

Bainbridge Township, Ohio
Board of Zoning Appeals
May 16, 2019

Pursuant to notice by publication and ordinary mail, the public hearing was called to order at 7:05 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Ted DeWater; Mr. Joseph Gutoskey; Mr. Todd Lewis and Mr. Mark Murphy. Ms. Karen Endres, Zoning Inspector was present.

Mr. Lamanna welcomed everyone to the regular meeting of the Bainbridge Township Board of Zoning Appeals, explained the public hearing process and swore in all those who intended to testify. He let the record reflect that everyone had been duly sworn in. He also stated that the agenda will be changed up tonight with BZA 2019-19 for 7061 Bramshill Circle being heard first.

Application 2019-19 by Eric Birnesser for property at 7061 Bramshill Circle

The applicant is requesting area variance(s) for the purpose of constructing a new single family dwelling. The property is located in a R-5A District.

Mr. Eric Birnesser, property owner and Mr. Brendon Lieske and Mr. John Dingeldein, soil and materials engineers from SME were present to represent this application.

Mr. Birnesser testified that the moment they received access to the build site which was further east originally, this is a new proposed site plan, we got SME to come out to do the soil testing to make sure we had everything lined up right and the house was going to stay where it was and not run into any issues later down the line, long story short, the results that they found basically told us if we build a house of this design where it is sitting we had a very, very high risk for high probability of fault which is obviously alarming when you are building a home that you want to raise three kids in and hand down to them when you pass. He said basically he worked with SME over the next few weeks after they found out that information to come up with a way to make the site a lower risk field or achieve a factor of safety that the engineer could be satisfied with and would feel confident that it was a secure build and a smart build and every way they look at it, no matter how we slice it, we had to move it further west so we had to move it 70' to the west and dropping the elevation in some places 20' and some places 30' to be able to reduce the weight and this was done to reduce weight and reduce the risk and increase the factor of safety for the build site. He said Mr. Brendon Lieske and Mr. John Dingeldein will present any information and facts supporting their decision.

Mr. Brendon Lieske handed out some information to the board.

Mr. Birnesser stated that they will be planting a green screen of evergreens along the west side of the property to maintain the privacy, they bought the lot and want to build in the back because they wanted privacy and didn't have any desire to move it further in one direction or the other so in order to maintain privacy which it is still roughly 300' and wooded between us and the next structure.

Mr. Brandon Lieske testified that the attachments he passed out includes a boring log of the technical boring that they drilled on the site, this is located in the northeast corner of that plateau. He said the confirm for them was the existence of this weak layer 50' deep which will be on the next page down and on the handouts it is highlighted in orange and you will see the low counts, those drop significantly once you reach this layer and they did additional laboratory testing. He said the next attachment is the direct shear test which measures the shear strength of your soil so that is the crucial fact that they consider when they are looking at slope stability analysis, the shear strength of it and this all came up very low, low enough that the original proposed location of the home, they would have a high risk if it went there so that is what got him to going down the path of looking at where he had moved the home to make it effective safety that we were comfortable with. He said to look at multiple scenarios and in the handout he included four, the first one, he wrote a number one in the corner of it, shows existing conditions and if you could reference the site plan. He said the first one is oriented in the east/west direction and shows the existing conditions and these are the results of their slopes analysis and what they were trying to go for was to get a factor safety of 1.3 or greater.

Mr. Gutoskey said he had Ms. Endres send him the original site plan. He showed it to the board. The board reviewed the original submittal.

Mr. Lieske said the original idea was the home was positioned much further east of this slope and because of the analysis they were looking at moving it away from that and also away from this slope, the southern slope because you really have three slopes and because they are filling in a ravine for this driveway it became a non-concern or less of a concern and we focused on these two so those are what the analysis and this handout package are referring to, the first one, the one in the corner was the existing condition so existing elevation and topo and it was a cut through the property in this direction (he referred to the site plan) east/west and then the second analysis is to cut through the property north/south near the southern slope here. He said the result of both of those showed us that to get to the factor of safety that we need that 1.3 or greater we have to move that home so far that it would actually be going over this building line here and actually from the east/west direction from the north/south it was actually pushing the home over the ravine which we didn't think was a viable option either. He said they looked at multiple scenarios and the one that finally clicked to work was actually cutting down the site, as you remove the soil that improves the factor safety and allowed them to shift the building closer to where they originally hoped to have it and this is the proposed location that they developed based on what they were comfortable with as the factor safety so you can see here it is 139' from the toe of the slope to get a factor of safety of 1.3 for this building right here and then 129' from the toe there to get a factor of safety of 1.3 on that line.

Mr. Gutoskey asked if basically your setbacks are measured from the toe of the slope.

Mr. Lieske replied yes.

Mr. Gutoskey said when looking at the site plan here it looks like they did it from the property line versus the toe of slope on the south side.

Mr. Lieske said that is correct, the way he drew it, that line is still the line we came of up with, the factor of safety from the toe.

Mr. Gutoskey said so you are saying that it is less, the property line is less than 129 but the 129 dimension should be from the toe of the slope on the south side. He said the only reason he is asking is that is not how it is shown on the drawing.

Mr. Lieske said sure but he believes the 129 is because the slope kind of curves, their analysis actually went over to here (he referred to the site plan) so that is where they started and they are considering that being the toe, that is really where that 129 was measured from for their analysis even though it comes out further over here, this was kind of the critical point or the closest point.

Mr. Gutoskey said what you are saying is you had to, in order to even fit the house on, that is the reason you are having to cut.

Mr. Lieske said yes.

Mr. Gutoskey said to decrease the loading on the slope.

Mr. Lieske said yes, decrease the loading and decreasing the height of the slope itself.

Mr. Gutoskey asked what is the property line, how does that affect that because that looks like it is going to have to have a 15' or 20' high retaining wall there.

Mr. Birnesser said it is on the elevation but it is a 10' drop and then a 10' retaining wall and then the house and once you get to the end of the house it is another 10' with a walk-out and retaining walls around the side of the house.

Mr. Gutoskey asked if there is any special design that has to be done on that retaining wall.

Mr. Lieske said they will definitely have to design it for that height but we think that is achievable, a 10' retaining wall and then a back slope behind it.

Mr. Lewis asked if they are scooping out that big section for stability or are you scooping it out because you are moving the house 70' and he still wants his walkout so you have got to take a big chunk away.

Mr. Lieske said it is all coming out for the stability, the weight of that soil itself is the contributing factor as to why that slope would fail.

Mr. Lewis said you mentioned there would be a possibility of a fault.

Mr. Lieske said not a fault, it is slope failure so that is what all of these analyses they were looking at what possible slope failures could occur.

Mr. Lewis asked to get through down to the stable clay are you putting pylons in or are you doing something to anchor this if the concern is it could shift, what are you doing to anchor it so it doesn't move, regardless of where you put it.

Mr. Lieske said the home with this scenario would just be traditional shallow foundations. He said because of the depth and thickness of that weak clay layer, either it is non-economical options to use in a foundation system so you would have to go so deep.

Mr. Lamanna said deep through the weak layer. He asked, on this retaining wall, is that pretty much the high point there and it then slopes back away, what is the elevation. He said it looks like it is pretty flat going away and is it also heading downhill.

Mr. Lieske said it is heading uphill in the western direction so the ground contour is 950, the top of the wall is 960 and then the slope to 970.

Mr. Lamanna said this retaining wall is not at the bottom of a hill, it is at the bottom of a flat area, sloped away.

The board reviewed the topo.

Mr. Lamanna said as you come west, there is a big difference in retaining this as opposed to retaining this (he referred to the topo). He said if you are retaining this the pressure of that slope against that retaining wall is going to be significant, if it is going to be a flat area or if it is even rolling away from you it is a lot better, you are not going to have nearly the force on that wall that you would if your slope is into the wall because if nothing else water drains. He said you are kind of up on a little ridge there.

Mr. Lieske said drainage is still going to be key.

Mr. Lamanna asked what is the area to the west, is it part of that subdivision, is it some kind of common area of the subdivision.

Mr. Murphy said that is Solon, right.

Mr. Manny Adler of 39790 Alsace Court, Solon, Ohio testified that that is part of the subdivision in Solon.

Mr. Birnesser said the house will be 20' from the property line.

The board reviewed the aerials of the subdivision in Solon.

Mr. Lamanna asked Mr. Adler if he is the closest house.

Mr. Adler said they are right behind this.

Mr. Lamanna asked him to point out his house on the map.

Mr. Adler referred to the aerial and said he is right behind the white house that has been in construction for about 12 years, we are right behind it, we are right behind Bramshill, that house that they have been building.

Mr. Birnesser said you are in direct line with the house that has been under construction for a long time.

Mr. Adler said that is correct. He asked Mr. Birnesser if he is building south because there are a lot of problems there, that is a floodplain, there is a creek that comes behind here and they have problems but not near him and that is what he was concerned about.

Mr. Lamanna said there are ravines. He said if you look at the elevations, you see this 930 there is 930 and there is 960 so that is a steep downgrade all along here, so anything flowing through is down here and in fact there is a low point here so this is a kind of flat area that is up on top.

Mr. Adler said this house they are proposing is nowhere near the one under construction.

Mr. Lamanna said no you can see it is probably 500' from that.

Mr. Adler asked about the driveway they are building.

Mr. Lamanna said they will have a driveway to this circle right here to Bramshill Circle so they will have a driveway that runs down through this flag, the pole part of the flag. He referred to the common property in Solon and said it is not near anyone's property.

Mr. Lewis asked if there is any more expert testimony for the board and if they were able to complete their presentation.

Mr. Lieske said he believes so and the main point was just that there is a deep weak layer that they discovered and because of the presence of that to have a safe enough factor safety that is where they looked into cutting.

Mr. Lamanna said from your professional opinion that is an appropriate factor of safety, 1.3.

Mr. Lieske said yes, we use it a lot.

Mr. John Dingeldein testified that they were also involved with the landslide at Hawksmoor which is the next road over, the main entry to that so we are used to this subdivision, we have very good knowledge of the area in addition to the site we are talking about.

Mr. Lewis said he has some questions on the retaining wall. He said the print says that it is designed by owner engaged civil engineer so what is that going to look like and how is that going to be held in place, you are looking for a 20' side yard variance distance as opposed to the 90' we started with, 20' is not a whole lot of room so we are talking about a retaining wall in there and he believes probably some substantial screening.

Mr. Birnesser said ultimately he has to contract with experts to design this but contracting engineers when he doesn't know that he can even do this.

Mr. Lewis said he is just trying to figure out in 20' there is a gap between the house and the retaining wall and then adding some kind of screening and screening gets pretty good in diameter.

Mr. Birnesser said the evergreens they were planning to plant are above the retaining wall. He said as the architect has it drawn they will be roughly 10' from the line and within that 10' is where they would start to put the evergreens and then it would be a retaining wall and 10' to the structure.

Mr. Murphy said what is most visible from your driveway is holding the bank back above the hill, above you.

Mr. Birnesser said correct.

Mr. Murphy said the western part, the people in Solon won't even see the retaining wall, they are going to look at the second story of your house.

Mr. Dingeldein said the house will be totally obscured from the Solon side.

Mr. Gutoskey said the question he has though, is it going to be physically possible to do, the house is 20' off.

Mr. Birnesser said 18' is what they have here.

Mr. Gutoskey said your retaining wall is 10 you still have got to lose another 10'. He said if your house is at 20' somehow you have to have a slope that is stable to the retaining wall and he doesn't know if you are going to get away with a 10' retaining wall because you are almost going to have a 1 to 1 slope to the retaining wall and then it is kind of hard to plant trees on a 1 to 1.

Mr. Lamanna said you have a 10' elevation change.

Mr. Gutoskey said basically it is a 1 to 1 slope. He said you've got slope here, it is going to slope down to the retaining wall and then it is going to drop 10' so you have at least 20'.

Mr. Lamanna said you are saying how much slope are they going to put for the retaining wall.

Mr. Gutoskey said he thinks the retaining wall is 5' higher than 10.

Mr. Birnesser said at the end of the day he is going to trust the engineers and if the engineers tell him he needs a 12' or 15' retaining wall and added that they have been working on it for close to six years.

Mr. Lamanna said again because it starts at 960 and goes to 970 in the middle.

Mr. Gutoskey said not even no because it is 970 and then it is 960 to the top of the wall and then the wall goes down to basically where the house is.

Mr. Lamanna said he guesses that he will end up with a wall that is 965 or something like that and then you are going to have a slight slope in the middle it will slightly slope into the wall.

Mr. Dingeldein said if the variance is granted then the wall would be designed professionally by engineers not by a landscape person, it is a substantial wall so the stability of the wall, you can work with steeper slopes but they present more challenges and flattening is always a good thing so all of those things will be evaluated in the actual wall design, if a variance is granted, we know what the next step is.

Mr. Lamanna said he would think you would want to minimize the amount of slope down into that wall, this is the garage side anyway and you are screening yourself from the neighbors.

Mr. Gutoskey asked how high the house is at the highest point.

Mr. Birnesser said the highest point is 35'.

Mr. Gutoskey said you lop 20 off of that you are only going to see about 15' of the top of the house, you will be seeing some roofs.

Mr. Lewis asked if we factored that gravel motor storage area into the lot coverage.

Ms. Endres replied yes.

Mr. Murphy asked besides the neighbor from Solon do we have anybody else here interested in this project.

Mr. Lamanna asked if there are any questions.

Mr. Gutoskey said if you are in Solon you probably won't see the house, you will see a little bit of roof maybe.

Mr. Murphy asked if the rest of the development, Alsace Court, is built out, is there more buildable land right next to your (Mr. Adler) lot tucked into the corner.

The board reviewed the aerial of the Solon homes and the Hawksmoor Subdivision.

Mr. Lamanna said the county line is that red line.

Mr. Murphy said if Solon does what they want and we can kind of keep an eye on Bainbridge which is what we do he was just asking if that is completely built out, if they are done over there.

Mr. Lamanna said that is a common area.

Mr. Murphy said he was wondering if they have another road right-of-way and future development.

Mr. Dingeldein said that is all greenspace and the creek runs through the wetland or floodplain.

Mr. Gutoskey said he thinks there is one lot left to build, when you come down Hawksmoor, that is the only lot left.

Mr. Murphy said we don't want your house sliding into the ravine.

Mr. Lamanna said to Ms. Endres that she has a note on here that the first 490' to 500' of the driveway is outside of the cluster boundary buffer area.

Ms. Endres said when she spoke to the applicant she understands that they tried to engineer the plan so that most of the driveway was not within the buffer yard so the whole driveway is not in the buffer yard, part of it is.

Mr. Lamanna said 10' is, so do we need a variance for that 10'.

Ms. Endres said she didn't think so because the setback for a driveway is 2' and the portion of the driveway and the parking pad and the garage are within that buffer area.

Ms. Endres continued by saying that is the variance and she thinks the calculation given to her was there is 5,664 sq. ft. of coverage and that includes the drive, parking and garage areas within the buffer area.

Since there was no further testimony, this application was concluded.

Motion BZA 2019-19 – 7061 Bramshill Circle

Mr. Lamanna moved to grant the applicant the following variance for the purpose of constructing a house as shown in his plans.

1. To have a setback on the west side from the current cluster requirement, 100' or the 90' requirement of the approval with respect to the Hawksmoor Development from BZA Case 90-19 for a variance of 70' from that and 80' from the current requirement for the purposes of constructing a house which has approximately 6,000 sq. ft. within the buffer area which will be the limit for the amount of coverage within that buffer area as part of the variance.

Based on the following findings of fact:

1. A practical difficulty exists because there is a limited building area on this lot which is a flag lot.
2. The house must be placed at the flag portion of the lot.
3. As it turns out on the one side or two sides or almost three sides there is severe sloping away from the area where the house could be built and after review by engineers they have determined that in order to have an acceptable safety factor with respect to slope erosion after conducting soil sampling of the site that the house needs to be moved to the west a distance which will make it only 20' from the side lot line and the board also notes that that 20' is the west side line.
4. The adjacent property is actually a common area for a development in Solon. It is a fairly high density development and the nearest house will actually still be slightly in excess of 300' from the corner of the house as proposed therefore it should have no adverse impact on any of the neighboring properties.
5. The board also notes that there needs to be a retaining wall along this west property and the applicant has indicated that he will be planting trees to provide a visual buffer behind that retaining wall.
6. The board also notes as part of this variance the applicant will provide a plan for this retaining wall to the zoning inspector during the course of construction that has been approved and signed and stamped by a civil engineer or an appropriate professional for the nature of the work.

Mr. Gutoskey seconded the motion.

Vote: Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye.

Application 2019-13 by Speedway, LLC for property at 7353 N. Aurora Road -
Continuance

The applicant is requesting a review and renewal of an existing conditional use permit for a gas station with a convenience store. The property is located in the MUP District.

Mr. Kevin Hoffman, District Manager for Speedway, LLC was present to represent this application.

Mr. Lewis asked Mr. Hoffman if he is the owner.

Mr. Hoffman testified that he is not, it is an LLC, he is the District Manager.

Mr. Lewis asked Ms. Endres if there are any complaints or compliance issues.

Ms. Karen Endres, Zoning Inspector testified that she thinks they addressed the complaints that they have regarding signage on the doors, there was signage on the doors blocking the view of the people, all of the signage has been removed from the doors and then relative to potholes in the parking lot, she was out there a week or two ago and her understanding is they are going to continue to work on the parking lot and asked if that is true.

Mr. Hoffman said yes.

Ms. Endres said she hasn't been out to verify the parking lot. She said she has some pictures regarding the outside storage that the board can view.

Mr. Lewis asked Mr. Hoffman if he is aware of these items.

Mr. Hoffman said he is, yes.

Mr. Lewis said he doesn't know if you, Mr. Hoffman, physically spend time there as a District Manager.

Mr. Hoffman said not much, his understanding of what has gone on he believes there was initially a complaint about that signage on the front door so Ms. Endres came out to visit and then found that there was extra signage and some merchandise that shouldn't have been there all of which he was not aware of, he has been managing the location for just about a year and a half so once they discovered that and you gave us information our legal department got with him and said what we needed to remove so we removed the front merchandise that was in front he thinks it was water, mulch and windshield washer fluid and just the window signage and that was all.

Mr. Gutoskey said he thinks there was water softener salt there too.

Mr. Hoffman said there was over on the side but it is gone.

Mr. Lewis said his question of it is is that it doesn't appear that the store manager is aware of your use conditions, a list of dos and don'ts.

Mr. Hoffman said right.

Mr. Lewis said and these things seem to happen and we are relying on a store manager for compliance so he is kind of struggling with how long until these show up again and maybe we have more issues, the store manager doesn't know and maybe personnel changes, who is going to take on the responsibility of this compliance.

Mr. Hoffman said he will be as well as that general manager. He said she was unaware as well and from his understanding they have been out of compliance for a long time and had no understanding of it so once the legal department found out we have taken care of it and it will not be an issue.

Mr. Lewis said so you are talking about the potholes and those are going to get repaired.

Mr. Hoffman said yes, we have a maintenance tech and he has been working on them, the weather has changed.

Mr. Lamanna said potholes are really a bad idea when you are running a gas station.

Mr. Gutoskey said unless you do service too.

Mr. Lamanna said if a person comes in and sees a lot of potholes they can find another gas station to go to.

Mr. Lewis said what he is trying to nail down is pursuing a finite completion date of the pothole repairs and he understands it has been particularly rainy. He asked if that is scheduled by you (Mr. Hoffman) or by your headquarters.

Mr. Hoffman said he could submit work orders for it and then follow up to make sure it is getting done but he would say a reasonable date would be end of month they would have everything taken care of.

Mr. Lewis asked if those work orders have been submitted.

Mr. Hoffman said yes.

Mr. Gutoskey asked as part of their permit, what is their allowable outside sales, what is allowable as far as propane and ice.

Ms. Endres said when she did her inspection she met with the store manager relevant to the propane and water and she thinks the board has been addressing those on a case by case basis, our zoning doesn't actually allow for outside sales and storage however there are some things like the propane tanks, you wouldn't store those inside so she expects that the board of zoning appeals would be inclined to address that.

Mr. Gutoskey said that is the same thing we did up at the Shell station.

Mr. Lamanna said we have allowed all of them to have outside storage of propane.

Mr. Gutoskey said those are typical, ice and the propane but as far as anything else, washer fluid.

Mr. Lamanna said right and asked about the air pump and is there more on the sign than "air".

Ms. Endres said she was just trying to get the ground level view features of the property, what was there. She said she didn't get into the air with Getgo or any of the others, she thinks it is a bigger "air" sign though.

Mr. Gutoskey said that is so people won't think it is a gas pump.

Ms. Endres said she is not opposed to it but the sign itself is probably bigger than at any other gas station but she didn't take that picture because it was a bigger sign.

Mr. Lamanna said it is a generic "air" sign and whenever you have to look for air it is always hard to find so in some ways it is not a bad idea because sometimes it is very hard to determine if a place actually has air.

Mr. Gutoskey said it is out of the way of the pumps.

Mr. Lewis asked about the big red sign, the banner in the front yard.

Mr. Hoffman said it was a now hiring sign but it has been taken down.

Mr. Lewis asked who put that up.

Mr. Hoffman said their recruiter.

Mr. Lewis asked if they schedule that through headquarters or your store managers.

Mr. Hoffman said no often times the recruiter will just take it upon themselves in a low application area to post signage or temporary signs and then we end up pulling it down but it is just a drive for applications.

Mr. Lamanna asked what we have been doing with the pump signs.

Mr. Hoffman asked if he means over the top of the pump.

Mr. Lamanna said yes.

Ms. Endres said typically other gas stations seem to have their station logo there rather than advertising products. She said it got her attention this time just because she does recall seeing the signage at other gas stations.

Mr. Lamanna said he knows there is stuff around there but he was trying to remember what.

Ms. Endres said Getgo, Shell or BP had their emblems.

Mr. Lamanna said it seems to him that the trend is going towards advertising and with the screens.

Mr. Lewis asked if all of these window signs are down, not just the stuff on the doors but the 2 for 1 on the sodas and the pizza slices.

Mr. Hoffman said yes, all signage is down.

Mr. Murphy said there is an aerial shot in our package that shows a whole bunch of pallets and asked if they have been removed.

Ms. Endres said that is correct, some of it has been moved to behind the dumpster so she has a question about what is going to happen long term, is that going to be removed from the property.

Mr. Hoffman said yes since we won't be able to sell it there we will have it transported to another Speedway location but in order to get it out from the storefront he wanted to make sure it was out of the way.

Mr. Lewis said temporary storage and what is your timeline to have that stuff leave your site.

Mr. Hoffman said in a month because it has to go through maintenance with a vehicle. He said it is back behind the dumpster area behind the building.

Ms. Endres said it is not visible.

Mr. Lamanna said it is not visible and it is not an active sales site.

Ms. Endres said it is temporary storage is what she can consider as long as there is an understanding that it would be removed. She said that would be true about the pallets, the pallets were leaning up against the dumpster the day she was there and a typical issue she has with gas stations is that the propane tanks are not always put in the cages so we ask the store manager to take care of that so propane tanks aren't laying around.

Mr. Lamanna said there are two reasons and one, since a lot of these things are outside because they should be outside we want to make sure that it doesn't look bad and then secondly loose propane tanks, if somebody runs into one and knocks the top off of a propane tank even though it is empty most of the time empty tanks have a pound or two of propane in them and that could easily create a hazard. He said if the board will allow the propane tanks outside as part of that we would expect you to police them, people should not just drop off a propane tank and leave it.

Mr. Hoffman said that is where those would come from so we have to call in an order for them to be picked up.

Mr. Lamanna asked if people just leave them and not exchange it.

Mr. Hoffman said they do and they wouldn't fit in there, otherwise they would lock them up, that is what is happening but as a training issue they will take care of it.

Mr. Lamanna said let's make sure we get all of those things put away.

Mr. DeWater said we have limited the propane cages to one advertisement sign on the cage except for the safety signs.

Ms. Endres said that is correct, typically with the other gas stations, we don't count the safety warnings as signage against their allowance but one Blue Rhino sign is allowed.

Mr. Lamanna said right, we don't need four signs.

Mr. Gutoskey said they probably have six signs there.

Mr. Lamanna said there may be a problem with the coffee signs.

Ms. Endres said she did not add them up and didn't know if the board would consider them as signage, they are probably smaller than 3 sq. ft., typically she leaves signage smaller than 3 sq. ft. alone, but this is a little different, these aren't directional signs, this is advertising so she thought she would leave it up to the board to decide what you wanted to do.

Mr. Gutoskey said if they put an arrow on it, it would be a directional sign.

Mr. Lewis said because it is not your company name and it is a specific product advertising.

Mr. Lamanna said it is not on the side.

Ms. Endres said it is not on all four sides, it is on the side where people would be standing to pump their gas.

Mr. Lamanna said his inclination is if we stick to what we see there, the two sides that size, it is okay, you can't really see it from the street, but this is not a license to make it bigger and bigger.

Mr. Hoffman said he would imagine that those have been there for ten years.

Mr. Lamanna said if they stay that size we will allow you to keep them that size and we won't count them like that, one per pump base. He said he knows some places are going with little TV screens etc. but we would not allow that just so we understand that.

Mr. Hoffman asked him what he means by TV screens. He said those have been there and those screens indicate what to put in, your zip code.

Mr. Lamanna said he is talking about, some locations have TVs that may have advertisements running with sound.

Mr. Hoffman said all Speedways have them.

Mr. Lamanna asked if this Speedway has them too.

Mr. Hoffman replied yes.

Mr. Lewis said if you are getting the fresh coffee and the pizza slices and the two hotdogs all for \$2.99 on the screen, do you really need the sign on the pump too when the customer is getting blasted with the messaging right at the pump level already.

Mr. Hoffman asked if the board is saying "Always Fresh Coffee" on the hood, on the top.

Mr. Lewis said he is just thinking out loud. He said getting back to the propane tanks he thinks we need to have some very specific direction on that, are they all getting peeled off with one remaining with the exception of "hazard".

Mr. Gutoskey said he would say yes, that is what we did with Shell.

Mr. Lewis asked if they are from a contractor or third party that brings those in.

Mr. Hoffman said Blue Rhino, yes.

Mr. Lewis said he gets that so it is probably not Speedway that is dressing up the cages, it is their vendor.

Mr. Hoffman said they could make the request to have it removed.

Mr. Lewis said that is consistent with what we have done with others in your business that one sign is adequate, they know there is propane there, they will get there.

Mr. Lamanna said you just have to tell them that you have a limited amount of signage that we are allowed to have here, we can't use up half of it on a repetitive Blue Rhino sign.

Mr. DeWater said even on the ice machines there is usually only one sign.

Mr. Hoffman said he thinks there is just a price on the ice machine.

Mr. DeWater said he thinks both of them say Home City.

Mr. Hoffman asked to be specific, the sign above it and below is excessive.

Mr. Gutoskey said it does have signs on the sides too.

Mr. Hoffman said it says ice.

Mr. Gutoskey said it just says "ice" which is fine.

Mr. Lewis said it might be painted on or are they vinyl applied signs.

Mr. Hoffman said they are probably adhesive yes, they are both lower decals on Home City Ice.

Mr. Lewis asked what the thing is on the top of that with the red crescent.

Mr. Hoffman said it says "Home City Ice Big Bags".

Mr. Lewis asked if it is cardboard kind of propped.

Mr. Hoffman said he thinks so, yes.

Mr. Lewis asked if it is indoors or outdoors.

Mr. Hoffman said outdoors, it is plastic.

Mr. Lewis said he thinks today's customers are pretty well educated, they recognize the ice machines and they recognize the propane tanks, you have a lot of repeat business and folks find their way initially and they know their way back.

Mr. Lamanna said somebody can look at it and see right away that you've got ice, that is all they really need to know. He said basically what we are trying to do is we are just trying to say you have so much signage allowance and you are running way over it so we are just figuring out ways to get it down and again we are also allowing an outdoor storage of merchandise here so we don't want that to become a bootstrap for a whole bunch of additional signage because there is outside storage and a point of fact if he drives up and looks and he sees a whole bunch of cages he pretty much knows you are selling propane and if he sees something that looks like this he has got a pretty good idea you are selling ice too, he doesn't need a whole lot of additional information about it. He said if he is interested in that he is going to go inside and say that he needs some propane so part of it is just we don't want a clutter of tons and tons of advertising all over the place and you are already pushing way past your permitted amount anyway so part of this is looking to get the total amount down and part of it is if we are going to allow outside storage, we don't want that to become an excuse that a whole bunch of identical pieces of identifying advertising on each individual cage, having it on one of them conveys the message and reduces the clutter. He said that is part of the purpose of the regulations is to limit the clutter.

Mr. DeWater said he believes he would want his signage usage going to the Speedway products anyway, not his vendors.

Mr. Lamanna said certainly for ice, but on the propane exchange if you've got Blue Rhino tanks you are going to want to take it to a Blue Rhino place as opposed to a competing exchange.

Mr. Murphy asked if there is anyone else here interested in this application.

Mr. Gutoskey said in looking through these old minutes there is really nothing in here about the outside storage like we did at Shell when we cleaned that up as far as what was permitted for the amount of cages etc.

Mr. Lamanna said in this case, where they are now, they are kind of back and out of the way.

Mr. Gutoskey said the difference between this and Shell, this sits back away from the road and it is a bigger lot. He asked about the renewal time because they haven't been here in a long time and that could be why some of this stuff happened.

Mr. Lewis said he agrees on that, what we are talking about is the renewal term on the conditional use permit because we do realize that the nature of the business may have store manager rotations and somebody like you (Mr. Hoffman) comes in and you have to do the housekeeping job so we are looking to assist your business but also kind of keep an eye on things and if we notice something our zoning department will be getting ahold of either you or the store manager and saying you are outside of your boundaries but it is probably your responsibility to educate your store managers.

Mr. Murphy said he doesn't think it would be any different than five years, they have been there for a long time.

Ms. Endres said for whatever its worth the manager was cooperative in correcting the situation.

Mr. Lamanna said it looks like they have already been cooperative so you just need to follow up that we get all of the items we are talking about.

Ms. Endres said she wasn't sure what you would say about the ice machines and propane tanks so she just left that for the meeting tonight for a discussion and she had every reason to believe that Speedway will cooperate with whatever decision the board comes up with relevant to ice machines and propane tanks.

Since there was no further testimony, this application was concluded.

Motion BZA 2019-13 – 7353 N. Aurora Road (Speedway)

Mr. Lamanna moved to renew the conditional use permit for this applicant for the operation of a gas station with a convenient store.

1. This renewal will be for a period of five (5) years from the date the board's decision on this renewal becomes final.
2. The applicant has two ice machines and four propane cages which the applicant will be able to continue to have as outside storage and sales of material.

With the following conditions:

1. The applicant will reduce the signage to one sign for the ice and one sign for the propane. That signage will however still be within the overall limit of the signage permitted.
2. With respect to the signs such as coffee that exists on the tops of the pumps, the board will continue to allow signage where it currently exists on the top of the pumps in that size, not any increase and with the proviso that it remains a generic type of description and is not going to a specific brand name unless they just return to a simple Speedway use on that.

Motion BZA 2019-13 – 7353 N. Aurora Road (Speedway)

3. The applicant is also going to finish cleaning up the existing outside storage and remove some things that are stored behind the dumpster area within 60 days.
4. The applicant has indicated they will continue to work on repairs to the parking lot so that they can take care of existing pothole problems within a reasonable period of time.
5. All of the previous existing conditions will continue in effect.

Mr. Gutoskey seconded the motion.

Vote: Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye.

Application 2019-15 by New Creation Builders for Anthony Marra for property at 18770 Elmwood Drive - Continuance

The applicant is requesting area variance(s) for the purpose of constructing an accessory building. The property is located in a R-3A District.

Mr. Lamanna noted that there was a previous hearing on this application and it was continued.

Mr. Anthony Marra, property owner, was present to represent this application.

Mr. Marra testified that basically he has a house with no garage and he wants to build a garage and his initial design was to have a bonus room above the garage and attach it to the house but he just doesn't have the funds this year to attach it, it was an extra \$10,000 so he was hoping to put that off to a later date but there are some dimensions for variances here. He said he was not at the last meeting, he was out of town. He said his understanding was the minimum front yard distance was discussed and it wasn't a big issue but the main thing is the height, he is just trying to get up to speed.

Mr. Gutoskey said the height of the garage.

Mr. Marra referred to the aerial photo and said his property is in the lower left here, across the street there is and he doesn't know the height, he didn't measure it, but it is a two-story detached garage. He said he talked to the owner about this other garage lengthwise, his is actually 22', this is wrong what it says here, 24'. He said he was proposing 24' just because of the design but there is some flexibility and if it seems excessive he understands that but he would at least like to be able to do a 22' high like his neighbors, they all have two-story high garages, and that is what he is hoping to do and eventually it will be attached but he can't afford that this year.

Mr. Lewis asked how high the house is.

Mr. Marra said 11'.

Mr. Lewis said so going back to that, did you happen to observe that all of the other accessory structures were behind the house, not beside it so there would be less impact and they are kind of blocked a little bit by the main house structure. He said the two examples you gave us were both in their backyards.

Mr. Marra said that is true.

Mr. Gutoskey said there is another one or two lots to the south.

Mr. Marra said that is a large garage too, he had forgotten about that.

The board discussed the aerial view of the houses and garages in the area.

Mr. Marra said he talked to his neighbors and they didn't have an issue with it but they couldn't make it here today so that is not really official unless they can come and testify.

Mr. Gutoskey said your lot is pretty wooded in the back.

Mr. Marra said yes, he is the one with trees in the backyard so he does have some limitations, he couldn't put it where Dan Conroy has his garage, it is so far back, he would have to clear out all of those trees.

Mr. Gutoskey asked if it could be off-set a little bit behind the house.

Mr. Lewis said he was okay if it was just in line with the house and no closer to the street and asked is it going to be a side entry or a front entry because if he is talking about eventually putting in a breezeway.

Mr. Marra said the garage would be front entry and one of the reasons he would like it to be in line with the house is to save some costs on the driveway, if he puts it here, he could saw-cut the driveway and he won't have any additional paving, he is trying to work it into the budget, to go back it just adds more to his budget and he would have to build a road back to it.

Mr. Lewis asked how far the house is off the street.

Mr. Marra said it is closer than 86' but he doesn't know the exact dimension.

Mr. Lewis said if it is no closer than the house and he doesn't need any side yard variances, it is only height.

Mr. Gutoskey said all of those houses are the same, one-story on a slab with real flat pitched roofs.

Mr. Lamanna said the adjacent house looks like it has two stories.

Mr. Gutoskey said he thinks that is a newer house.

Mr. Marra said they modified a few things on that house but within the immediate vicinity there are probably three attached garages and 22' is not excessive compared to the other structures. He said it is a pretty relaxed neighborhood.

Mr. Lamanna asked what the original setback was in here, was there a different setback.

Ms. Endres said the original setback said it would have been 20' from the side line.

Mr. Lamanna said no, from the front.

Ms. Endres said she thinks it was 75'.

Mr. Lamanna said certainly at 86' given his own house is already there and he will still be 51' off the side line. He asked how much space does that leave in-between the two structures when you are done.

Mr. Marra said not much, only 6' and he didn't realize that little connection would be so much money, there is a lot of engineering that goes into tying in the two structures.

Mr. Lamanna asked if there are any neighbors here interested in this.

There were no neighbors present.

Mr. Lamanna asked if there will be a driveway on the side of the house.

Mr. Marra said there is yes, there will be a parking space on the side of the garage and added that it is actually a smaller garage than some of the other structures footprint wise.

Mr. Lamanna asked if it would be a problem to plant a few trees along there.

Mr. Marra said if it helps but most things he plants dies, but he will try.

Mr. Lamanna said just plant maybe three Pine trees in there, five or six feet.

Mr. Marra said on their property line there is already a row of shrubs and trees. He showed the board on the aerial photo.

Mr. Lamanna said if somebody looks down instead of just seeing a big side of the garage that is going to be taller than everything else, it just breaks it up a little bit.

Mr. Marra asked if he is to plant them along the property line.

Mr. Lamanna said he thought maybe along the edge of the driveway, maybe three or four, but if you are planting a Pine tree you might want to put it 6' or 8' away from the driveway so there is room for it to grow but just something in there to break it up so no one will be looking across a plain yard looking at the side of the garage so that will help add some screening. He asked if there are any windows on that side.

Mr. Gutoskey said he doesn't see any.

Mr. Marra said that is not accurate, it should show a window on the side elevation and one on the back.

Mr. Gutoskey said in the front we have a garage door and in the back we have nothing and the left side has a garage door.

Mr. Marra said there should be a window on the front too.

Mr. Gutoskey said the drawing is proportional but it is not quite to scale.

Mr. Lamanna asked if the back side of this is going to line up with the back side of your house.

Mr. Marra said he thinks there is going to be a little stagger because of how we want to use the driveway and go right into it so it is setback a little further than the house, it is not closer, it is further.

Mr. Lamanna said so the 86' works where you want it.

Mr. Marra said that would be perfect.

Mr. Lamanna said he doesn't want you (Mr. Marra) to find out it needs to be at 85', are you confident in the 86'.

Mr. Marra said they measured twice.

Mr. Lamanna said if you are happy with the dimension, fine but we don't want you to have to come back.

Since there was no further testimony, this application was concluded.

Motion BZA 2019-15 – 18770 Elmwood Drive

Mr. Lamanna moved to grant the applicant a variance for the purpose of constructing an accessory structure, a detached garage, in conformance with the plans submitted by the applicant.

1. A variance to the front yard setback requirement of 100' to 86' for a variance of 14'.
2. A variance to the maximum accessory building height for non-conforming lots from 15' to 24' for a variance of 9'.
3. A variance from the maximum size for a non-conforming lot of 300 sq. ft. to 576 sq. ft. for a variance of 276 sq. ft.

Based on the following findings of fact:

1. A practical difficulty exists with respect to the front yard setback. The common front yard setback in this area appears to be more in the nature of 75'. The existing house itself is less than 86' and most of the adjacent houses are as close or closer than this accessory structure will be so it will not adversely change the character of the neighborhood.
2. There is also 51' from the side yard which is a larger side yard than most of the other properties have so it will have a less impact on the neighboring property.
3. With respect to the height, this is a 1-1/2 acre lot so it can accommodate a larger building.
4. With respect to the size, the additional square footage is not significant and still leaves the maximum lot coverage at well below the 10% permitted.
5. With respect to the 24' height, there are other accessory structures of similar heights and after considering the elevations on the plans it does not appear that this should adversely affect the character of the neighborhood.
6. The applicant, however, has agreed to plant some Pine trees along the other side of the existing driveway extension that will be to the north side, three or four Pine trees in order to provide some screening and buffering on that side of the garage which will minimize the impact on the neighbor and on the character of the neighborhood.

Mr. Lewis seconded the motion.

Vote: Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye.

Application 2019-16 by Lee Ann Jones for property at 8381 E. Washington Street

The applicant is requesting a review, renewal and expansion of an existing conditional use permit to continue operation of a service station/Lube Station and to permit the addition of a 500 gallon propane refill station. The property is located in a CB District.

Ms. Lee Ann Jones and Mr. Kerry Jones were present to represent this application.

Ms. Jones testified that they are here for two reasons, to renew their conditional use permit for their commercial garage and they also want to add a 500 gallon refill station but they need a variance for that, the zoning requires 100' on the side and they would need a 38' variance on the east and west side lot in order to install the tank. She asked the board if they have a copy of the site plan.

Mr. Lamanna asked Ms. Endres if in a CB district are you saying that there is nothing that talks about selling propane.

Ms. Karen Endres, Zoning Inspector testified by saying not really, no other than fuel stations but this is different, gas stations sell gas, diesel fuel, propane tanks like we just saw with Speedway.

Mr. Lamanna said the question is in theory one could have a gas station selling compressed natural gas.

Ms. Jones said they found that in other areas, they called around and they found the same thing that they didn't have anything on the record for setbacks for propane.

Mr. Gutoskey said he doesn't think there is anything in the zoning that says you can have it.

Mr. Lamanna said Ullman on East Washington has propane tanks.

Mr. Gutoskey said this goes back to the discussion we had on Saturday about uses in different districts.

Mr. Kerry Jones testified that Kredo Hardware used to sell it years ago, across the street, a refilling station.

Mr. Gutoskey said that is true.

Ms. Jones said you get more for you money, more propane.

Mr. Murphy said Blue Rhino is only 15 to 18 pounds instead of 20 pounds, they don't fill them all the way up. He asked if this is something that has to be manned, people come in with their tank and you walk out and fill the tank.

Mr. Jones said it wouldn't be self-serve, it is a 500 gallon tank, it is not a huge tank.

Mr. Lamanna said this is a retail sale of a product, right.

Ms. Endres said she is not opposed to it.

Mr. Lamanna said we allow retail sales of fuel, this is technically fuel.

Ms. Endres said it is an above ground propane tank. She said it seems like that Chapter 161.11 kicks in but she doesn't love the way it is written.

Mr. Lamanna said that is in respect to permitted yard obstructions.

Ms. Endres said that is the only place she can find above ground tanks regulated, the only zoning reference she could find regarding above ground tanks.

Mr. Lewis asked how the tank is refilled.

Mr. Jones said it is a tanker truck that comes in and refills that tank.

Mr. Lewis asked if they will be able to follow your turn.

Mr. Jones said actually the refilling trucks aren't that big, they are not even as big as a standard 4' x 20' box truck.

Mr. Lewis said he wasn't sure how the delivery for refills was done.

Mr. Jones said it is a big propane tank basically on the truck.

Mr. Lewis asked if it is filled to the whole 500 gallons.

Mr. Jones said that he doesn't know.

Mr. Lewis asked if it is Blue Rhino.

Mr. Jones said it is a different company, Ferrellgas but there are other ones out there, they contacted Ferrellgas. He said the trucks aren't that big.

Mr. Murphy asked how big the tank will be.

Mr. Jones said 500 gallons and it is probably about 12' long because they need room for the cabinet in front.

Mr. Lewis asked the service cabinet.

Mr. Jones said correct, the tank is approximately 3' wide by 12' long.

Ms. Endres said for purposes of the setback on that with the bollards she wasn't sure what the 25.1 measured to and when she scaled it she came up with 21' so she put in the 21' just to make sure we are covered.

Mr. Lamanna asked what is on the other side.

Mr. Jones said PNC bank.

Mr. Lamanna asked how far away it is from that sideline.

Mr. Jones said it is about 60' he thinks.

Ms. Endres said she thinks the CUP 100' is relevant to buildings rather than structures, the 100' she is referring to here comes from Chapter 161 rather than from the conditional use provisions.

Mr. Lamanna said he thinks this is in the permitted yard obstructions.

Ms. Endres said right.

Ms. Jones asked if that is designed for residential or does it pertain to commercial property.

Mr. Lamanna said he thinks it applies to everybody. He said it is the whole thing with accessory structures.

Ms. Endres said most of the time people put their propane tanks, if they have propane heat, by their house, they are not 100' away and most of the time the houses are not set back 100' from the side lot lines so she doesn't know where this came from but it is the only thing that references above-ground storage tanks so that is all she had to hang her hat on to figure this out.

Mr. Lamanna said the interesting thing is when you move into a commercial district you don't have the restrictions of accessory structures regarding the number of structures as long as the lot coverage is not exceeded so in essence a permitted yard obstruction is not really a concept that means anything for a commercial district because you don't have to worry about permitted yard obstructions you can have as many structures as you want but if you have residential property you are allowed one accessory structure.

Ms. Endres said she doesn't think it has anything to do with accessory buildings.

Mr. Lamanna said there are two things, it gets you outside of the multiple accessory buildings, a permitted yard obstruction is a structure. He said if a permitted yard obstruction is not a structure such as a mailbox or maybe a generator or something, then the issue is you have got something that is in the required setbacks. He said when they say permitted yard obstructions, that is what they are talking about, that you can have these things notwithstanding what the setback is, they can be there and the setback requirements don't apply.

Ms. Endres said right.

Mr. Lamanna said if he has a mailbox it is neither a structure which goes against the one accessory building nor is it limited by its placement in terms of front or side or rear yards so he thinks that is what that section does.

Ms. Endres said she doesn't like the way it is written.

Mr. Lamanna said he thinks it should be a little bit more explanatory on what it is trying to do and he thinks that is what it is trying to do.

Ms. Endres said that is general provisions so she thinks it applies to commercial, residential, industrial.

Mr. Lamanna said it is a general provision except that it doesn't mean anything because they don't have to avail themselves of that provision, since they can have ten structures on their property adding an additional structure only says this structure meets the setback requirements for a commercial CB district.

Ms. Endres said it appears to her they have a setback requirement in the wrong section of the zoning resolution so to establish a setback requirement of 100' for an above-ground storage tank but it is confusing because it is in the required yard.

Mr. Lamanna said it says if he had a five acre lot and he decided to have a 500 gallon tank put in his backyard and buy 500 gallons at a time at the cheapest time of the year since the price changes by season and fill up from there. He said if somebody had a home occupation and for whatever reason if they meet this requirement they could have that tank and it wouldn't count but he thinks for a commercial application the only question is if the sale of propane is permitted and he thinks it would be.

Ms. Endres said she thinks it would be but this is also an expansion of a conditional use, this is just like any other conditional use.

Mr. Lamanna said he thinks in this case the 100' doesn't apply because they are not attempting to avail themselves of a permitted yard obstruction, they are saying they want this as part of a permitted use in a CB albeit conditional and the question is, does it meet the setback requirements in the CB district, it still doesn't meet the requirements.

Ms. Endres said when she looked at the conditional use, there is that 100' setback but they talked about buildings.

Mr. Gutoskey said it is not on a foundation, it is almost like a shed.

Ms. Endres said it would be an accessory structure.

Mr. Gutoskey said it would be a tank sitting on a skid.

Mr. Jones said pretty much, it gets bolted down but they can be just sitting there as well.

Mr. Gutoskey said and surrounded by the bollards and if you look at it it is 500 gallons, it is a 3' diameter, 9-1/2' long, it is not that big.

Ms. Endres said we had that discussion about the bollards.

Ms. Jones said right and they have a lot of area back there that is being underutilized and it would be a good add-on.

Mr. Gutoskey said and realistically look at the size of the tank.

Mr. Lamanna said because of the nature of this property he is not even worried about it.

Mr. Gutoskey asked if it should be moved more to the west.

Mr. Lamanna said he would almost rather have it more to the west and get it away from the bank building.

Ms. Jones said that would not be an issue, she is part owner of the storage facility.

Mr. Lamanna said that is a road access strip, there are no buildings or anything else there.

Mr. Lewis said if you slide it further to the west we are still a long way away from the Mexican restaurant.

Mr. Lamanna asked if it is 100' for a building in the CB District.

Ms. Endres said no, that is for the conditional use, buildings under conditional uses are 100'.

Mr. Lamanna said this is a conditional use because it is a service station. He said we have 20' for a side yard.

Ms. Endres said right it is a 20' sideline setback in commercial for buildings and structures in a commercial business.

Ms. Endres said it is 21' from the one side.

Mr. Lewis said 21' on the west side.

Mr. Gutoskey said it is almost centered.

Ms. Jones said that was the idea to center it.

Mr. Lewis said other than that cut that goes in with the driveway going to the back you are almost really even with that to the north of it, you are sitting smack dab in the middle of it.

Mr. Gutoskey said what he was getting at, the area is 6' x 15' but the tank isn't that big, if you push the tank forward you are really off of that far west line.

The board discussed the location of the proposed tank.

Mr. Lewis said if you are looking for traffic on the paved surface and they don't want to push it closer to the buildings and you got a nice turning arc back there, you've got to get the surface truck in to refill.

Mr. Jones asked if they are talking about pushing it forward towards the lube station more.

Mr. Gutoskey said no because your space is 6 x 15 and the tank is only 10' long and the setback is to the tank and not really the bollards.

Mr. Murphy asked what if you rotated it.

Mr. Jones said it would be easier for people to pull in especially if it was an RV possibly getting a refill, it would just make it easier he thinks.

The board discussed outside sales of merchandise.

Mr. Lamanna said every gas station is technically doing this and this is no different than the exchange tanks outside the building.

Ms. Endres said the big difference with this is this is an above ground storage tank.

Mr. Gutoskey said if you go in the conditional uses here it tells you where you can place a pump island which is to be located no closer than 30' of a right-of-way line of a dedicated street.

Mr. Lamanna said that makes sense.

Mr. Lewis said because it is fuel does it have to be 3,000' from the next fuel station.

Mr. Lamanna said they are already a conditional use.

Mr. Gutoskey said it is under the service station garage and repair garages, it would fall in with what he is doing.

Mr. Lamanna said nobody is worrying about the fact that there are all of these other flammable liquids

Mr. Jones said he thinks it is state regulations that you only have to be 20' from any buildings.

Ms. Jones said 10'.

Mr. Lamanna said yes but if you get a propane leak and it gets sucked into the building by some fan.

Mr. Jones said the Assistant Fire Chief was in checking fire extinguishers and he asked him about it and he said whatever zoning is, he would have no problems with.

Mr. Lamanna said he thinks it is far enough away from the other property line especially this size tank, if it was a 10,000 gallon propane tank you may have some concerns about where it is located but 500 gallons is not a problem. He asked if there is a sign issue with this.

Ms. Endres said no.

Mr. Lamanna said the board doesn't worry about safety signs.

Mr. Jones said they won't have any signage on it, they have room on their sign out front.

Mr. Lamanna said if you have the space already. He said right where it is it is not within 20' of any sideline.

Mr. Lewis said the building itself is almost a buffer between it and the street.

Mr. Lamanna said it has adequate bollards to protect it from anybody running into it, it is not exactly that big of a tank.

Mr. Jones said no one is going to be going too fast back there.

Mr. Lamanna said it is not that big of a tank.

Ms. Endres said the buildings are also included in your packets and the building was given a variance from 15' back in 2003.

Mr. Gutoskey asked didn't we address a lot of these too when we split all of the property around.

Mr. Lamanna said yes.

Mr. Gutoskey asked if they still had the carwash going on.

Mr. Jones said no, the carwash is done.

Mr. Gutoskey said he asked because it was part of it at one time.

Mr. Lamanna said so the carwash is not going to be part of this.

Ms. Jones said no.

Mr. Lamanna said this is for a service station and a bulk propane station.

Mr. Lewis said they have so many safety requirements they have to satisfy.

Mr. Lamanna said that will be the one condition that you are satisfying all fire and safety rules that are applicable to this.

Since there was no further testimony, this application was concluded.

Motion BZA 2019-16 – 8381 E. Washington Street

Mr. Lamanna moved to grant a renewal and a modification of a conditional use permit for this property to continue the operation of a service station “lube station” and the addition of a 500 gallon propane refill station with the notation that this no longer includes the carwash that was previously operated at this location.

1. The period of this new CUP will be for five (5) years from the date that this decision on this case becomes final.
2. With respect to the expansion to include the propane, the board finds that the location meets the 20’ side yard setback requirements and rear yard and the front yard setback requirements.
3. The board finds that Chapter 161.11 (9) with respect to permitted yard obstructions does not really apply because this is a commercial business district and this is an additional commercial structure that is otherwise for purposes permitted within the CB District.
4. The board finds that propane refill is permitted as part of a service station application but the board notes for the record that this is technically an outside sale of a product that is no different than the outside sale of gasoline or diesel and as the board has noted with many other applications it would be unsafe to have propane sold from inside of a building.

With the following condition:

1. The applicant will construct this tank to meet all applicable safety and fire requirements and will operate it in accordance with such requirements and will have the safety bollards that are shown on the applicant’s application with respect to the construction of this addition.

Mr. Gutoskey seconded the motion.

Vote: Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye.

Application 2019-17 by Northeastern Inc. for Lisa Meyer for property at 17122 Sunset Drive

The applicant is requesting area variance(s) for the purpose of constructing a new single family dwelling. The property is located in a R-3A District.

Mr. Mike Davet was present to represent this application.

Mr. Murphy said we don’t have any neighbors here today.

Mr. Davet testified that they do have Lake Lucerne approval today. He said for all intents and purposes it is the same house with a three-car garage. He said he thinks the only setback that changed was the rear yard. He said they checked with the ARB on the garage and they said they allow three-car garages. He said they are trying to get a single family dwelling built in Lake Lucerne, it is over a lot line so there are two lots that the customer has purchased and we are going to put the house in the middle of two lots. He said they had previously submitted basically the same house footprint with a two-car garage and then they were hoping for a detached accessory building but in Lake Lucerne that is a no-no but they allow three-car garages so we changed from a two-car garage to a three-car garage which altered the rear yard setback so for all intents and purposes all of the setbacks were the same except for the rear yard and that reflects here and then and it is a three-car garage versus a two-car garage.

Mr. Lamanna said so one time there was a vacant lot with a house on one of the lots.

Mr. Davet said that is correct.

Mr. Lamanna said there are two lots now and asked if this particular plan has been approved by the ARB.

Mr. Davet said yes and as he understands the board has the approval from them, it was sent to you or emailed to you.

Ms. Karen Endres, Zoning Inspector testified that they told her it was tentative approval, we are still going around and around about that but they have seen the plans but she doesn't have a letterhead letter from them yet.

Mr. Davet said their tentative approval thing and he is going to get in the middle of this quagmire again because they want your approval prior to their board approval and it says it in their paperwork.

Mr. Lewis said it is the chicken and the egg.

Mr. Davet said yes and they don't want to get off of it so it is what it is.

Mr. Lamanna said they have the luxury of doing that, we are a public body so we have to act on the things that are within the public body, we ask that as we say our approval it means nothing with respect to the requirements of any deed restriction or homeowner's association you are fully obligated to obtain whatever consent approval is required by those documents and you can't fall back on anything that we do to imply that any such requirement has been satisfied. He said we give people that spiel so they understand that they have got to meet both of the requirements. He asked if we talked about what we are doing with respect to the fact we have two lots here.

Mr. Davet said yes we did actually. He said previously and you probably want it restated today that Mr. Lewis had stated that we have to do a re-plat of the two lots, we are in are final markup with that with Ms. Endres and Mr. Dietrich so we have that going and that re-plat needs to be completed prior to the certificate of occupancy basically is what the board said last time, subject to change. He said Mr. Dietrich has been extremely helpful with that whole process.

Mr. Gutoskey said now you have to go to the Planning Commission to get it approved.

Mr. Davet said there is a bunch of signatures that have to go on this.

Mr. Gutoskey said you can't just vacate the lots anymore.

Mr. Lamanna said that is good but why don't they create some kind of streamline procedure.

Mr. Gutoskey said in Cuyahoga County you combine the lots, it gets signed off and you record it, it gets approved at the local level.

Mr. Lamanna said and it just gets notated somewhere.

Mr. Gutoskey said then it gets drawn on the tax maps.

Mr. Davet said the Planning Department was unable to even offer any guidance on how to get it completed, it was Mr. Dietrich and Ms. Endres and the surveyor and him.

Mr. Lamanna asked if the local Planning Commission can adopt their own procedure to do that.

Mr. Gutoskey said even if you consolidate a lot that is not in a subdivision, it still has to get reviewed by the county surveyor and it has to go to the Planning Commission for approval but it is administrative, it is not going to the commission.

Mr. Lamanna asked if the Planning Commission can create an administrative procedure.

Mr. Gutoskey said that is what they are going to have to do because typically what is going to happen is you are consolidating lots together because otherwise you would do a lot split so if you are consolidating lots in a pre-platted subdivision they need to create a streamlined procedure so the Planning Director can sign off so you don't have to get on the meeting agenda and wait 20 days and then go to the commissioners.

Mr. Lewis said so you are hoping to break ground in October.

The board discussed the lot consolidation procedures.

Mr. Murphy said it is not over the Lake Lucerne requirements.

Mr. Gutoskey said they got rid of the shed, it is really not much different than what we saw the last time.

Mr. Lewis said he has what was approved last time and the current one.

Mr. Gutoskey said the board modified its approval (rescinded the motion) at the last meeting.

Mr. Lewis said the board didn't address the shed because it was the accessory building, we gave these variances on the original house that was presented to us with the condition that they had to satisfy joining the lots and getting all of that done and the house was approved and the condition was also attached to that that we need the formal ARB approval document for our files.

Mr. Lamanna said at this point in time the only thing we are doing is we have to deal with the lot joining issue and the ARB for the file.

Mr. Lewis said we are on the current version and Mr. Murphy is right, they satisfy all or meet all of the setback requirements for the Lake Lucerne ARB.

Mr. Murphy asked Ms. Endres if the variances were calculated on the combined lots.

Ms. Endres said yes she calculated lot coverage as if they were combined.

Mr. Lamanna said this has a three-car garage but the other one had a two-car garage.

Mr. Davet said correct.

Mr. Gutoskey said and an outbuilding.

Ms. Endres said the staff letter dated May 7, 2019 is relevant to the most current application.

Since there was no further testimony, this application was concluded.

Motion BZA 2019-17 – 17122 Sunset Drive (House)

Mr. Lamanna moved to grant the applicant the following variances for the purpose of constructing a new single family house in accordance with the plans that have been submitted by the applicant.

1. A variance from the maximum lot coverage of 10% to 21.6% for a variance of 11.6%.
2. A variance from the required minimum front yard setback of 100' to 60' for a variance of 40'.
3. A variance from the required minimum side yard setback (north) of 50' to 45' for a variance of 5'.
4. A variance from the required minimum side yard setback (south) of 50' to 33.06' for a variance of 16.94'.
5. A variance from the required minimum rear yard setback of 90' to 66.40' for a variance of 23.6'.

Based on the following findings of fact:

1. A practical difficulty exists. This property is located in Lake Lucerne and it is actually going to be on two existing lots that will be combined.
2. All of these setbacks meet the former Lake Lucerne requirements and in fact in many cases substantially exceed them and they will be very consistent with the character of the neighborhood.
3. The setbacks will not adversely affect the neighboring properties nor will they impose a burden upon the township with respect to the provision of services to the property.
4. Two additional obligations are included with respect to this approval. In order to have it satisfy the requirements and findings necessary to grant the variances the applicant will complete a joinder of the two lots prior to the certificate of occupancy being issued and the applicant will provide, when obtained, the consent from the Lake Lucerne ARB for the zoning file.

Mr. Lewis seconded the motion.

Vote: Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye.

Application 2019-18 by Chad D. Kane for property at 8410 E. Washington Street

The applicant is requesting a new conditional use permit for the purposes of a change of ownership for auto repair (Highway Garage). The property is located in a CB District.

Mr. Chad Kane was present to represent this application.

Mr. Kane testified he is keeping business as usual, the building has been there for 21 years and Mr. Lanza has been in business for 45 years, his plan is to be in business for the next 30 -35 years and carry on his legacy. He said he is from northeast Ohio, a former Marine, he has been in corporate America for over 22 years before he took over the garage six months ago. He said he got sick of corporate America, he was the CFO of a large home building company and he was lucky enough to have a little bit of capital so he looked into different businesses and this one was a really good marriage and the fact that Mr. Lanza has the same values that he believes in so it is easier to replicate so it is really business as usual.

Mr. Lamanna asked Ms. Endres if there are any specific conditions on this that she is aware of.

Ms. Karen Endres, Zoning Inspector testified that she was actually on the site today and it is nice and clean, a couple of changes, there was a non-profit group there at one point and there is part of the building that is for lease right now and we talked about that a little bit, one of the trustees was asking me about that, why is there still a sign out there when the property sold so she got that clarified. She said there was another question regarding the car rental business that is operating out of a trailer in the front of the building and we need to get that business into an actual building rather than an RV or a trailer.

Mr. Gutoskey said remember when Colonial came in and had to have that because of the sales regulations on used cars, you have to have them in a separate building.

Mr. Lewis said that is Enterprise right?

Mr. Kane said it is Fidelity and Enterprise is still there in the building. He said they took the wheels off of the trailer and they are trying to use it for a building.

Mr. Lamanna said people try to play the game the other way and say this isn't a building so they won't have to pay property tax on it.

Ms. Endres said she thinks we are going to be getting that worked out and she would be disinclined to send it back.

Mr. Lamanna said if we are not changing anything significant it is just relocating to a different spot on the property unless it is creating a different set of circumstances than we thought. He asked if there was anything in any of the prior approvals or any special conditions ever associated with this because he didn't see anything in the previous minutes.

Ms. Endres said generally they are supposed to be maintaining their conditions, trash containers etc. and referred to 79-35C was the original one, that is where most of the conditions are.

Mr. Lamanna asked if there is anything there that is not covered by the CUP.

Mr. Gutoskey said when he built the new building it was in 1997 and our decision looks like it was in 1997.

Ms. Endres said she went back through the minutes and nothing jumped out at her.

Mr. Lewis said he was looking to see if they had any unusual thing. He said the business was so well defined and it worked within that scope.

Mr. Gutoskey said there were two side yard variances.

Mr. Lamanna said a couple of things just because they come up and something to be aware of is there is a section in Chapter 117.13, General Standards and Specific Criteria for conditional uses. He said Ms. Endres can give you (Mr. Kane) a copy of that and you should be aware of that because it applies to every conditional use, it is a whole list of things you have to satisfy, some are functional and operational, some are structural building type things that probably don't matter because there have been some variances granted with respect to the building in the past but please look at them because there is a whole bunch of them that have to do with operational things so we don't sit here and recite these in every case, you have to look at them and comply with them and if for some reason you think you can't comply with them then you've got to come back and we will consider whether or not it is appropriate to grant some kind of variance to it but please be aware of those and also be aware of the signage requirements, there are very strict signage requirements and the other thing, you were hearing all of the discussion with the Speedway people about the outside sales of merchandise, that is a no-no. He said the thing we run into the problem with is people putting up signs, especially temporary signs and banners and flags etc. that is potentially an issue so if you are going to put up some kind of a sign, talk to the zoning inspector and find out whether it is permitted or not and secondly if you are thinking about anything that looks or smells like outside storage, talk to the zoning inspector and find out about it first so you are not back here getting all of the questions that Speedway was getting.

Mr. Kane asked if there are restrictions on digital signs, what you can put on it etc.

Mr. Lamanna said yes there are some restrictions on that.

Ms. Endres said the most common violation with digital signs is they scroll through too fast, you can't have flashing, you can't have scrolling, the message is supposed to change every 30 seconds, not every 5 seconds or 1 second.

Mr. Lamanna said originally we were dealing with these things on a one by one basis but then we have the ordinance now that covers those specifically and tells you what the specific requirements are. He said they are designed so they don't become a distraction, we don't want people focused in on reading the latest news while they are driving down E. Washington Street so that is part of the signage and there are some very specific requirements.

Ms. Endres said the other thing relevant to digital signs is it really should be advertising things that are on your property.

Mr. Lamanna said that is another issue of off-premises advertising.

Mr. Murphy asked if there is any reason not to grant it for five years.

Mr. Lewis said no, this is a fine business, you are a continuation of it and welcome to the community and much success.

Since there was no further testimony, this application was concluded.

Motion BZA 2019-18 – 8410 E. Washington Street

Mr. Lamanna moved to approve the transfer of the conditional use zoning certificate to the applicant from the current holder and that the new conditional use zoning permit will be valid for a period of five (5) years from the date that the board's decision on this application becomes final.

1. The board notes that as with all conditional uses they are subject to the provisions in Chapter 117.13 of the zoning resolution and all of those will continue to apply to this.
2. At the current time there does not appear to be any specific requirements on this conditional use certificate.

Mr. Lewis seconded the motion.

Vote: Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye.

Since there was no further testimony, the public hearing was closed at 9:45 P.M.

Respectfully submitted,

Ted DeWater
Joseph Gutoskey
Michael Lamanna, Chairman
Todd Lewis, Vice Chairman
Mark Murphy

Attested to by: Linda L. Zimmerman, Secretary
Board of Zoning Appeals

Date: June 20, 2019

AUDIO RECORDING ON FILE

Bainbridge Township, Ohio
Board of Zoning Appeals
May 16, 2019

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 9:45 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Ted DeWater; Mr. Joseph Gutoskey; Mr. Todd Lewis and Mr. Mark Murphy. Ms. Karen Endres, Zoning Inspector was present.

MINUTES

Mr. Lamanna moved to adopt the minutes of the April 18, 2019 meeting as written.

Mr. Gutoskey seconded the motion.

Vote: Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye.

Mr. Gutoskey moved to adopt the minutes of the special May 11, 2019 meeting as written.

Mr. DeWater seconded the motion.

Vote: Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye.

APPLICATIONS FOR NEXT MONTH

Application 2019-20 by Pastor Doug Frano/New Life Fellowship for property at 18000 Chillicothe Road

The applicant is requesting area variance(s) for the purpose of constructing a detached garage. The property is located in a R-3A District.

Application 2019-21 by Jonathan Price for property at 7271 Chagrin Road

The applicant is requesting area variance(s) for the purpose of constructing an attached garage. The property is located in a R-3A District.

The Bainbridge Township Board of Zoning Appeals set a public hearing on the above applications for June 20, 2019 at 7:00 P.M. at the Bainbridge Township Community Hall, 17826 Chillicothe Road, Bainbridge Township, Ohio and unanimously resolved to request the Bainbridge Township Board of Trustees to issue a purchase order for legal advertising.

Since there was no further business, the meeting was adjourned at 10:35 P.M.

Respectfully submitted,

Ted DeWater
Joseph Gutoskey
Michael Lamanna, Chairman
Todd Lewis, Vice Chairman
Mark Murphy

Attested to by: Linda L. Zimmerman, Secretary
Board of Zoning Appeals

Date: June 20, 2019