



Borough of Ben Avon Heights

Thursday December 1, 2022 – Planning Commission, Public Drafted Zoning Ordinance

A quorum is in attendance

Present:

Members: Cuteri, Griffith

Consultant at HRG: Laura Ludwig

Solicitor: John Vogel

Secretary: DiNuzzo

Residents: Clayton Morris 2 Canterbury Road, Steve Stiller 21 New Brighton Road, Megan Thompson 15 Penhurst Road, Christian Vagely 51 Newgate Road

- 1. Call to Order:** Mr. Cuteri began the meeting at 7 PM.
- 2. Roll Call:** There was a roll call of Council Members. A quorum is present.
- 3. Public Comment:** Mr. Cuteri began the meeting by addressing two residents' questions that were submitted by email as they were unable to attend. Scott Dismukes at 22 Clovelly Road submitted: Article II Section 202 General Definitions the definition for Dwelling Types identifies three or more families. I ask that the Planning Commission consider revising this definition to two or more families. Mr. Vogel noted we are not bound to accept the changes. Ms. Ludwig questioned what the logic behind this was as there are several typed of dwellings defined. So, you want to make sure they're all differentiated. Traditionally multi-family dwellings do have three or more units that accommodate 3 or more families.

Ms. Thompson at 15 Penhurst asked where is multifamily used, not in the definitions but used in the document. Maybe that's what he's trying to capture. Mr. Cuteri responded no he's referring to the definitions for dwelling types. Mr. Vogel added that a different zoning ordinance he referenced a multifamily unit was 3. Ms. Ludwig added this is where you define it because you don't want to allow. Ms. Thompson asked if you don't want to allow it why wouldn't you just explicitly prohibit it. Ms. Ludwig responded it's more of a protection. Mr. Vogel added we define duplexes as well, duplexes are three. I don't see why we need to define it. Mr. Griffith agreed, it's not even used throughout the document, we just define it.

Mr. Dismukes also submitted: Article III Section 315 Specific Standards for Accessory Uses and Structures, Part J Solar Subpart J specifically limits installation of solar panels to roof mounted only on the roof of the primary structure or the roof of a detached garage. I ask that the Planning Commission consider expanding this authorization to any accessory structure which otherwise meets all appropriate setbacks – for example see swimming pools in Part L, Subpart 2. My specific example is what if I want to install a pergola over my back patio with several solar panels on top. I can meet the setback requirements.

Mr. Cuteri stated, in subpart J, he would like to add solar panels. Mr. Vogel questioned, isn't a pergola by definition open? Mr. Clayton at 2 Canterbury Road stated you don't want people putting solar panels in their yard, so you need to define it as a structure that is its own use. You could put them on a structure like a pool house or a pergola or a garage but we don't want people putting standalone solar panel structures up. Ms. Ludwig stated we do state that, it needs to be roof mounted. Mr. Vogel referred to section

315, and suggested it state the primary structure or the accessory structure. Mr. Clayton noted an accessory structure's purpose is not to hold solar panels. Ms. Ludwig added, a shed you buy at Home Depot, it probably wouldn't support the panels. Mr. Stiller at 21 New Brighton Road referred to number 10, which is basically saying if a solar panel structure is capable of accommodating them, they can be placed on there. Ms. Ludwig responded I think you need to read that in full, as I believe it says no solar panels can be attached to a tree or any other natural object or accessory structure. It does read as a loop hole. Mr. Cuteri noted that the way section 10 is worded is confusing.

Mr. Vagely at 51 Newgate Road added that there could be some sheds that could get better or more sunlight, would they be opposed to that. Mr. Cuteri noted that sheds and accessory structures are limited in size and height. The idea that we're trying to do is discourage people to really do additions and building excessive structures on their property because that increases fire risk. Mr. Clayton asked, what if you put it on the minimum height of an accessory structure. That way it's out of sight lines and we're not going to see it. The panel agreed that made sense. Mr. Vogel suggested the language could say roof of primary structure or the accessory structure provided that the accessory structure is between 8-12 feet in height. Mr. Clayton also suggested this scenario presented to the Planning Commission, could just apply for a variance. Ms. Thompson asked if they were going to delete the sentence in item 10, Mr. Cuteri confirmed that he thinks they're going to delete that. Ms. Thompson responded it should just be no facilities should be attached to a tree or any other natural object.

Janae Smith at 22 Banbury Lane submitted a question about private garages and setbacks. The old zoning was not 5 ft back from the rear property line for NEW accessory / garage structures as you note below, please talk to Dave Raves and the zoning officer to confirm. (Review page 19&20 of old zoning rules on setbacks)- section 6.0 is what was followed. You are now basically allowing large NEW 800 sq ft buildings to be newly built 5 ft -7.5 ft, from rear property lines. These are not adding onto existing garages, this is new building rules for new garages. - and they can be 28 ft high, that's huge right on a property line in our opinion, as big as another 2-story house. There needs to be some privacy space for neighbor back yards, and 5-7 ft isn't much, especially if they have a deck as well off the back of the new garage, further encroaching on the rear property line.

Mr. Cuteri explained to the public that they were trying to enlarge garages for those who needed higher garages, but also increased the setbacks so they wouldn't impact neighbors' properties as much. Under C, garage private, number 2, for garages less than 15 feet in height, the side setback should be requirement should be 7 and ½ feet, the side and rear setback. For garages greater than 15 feet in height, the setback requirement would be 15 feet. Ms. Ludwig responded and right now it just says side setback. Under 2 and 3. Mr. Cuteri responded 3 we wouldn't change because the rear setback is set by the table. That's only if you get a bigger garage. Mr. Stiller added the table below it might also need to be changed. Mr. Cuteri responded the only thing that needs to change is take the word 'the' out.

Ms. Thompson questioned that a lot of the detached garages, most of the detached garages in the neighborhood are non-conforming. There was a gentleman speaking at the last meeting wanting to increase the height of his garage to accommodate a larger vehicle. But does this mean that you could not add on? Mr. Vogel responded; you can't add on to a non-conforming use. Mr. Thompson continued, so you couldn't increase the height of your non-conforming use. Mr. Vogel responded no because you have a non-conforming structure to begin with. There's an actual expansion of non-conforming uses. A non-conforming structure, if you say a garage can only be 10 feet high, you can't expand a non-conforming structure. Mr. Vagely questioned, what if the renovations make it conforming? Mr. Vogel responded you can always make a structure conform. Ms. Thompson added I think the concern is a lot of garages, there is no space to make it conforming, if you would like to increase the height in it. Now you can't due to the setbacks. Is that the answer? Mr. Vogel responded, that's the answer. Ms. Ludwig added, there's a whole article in the ordinance that's devoted to nonconforming use and structures and the process.

Mr. Vagely at 51 Newgate stated that he was unable to make the last meeting but saw that the setback was being changed. It was changed from 15 feet to 15%. The way my lot is, it's 160 feet deep but my house has a big front yard and not much in the back. My wife and I thought we would do a swimming pool, but it would be a smaller sized pool, but that would change it. My first question is when would this go into effect to try and get ahead of the new zoning ordinance and 2 is it something that a variance would be kind to? Mr. Vogel responded, the variance technically means usually that you can't use your land otherwise, however, if everyone is fine with it, then it can be granted. Mr. Vagely stated I used to live in the city I had a third-floor balcony off my rowhouse and I had to get permission from the neighbor behind me and on the sides of me, is that the same process? Mr. Cuteri responded, let's go back, 15% is for the primary structure, the pool would be an accessory structure. So, it's not 15%. Mr. Vagely responded so my follow up question would be, after solar panels the next page, talks about rear and front yard, but I have a side yard. How does that work? Ms. Ludwig responded must comply with applicable rear and side yard setbacks. Inground pools must be enclosed by a fence.

Mr. Vagely responded if you look under 4 L, it doesn't mention side yards. Mr. Cuteri added it states it's only allowed in rear yards and prohibited from front yards. Mr. Vagely responded but it doesn't mention side yard. Mr. Cuteri agreed. Mr. Vagley continued, I have a big front yard, I have a house and the distance between my house and property line is about 12 feet, there's not much there. But my side, I have about a 70 by 70, that's still 70 feet off the street so, what constitutes that a rear yard. Mr. Cuteri asked if this was a corner lot. It is not. Mr. Cuteri questioned if they could modify this.

Mr. Vogel responded that it should state that it's allowed inside yards but still have to meet all the setback requirements. Mr. Cuteri responded but it doesn't really talk about an accessory structure having a front yard setback. Ms. Ludwig responded; it's prohibited in the front yard. Mr. Vagely added, this would not be visible from the street if that matters. I did live in a historic district before and things being visible from the street was all that mattered. Mr. Cuteri stated, only allowed in rear yard or side yard if not visible from the street and prohibited in the front yard.

Ms. Thompson stated in 315 A, it talks about an accessory living dwelling. I think the question was why you wouldn't use, capital D capital U dwelling unit, instead of creating ambiguity between defined dwelling unit, that defined term should be used in A. Mr. Vogel responded I would agree with that because we do define accessory dwelling unit. So, the accessory dwelling unit, in paragraph A, I would say as long as they're parallel.

Mr. Morris stated for the record I think there shouldn't be a separate sound ordinance but I'll bring that up at the next meeting. Mr. Cuteri responded yes, that's a Council issue now. Mr. Morris asked, just curious why is that a Council vs Zoning? Mr. Cuteri responded because of the enforcement. Mr. Vogel added the zoning officer would have to do the enforcing if it was left in the zoning ordinance and we felt it was better to create its own so law enforcement can enforce it.

Mr. Vogel informed those who attended of the time line. Mr. Vogel noted that we had this meeting advertised in the Citizen and for record purposed confirmed with the Borough secretary Ms. DiNuzzo that it was published on November 11th and 18th. She confirmed and will obtain proof of publication for our files. The next step will be a formal presentation of proposed ordinance to Borough Council by the Planning Commission. That should be on the agenda for the 13th. This meeting is for questions from Council, not the public. If there are no changes requested by Council, the proposed zoning ordinance and map will be submitted to County Planning Agency. They have 45 days to respond. The next step is we hold a hearing on the publication of the zoning ordinance. Mr. Vogel suggests allowing the county to make their changes and then schedule the hearing. If the county sends back issues, this would be sent back to the planning commission and the process would start again. Once it's gone through again, there will be a hearing on the

amendment, published in the paper, mail notice to people affected by any zoning map change. 30 days before the hearing, if anyone wanted electronic notice, we have to let them know; a quick notice in the newspaper, then we have a hearing, then it's adopted as long as all things are fine.

The meeting adjourned at 7:44pm

Jessica DiNuzzo, Secretary