

Rezoning Application #ZON-19-02

June 30, 2020

Rezoning Application #ZON-19-02, TH Midwest Inc., Requesting amendment of one property from the currently effective signage plan approved under Application #17986 applicable to Green Meadows Plaza Planned Commercial and Office District (PCD). The property is owned by 401 East Powell Road LLC and located at 8940 Green Meadows Road, being lot 7511 of Green Meadows Industrial Park Phase 1, having parcel number 318-313-04- 013-002.

Roll: Mark Duell, Christine Trebellas, Adam Pychewicz, Dennis McNulty, Dustin Doherty

Township Officials Present: Michele Boni, Planning & Zoning Director
Jeff Beard, Zoning Enforcement Officer

MOTION TO RETURN FROM RECESS FOR REZONING APPLICATION #ZON-19-02

Ms. Trebellas made a motion to return from recess for Rezoning Application #ZON-19-02, TH Midwest, Inc.; seconded by Mr. Doherty.

Vote on Motion: Mr. Duell-yes, Ms. Trebellas-yes, Mr. Pychewicz-yes, Mr. McNulty-yes, Mr. Doherty-yes
Motion carried

Mr. Duell: I missed the last meeting, so if you could tell us where we're at and what brings us to this point today.

APPLICANT PRESENTATION/COMMISSION QUESTIONS & COMMENTS

Chris Rinehart, Rinehart Legal Services, on behalf of TH Midwest, Inc. and EG America, who is the owner of TH Midwest. The last time we brought in a modified design from a previous submission. They tried to get rid of that modern type style and come back with a more contemporary design that fit in more with the area and build in some architectural features to make the building a little more aesthetically appealing. Looking at the elevations from last time to this time, there was a concern raised about the pitched roof component that had been removed, and the request was made to see if we could incorporate that in some way. Taking a Wendy's as an example, they incorporated a pitched roof that I think the only side that it's not on is the drive-thru side, so it has 3 sides that have this pitched roof component built into it but still maintains some bump outs and carve outs to keep that architectural feature in the front so it doesn't look like one long building. There were concerns about the drive-thru itself, so they built in some curbage around that drive-thru for less interference with the traffic flow around the site. They looked at making it one-way, but for purposes of truck flow, they wanted to keep the two-way maintained to try and maintain the parking. They did move some of the parking to the back of the lot on the northern section, so there are additional spaces up there. The trash enclosure is in that area as well. We separated the drive-thru area off a little based on those concerns, and they incorporated some landscaping as well. They did not reduce the monument sign size, but did move it back to 24' from the right-of-way line to eliminate some variance requests and also because of some of the concerns about the sign. That was their compromise in trying to address that concern while at the same time they think they reached the limit on how small they can make that sign and still keep everything on it so it looks decent. They eliminated the chicken from the drive-thru overhead bar. I think that is Sign M and they picked one for the S Sign. They would like to keep that sign but they did eliminate the chicken and just have a Popeye's Enter sign. There were concerns about the proportionality. They made sure everything is on the plans as proportionate as they can make it. In terms of variances and divergences, there were some we had to have but some were

eliminated. We took the development text from the existing zoning, reproduced that into the new text and added the corresponding specifics to our new development. They're asking for divergences for the two monument signs from the LED lighting and one off the general development standards. There's a maximum square footage for monument signs at 36 square feet. The pricing sign is 49.67 square feet per side and the other is 36.67 square feet, so that one's close but not technically within limits. On the general signs themselves, we request 2 main divergences for number of colors, sizes of lettering and fonts; that goes along with our previous discussions regarding branding, and it allows 10 colors for each sign and 8 sizes of lettering, 8 types of lettering, and that's limited to just those two signs, not any others. Any others, limitations will apply. There was a divergence for the brick base for the monument signs. There was discussion as to whether it should be brick or the stone base that is more consistent with the materials on the front of the building. The consensus was stone was preferred, so we needed a divergence for that. Another divergence because the development standards table requires that base to extend underneath the green pop out element on the monument signs, I think everyone was fine with the base just being underneath the main portion of the monument signs. I could not get an exact height on all three signs prior to tonight because of a change in the sign company, it is now Federal Heath as opposed to Cummings, but there's a height limitation of 20' in the previous zoning text, and the EG Group sign is in the neighborhood of 28'9", so there's a divergence to allow wall signs up to that height to accommodate that sign. It appears the Turkey Hill and Popeye signs will be close to that 20' or just above, so that will cover those two signs as well. There were some questions about the air machine, so that's shown on the sign plan.

Mr. Doherty: I like the new sidelines on the building.

Mr. Rinehart: Aesthetically, it appeals a little more. They added that fixed component to the canopy as well.

Mr. Doherty: How does the Board feel about that arrow still through the drive-thru? They got rid of the chicken, but they still have that arrow.

Mr. Duell: I think the arrow is fine.

Ms. Trebellas: I can live with the arrow; I'm just glad the chicken's gone.

Mr. Rinehart: He's completely gone from the site except for the drive-thru.

Mr. Doherty: I appreciate how they incorporated that minimally and their logo throughout, and I like the new sidelines on the roof with the bump outs and new screening.

Mr. Rinehart: That pitch is a 12/12 pitch. They looked at trying to do a 12/6 but it was a little funky, so the 12/12 is the maximum permitted under Table 2.

Ms. Trebellas: I think it works because it follows the Code and adds a little variety. It blends the two together.

Mr. Doherty: Can you explain what is the striping on the backside of the curb on the north side of the building outside of the drive-thru? I was wondering if it was a loading zone.

Mr. Rinehart: That could be what that is because there is a 5' carve out in between the curbing and then it goes straight to the door on the back of the building.

Mr. Doherty: If you look at the truck plan, the truck plan doesn't even come close to that loading zone; it's north of there, so that's very odd to me.

Mr. Duell: There's got to be enough room for trucks to get around while trucks are in the loading zone

Mr. Rinehart: And that's not where the truck is going to be all the time.

Mr. Doherty: They sell diesel but they don't have room for a truck to get in there for diesel. The truck plan goes completely around the site, not even at the dispensaries, and the truck doesn't go into that loading zone.

Mr. Rinehart: Again, my assumption is this is the truck plan for the loading and unloading of the store itself because with the floor plan for the store, you can see where that door is that opens into the storage area of the store, into where the Cinnabon storage, cooler is, so I don't know if they did the truck plan for the fuel. That truck may end up sitting on that hatched area, so it's just showing there's enough room for a truck to go in and out of there.

Mr. McNulty: That area seems necessary because of what's forced as the in and out for this whole lot. There is no front entrance; everybody comes in and out through the back. So that little safety zone at the back door where the loading is, getting to the dumpster, the employee parking, seems to be necessary.

Mr. Doherty: If you look at the revised truck plan and the circulation through the site, the truck is on the northern portion outside of the loading zone, so how is it going to be in that loading zone?

Mr. Rinehart: It is likely that truck when it's loading and unloading will be sitting in that spot. They want to show there's going to be enough room to get trucks in and out, and it's not going to cause a problem for them to access the site and get out of it.

Mr. Beard: And that will all be figured out with the Fire Department and the County Engineer's Office when they finalize because this site plan might still change. The biggest thing we're looking at is the signage divergences they're seeking.

Mr. Doherty: And the shutters, those are to scale?

Mr. Rinehart: To the best of my knowledge.

Ms. Doherty: And they reduced the lighting as well; the lighting looks much smaller than it was before.

Mr. Rinehart: That was one thing I told them to do, take a look at the scaling, and it's not going to be 100% but it's as close as they could get it from a proportionality standpoint.

Ms. Trebellas asked to scroll through the signage.

Mr. Rinehart: The pricing sign is based on what was discussed on square footage. The total square footage of just the signage components is 49.67. The limitation for monument signs is 36 square feet pursuant to the current text, and we moved it back to 24' so it didn't create a separate variance under the Zoning Resolution so it's only one divergence rather than change that entire matrix and leave that entire document the way it is now.

Mr. Beard: Chris, if you do the calculations on the square footage, for this sign it comes to 49.727 square feet.

Mr. Rinehart: I don't know what it is based on your calculation and how you do it and how they did it.

154 Mr. Beard: There's four signs that are a little different than what you have shown, but when you add them
155 all up, you still have the same total as what you have. That's one of the stipulations that will be on the
156 recommendation.

157
158 Mr. Pychewicz: We covered the base last meeting and, Mark, we discussed the stone base which matched
159 the building material, and I think the majority of the Board was good with that and not doing a brick as
160 the Code states. And the little green part of the sign hanging over, again, the Board is all in agreement we
161 didn't need to extend the base over. That would make things look a little out of place if they did that, so
162 for this sign, we're good unless there was anything anybody else had on this one.

163
164 Mr. Rinehart: And, Jeff, just for clarification, Federal Heath had little notes in the lower right corner; the
165 boxes. I assume you don't want those on there since we would commit to this. It was one of the things
166 McCarthy raised previously.

167
168 Mr. Beard: I would take them off for the Trustees.

169
170 Mr. Pychewicz: The next sign; similar notes for this one. The base and the flange are good.

171
172 Ms. Trebellas: This one is also set back farther.

173
174 Mr. Doherty: I like the stone they're using; it matches the building.

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176 Mr. Duell: The stone is fine, the little accent piece; it's all fine.

177
178 Mr. Rinehart: This is the one on the front of the building and would be the highest one.

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180 Mr. Beard: And if you are going to approve the divergence for the 28'9", then these signs are in
181 compliance and we don't have to review these to change them as they will meet the height of the building.

182
183 Mr. Doherty: Those look fine.

184
185 Ms. Trebellas: I have no problem. I think it would look kind of weird if you lower those signs. You
186 mentioned something about how they were going to change the canopy.

187
188 Mr. Rinehart: They mentioned to me, and I can confirm this, that they were building in the pitched roof
189 with the canopy.

190
191 Ms. Trebellas: How is the signage going to work with that and the pitched roof?

192
193 Mr. Rinehart: The pitched roof is going to sit on top of it.

194
195 Ms. Trebellas: On top of the white band?

196
197 Mr. Rinehart: That is my understanding.

198
199 Ms. Trebellas: I think I would like the pitched roof to sort of blend in with the building.

200
201 Mr. Rinehart: And I think that was the reason they were doing it, to look more compatible with the two.

202
203 Ms. Trebellas: Do we need to add that since it's not in this document?

204

205 Mr. Beard: They would just have to meet the standards as in the original text.
206
207 Mr. Rinehart: I don't have a problem with committing to that as long as we can put in to clarify the
208 pitched roof to the canopy and add to if possible.
209
210 Ms. Boni: Jeff, I don't know if it talks specifically about what the canopy needs to look like so we may
211 want to add that as a stipulation.
212
213 Ms. Trebellas: I would prefer it if possible, to have the hip there.
214
215 Mr. Rinehart: I'm happy to clarify it and add if reasonably possible.
216
217 Ms. Trebellas: Are there any other thoughts on the canopy?
218
219 Mr. Pychewicz: Just add the mansard or pitched roof on top. I think just having that, everything else is
220 good.
221
222 Mr. Rinehart: The next one just shows what the fuel pumps will look like, the menu board again.
223
224 Ms. Trebellas: Did you get rid of the preview menu board?
225
226 Mr. Rinehart: Yes. The only thing on the Popeye's S sign is I've asked them to add the 3000 K lumen
227 note as well as on the previous signs. They've included a little elevation to show the profile of the sign as
228 opposed to just straight forward to give as much detail as they could regarding that particular sign. They
229 got what they could get me by today, so this elevation may change a little bit but it won't be much
230 different than what you're seeing.
231
232 Ms. Trebellas: And that sign has replaced all other saxophone playing chickens.
233
234 Mr. Rinehart: Yes, so there is no longer multiple choice; this is the choice they have selected. They chose
235 to just go with the branded name, minimize it. They did not change the grain portion of it on the
236 background; I know that was a little concern. This will be backlit, so that grain will pop out a bit. If
237 there's still that concern, I can ask them to change that to a solid color.
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239 Mr. Pychewicz: No, I think this looks fine.
240
241 Ms. Trebellas: I think we should get final dimensions for it; right now there's no dimensions whatsoever.
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243 Mr. Rinehart: The air sign? We'll get you that.
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245 Ms. Boni: Is this the only sign that doesn't have dimensions yet?
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247 Mr. Rinehart: I think so because this is a brand new sign.
248
249 Ms. Trebellas: I take it this is also not in your signage calculations?
250
251 Mr. Rinehart: No, it is not.
252
253 Ms. Trebellas: So that would all need to be finalized before it goes to the Trustees.
254

Mr. Rinehart: I think we're significantly below the maximum, so it certainly should not cause any other divergences to be required.

Mr. Beard: I have not seen any gas station that has applied for a sign for their air machine.

Ms. Boni: We never reviewed these before, but that's up to the Board to decide if it needs to be included.

Mr. Duell: I don't think it needs to be in there, especially if the Zoning staff has not been looking at air signs on other gas stations in the Township. It's going to be diminutive when compared to the signage.

Mr. Rinehart: I think the only remaining one is the Cinnabon sign which we haven't changed.

Mr. Beard: On your sign schedule, this is listed twice, just so you're aware. We did receive an email with some concerns about the Turkey Hill, but their concerns were traffic related, access in and out of it with the traffic light being there at Powell Road, and backing up and how hard it will be to get out of there, and about where the dumpsters were. We responded to her inquiries and let her know where the dumpsters could be, and that the final site plan is with the Fire Department and County Engineer's Office and the dumpsters would have the enclosures that are the same material as the building and are taller than the dumpsters so you won't see them. Then with the traffic flow, it was up to the County Engineer to decide where the access is. I just wanted you to be aware of this.

Ms. Boni: Do you want to add that stipulation on there?

Ms. Trebellas: Are we adding two stipulations?

Mr. Duell: Eliminate the air sign.

Ms. Trebellas: And the hipped roof or mansard on the canopies?

Mr. Rinehart: You just want us to get rid of it from the project completely or just from the package?

Mr. Duell: Eliminate it from the package.

Mr. Duell: Everyone okay with the stipulations?

Board and applicant are fine with the stipulations.

CONDITIONAL RECOMMENDATION OF APPROVAL OF ZONING APPLICATION #ZON-19-02 OF TH MIDWEST INC., WITH STIPULATIONS

Motion by Mr. Doherty to conditionally recommend to the Board of Township Trustees the approval of Zoning Application #ZON-19-02 of TH Midwest Inc., the applicant, requesting amendment of the signage provisions of the *Green Meadows Plaza Planned Commercial and Office District*, Application #17986, the version of the application to be approved consisting of those materials submitted by the applicant in a hard and digital copy booklet also titled *Green Meadows Plaza*, the pages of which are stamped RECEIVED with ORANGE TWP. ZONING above and June 30, 2020 superimposed over RECEIVED by Orange Township Zoning ("Development Plan"), as modified by those stipulations listed in the *Statement of Stipulations* attached hereto as *Attachment A* prior to the consideration of this application by the Board of Township Trustees and if those do not fully comply with the same, the recommendation of the Zoning Commission is denial of Zoning Application #ZON-19-02 of TH Midwest Inc.

306
307 Seconded by Mr. Pychewicz

308
309 Vote on Motion: Mr. Duell-yes, Mr. Pychewicz-yes, Ms. Trebellas-yes, Mr. McNulty-yes, Mr. Doherty-
310 yes

311
312 Motion carried

313 Attachment A
314

315 **Statement of Stipulations**

316 **Re: Zoning Application #ZON-19-02 of TH Midwest Inc., requesting amendment of the signage**
317 **provisions of the *Green Meadows Plaza*, Application #17986.**

- 318 1. Include the Development Standards Matrix Table 1 and Table 2 from Rezoning Case #17986 with
319 this development text.
320 2. Fine tune the sign square footage as staff determined slight differences in numbers of individual
321 signs. The overall square footage is the same total.
322 a. Signs A1, A2, C, P and W
323 3. Ensure canopy to have sloped or mansard roof appearance to resemble similar materials of
324 primary structure.
325 4. Removal of "Air Sign" from application

326
327
328 Meeting continued with Zoning Amendments

329
330 Minutes prepared by Cindy Davis, Zoning Secretary

331
332 On September 15, 2020, Mr. Pychewicz made a motion to approve the June 30, 2020 meeting minutes of
333 the Orange Township Zoning Commission for Rezoning Application #ZON-19-02, TH Midwest, Inc.,
334 with the following corrections:

- 335
336 • Line 113 should read: "...so I don't know if they did the truck plan..."
337

338 Seconded by Ms. Trebellas

339
340 Vote on Motion: Mr. Pychewicz-yes, Ms. Trebellas-yes, Mr. McNulty-yes, Mr. Doherty-yes

341 Motion carried
342
343
344

Zoning Commission

Amendments to Zoning Resolution

June 30, 2020

MOTION TO RETURN FROM RECESS FOR CONSIDERATION OF RESOLUTION #20-218

Mr. Pychewicz made a motion to return from recess for consideration of Resolution #20-218, Initiating Amendments to the Orange Township Zoning Resolution; seconded by Ms. Trebellas.

Vote on Motion: Mr. Duell-yes, Mr. Pychewicz-yes, Mr. Dove-yes, Ms. Trebellas-yes, Mr. McNulty-yes

Ms. Boni: Regional Planning did hear these amendments last week. I just sent this out to you today, so if you didn't have time to read it, I'll be happy to read through this.

Mr. Duell: You can just hit the high points.

Ms. Boni: This request has two big points as far as amending our Zoning Resolution. The first mentions Sections 12.06 m), 13.06 m) and 14.07 e). The text amendment would be the outside display of materials, merchandise or products for advertising, merchandising or storage purposes is prohibited except for materials, merchandise or products that are required by Federal, State or Local laws, rules or regulations. The second change is to Section 21.05 c) in regards to swimming pools. This text is proposed to state all swimming pools or the property upon which such swimming pools are located shall be walled or fenced to fully enclose the swimming pool and prevent uncontrolled access to the swimming pool. Said wall or fence shall be not less than five feet in height and may include the wall of a building or other structure, shall be of such construction as to not allow uncontrolled access under or through the wall or fence, and shall be maintained in good condition with all entry or access points having functioning locks. Swimming pools that do not meet the definition of a structure, as defined in this Resolution, are exempt from this requirement. It's that last sentence that's being changed. Regional Planning commented, and this is more specific to pools than the reference to methods of controlling access applies by individuals from the street or from adjacent properties as well as expanded language regarding the extent to which the fence can control access. Also, the proposed change includes an exemption for pools which do meet the definition as proposed to only exempting wading pools, so these are really for kiddie pools or above ground temporary pools you can easily move around. Staff is in agreement with the proposed changes but wants to make sure Orange Township is aware of some of the issues from the proposed changes. As far as the first amendment regarding outside sale of propane tanks, Regional Planning didn't have any concerns with that, but they did have concerns as far as the pool language goes. The new language surrounding which pools are exempt would not allow inflatable pools, some of which can be fairly large, without requiring fencing, as they do not have a fixed location on the ground or attached to something having a fixed location on the ground. Under the current language, these pools would require a fence. Essentially, our Code reads that any water body you have in your backyard would basically require a 5' fence. The reference to functioning locks suggest that the fence's point of access would need a lock, whether it be combination or key, as opposed to a lock in the sense of a mechanism which prevents uncontrolled access. A latch or handle would prevent unintentional entering, but would be absent a lock in the traditional sense. Staff recommends rephrasing to remove any possible ambiguity. That second bullet point is the same language we've had. We didn't look at that but that's what we could consider this evening. Staff recommended conditional approval to the amendments to the Orange Township Zoning Resolution. I drafted a recommendation for this evening and just to give some background on the pressure on this, since the Orange Township swimming pool has been closed for the season, Jeff and I have been completely inundated with calls regarding temporary swimming pools, and we just had a challenge on allowing or permitting them in this interim just because the way our Code is read, so that's why we wanted to bring this to the Zoning Commission. If you have any questions on the outdoor sale of propane tanks, Jeff is here to answer that as he was the one who kind of initiated that idea and that's mainly because propane tanks cannot be stored indoors.

Zoning Commission

Mr. Duell: I had a question about the one language on the outside display of materials, merchandise or products; is that the language that Regional Planning wrote?

Ms. Boni: No, we had the Prosecutor's Office write the language for us, and that's what they wrote.

Mr. Duell: I think the required and display part is what Regional Planning had in their document; if so, then I am confused. But if this is the language, I'm okay.

Ms. Boni: This is the language.

Mr. Dove: Is this just for propane; is that why we're doing this?

Ms. Boni: That is what sparked it.

Mr. Beard: With the Friendship Kitchen going in, people stopped and asked if they were going to sell propane, so their propane dealer contacted us. Their development text says no outside storage which is what our Code says but when we looked into it and contacted the Prosecutor's Office, he did some digging and all the gas stations, Menards, most of the locations have this language that's in our General Codes that says the materials are prohibited, so either make an exemption to allow that or you're going to open a big can of worms to try and enforce that because legally they can't be inside.

Mr. Dove: Can we limit it to propane tank sales? Aren't we opening this to anything, like mulch? Does mulch have to be displayed outside per Federal law?

Mr. Duell: I don't know what Federal law would prohibit mulch being moved inside.

Mr. Dove: Local laws, rules or regulations; we can have a regulation on a mulch bag that says it should be stored outside.

Mr. Duell: I think the idea is we can't set a rule that violates anything above us, and all of those are above us.

Mr. Beard: And according to the Fire Code, the propane has to be outside, so that was one of the contacts because they contacted the Fire Department and they told them it was okay. Then they contacted us and we put a hold on it for a little bit while we were going through this process.

Mr. Dove: I understand the propane. I just know Home Depot is going to come up with ways to store things outside. They already do it.

Mr. Beard: I believe they actually had an amendment to allow for that.

Mr. Dove: I mean mulch or flowers or tractor trailers.

Mr. Duell: Is the Speedway in Orange Township at Old State and Polaris Parkway?

Mr. Dove: No, that's in Columbus,

Mr. Duell: That's close enough and they have it outdoors. I don't think we should be putting Orange Township in a disadvantage.

Zoning Commission

Mr. Dove: I completely understand the propane tank but that does not say propane tanks; this says anything that's required can be displayed outside.

Mr. Duell: It's only stuff that's required.

Ms. Boni: Yes, so if they come back to us and say legally by Federal, State or something above us says it has to be outside, but if there is some new Federal law that says mulch has to be outside; they'll have to show that to us for us to permit it.

Mr. McNulty: I think that wording is limiting enough. I can't see how that loses really.

Ms. Trebellas: I'm okay with it; I'm just trying to think of what else could be required to be outside, but that leaves the Zoning Department to have to be aware of what new laws and requirements are regarding new items.

Mr. Duell: They can always deny it until the requestor can prove there's a law that says it has to be outside.

Mr. McNulty: Do we even have the ability to say it couldn't be done if the Federal Government says it's required to be outside?

Mr. Duell: You could tell them they can't sell it but that's putting local businesses behind the 8-ball compared to just down the street. That's why I say I'm okay with this.

Mr. McNulty: I'm okay with it as well.

Ms. Trebellas: I'm good with it.

Ms. Boni: The balloon shows the changes for each of the changes of the Zoning Resolution, so this has to be modified in three sections, but I think the swimming pool will be the biggest conversation and, Jeff, correct me if I'm wrong but the only thing that really changes is the last sentence from our current Code?

Mr. Beard: No, the fenced to fully enclose the swimming pool or walled, I spoke with the Prosecutor's Office and they had some cases where a neighbor tried to argue that there was a pool that didn't meet the Code because it had a fence around three sides and on the other side was the house. The neighbor tried to argue that the house wasn't a fence so it didn't meet the permit, so they tried to include all that with putting the wall or fence and having the locks on it.

Ms. Trebellas: Generally if you're using the house as a wall or fence, you need to have an alarm on your backdoor, so a child couldn't walk out your backdoor into the pool area if your backdoor is unlocked.

Ms. Boni: The Delaware County Building Department will have to enforce that; they have their unique Building Code. I talked to Genoa and Liberty Townships because this is coming pretty hard at us. Liberty has similar standards as what we're proposing except they would require a safety cover instead of a fence but Genoa kind of relies on the HOA's for their standards on temporary pools. But any in-ground pool with this text will still require the 5' fence. I'm pretty sure Liberty got rid of the 5' fence requirement but they have the automatic safety cover. They both follow Delaware County's but we thought we wanted to change this because even a little dog pool would technically need a fence.

Mr. Duell: Anything that was under 18" in depth was exempt.

Zoning Commission

Mr. Duell: So is there a different number? I see Regional Planning's (lost connection)

Ms. Trebellas: My concern is the line that says any pool that does not meet the definition of a structure. There are above ground pools that, my HOA doesn't allow in our neighborhood but others do, that are quite large and quite deep; they can be up to 6' deep. Right now they don't require a fence based on this resolution because they are not a structure, correct?

Ms. Boni: That's correct, but the County would require them to have an enclosure.

Ms. Trebellas: That's what I guess is confusing of what the County requires versus what we require.

Ms. Boni: The County Building Code would supersede ours. The County doesn't require a fence like we do for in-ground pools but they do require that there's an enclosure.

Ms. Trebellas: The enclosure could either be a fence or could it be a cover?

Ms. Boni: Yes.

Ms. Trebellas: My concern is I don't want someone to put up a humongous pool and not have it enclosed for safety reasons.

Ms. Boni: They would violate the County Building's requirements if that were the case.

Mr. Dove: But doesn't a 5' above ground pool act as a 5' fence? How is a kid going to climb up a pool wall? I could see putting a gate across the steps that go up to get into it.

Ms. Trebellas: Most pools that large have ladders.

Mr. Pychewicz: Michele, for clarity, the two things being added are either a fence or wall enclosure, so it's including the wall in the case where the house or the structure and then three sides of a fence is considered as part of the enclosure. And the second part is the swimming pools that don't meet the definition of a structure does not apply. Are those the two changes to the current Code?

Ms. Boni: Yes.

Mr. Pychewicz: I say certainly on that second part; swimming pools that don't meet the definition of a structure are exempt which to me makes sense adding that part. The wall or fence, I agree with that as well. It's silly to argue that if someone has a fence around their pool and they use one side of their house as not being enclosed, my interpretation is the safety is more or less from the outside people, uncontrolled access is what it says, but I see it as protection from people going through there, so I agree with using part of the house for one of the four walls or structures to block that. I'm assuming that's the intent, that we can use the structure as one of the sides.

Ms. Boni: That's correct.

Mr. Duell: I'm back. Wall or building is fine with me. All access points have to have functioning locks, is fine with me. The only question, Regional Planning pointed out that some swimming pools might not meet the definition of a structure and be quite large. You might want to be careful with just saying swimming pools.

Zoning Commission

Ms. Trebellas: I take it this is basically for in-ground pools and above ground pools do not meet the definition of a structure. We sort of talked about that when you were logged off. But above ground pools would still have to comply with Delaware County restrictions.

Ms. Boni: Yes, and the above ground pools I think we could leave out. That's a big conversation as far as safety goes but we have the County Building Department to rely on that, and that's what Genoa and Liberty does too.

Ms. Trebellas: And I have no problem with the side of the building or structure being part of the wall. It makes perfect sense that a house, garage or pool house can provide part of that enclosure.

Ms. Boni: And I think this is what Mark was bringing up earlier.

Mr. Duell: Yes.

Mr. Pychewicz: So instead of saying swimming pools that do not meet the definition, say a body of water that doesn't meet the definition of a structure or defined in the resolution are exempt from this requirement? Maybe getting rid of swimming pools and using some other verbiage there?

Mr. Duell: I think their concern was some temporary swimming pools can be quite large and this is supposed to be a safety feature. There used to be a size limit on swimming pools; now we've taken the size limit off. We're just shoe horning in the definition of a structure, and they may not be considered a structure.

Ms. Boni: And that would be the next step. If we keep the text as proposed, I would like us to revisit our definition section and maybe define that a little more.

Mr. Beard: One concern here is, is our definition section with the structure is what is a structure but it also is we don't regulate fencing so if we have something that's not considered a structure, there's nothing for us to enforce a fence because we can't require them to file a permit unless it has a pool, but if it's not considered a structure, they don't even file a pool. And then the 18", I know some of the other places are bigger. I believe the one was 24" or 36". I have a pool that I put up this summer and I'll take it down during the winter, and those are the types of pools that one of the Trustees came to us about this, wanting to allow these but HOA's have more power and can restrict those whereas the Trustees want this because we're getting a lot of calls and questions about putting up temporary pools just for the summer then taking it down for the winter. According to our current Code, my pool would require a 5' fence. It is a 10' in diameter pool that holds 24" of water in it where Codes, my Township, is if it's 24" or less, it doesn't require it, so there's no set specific size or depth of water, so this is what we went with the Prosecutor's Office.

Ms. Trebellas: So the Prosecutor's Office reviewed this?

Ms. Boni: They essentially wrote it for us.

Mr. Beard: And they gave us the concern of liability allowing these portable pools not having a fence. I received a complaint about a pool in a backyard in Farm Residential, and it's one of these types of pools. There's no fence but since it's not a structure and knowing the Trustees were pushing for this, at least for now.

Mr. Duell: The question becomes how big of a temporary swimming pool are they okay with and at what size does it become a concern because we've gone from one extreme to the other where at first we're not

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allowing any of them without a fence, now we're potentially allowing some rather large ones without a fence.

Ms. Trebellas: Mark, would you be more comfortable if you put in size limitations?

Mr. Duell: That is what I brought up but I don't know what the proper size limitation is. Current says 18" depth, Jeff was talking about 24"; I don't know what the answer is. This was the concern Regional Planning had but they didn't necessarily have the answer either.

Ms. Boni: What we could do as a stipulation to this recommendation is consider a new maximum depth for the swimming pools that would qualify to be exempt from this requirement.

Mr. Duell: Maybe it's a decision the Trustees need to make; how big are they willing to go.

Mr. Dove: I think it's how deep are they willing to go.

Mr. Duell: Yes, it's the concern Regional Planning brought up and I agree. I don't know I have the right answer, I don't know what we're getting calls on or what people are trying to get away with or not get away with, what the Fire Department would consider safe or unsafe.

Ms. Trebellas: Or requiring, if they don't have a fence, have a safety cover or something.

Mr. Dove: I would even think some way of not allowing access. If it has a ladder, get rid of your ladder.

Mr. McNulty: A lot of those big above ground pools in rural areas people build decks around them. If you did that and put locks on all the entrances, would that be sufficient or would you need to have a fence around that?

Ms. Trebellas: Or you could just put a gate on steps to the deck that could lock.

Ms. Boni: I'm wondering if maybe the maximum would be based on recommendations from Orange Township Fire Department or Delaware County Code Compliance.

Mr. Beard: Genoa said their practice for quite a while is if above ground pool height exceeds the height of the fence that's required, then they do not require a fence.

Mr. Duell: I'm looking on line and Home Depot sells an inflatable pool that has a depth of 48", so that's starting to get pretty deep if you're concerned about safety.

Mr. McNulty: If someone got in your pool that was 48" deep and they drown, is the Homeowner of the pool responsible?

Ms. Trebellas: I believe so but I also think part of that would be does the homeowner have a fence, a safety cover?

Mr. McNulty: So the fencing and cover are to protect the homeowner.

Ms. Trebellas: I believe so.

Ms. Boni: And the County will require it.

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Mr. Duell: Most HOA's would not allow a traditional above ground pool but these inflatable ones, they're not permanent structures, you take them down, so what do they want? I can see those going up as high as 48", so I'm not sure what the Trustees are looking for. Do they truly just want kiddie pools exempted or do they want these bigger inflatable pools exempted too?

Mr. Beard: From our discussion it seemed like they wanted these portable pools that you can buy at Wal-Mart and places like that that you put up during summer and take down for the winter that are not permanent to be exempted and I think some of it's based on the COVID stuff. They've gotten a lot of inquiries like we have about putting these up for the summer since our pool is closed, so I think they're trying to appease some of the residents to be able to still enjoy the summer and still have a pool.

Mr. Duell: So maybe the maximum depth is 48"; that seems to be the standard.

Mr. Beard: And I know some HOA's still won't allow these type because they're above ground.

Mr. Duell: Which is fine, but they're lower than us on the ladder, so if they want to be more restrictive, that's fine.

Mr. Beard: There were some who had their HOA contact us and ask what are policy was. We talked to them about this changing and their regulations say no for them, so they're still going to keep it that way.

Ms. Trebellas: My HOA does not allow above ground pools but they do allow kiddie pools.

Ms. Boni: Is there a maximum depth of that though?

Ms. Trebellas: I don't think there is the last I looked. I was curious because my girls have a kiddie pool.

Mr. McNulty: It sounds like the HOA's are going to take care of the problem because I tend to agree to not place undue restrictions on people if they want to have temporary pools because putting a fence around it makes it a permanent thing and a lot of people are not going to do that.

Ms. Boni: What if we just said temporary pools...

Mr. Duell: We could say temporary or we could say inflatable.

Ms. Boni: Inflatable pools that don't meet the definition of a structure are exempt from this requirement.

Mr. Dove: I'd go with inflatable.

Ms. Boni: If you want me to put in a stipulation to have the Trustees consider a maximum depth, I'm happy to do that too.

Mr. Duell: I think saying inflatable kind of puts a de facto maximum depth upon it, and that maximum appears to be around 48" as far as I can tell, so maybe that's the answer; just say inflatable pools are exempted.

Mr. Beard: My pool is not inflatable.

Ms. Boni: What if it was inflatable and/or disposable? Is that too complicated?

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355 Ms. Trebellas: Actually some of those kiddie pools are plastic liners, they're not inflatable; there's two
356 types.

357
358 Mr. McNulty: I think inflatable works for the larger pools we're talking about; we don't care about the
359 kiddie pools.

360
361 Ms. Boni: But we do in the current text.

362
363 Ms. Trebellas: Jeff, what is your pool made of?

364
365 Mr. Beard: It has a liner, it's got posts that you attach together, pretty much like PVC pipe.

366
367 Mr. Duell: Is it collapsible?

368
369 Mr. Beard: It is. I'll take it down when it gets colder.

370
371 Ms. Trebellas: Could we say inflatable and/or collapsible pools?

372
373 Mr. Beard: That's why I think they have it as a definition of a structure because a structure has to have a
374 permanent base or be affixed to a permanent structure.

375
376 Ms. Trebellas: So yours basically has a plastic frame or liner and that's how the water is contained as
377 opposed to the inflatable.

378
379 Mr. Beard: Yes, and these can get pretty big.

380
381 Mr. Dove: I'm thinking of structures like if you have a wood patio decking or stairs going up to it or
382 something like that, where you're not going to move it season to season. It's a permanent fixture.

383
384 Mr. Duell: I would think any large above ground pools are going to become structures because they're not
385 going to move.

386
387 Ms. Boni: And we have required fencing for that, especially if they're putting in a foundation or any kind
388 of concrete slab underneath it. Also, again, even if we didn't approve a fence in the past, I can't speak to
389 past practices before Jeff's and my time, the County would require that safety covering.

390
391 Ms. Trebellas: I'm at the point of almost wanting to defer to the Zoning Staff because you are more
392 familiar about what people are asking about what's out there than at least I am.

393
394 Ms. Boni: I think it's just difficult to enforce something that's not permanent as far as what we consider a
395 structure.

396
397 Mr. Dove: I'd leave it for now as inflatable and/or collapsible.

398
399 Ms. Boni: It's a tough call because the safety is obviously the biggest concern.

400
401 Mr. Beard showed an example of the type of pool he has.

402
403 Mr. Dove: How do you get in it?

404
405 Mr. Beard: I step over it; it's 30".

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Mr. Dove: But a kid couldn't.

Mr. Beard: No. I lift my kids up over it. It's 30" but holds a maximum of 24" of water. They are collapsible, so they wouldn't be considered a structure by our definition.

Mr. Dove: Hopefully the homeowner is smart enough to remove a ladder so you can't access it. Kids aren't going to climb up that.

Mr. Pychewicz: I'm good with the way I think we have it worded as collapsible...

Mr. Dove: And/or inflatable.

Ms. Boni: I really appreciate the Board even considering this this evening. It's amazing how many residents use our Township pool and that really put a hindrance on the community. Kids look forward to that every summer and they're trying to figure something out; this is one of the better options we can work with. This is what I changed; I wanted to include the stipulation because it is different from what the Trustees originally initiated.

Ms. Trebellas: So basically we removed the section asking the Trustees to limit the size? I don't have a problem with it either way. I think inflatable and collapsible is what we need.

Ms. Boni: That is correct.

MOTION OF THE ORANGE TOWNSHIP ZONING COMMISSION TO THE BOARD OF TOWNSHIP TRUSTEES REGARDING PROPOSED AMENDMENTS TO THE ORANGE TOWNSHIP ZONING RESOLUTION, AS REFLECTED IN RESOLUTION #20-218 OF THE BOARD.

Mr. Pychewicz, moved adoption of the following Motion:

WHEREAS, pursuant to R.C. Section 519.12, the Board of Township Trustees of Orange Township, Delaware County, Ohio, on May 18, 2020, adopted its Resolution #20-218 to initiate amendments to modify or supplement Section 12.06(m), Section 13.06(m), Section 14.07(p) and Section 21.05(c) of the Orange Township Zoning Resolution;

WHEREAS, the Orange Township Zoning Commission has conducted public hearings regarding the Resolution on June 2, 2020 and June 30, 2020; and

WHEREAS, the Delaware County Regional Planning Commission has presented its recommendation regarding such amendments, adopted at its meeting on June 25, 2020, which recommendation has been considered during the public hearing;

NOW THEREFORE, Mr. Pychewicz moves that the modification or supplements and the deletion stated reflected in Resolution #20-218 are recommended for approval to the Board of Township Trustees, with the following exception/s:

1. Modify Section 21.05(c) of the last sentence to state the following:

- a. Inflatable and/or collapsible pools that do not meet the definition of a structure, as defined in this Resolution, are exempt from this requirement.

Further moved that, as indicated in Attachment 1 of this Motion, the existing text of the above stated Exhibits is in black print, new text proposed in this Motion is in blue print, all other indicated changes being as reflected in Resolution #20-218.

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Further moved that a copy of this Motion, together with the recommendation of the Delaware County Regional Planning Commission, be submitted by the Planning & Zoning Director to the Board of Township Trustees as soon as possible, so that it may proceed with its action in this matter according to law.

Attachment 1

EXHIBIT 1

- a) **Freight Loading Area** - When any use within this district requires the pickup or delivery of merchandise or supplies, an adequate loading area for such activity shall be provided on the lot occupied by the use. No such loading area shall be located on any public street or alley. Such loading area, as provided shall be adequate in size to accommodate tractor-trailer (semi) units with adequate room to permit entry to such loading area without interfering with traffic on adjacent streets or highways.
- b) **Landscape Plan** - When any use abuts on U.S. Route 23 or on a Class A or Class B road as defined in Section 21.09 herein a landscape plan shall be developed which is compatible, in the discretion of the Zoning Commission, with the adjoining areas and the owner or occupant of the premises shall at all times maintain all grassed and landscaped areas.
- c) The outside display of materials, merchandise or products for advertising, merchandising or storage purposes is prohibited, **except for materials, merchandise or products that are required to be displayed outside by federal, state, or local laws, rules, or regulations.**

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Neighborhood Office District (C-1)

ver. 2020

EXHIBIT 2

- a) **Side Yards** - Except as otherwise provided in Article XXI, no building or structure shall be located closer than twenty-five (25) feet to any side lot line.
- b) **Rear Yards** - Except as otherwise provided in Article XXI, no building or structure shall be located closer than thirty (30) feet to the rear line of any lot.
- c) **Screening** - All commercial and office areas shall provide a screening of shrubbery or artificial fencing so as to hide trash collection areas and service areas from the view. All such shrubbery shall be properly trimmed and all screening shall be maintained in a neat and tidy manner.
- d) **Parking** - Off street parking shall be provided, within this district in strict compliance with the provisions of Article XXI of this Resolution.
- e) **Signs** - Signs identifying or advertising uses within this district shall be in strict

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compliance with the regulations imposed by Article XXII of this Resolution.

- f) **Freight Loading Area** - When any use within this district requires the pickup or delivery of merchandise or supplies, an adequate loading area for such activity shall be provided on the lot occupied by the use. No such loading area shall be located on any public street or alley. Such loading area, as provided shall be adequate in size to accommodate tractor-trailer (semi) units with adequate room to permit entry to such loading area without interfering with traffic on adjacent streets or highways.
- g) **Landscape Plan** - When any use abuts on U.S. Route 23 or on a Class A or Class B road as defined in Section 21.09 herein a landscape plan shall be developed which is compatible, in the discretion of the Zoning Commission, with the adjoining areas and the owner or occupant of the premises shall at all times maintain all grassed and landscaped areas.
- h) The outside display of materials, merchandise or products for advertising, merchandising or storage purposes is prohibited, **except for materials, merchandise or products that are required to be displayed outside by federal, state, or local laws, rules, or regulations.**

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Neighborhood Commercial District (C-2)
ver. 2020

EXHIBIT 3

- a) **Building Dimensions** - Buildings may contain such area of floor space as is approved in the development plan.
- b) **Landscaping** - All yards, front, side and rear, shall be landscaped and all organized open spaces or non-residential use areas shall be landscaped. Such landscape plans shall be submitted with the subdivision plat and shall be subject to approval in the same manner required of the subdivision plat. All such landscaping shall be maintained and kept in accordance with the landscape plan as submitted, and such maintenance and upkeep shall be the responsibility of the owner of such yard, space or area. All lots shall be kept seeded or maintained in such manner as to prevent erosion of the property and excess drainage onto adjoining lands.
- l) **Parking** - Off street parking shall be provided, at the time of construction of the main structure or building, with adequate provisions for ingress and egress according to the development plan. In preparing and approving the parking plan the provisions of Article XXI of this Resolution shall be incorporated.
- m) **Signs** - Signs identifying or advertising uses within a Planned Commercial and Office District shall be in strict compliance with the regulations imposed by the approved development plan and/or Article XXII of this Resolution, as applicable.

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- n) **Tract Coverage** - The ground area occupied by all the buildings and structures shall not exceed in the aggregate forty-five percent (45%) of the total area of the lot or tract. The ground area occupied by all the buildings, structures, driveways, traffic circulation areas, parking areas and sidewalks shall not exceed in the aggregate seventy-five percent (75%) of the total area of the lot or tract.
- o) The Zoning Commission and/or the Orange Township Board of Trustees may impose special additional conditions relating to the development with regard to type and extent of public improvements to be installed; landscaping, development, improvement, and maintenance of common open space; and any other pertinent development characteristics.
- p) The outside display of materials, merchandise or products for advertising, merchandising or storage purposes is prohibited, **except for materials, merchandise or products that are required to be displayed outside by federal, state, or local laws, rules, or regulations.**

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*Planned Commercial and Office District (PC)
ver. 2019*

EXHIBIT 4

SECTION 21.03 – STRUCTURE SEPARATION: No principal structure shall be located closer than twenty-five (25) feet to another principal structure unless the adjacent walls of both structures are masonry in which said principal structures shall be no closer than fifteen (15) feet. No principal structure shall be located closer than fifteen (15) feet to another principal structure unless one of said structure has, as its exterior facing wall, a fire wall, free of any opening and capable of stopping the spread of any fire.

SECTION 21.04 – SANITARY SEWER REQUIREMENTS AND POLLUTION CONTROL: All uses shall be conducted in conformance with regulations promulgated by the Environmental Protection Agency and the Delaware County Department of Health. Prior to the issuance of any zoning permit, evidence of compliance with said regulations shall be presented to the zoning inspector.

SECTION 21.05 – WATER IMPOUNDMENTS: All water impoundments such as ponds, lakes or swimming pools shall be constructed and developed in compliance with the following standards:

- a) Except adjacent to U.S. Route 23 no impoundment shall be located closer than twenty-five (25) feet to the right-of-way of any adjacent improved road. No impoundment shall be located closer than fifty (50) feet to the right-of-way of U.S. Route 23.
- b) No impoundment shall be located in the front yard except the FR-1 or A-1 district except upon issuance of a Conditional Use Permit pursuant to Article XXVIII of

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this Resolution or as approved in plans of development or approved subdivision plats.

- c) All swimming pools, or the property upon which such swimming pools are located, shall be walled or fenced to fully enclose the swimming pool and prevent uncontrolled access to the swimming pool. Said wall or fence shall be not less than five (5) feet in height and may include the wall of a building or other structure, shall be of such construction as to not allow uncontrolled access under or through the wall or fence, and shall be maintained in good condition with all entry or access points having functioning locks. Inflatable and/or collapsible pools that do not meet the definition of a structure, as defined in this Resolution, are exempt from this requirement.

SECTION 21.06 – LANDSCAPING: All uses and improvements in the township should pay close attention to maintenance of proper landscaping as soon as possible after completion of construction and of the principal structures or improvements. Maintenance of ground cover at all times is encouraged to prevent erosion. Replacement of trees, removed during land clearing, should be accomplished as soon as possible. All vacant lots/lands shall be kept seeded and maintained (mowed).

SECTION 21.07 – REPEALED.

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*General Development Standards
ver. 2019*

Seconded by Mr. Dove

Vote on Motion: Mr. Duell-yes, Mr. Pychewicz-yes, Mr. Dove-yes, Ms. Trebellas-yes, Mr. McNulty-yes, Motion carried

Meeting adjourned at 8:40 p.m.

Minutes prepared by Cindy Davis, Zoning Secretary

On September 15, 2020, Mr. Pychewicz made a motion to approve the June 30, 2020 meeting minutes of the Orange Township Zoning Commission for Zoning Resolution Amendments, with the following corrections:

- Line 99-100 should read: “....I don’t think we should be putting Orange Township in a disadvantage....”
- Line 181 should read: “....two things are either a fence or wall enclosure....”

Seconded by Ms. Trebellas

Vote on Motion: Mr. Pychewicz-yes, Ms. Trebellas-yes, Mr. McNulty-yes, Mr. Doherty-yes Motion carried