



Berkshire Township Board of Zoning Appeals
Regular Meeting Minutes
May 15, 2024

Call to Order: Kim Zianno Hartman called the meeting to order at 7:00 p.m.

Determination of a Quorum/Roll Call: Members Dorothy Kerr, Kim Zianno Hartman, Scott Lillie, Tony Lonigro, James Spurrier, and Ellen Ebe (Alternate) present. Also, present were David Weade, Zoning Inspector and Alison Newton, Board Clerk.

Motion to approve the minutes: Jim noticed a correction necessary for the previous minutes (Application #24-017 Kessler Sign Company; page 2) regarding the height of the sign (height of sign was noted as being 22.6ft and it should be corrected to 22.5ft). David indicated he would make that change and asked the board if they would go forward and approve the minutes with that change.

A motion to approve the meeting minutes from the 4/17/2024 meeting was made by Jim and seconded by Dorothy. The motion was approved 5-0.

Announcements: Statement of Policy

As is the adopted policy of Berkshire Township, all applicants will be granted an opportunity to make their formal presentation. Following the applicant's presentation preliminary questions or points of clarification from the board will be allowed. The audience will then be granted an opportunity to comment. Each individual will be granted 3 minutes. We ask that you be brief and to the point. The Chairperson may limit repetitive comments and close public comments after a reasonable time. The board will follow with questions and take action if needed.

Participants sworn in by David Weade:

Chris Moorman
Zachary Zinsmeister
Kelcey Zinsmeister

New Business:

Application # 24-076 Chris and Ann Moorman. Variance request on side yard setback.

Before public comment, Zoning Inspector Weade mentioned to the board that they are to consider and vote upon the variance request for the side yard setback, and not consider anything else on the property.

Chris Moorman, 1043 S Galena Rd explained to the board that he has built a 30x30 pole barn on his property and didn't know that it had to be located 20ft from the adjacent parcel. The adjacent parcel is owned by him, and he is asking to go from the 20ft variance to a 12ft variance. The barn is located 12ft from the neighboring parcel.

An initial procedural question was posed by Kim regarding several responses of 'not applicable' on questions 1-7 in the application. Kim went through those questions with Chris and the updated responses are noted below:

1. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance.
 - a. Answer: The barn is for storage of cars and tools. Answer would be 'yes'.
2. Whether the variance is substantial.
 - a. Answer: No
3. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties or the comprehensive plan for the community would suffer a substantial detriment as a result of the variance.
 - a. Answer: No, it would not create an eyesore
4. Whether the variance would adversely affect the delivery of government services.
 - a. Answer: No
5. Whether the property owner purchased the property with the knowledge of the zoning restriction.
 - a. Answer: No
6. Whether the owner's predicament feasibly can be obviated through some method other than a variance:
 - a. Answer: No
7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.
 - a. Answer: Yes (this was originally answered 'no')

Tony posed a question pertaining to the applicant's response in question 5 about not being aware of the zoning restriction. He asked if the applicant looked into the zoning restrictions during the permit process. The applicant's response was that the contractor showed up early and the project started before anticipated. He thought that the permit was required but didn't know about the setback requirement.

Kim asked who built the garage, and the applicant indicated that "ANS Company" was the company he contracted and that they did not explain the permit process or their

building process very well, so he didn't really know what to do when they showed up. Admits it was a poor decision, and he thought he needed permit and that there was a process in place but wasn't sure. He reached out to David Weade for clarification on the process and was in the process of getting permit and the company showed up early to build the barn.

Kim followed up by asking if the barn is sitting 12 ft from existing property and if he has considered combining the properties which would avoid the need for a variance. The applicant stated that he thought the variance would be easier to make this right, he would not object to connecting the parcels. The adjacent one acre is just for recreational activity. Clarification was added that if the township were to grant the variance, then it would go to Delaware County to do inspection and get the permit on the barn. If the variance were not granted, the township could allow the parcels to be combined and it would eliminate the need for the setback.

Jim requested more information about the timelines of the project. The applicant stated that he reached out to David in September of 2022 for guidance, the building showed up in November 2022, and it was built in December of 2022. David provided some more clarity on the timeline and indicated that the barn was built the weekend before 12/19/22, first contact was in 2021 (applicant asked David what he would do to build a garage) and a follow up in the fall of 2022 asking the same question. A letter from the township was sent on Jan 3, 2023 notifying Chris that his barn was built without permit. Jim asked what the applicant did after he received this letter and the applicant mentioned he was unsure about what the next step would be, he did have a conversation with David (confirmed by David). He was informed that he would need a post construction permit, a plot plan, and a letter from health department making sure he was not on the septic system.

Kim again suggested the option of combining the parcels and posed the idea of tabling the conversation for a month to consider giving the applicant more time to think about his options. The applicant remembered that there was a cost consideration as to why the variance was selected over the option of combining the lots. The variance application was \$750 and the cost to combine was much more with at least \$1900 for the survey.

Jim requested more information from David about the variance process and David clarified— if variance is turned down, the applicant could not bring this same request back, the only path forward would be with the courts of Delaware county. If the variance were approved—the structure would still need inspected/approved by the county. Kim reiterated that the county would see the letter from the township and the variance was approved and they would then continue with the inspection. The building department won't go forward unless they know the township has approved the building. Finally, Kim asked David if the board could consider approving the variance upon the condition that there is permit approval from Delaware County, and David indicated that option is not possible.

Scott Lillie made the motion to approve variance application # 24-076. Tony second.

Motion approved 4-1. Kim Zianno Hartman vote No.

David will get letter for the applicant acknowledging the variance approval and the applicant will need to get the building permit approved from the county.

Application #24-078 Zachary Zinsmeister. Application for Conditional Use.

Before general discussions, David Weade spoke to application and reminded the board that the conditional use application goes with the property owner, not the property. It was noted that the previous owners of the property (Mr. Ward) had an approved conditional use permit for his automotive business, but the property was sold to Zachary Zinsmeister. The applicant's sister, speaking with him at the podium, is Kelsey Zinsmeister.

Jim asked for clarity on the zoning of this property and David explained that it is zoned A1 (agriculture).

Ellen asked the applicant to confirm his residence. The application lists his address as 4061 Barrywood Drive. The applicant confirmed that he does in fact live at 8860 State Route 37 E, and the application was filled out before he moved into the residence. It is also noted that the previous owner and shop mechanic lives at the residence and is the sole employee of the business. The applicant was asked if Mr. Ward made them aware of the conditional use of the property and the applicant said that they were not aware of the policy, so Kelsey (applicant's sister) filled out the conditional use application immediately. Also, during this application process, the applicant has built a fence, and made updates to the property to make sure it is in line with the Township requirements.

The board asked questions about the hours of the business, the type of services that are provided, how many cars per day visit the shop, and how much of the space is dedicated to the business. The applicant identified the working hours of 7am-7pm, that the automotive services include things like oil changes of small cars (no big trucks) which involves 2-3 cars per day, and that entire building (4200sqft) is used for the business. Tony referenced the home occupational use requirement (section 21.12.3.L) that states there is a 20% use limitation on house and 50% use limitation on accessory buildings. The applicant mentions that there is a kitchen, office, and there would not be 100% business use. If you consider only the shop, it would be closer to 1600sqft of shop space plus the office.

Kim poses a question to David about how this business change came to the Township's attention. David explains that he noticed that more vehicles were accumulated in the back of the property and there was a storage container. Further, the house to the east has gone for sale and prospective buyers wanted to know what was going on at the property. The applicant mentioned that they have since improved the lot and made sure there were no cars in front of the property.

Ellen asks for specification on the timeline for Mr. Ward to run the business, if he plans to retire, and if the applicant would become the mechanic in the future. The applicant explains that he expects Mr. Ward to stay with the business for about 10 more years until retirement. The applicant is not a mechanic and would not take over the business.

Jim asks the applicant if he bought this property as an investment and the applicant confirms this. Kim asks the applicant if there is a signed lease agreement with Mr. Ward and the applicant confirms this.

Jim noted that when the application from Mr. Ward came up in 2015 the approval was granted with conditions, of which, indicated that there should be nothing in front of the house. Also, if a car comes in it gets its oil changed, it should then leave the property and the current situation does not look like it is the case. Additionally, this now appears to be an owner/tenant agreement rather than a home occupation.

Tony shares concerns that some of the conditions are not being met. Kim also mentions that the owner of the home is not the owner of the business for this conditional use, shares Tony's concern that this looks like a new lease agreement not in the spirit of the home occupancy. At the conclusion of the discussion, the applicant shares that he is doing this application to benefit Mr. Ward, and he doesn't want to see this business ripped out from under him.

Tony Lonigro made the motion to disapprove variance application #24-078 for not meeting the intent of the home occupancy and for not meeting the requirements of the code 21.12. Jim second. Motion to disapprove, 4-1. Kim Zianno Hartman vote No. —

David informed the applicant that he was unsure of the exact timeframe, but the business should be shut down in 30 days. If the applicant were to proceed with commercial zoning, they should be aware that time is of the essence. The applicant is approved to continue to operate the business during the application process but the commercial zoning request would need to be on the July docket and would go in front of the zoning commission. The township would need to have the documents to them by June 13th for the July 11th meeting.

Other Business: None

Regional Planning Commission Updates: none

Adjournment: Dorothy motioned to adjourn the meeting at 8:04pm. Kim seconded. Motion approved 5-0.

Ad W. Hill

Zoning Inspector

Ann [Signature]

Meeting Secretary

6-26-24

Date

Ad W. Hill

[Signature]

Dorothy Kern

Eileen Ene

J.P. Spurgeon

Board Members