC board to look into other township areas that might have language on this. Officer Payne stated he will contact Dan Wilhoite, Medina County, to check into this and put together more information defining what type of high-risk commercial properties we want this tied to. Mrs. Czyz stated and you would have to define high-risk.

Mrs. Porter wanted to confirm that any properties that are agriculture would not be affected by this. Mrs. Jenkins said correct and anybody who has a pond or a lake now would be grandfathered in. Mrs. Czyz said or you put one fish in it and it becomes agriculture. Trustee Witthuhn stated that all of the schools in Brunswick have fences because a couple of years ago they did expansions to all of the buildings and put in detention basins and they are all fenced in. Mrs. Czyz stated you really want them around the retention basins as those are the ones that will keep the water in them. Officer Payne confirmed he will contact Dan Wilhoite. Chair Jenkins asked Officer Payne to email the board after he talks with him. (End of discussion)

Continued Business:

1. Agritourism:

- Proposed language review
- Check the language in Sec. 303-14 Agritourism, (B General Requirements)(d.) to make sure it is from the ORC and not CAUV.
- Discussion of height limitation of 35 feet for structures and buildings
- Discussion on ADA (American Disabilities Act) Regulations for Agritourism

Chair Jenkins continued with Agritourism and stated on our desk tonight is a great example of a sign on Agritourism from an Alpaca farm in Medina County. Mrs. Czyz stated that sign is in York Township so we might want to reach out to their Zoning Inspector, Dorothy Crouch, to see what they have in their regulations and whether they require a sign. Mrs. Jenkins stated the sign is pretty clear that it takes all of liability off of the agritourism site.

The board went on to review the revised Agritourism language sent in by Matthew Mickas, Vice Chair. Mrs. Jenkins said I think we all agree that this will probably take more work, but it's important that we get something in the book now. She said we can always revisit it for modifications.

Definition of “FARM” [ORC vs. CAUV]

[Add - Article II Definitions]

Farm: Land that is composed of tracts, lots, or parcels totaling not less than ten (10) acres devoted to agricultural production or totaling less than ten (10) acres devoted to agricultural production if the land produces an average yearly gross income of at least twenty-five hundred dollars (\$2,500) from agricultural production.

[Matthew Mickas Note] – Language comes from O.R.C 901.80. This is specific to the immunity from liability for agritourism provides and the definition that is utilized in that reference. Additional option is to add a definition section to 303-14 that specifically stated how the farm is defined when pertaining to Agritourism.

Chair Jenkins stated she read in Senate Bill #75 or in Medina County where someone had a barn for weddings and all they had to do was plant one grape vine. Mrs. Czyz stated that was in Litchfield County.

Chair Jenkins stated as you read through the proposed language on Agritourism it is basically defining what it is and what it has to be:

Farm: Land that is composed of tracts, lots, or parcels totaling not less than ten (10) acres devoted to agricultural production or totaling less than ten (10) acres devoted to agricultural production if the land produces an average yearly gross income of at least twenty-five hundred dollars (\$2,500) from agricultural production.

Mrs. Jenkins stated they have to prove that to us, correct? Mrs. Czyz said try to fight that in court. Mrs. Jenkins said so they don't have to prove it to us. Mrs. Czyz stated they do not and said she didn't want to see anything put in the zoning resolution that can't be defended in court. Mrs. Porter stated if you want to be under CAUV, you have to give that information to the Auditor's Office, but many of these people are not under CAUV. Mrs. Czyz stated correct because that is not a requirement. Mrs. Jenkins stated so I can just plant an apple tree and say I'm under Agriculture and zoning can't require anything. Mrs. Czyz stated I can't require your income. Mrs. Jenkins said so they don't have to come to us. Mrs. Czyz stated if they do any type of business in a building, they have to get a form and get it notarized to be exempt from the Agriculture disclaimer. Mrs. Jenkins said if someone is going to build a structure, we can put the height limit requirements on it; we can put setbacks on it so there has to be a process for applying for a permit. Mrs. Porter agreed and said don't we have to put the height requirement on for public safety if our fire department can't fight a fire over 35? Mrs. Jenkins said I think all of these concerns here are really safety concerns and that is why we are looking at them.

Chair Jenkins stated we are trying to put language in the book that we can regulate and said our Zoning Inspector feels some of it is unenforceable, but we can require a process and as long as it is in our zoning code we can require it. Mrs. Porter stated our Zoning Inspector doesn't think we can enforce the \$2,500 gross income, but I think we can enforce the building height maximum for safety and referenced the ORC Sec. 519.21 (2) Buildings or structures incident to the use of land for agricultural purposes on lots greater than one acre but not greater than five acres by: setback building lines; height; and size. Mrs. Porter stated I think we can enforce almost everything in the suggested language Mr. Mickas provided us except the \$2,500 gross income. Chair Jenkins asked the Zoning Inspector who they have to prove it to that they fall under Agritourism? Mrs. Czyz stated they have to take the *Declaration of Agricultural Exempt* form from my office to the Medina County Building Department and they still have to follow electrical and plumbing regulations. She said on the height limitation, if they want to build it to 50 feet they can and would not have to follow our regulations of 35 feet. Mrs. Jenkins asked why and Mrs. Kijek said what about the safety issue we just talked about with the fire department. Mrs. Czyz stated the

Medina County Building Department would address that. Mrs. Czyz stated we do require that they be 5 feet from the property lot line from the rear and the side. Chair Jenkins stated what we've researched says that we can regulate the height as long as it is in our Zoning Resolution. Mrs. Czyz stated then she's been receiving conflicting stories on this information and even through the county they said the building department won't touch it as long as they have an exemption form. She said they still have to provide me a lot improvement plan to show exactly where they plan to locate buildings, etc. Chair Jenkins stated yes, but when it comes to public safety, it says we can regulate building height and parking lot ingress/egress. Mrs. Czyz said yes because of the public safety.

Mrs. Czyz cited an example and said Mapleside has a portion of property to the north/west that they have acquired and one of my concerns is what is the point of ingress and egress? She said they want to make the point of ingress off Pearl Road and point of egress of Boston Road so there is a concern with traffic. She said it is a public road so we have no say about it as the Medina Highway Engineers Office would address that. Mrs. Czyz stated there is an issue there if our fire department, police department or emergency services would be called to respond there. How would they get in if they are coming out off of Boston Road. She said so they would have to make it wide enough and then after 200 feet they would be required to have a pull-off for safety forces off that driveway.

Chair Jenkins referenced Immunity From Liability for Agritourism Providers (5.) (D.) of the proposed Agritourism language (and the ORC,) and stated this section talks about the inherent risks provides the language for the warning signs.

(5) The agritourism provider has actual knowledge or should have actual knowledge of an existing dangerous condition on the land or regarding facilities or equipment on the land that is not an inherent risk and does not make the dangerous condition known to the participant, and the dangerous condition proximately causes injury or damage to or the death of the participant.

(D) An agritourism provider shall post and maintain signs that contain the warning notice specified in this division. The provider shall place a sign in a clearly visible location at or near each entrance to the agritourism location or at the site of each agritourism activity. The warning notice shall consist of a sign in black letters with each letter to be a minimum of one inch in height. The signs shall contain the following notice of warning: "WARNING: Under Ohio law, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location if that injury or death results from the inherent risks of that agritourism activity. Inherent risks of agritourism activities include, but are not limited to, the risk of injury inherent to land, equipment, and animals as well as the potential for you as a participant to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this agritourism activity."

Mrs. Murphy asked if the township has to include the immunity sign language in our book if it is in the ORC. Mrs. Jenkins said we would probably want it in there; or we could reference the specific section in the ORC 901.80 (5.) (D.).

Mrs. Jenkins stated that the proposed Agritourism language is from the ORC and a modified version of Montville Township's language based on what townships are allowed to regulate. Mrs. Czyz stated the need for Agritourism is based on the case that came out of Litchfield Township, which has brought Agritourism to the forefront in Medina County and all of the townships are looking to put language in their zoning book. [End of discussion]

The ZC board decided to send the new proposed text amendments on Agritourism to the Planning Commission and Prosecutor's Office and put the existing sections 902-2 (E); 904-3; 904-4; 904-5; 904-6; 904-7 etc. as continued business for April, 2019 meeting agenda.

Motion to send Agritourism Language to Planning Commission and Prosecutor’s Office for Review, Comment and Recommendation

Chair Jenkins called for a motion to send the Agritourism text amendments to Planning Commission and Prosecutor’s Office and to set a public hearing date. **Motion:** Mrs. Kijek made a motion to send the modifications specific to Agritourism to add new language on definitions and sections through 303-14 to the Planning Commission and the Prosecutor’s Office and set a public hearing date for Thursday, April 4, 2019 at 7:00 p.m. Mrs. Porter seconds the motion. **Roll Call:** Mrs. Murphy-yes; Mrs. Porter-yes; Mrs. Kijek-yes; Mrs. Jenkins-yes. Motion carries to send text amendments to the Planning Commission and Prosecutor’s Office.

Continued Business

2. Review of the Brunswick Hills Township Zoning Resolution/Proposed Text Amendments: Section with Action Items

- Sec. 902-2 (E) Submission of Applications (Mr. Mickas)

Modification specific to Section 902

[Revise – Sec. 902-2]

Sec. 902-2 Submission of Applications

- E. Upon receipt of an application which requires submittal of a site development plan in conformance with Subsection C above, the Zoning Inspector shall refer the application to **the Township Fire Department and** Zoning Commission for review and **recommend approval, denial, or approval with specified conditions or modifications of the site development plan as submitted to the Board of Trustees** as set forth in Section 904-3. The Zoning Inspector shall issue a Zoning Certificate within ~~ten (10)~~ **Thirty (30)** days after approval of a site development plan by the ~~Zoning Commission~~ **Board of Trustees**.

Mrs. Czyz questioned the language and she said did not agree with the modifications to Sec. 902-2 (E) and said the fire department has no right to approve or deny anything, but they can give us their “recommendation” and opinions. Mrs. Czyz stated the fire chief gets a copy of the site development plan anyway but that is just for review on what he recommends. Mrs. Jenkins referred to Mr. Mickas’s notes on the fire department and read: *requests the fire department to respond prior to the zoning commission meeting. This way it provides time for the Zoning Inspector to review the comments and present a clean plan to the Zoning Commission.* Mrs. Jenkins agreed with Mrs. Czyz in that the way it reads, it sounds like the fire department has authority to recommend, or deny approval. Mrs. Jenkins stated this is something we can work on at the next meeting. Mrs. Czyz confirmed that both the fire department and the police department get a copy of site plans for review and she needs their recommends so she can go back to the developer for revisions and present the Zoning Commission with a clean plan.

Mrs. Jenkins referred to Mr. Mickas’s notes and asked the Zoning Inspector if she prefers having the emergency forces recommendation within one week. *The date of 14 days prior to the meeting will need to be discussed, Mrs., Czyz stated that she would really need them to give feedback within one week. We can change that language to seven (7) days after receipt if this fits the process better.* Mrs. Czyz stated yes, she needs the information within one week from the fire department and the police department so she has enough time to go back to the developer with modifications. Mrs. Jenkins stated we can change the 14 days to 7 days.

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- **Action Item: Review language in 902-2 (E) regarding fire department “recommendations vs, approval” and change 14 days to 7 days.**

Proposed Text Amendments from Matthew Mickas Revised Modifications document for continuation:

- Sec. 904-3 Referral to the Zoning Commission
- Sec. 904-4 Zoning Commission Action
- Sec. 904-5
- Sec. 904-6
- Sec. 904-7
- **New:** Discussion on defining number of days in our Zoning book; “days” vs. “working days” for consistency.

Mrs. Jenkins stated the remaining sections will be added to next month’s agenda under continued business. She asked the Zoning Inspector and board members to review the proposed text amendments in Sections 902-2 (E); Sec. 904-3 Referral to the Zoning Commission and Sec. 904-4 Zoning Commission Action prior to the next meeting.

Motion on Continued Business: Chair Jenkins entertained a motion to add sections 902-2 (E); 904-3; 904-4; 904-5; 904-6; 904-7 to next month’s continued business. **Motion:** Mrs. Porter made a motion to continue the 900 sections as continued business for the next meeting. Mrs. Kijek seconds the motion. **Roll Call:** Mrs. Kijek-yes; Mrs. Porter-yes; Mrs. Murphy-yes; Mrs. Jenkins-yes. Motion carries to continue proposed text amendments at the April 4th meeting.

Mrs. Jenkins also asked the board to review “days” vs. “working days” for consistency within the resolution and said that Mr. Mickas was in contact with Brian Richter on this wording and defining “working days”. and I believe the recommendation was to list it as “working days”. Mrs. Czyz stated and you have to take into consideration that holidays are not a working days. (End of discussion)

Additional Business: None

Public Input: None

Announcement of Next Meeting Date: Thursday, April 4, 2019 @ 7 p.m.

Motion to Adjourn Meeting: Chair Jenkins called for a motion to adjourn the meeting. **Motion:** Mrs. Murphy made a motion to adjourn the meeting. Mrs. Kijek seconds the motion. **Roll Call:** All in favor to adjourn at 8:17 p.m.

Respectfully Submitted,

Mary Jean Milanko, Zoning Secretary

Sandra Jenkins, Chair

Date