

**JAMESTOWN CHARTER TOWNSHIP**

**Zoning Board of Appeals**

Meeting Minutes

January 3, 2023 at 6:00 p.m.

**CALL TO ORDER:** Chairperson Chris VandenHeuvel called the meeting to order at 6:00 p.m.

**BOARD MEMBERS PRESENT:** Scott Brouwer, Janae Byker, Mike VanAanhold and Chris VandenHeuvel. Dean Smith, member of the Planning Commission, sat in the audience during consideration of the GDK Appeal and did not participate in the deliberation. He participated in the meeting at 7:07 p.m., after the appeal.

**ALSO PRESENT:** Township Attorney Jim Scales

**INVOCATION:** Board member VanAanhold opened with the invocation.

**APPROVAL OF AGENDA:** A motion was made by Brouwer, supported by VanAanhold, to approve the agenda. Motion carried unanimously.

**APPROVAL OF MINUTES:** A motion was made by VanAanhold, supported by Brouwer, to approve the minutes of the December 06, 2022 Zoning Board of Appeals meeting as written. Motion carried unanimously.

**PUBLIC COMMENTS FOR ITEMS NOT ON THE AGENDA:** None.

**PUBLIC HEARING:**

**Chairman VandenHeuvel** read the request from GDK Acquisitions LLC and Boverhof Builders, Inc. to appeal a decision made by the Jamestown Township Planning Commission. The decision being appealed is the denial of Special Land Use approval for a four-family dwelling proposed to be located in Township's R-2 Residential zoning district. The site is assigned permanent parcel number 70-18-03-300-042 (at one time assigned parcel number 70-18-03-300-036) and is located on the west side of 22<sup>nd</sup> Avenue approximately 200 feet north of Quincy Street.

**Township Attorney Jim Scales** gave information to the ZBA members regarding the process of deliberating an appeal of a Planning Commission decision. They are to look at the written record that was prepared and submitted to the Planning Commission, and determine whether there was competent, material and substantial evidence to support the decision that the Planning Commission made. The documents which make up the record are the application materials, minutes and the resolution that was presented to and approved by the Planning Commission. These are attached to the memorandum from the Township Attorney dated December 20, 2022. The only public comments that should be considered are those that relate to items that were presented to the Planning Commission. They should also consider the written appeal filed by the applicant's attorney dated November 17, 2022.

**A motion was made by** Byker, supported by VanAanhold to open the Public Hearing at 6:06 p.m. Motion carried unanimously.

**Attorney James Bruinsma**, from McShane & Bowie P.L.C., spoke on behalf of the applicant. He stated the reasons they are appealing the decision of the Planning Commission to deny the Special Land Use and why that decision was incorrect. They are arguing the subjective criteria upon which the decision was based and the way the decision was made. He stated that the application was submitted for the September 20, 2022 Planning Commission meeting, and at that meeting the Planning Commission said they were going to deny the application and have the Township Attorney write up a resolution which was later adopted at the October 18, 2022 Planning Commission meeting. He argued that the resolution was not the same as what was discussed at the September 20, 2022 meeting, as

it included details, such as specific measurements and facts, which were never discussed. Bruinsma stated that the applicant never saw the resolution for denial, and he said it was never disclosed prior to the October 18, 2022 meeting or discussed at that meeting. It was just voted on and the applicant was denied the opportunity to speak during Planning Commissioner discussion of the resolution at the October 18, 2022 meeting. He stated that the ZBA cannot consider the resolution drafted by the Township Attorney as it wasn't part of the discussion at the September 20, 2022 meeting, and that as the ZBA is reviewing the decision made by the Planning Commission, they can only consider the findings and discussion of the Planning Commission that occurred at the September 20, 2022 meeting, and not the facts and details of the resolution drafted later by the Township Attorney as they were not deliberations made at an open meeting. Bruinsma then read the findings of the Planning Commission as recorded in the minutes of the September 20, 2022 meeting. "There was general agreement among the Commissioners that the lot is not big enough for a fourplex and would change the character of the area, as residences in the vicinity of the fourplex are single-family." He objected to the findings that the size of the lot is too small for a fourplex and that the fourplex would not be in character with the surrounding community of single-family residences. He stated that the ordinance says the size of the lot must be a minimum of 30,000 square feet in that zoning district, and that is not open for interpretation or amendment by the Planning Commission as the lot meets this standard. Regarding the finding that the fourplex does not meet the character of the community of single-family homes, he referenced design standard 18.4(3) of the zoning ordinance which states that the special use be designed, constructed, operated and maintained in harmony with the existing or intended character of the general vicinity, and that such use will not change the essential character of the area. He said that the goals for residential uses in the community in Chapter Two of the Jamestown Township Master Plan are to provide strong neighborhoods with a range of residential styles, and the proposed residential use does not change the intended character of the area.

**Township Attorney Scales** provided information to the ZBA regarding the resolution of denial adopted by the Planning Commission at the October 18, 2022 meeting. He stated that no decision was made at the September 20, 2022 meeting. The decision to deny the Special Land Use was tabled and the Township Attorney was directed to prepare a resolution of denial, incorporating findings of fact consistent with their direction that the project did not appear to be compatible with the area. This was provided to the Planning Commissioners with their meeting packet before the next meeting. At the October 18, 2022 meeting, the Commissioners were given the opportunity to discuss or change the resolution. They considered and agreed with the findings included in the resolution. He also stated that the Commissioners have knowledge and experience of the character of the area, and they felt that too much was being squeezed onto the lot and there were no other units like this within 3500 feet, and that special uses are appropriate in some areas and not others, which is the reason for the discretionary standards within the Special Land Use section of the zoning ordinance. Regarding the resolution, Scales stated that the Commissioners also determined that the size of the building, the driveways, paved parking, and entrances were not in the character of the area. While the details may not have been provided in the minutes, the Commissioners' discussion was based on the drawings they received with the application, which are part of the record. Scales also stated that while the site meets the standards of the ordinance for minimum area, fourplexes are not considered a use by right, and that it is the burden of the applicant to show that the application meets the standards for a Special Land Use and to show how it would be compatible with the surrounding area. The property can be developed as a duplex without Special Use approval.

**Vandenheuvel** asked Attorney Scales if the Planning Commission commonly asks for more specific facts regarding an application to be provided at a later meeting. Scales replied that is something that has been done before when a decision is made with a direction to prepare a record that gives specificity to those reasons.

**VanAanhold** asked for clarification regarding when the decision to deny the Special Land Use was made, Scales replied that the Planning Commission tabled discussion at the September 20, 2022 meeting after the public hearing, and the resolution to deny was adopted at the October 18, 2022 meeting.

**Byker** asked if it was reasonable that the applicant not be allowed to speak again at the October 18, 2022 meeting. Scales replied that the Planning Commission is not required to hold another public hearing and outside of a

public hearing, public comment for items on the agenda is held toward the end of a Planning Commission meeting. VandenHeuvel stated that typically once deliberations have begun the opportunity for public comment has passed.

**Attorney Bruinsma** stated again that he did not believe proper procedures were followed and that it was not okay to have the Township Attorney deliberate on behalf of the Planning Commission, and the public never got to see it, and the applicant didn't get to know what is in it. The decision should be overturned and sent back to the Planning Commission to have it done correctly.

**Township Attorney Scales** stated that there was no deliberation between himself and the Planning Commissioners. The resolution he drafted was based on the direction of the Planning Commissioners to provide more detail for their findings considered at the September 20, 2022 meeting. The resolution was discussed and adopted at the October 18, 2022 meeting.

**VanAanhold** asked if the entire resolution was read at the October 18, 2022 meeting, and Attorney Bruinsma replied that it was not.

**VandenHeuvel** asked Attorney Bruinsma if anything in the adopted resolution was materially different from what was discussed by the Planning Commissioners. Attorney Bruinsma replied that only the size of the lot was discussed, not distances to the closest multifamily dwellings, the size of the structure, curb cuts or specifics as to the layout or access to the property.

**Dean Smith**, Chairman of the Planning Commission, stated that the Planning Commissioners are laymen, not professionals or civil engineers, and it is within their purview to request professional help from their legal counsel in drafting a legal document so that it is done properly. He also stated that the resolution was a public document included with the meeting packets and was available to the public before the October 18, 2022 meeting.

**Byker** asked if the resolution was available for anyone in the public. She was informed that it was available before the October 18, 2022 meeting.

**A motion was made** by Brouwer, supported by VanAanhold, to close the Public Hearing at 6:41 p.m. Motion carried unanimously.

**Board members** deliberated the appeal and discussed the standards for granting a Special Land Use that the Planning Commission considered.

**VandenHeuvel** reminded the ZBA members that they are not re-evaluating the decision that was made in terms of whether they would make the same decision. They are to evaluate whether the conclusions that were made and were included in the resolution are properly supported by the evidence that was part of the record. He reviewed the sections of the resolution and noted that they fall into two different categories pertaining to finding that the use would be out of the character of the surrounding area and that the structure is too large for the size of the lot.

- (a) all of the residential development occurring north of Quincy Street for a distance of approximately 3500 feet on either side of the property has been developed for single family dwellings.
- (b) The property it abuts is developed for a single family dwelling.
- (c) The nearest multifamily dwellings are located approximately 3500 feet from the proposed site and are located within multifamily complexes with common amenities and access in a planned development. Four family dwellings located on isolated residential lots are not a common characteristic of the neighborhood.

VandenHeuvel was of the opinion that in these three sections, the facts of the resolution do come out of what was deliberated at the meeting. The zoning ordinance standard is very broad, "it needs to be designed, constructed, operated and maintained in harmony with the existing", and the interpretation of that section by the Township Planner was different from that of the Planning Commission, but the details of the resolution support the Planning Commission's determination that there is no comparable development near the proposed fourplex.

**VanAanhold** noted that the Township Planner indicated in his memorandum that while the application meets the standards, he also states that the Planning Commission must determine if the proposed meets the standards. Also noted was the list of items that the Planning Commission "shall" deliberate regarding a Special Use.

**Byker** stated that she drove by the area, and noted that there are duplexes across 22<sup>nd</sup> Avenue, and asked what would be considered a “neighborhood” and whether a fourplex would be vastly different from a duplex?

**VandenHeuvel** stated that the ZBA members cannot put themselves in the shoes of the Planning Commissioners. The question isn’t whether the ZBA would make the same decision based on the evidence, but whether a reasonable person could come to that conclusion. He continued review of the sections of the resolutions. He understands the question of whether the Planning Commission should make judgments about the dimensions of a structure when the zoning ordinance already has clear guidelines for what those dimensions should be, and those appear to be black and white, not open to discretion.

- (d) The mass of the proposed 96 foot wide, two story building, with four garage doors, four individual driveways, two access points to 22nd Avenue, and additional paved parking areas is out of scale and character with the established single family residences in the area.
- (e) Although the proposed meets the minimal standards for lot area and width, the size of this lot is not proportionally greater than the existing development pattern for single family dwellings. The lot is smaller than these lots in the vicinity developed for single family residences which are located outside of developments which include planned open spaces.
- (f) The property could be developed as a duplex without special land use approval, which would permit a multifamily use of the property more in character with the surrounding area.
- (g) The Township is already providing its fair share of land for multifamily residential development to meet the needs of the township and surrounding areas.

VandenHeuvel believes (d) and (e) are the main pieces for the finding that the structure would be out of scale for the lot it is on, the question remaining if the Planning Commission can use discretion in determining whether the dimensions are out of character. He feels that these two items are weaker in the conclusion the Planning Commission was making, but he does feel differently about the first three (a), (b), and (c). He stated that if they find that some part of the decision that was made was justified based on the evidence, they would need to uphold the decision of the Planning Commission and deny the appeal.

**Byker** asked if the application could be sent back to the Planning Commission to be reviewed again, and Attorney Scales stated that a court could do that, but not the ZBA.

**Byker** noted the statement in (g) of the resolution that the Township is already providing its fair share of land for multifamily residential development, and she wondered what would be a fair share. VanAanhold thought this would be referencing the master plan.

**VandenHeuvel** asked Attorney Scales for information on precedent for use of discretion versus measurements in interpreting the zoning ordinance on the Planning Commission, and Attorney Scales explained Special Land Uses as allowed by the Zoning Enabling Act. VandenHeuvel agrees that it wouldn’t have hurt to have read the resolution aloud at the October 18, 2022 meeting and allow some public discussion before the decision was made at that meeting. And he agrees that some parts of the resolution are easier to follow than others, but at the September 20, 2022 Planning Commission meeting, “there was general agreement among the Commissioners that the lot is not big enough for a fourplex and would change the character of the area, as residences in the vicinity of the fourplex are single-family”, and the detail of 3500 feet included in the resolution still leads to a reasonable conclusion regarding the character of the area and is not materially different. His inclination is to reject the appeal with the suggestion that they not try to write out a resolution at this meeting, but have their decision include a written proposal to be approved later.

**VanAanhold** noted that multifamily duplexes would be a use by right, but fourplexes are allowed by Special Use only. He stumbles over number 3 in the resolution regarding the non-harmonious nature of an isolated fourplex in this location, as he thinks it could be a reasonable conclusion.

**A motion was made** by VandenHeuvel, supported by VanAanhold, to deny the appeal based on finding that the denial of the Planning Commission was reasonably based on items (a), (b), and (c) from the drafted resolution and that we issue a

written decision setting forth the reasons for this denial to be approved at a later meeting. Motion carried, four ayes, Smith not participating.

**NEW BUSINESS:**

**Member Smith joined the meeting at this time (7:07 p.m.)**

- **2023 Election of Officers**

**A motion was made** by Brouwer, supported by Byker, to re-elect VandenHeuvel as Chairperson and VanAanhold as Vice-Chairperson. Motion carried unanimously.

**ADJOURN:**

**A motion was made** by VandenHeuvel, supported by Smith, to adjourn the meeting at 7:10 p.m. Motion carried unanimously.

Respectfully submitted by,

Maureen Carmody, Recording Secretary  
Zoning Board of Appeals

Minutes approved on

\_\_\_\_\_ by \_\_\_\_\_ (chair)