



**Borough of Ben Avon Heights**

**Tuesday, August 30, 2023 – Planning Commission**

A quorum is in attendance

**Present:**

Council Members: Cuteri, Griffith

Solicitor: Vogel

Secretary: DiNuzzo

Residents: Betsy Radcliffe 14 Wilson Drive, Maggie Good 45 Wilson Drive, Jennie Liska 19 Banbury Lane, Bert Fary 11 Oxford Road, Megan Thompson 15 Penhurst Road, Ken Bernauer 23 Banbury Lane, Dave Raves 6 Lynton Lane

**Call to Order:** Mr. Cuteri started the meeting at 7pm. He made note to the public that this meeting is to go over the final draft of the zoning ordinance, which will then be presented to Council. If someone would like to make a comment, please keep your comments to 3 minutes. Mr. Vogel added that there have been many changes to this working document since the beginning. They would like to hand this to Council, and the County, which will still have time to make more suggested changes. This is not the final say.

- 1. Public Comment:** Betsy Radcliffe at 14 Wilson Drive came with some concerns over the current drafted zoning ordinance. She questioned if all three of the Planning committee met as a committee more than once since 2023. She also questioned who else besides the three Planning Commission members, who else has vetted this current drafted zoning ordinance. Mr. Cuteri responded that Council has looked at it, but mostly the Planning Commission, HRG and the solicitor.

She also raised concerns over Table 4 on page 33. She stated that it's titled as Table of Authorized uses but it includes single family dwellings. She feels the table should be re-named table of Authorized Principle Uses and Structures. Mr. Cuteri responded that those are uses. Mr. Vogel added a single family is a use, this is why it's considered a use table, not a structure.

Ms. Radcliffe also had concerns over section 315. Specific standards for accessory uses and structures. She questioned why this section only includes some accessory structures, specifically dwellings units, home occupation business and outdoor hydronic heaters; the one not listed in table 5 as authorized accessory structures, therefore not permitted in the Borough. Mr. Vogel responded let's defer this to the County.

Ms. Radcliffe also raised concerns over table 5 on page 34, table of authorized accessory structures and uses. She noted that she saw the County's response from January 2023 stating the list was limited since the ordinance states "if an accessory structure or use is not specifically listed, it is not permitted in the Borough." She also noted that residents have also voiced their concerns in June that the list did not include popular structures like exterior fire places, large swing or climbing sets, play houses, firewood racks, etc. She stated the Planning Commission did not accept those suggestions, stating they are not regulated by zoning ordinances. She also went on to add that since 2010 there have been 6 zoning permits authorized for exterior fire places and fire pits, two for pergolas, two for generators, one for a shade sail, bat cage and tree house. She feels that since residents paid a zoning application fee in the past, these should be included in table 5. Mr. Cuteri responded that play structures are not covered in this ordinance.

Ms. Radcliffe also voiced concern over the missing index which she claimed Mr. Vogel and Mr. Cuteri assured the public at that meeting there would be an index included in the final draft. Mr. Vogel responded that they were under the impression she was referring to the table of contents. Mr. Cuteri added that they will not include a separate index when there is a table of contents available.

Maggie Good at 45 Wilson Drive feels there are still a number of grammatical errors; she noted that it refers to a table 11 and there is no table 11. On one table you refer to a section 406 and there is not section 406. She also questioned if anyone on the Committee was a zoning lawyer, she suggests an independent zoning lawyer look at this. She also asked the question if a hardship was needed for variances. Mr. Vogel responded that in the state of Pennsylvania, you need a hardship for a variance.

Ms. Good continued that they would like to put in an outdoor fireplace in, it's currently not listed under table 5, therefore she's not sure how she could prove a hardship. She feels broadening table 5 wouldn't hurt.

She noted that section 307 E, if a current structure burns down, or something happens to it, it's grandfathered in that you're allowed to rebuild it, but there is no definition in to what you can re-build. She feels it needs to be defined as it need to be the same foot print, the same location. She added that the types of uses, you have conditional use and use by special exception but you didn't put in permitted use by right. So only 2 of 3 are defined. She also feels the illustration is very confusing for those on corner lots. Mr. Cuteri noted they cannot write this for each individual property, they expanded these illustrations as requested in the past to expand.

She also noted that on page 36, 315 A 1, minimum parking spaces for a legal non conforming accessory dwelling unit, she would like to know what a legal non-conforming accessory dwelling unit is. She also added there is no table 2. Mr. Cuteri responded that they will look at table 11, some of these errors pointed out have happened because this document has been edited so many times.

Jenny Liska at 19 Banbury Lane came with questions over Table 1, she noted that the percentage of lot coverage was changed to 35% and was curious as to how 35% was chosen. Mr. Vogel noted that 35% is pretty standard from what he has seen in other ordinances. She was also curious over 312, accessory uses and structures, B 3, would like to know the reasoning. What the expectation is. Mr. Cuteri stated this refers to the second-floor spaces above garages, this is grandfathering those in built under the current zoning ordinance. A principal use is a single-family dwelling, the principal use is the primary use of the property. She also added that she feels number 4 in section 312 just feels redundant. Mr. Vogel noted that he believes this was added because someone requested it. She also noted that on page 39, section 315, section D, garages may only have one space above and shall not be used as a dwelling unit, what is the intent to specifically call out a dwelling unit? Mr. Cuteri responded if some residents wanted this language added, we would review.

Bert Fary at 11 Oxford Road raised the question, if he had a breezeway from his house to his garage, would that then be considered an attached garage? If I were to do that, I could then have a dwelling unit on the second floor of my garage, but not having a breezeway, it's considered a separate dwelling unit. Mr. Cuteri noted that if it's part of your primary structure, it's part of your primary structure. Mr. Fary continued, I understand you don't want multiple families living on one lot or short-term rentals. Is there an objection to having another family member living above a garage, if it's attached by a breezeway or not. Mr. Cuteri responded once you have a sperate dwelling facility, you now have two residents or two dwellings on one lost and that's what we want to avoid. Mr. Fary continued, it's not clear what I can do with the space over my garage. Mr. Griffin added, the last meeting it was discussed to have language written such that we could not have a 2<sup>nd</sup> dwelling unit above a garage. As a commission we agreed to make these defined more clearly.

Mr. Fary also questioned that in our ordinance, part of the lot percentage is including impervious surfaces, where in Sewickley, they do not, they split the two. Mr. Cuteri responded how much lot do you cover to maintain a community that's not all pavement.

Megan Thompson at 15 Penhurst Road came to this meeting with some concerns; She noted that the accessory dwelling unit definition was vague. She feels when you use verbiage such as typically and includes can be left up to interpretation, and it should say D U, dwelling unit, in that so there's not any confusion. She feels capitalized terms should be used. She noted that residential living area is the exact same definition as dwelling unit. Mr. Cuteri noted that residential living is a dwelling unit. She continued that an accessory dwelling unit should mirror the language in dwelling unit and not include more vague terms as she noted earlier. She continued to note the importance of defined terms because it says sheds are not to be treated as storage buildings. Mr. Cuteri responded storage units are defined separately in non-residential uses. She continued to note that this ordinance can be a bit confusing, as for what is a storage unit supposed to be used for. She also added that we have lots of ordinances already and residents should be able to use their lot how they feel it's best to be used. Mr. Cuteri responded that will not change. You have never been able to have residences above your garages. There are some that have been done prior to the 1978 ordinance that are legally non-conforming.

Ken Bernauer at 23 Banbury Lane came with concerns over garage setbacks. He noted that if a garage is higher than 15 feet, the setback needs to be 25 feet. He questioned why a house is allowed to be 28 feet or higher with a 10-foot setback on page 49 table 6. Mr. Cuteri responded that it is primarily to protect your neighbor's property, the better option is if you need more garage space is to add onto your house instead of another building. Mr. Bernauer feels garages are unsafe due to the type of items that are stored in there and would not want that option. Mr. Griffith added a few meetings ago residents felt the height of garages were too restrictive and wanted to match the roofs of their house. Other residents were upset that if their neighbor did this, all they would see is a massive structure. Mr. Vogel reminded the public that this is not the finals stage of this.

Dave Raves at 6 Lynton Lane submitted comments to the planning commission prior to this meeting. He addressed the topics he felt were the most problematic and needed to be addressed during public comment. He feels the setbacks in the drafted zoning ordinance are less restrictive than the current zoning ordinance. The current side yard setback is a minimum of 10 feet. The drafted zoning ordinance is also 10 feet. But now, you have allowed the current structure to increase by 30%. With the drafted zoning ordinance with the side yard setbacks. He suggests leaving the setbacks as they currently are.

He also raised concerns over accessory structures having their own setback requirements, he feels understanding this ordinance is difficult and enforcing this will be even more difficult. Any accessory structure has a 5-foot setback. He's not sure if it still has the same rear yard setback.

He continued that table 6 is confusing. Minimum size in height of garage of all residential lots, 720 maximum. Next section is a different size range. He continues to list more examples that it's confusing and contradicts itself.

- 2. Consideration of the Final Zoning Ordinance (Planning Commission may consider any other changes):** Mr. Vogel stated that he's written down some comments throughout the meeting that he feels is important. He continued that there were suggestions made by Mr. Raves that we'd like to adopt. In the requirement of the landscape plan, under site triangles on page 22, on the table of authorized uses where it referred to a section 406, it's now 405, no new accessory structure or part thereof can be used as a dwelling, section 403 B, special exceptions paragraph B, should be zoning hearing board not Council, may apply conditions. Membership of the Zoning Hearing Board section 1002 paragraph B is inconsistent with the MPC under section 93, only the governing body has the authority to appoint alternates to the Zoning Hearing Board. *The Planning Commission made a motion to accept the noted items by Mr. Raves. Motion passed.* Addition to table 5, table of authorized uses and structures, add exterior fireplaces or firepits. Addition to table 4, table of authorized uses, lists park under residential, commission will strike this statement. 307 R, single family residential district, and see section 803. Types of uses, add a definition of permitted use. Eliminate table 11. Definitions will be capitalized. Eliminate the definition of residential living area, replace with dwelling unit, where mentioned.
- 3. Mr. Vogel asked Mr. Raves as the Zoning Hearing Board Chairman if he would like all defined terms to be capitalized in the document and he requested that change. Planning commission approves of this change.**
- 4. Vote on Ordinance to present to Council:** *The Planning Commission approves the drafted zoning ordinance with the changes as discussed.*

**Meeting ended:** 8:50 pm