

**BIRCH RUN TOWNSHIP BOARD OF TRUSTEES
SPECIAL JOINT MEETING BETWEEN THE PLANNING COMMISSION/ TOWNSHIP
BOARD AND ZBA
SEPTEMBER 8, 2003**

The Planning Commission Chairman for the purpose of rewriting the Zoning Ordinance Book called a special joint meeting. Chairman Al Hunter called the Special Joint Meeting/Workshop to order at 7:00 P.M. Present for the Birch Run Township Board were Earl Schlegel, Supervisor; Amy Cook, Clerk; Dave Stewart, Ed Magnus, Joanne Strahm, and Jeff Putnam, Trustees. Present for the Planning Commission were Al Hunter, Diane Timmons, Wyn Wilson, Dennis Bronner, and Bob Scharrer. Present for the ZBA were Jerry Cook and Mike Hogan. There was no one in the audience.

A quorum was present for all Boards.

Motion by Jerry Cook supported by Ed Magnus to approve the August 20, 2003 minutes.
Motion carried

The handout attached dated August 25, 2003 for the September 8, 2003 Zoning Ordinance Orientation Meeting will be the document in which to refer to for the remainder of the minutes.

Miscellaneous Zoning Issues

1. The ZBA reached a consensus that the Zoning Ordinance book should regulate the amount and or location of outdoor storage, sales, and merchandise display. The outdoor sales will be allowed to operate if it was present in the original site plan review or the display is contained within a certain distance of the principal building. Mark will include this proposal in the Zoning draft with the appropriate additions.

Section 301 concerning signs was discussed and the ZBA reached a consensus that signs should be addressed in the Zoning Ordinance Book.

2. The ZBA reached a consensus that section 301 of the current Zoning Ordinance book does not adequately cover nonconformities. The ZBA then went on to agree that when a building or business that is nonconforming in the District where it is present is destroyed it can rebuild within the same footprints of the original building. A time requirement would also be placed upon them. Using the SEV in addressing reconstruction would be replaced. Instead the Zoning Ordinance book would base reconstruction on the replacement cost.
3. The ZBA reached a consensus that the new Zoning Ordinance Book should develop stricter regulations concerning Garage Sales.
4. The ZBA reached a consensus that there should be a certain minimum requirement regarding commercial vehicles in residential districts. Mark will develop these requirements and include them in his draft.

5. The ZBA reached a consensus that the roof pitch for a single family dwelling should be changed to a 4/12 pitch and the width should continue to be 24 feet the full length of the dwelling with a minimum square footage requirement.
6. The ZBA reached a consensus that section 304 (yard encroachments) is not a problem and the current rules should be carried over.
7. Section 305 is not a source of conflict and no revisions are necessary at this time.
8. The ZBA reached a consensus that the height of an accessory building should be increased to 16 feet to allow motor homes to be parked inside the building.
9. The ZBA reached a consensus that section 313 should be eliminated due to the fact that the Township has a Blight Ordinance in place.
10. The ZBA reached a consensus that Section 1614(15) should also contain a stipulation that a performance bond is required before a permit is issued for a major/minor water body.
11. The ZBA reached a consensus that a non-residential temporary use should require a permit and Mark will provide general provisions in his draft.
12. The ZBA reached a consensus that will address large and small animals in residential districts and subdivisions. He will also take the current amendments and expand them to include small animals.
13. The ZBA reached a consensus that the parking and storage of motor homes is not a problem at this time and will not be addressed in the new Zoning Ordinance book.
14. The ZBA reached a consensus that Section 1614(9) should be kept, but Mark will provide the Board with definitions to accompany this section for clarity.
15. The ZBA reached a consensus that Mark should draft a provision for regulating private roads within the Township for our review.

Certain topics like drive-in theatres and incinerators will not be included in the new Zoning Ordinance Book.

Motion by Dennis Bronner supported by Earl Schlegel to adjourn at 9:50 PM
Motion carried

Jerry Cook
ZBA Secretary

A handwritten signature in cursive script, appearing to read "Jerry Cook", written in black ink.

Date: August 25, 2003
To: Birch Run Township Planning Commission, Township Board, and Zoning Board of Appeals
From: Mark A. Eidelson, AICP
Re: September 8, 2003 Zoning Ordinance Orientation Meeting

The purpose of our upcoming September 8 orientation meeting will be to discuss how the Township prefers to address a number of miscellaneous zoning issues. Please review the following list of issues prior to the meeting and consider the issues raised. I will not be asking you to identify specific regulations at our meeting, but rather whether these issues should be addressed at all in the new ordinance and, if so, what basic regulatory guidelines may be appropriate. I will be raising several other issues at the time of our meeting. It will be beneficial to have a copy of the current Zoning Ordinance by your side as you review the issues raised in this memo. Please also be prepared to raise any other zoning issues that are of a particular concern to you so that we may discuss them as well. Please call if you have any questions.

As a final note, you will find that I frequently ask whether officials want to regulate a certain activity "at this time?" Adopting a wholly new ordinance is a significant undertaking in it of itself, let alone when new areas of regulation are introduced. Such new areas of regulation may be particularly controversial and officials may want to address such matters as part of the new ordinance ("at this time?"), or address them as an amendment at a future date, or not address them at all until there is a clear need. There are advantages and disadvantages to each approach.

- 1) **Outdoor Storage, Sales, and Merchandise Display:** The Township's current Zoning Ordinance does not appear to address the outdoor storage, sales and display of merchandise. Does the Township want to regulate the amount and/or location of outdoor storage, sales, and merchandise display that a business can maintain? For instance, should a convenience store be permitted to store and/or exhibit purchasable items outdoors and, if so, how large of an area should be allowed? Should such storage/display areas comply with setbacks? It is understood that some businesses, by their very nature, require outdoor storage, sales and merchandise display (such as car sales and landscape supplies sales). There are other uses that do not require this outdoor activity but may be apt to practice it. Some communities feel such activities undermine the aesthetic character and image of their community if such activities "get out of hand." Other communities do not concern themselves with, for example, convenience stores stacking firewood along the front wall of the building or hardware stores displaying lawnmowers in front.
 - a. Should this matter be addressed in the new ordinance at this time?
 - b. If "YES," are there certain minimum requirements you believe should be in place?

- 2) **Nonconformities:** Section 301 of the current Zoning Ordinance addresses nonconformities. Following are a number of issues/questions that I would like officials to consider.
 - a) Has this Section generally worked well for the Township and, if not, what have been the sources of conflict?
 - b) While Section 301(2) addresses nonconforming uses where a building is not present, this Section does not appear to address the situation where a building is present. Is this apparent regulatory void purposeful or an oversight, and how has the Township has been addressing this matter?
 - c) Section 301(5) relies on the application of the SEV in addressing reconstruction and restoration of nonconformities. Many communities rely on "replacement cost" (as determined by the Building Official) rather than SEV because the SEV may not reflect the most recent improvements to the property, and the SEV includes building foundation costs which are generally not factored into the cost to replace a building at the same location/footprint. Also, since the SEV is only 50% of the true

- value, Section 304(5) may be interpreted as establishing a 25% threshold for reconstruction. Do officials prefer to continue to rely on "SEV" or move to "replacement cost" ?
- d) Section 301(6) requires that improvements not exceed "30%" but it is subject to variable interpretation as to whether this is 30% per improvement, month, year, or lifetime. Either option can result in substantial and unintended improvements. In the case of the "per life" option, this can be very difficult to track over the years. A common provision that is sometimes employed provides that such repairs may not exceed 10% of the building's replacement cost in any 12-month period. How has Section 301(6) functioned to date and does the Township prefer to continue relying on SEV?
- 3) **Garage Sales:** Section 302(11) addresses garage sales. Some communities extend the scope of regulations to cover such things as setbacks for display areas, hours of operation, maximum days per sale, maximum number of events per year, and signage. Have garage sales been a source of conflict in the Township and should the scope of Section 302(11) be expanded at this time?
- 4) **Commercial/ Vehicles in Residential Districts:** Section 302(12) is a one-sentence provision that prohibits the storage of trucks of greater than one (1) ton capacity in residential districts.
- This provision is open to variable interpretation regarding the meaning of "storage." Has there been a need to enforce this provision and, if so, has enforcement been successful? As a means to better protect the character and quality of life within residential areas, including agricultural districts that permit considerable residential development, some communities adopt specific regulations prohibiting or limiting the overnight parking of such vehicles in residential areas. Provisions sometimes employed include: 1) limitations on size/weight of such vehicles; 2) limiting storage to within an enclosed building, or permitting outdoor storage for only one vehicle; 3) permitting storage only if the parcel is of a minimum size; 4) vehicle registration linked to the owner of the lot; 5) separate standards for large/small parcels; 6) absolute prohibition of all commercial vehicles, or absolute prohibition of commercial vehicles such as tow trucks, dump trucks, earth moving equipment, and semis.
 - Is this an area of regulation the Township wants to address at this time, beyond the current scope of Section 302(12)?
 - If "YES," are there certain minimum requirements you believe should be in place?
- 5) **Dwelling Standards:** Many communities include requirements for all single family dwellings not otherwise located in a mobile home park, to better ensure compatibility among stick-built and pre-manufactured residences? The current Zoning Ordinance's provisions addressing this matter are included in Section 303. Have there been any conflicts or concerns with the substance of this Section and are any changes desired.
- 6) **Yard Encroachments/Exceptions:** Section 304 addresses yard encroachments and exceptions. Have these provisions been the source of conflict in the past and are there any revisions that should be considered in carrying similar provisions forward into the new Ordinance?
- 7) **Height Exemptions:** Section 305 addresses height exceptions. Have these provisions been the source of conflict in the past and are there any revisions that should be considered in carrying similar provisions forward into the new Ordinance?
- 8) **Accessory Buildings:** Section 306 addresses accessory buildings. Section 302(12) and 306(4)(a) appear to conflict. Which, if either, should apply? Have the provisions of Section 306 been the source of conflict in the past and are there any revisions that should be considered in carrying similar provisions forward into the new Ordinance?

9) **Trash:** Section 313 addresses the regulation of trash, rubbish, and junk. The effective regulation of trash, rubbish, and junk is typically reserved for a separate police power ordinance (a non-zoning ordinance) for several reasons including: 1) a police power ordinance and subsequent amendments thereto are not subject to referendum; 2) a police power ordinance need not include "grandfathering" provisions; 3) a police power ordinance can take effect immediately and be applied to pre-existing conditions; and 4) some will argue that the authority vested in communities under zoning laws are quite restricted and do not extend to the regulation of junk, trash, etc.

- a) If the Township does not have such a police power ordinance in place, I recommend it consult with its legal council to determine whether a separate police power ordinance is the preferred approach.
- b) If the Township does have such an ordinance, I recommend it be reviewed to ensure it addresses (at a minimum) all issues addressed under Section 313, and that this topic not be addressed in the new zoning ordinance except for a short reference to compliance with the police power ordinance.
- c) Please note that while a police power ordinance can provide for a property lien, it is generally recognized that property liens are not valid under the Township Zoning Act and local zoning codes (see Section 313(8)),

10) **Major/Minor Water Bodies:** Section 1614(15) addresses the regulation of major and minor water bodies. Have the provisions of Section 1614(15) worked well in the past and should any revisions be considered in carrying the provisions forward into the new Ordinance?

11) **Non-Residential Temporary Uses**

The current Zoning Ordinance is generally silent on the matter of the regulation of non-residential temporary uses. Such temporary uses may include the sale of Christmas trees or fire wood in non-commercial districts, the use of a parking lot for an outdoor weekend merchandise sale, and the use of a parking lot for a weekend carnival. Some communities formally regulate temporary uses while others do not regulate such activities at all or manage such uses on a less formal manner.

- a) To what extent does the Township want to regulate temporary non-residential uses at this time?
- b) If the Township does want to regulate such uses, which of the following forms should the regulations take:
 - 1. Establish an application, review, and permit process.
 - 2. Establish minimum standards that such uses must comply with to ensure public health, safety and welfare, and compatibility with surrounding uses, but not require an application and permit process.
 - 3. A combination of (1) and (2) above.
 - 4. An approach different than any of the above.

12) **Keeping of Farm Animals:** It is not uncommon in rural areas for persons to want to maintain farm animals (one or more sheep, horses, chickens, pigs, cows, etc.) on their residential property even though their property is not a "farm." In this case, the keeping of farm animals would be considered an accessory use to the principal use (dwelling) of the parcel. The current Ordinance addresses this matter under Section 315, a recent amendment to the Zoning Ordinance. This Section addresses large farm animals only, and does not address pigs, chickens, lambs, goats, and similarly sized animals (at least during their early stages of life).

- a. Have there been any problems with the amendment (as adopted) during the year that it has been in effect that suggest the need for revisions?
- b. Do Township officials want to continue to leave the keeping of smaller animals unregulated at this time?

- 13) **Motor Home/Recreational Vehicle Storage:** The current Zoning Ordinance does not appear to address the matter of the parking and/or storage of motor homes.
- Has this issue been a problem in the Township and do officials want to pursue this area of regulation?
 - Does the Township want to permit the parking/storage of a motor home on a residential lot and, if so, does the Township want to consider any requirements regarding setbacks, restricted yard areas, length of storage, vehicle ownership, number of such vehicles per lot etc.?
 - Does the Township want to permit the use and/or outdoor storage of a motor home on a vacant lot, such as someone keeping a motor home on a 20-acre parcel and coming up from the big city every weekend to recreate, and if so, does the Township want to consider any requirements regarding setbacks, restricted yard areas, time limitations on length of use/storage, vehicle ownership, number of such vehicles per lot, etc.?
 - While some communities allow an RV to be occupied for a limited duration (usually not more than 30 days, with conditions) while visiting friends/family residing on the same lot, others expressly prohibit such occupation. Is this a matter that the Township wants to regulate at this time?
 - The current Ordinance does not appear to address the parking/storage of other recreational vehicles such as boats, snowmobiles, etc. Is this an activity that the Township wants to regulate at this time and, if so, what do you feel the scope of regulations should cover?
- 14) **Gravel Pits/Quarries:** The current Zoning Ordinance regulates mineral extraction/quarries as a special land use and includes the provisions of Section 1614(9). However, the Ordinance lacks any definition for "Sand, Clay, or Gravel Pits, Quarries." If a landowner scoops up a couple loads of sand off his property one weekend, and that is all for the rest of the year, is that operation considered to be a mineral extraction and subject to Section 1614(9)? If not, where is the line drawn as to when Section 1614(9) applies?
- 15) **Private Roads:** It is my understanding that Birch Run Township currently prohibits private roads. Most communities that permit private roads designed to more flexible standards than those of the local Road Commission do so in an effort to more effectively limit excessive grading and disturbance to the natural landscape, more effectively preserve rural character, and make land development less costly (particularly for the smaller land owner). Private roads have been a source of conflict in some communities, particularly where such roads were approved without the necessary safeguards to ensure proper design, construction and long-term maintenance. Officials may want to explore the allowance of private roads. Please find attached an article titled "*Regulating Private Roads*" which I believe you may find of interest. *Please note that the Bevan v. Brandon case referenced on page 10 of the article was overturned in 1991 by the Michigan Supreme Court (unanimous vote), ruling that the private road regulations of Bevan Township, as applied in the instant case, were a valid exercise of zoning power and did not constitute an unconstitutional taking.*