

Bainbridge Township, Ohio
Board of Zoning Appeals
January 16, 2020

Pursuant to notice by publication and ordinary mail, the public hearing was called to order at 7:10 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Brent Barr, Alternate; Mr. Ted DeWater; Mr. Joseph Gutoskey and Mr. Todd Lewis. Mr. Michael Corcoran was absent. Ms. Karen Endres, Zoning Inspector was present.

Mr. Lamanna welcomed everyone to the regular meeting of the Bainbridge Township Board of Zoning Appeals and explained the public hearing process. He let the record reflect that everyone will be sworn in individually.

Application 2020-1 by Christian Hunter for property at 17157 Sunset Drive

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

Mr. Christian Hunter was present to represent this application.

Mr. Lamanna swore in Mr. Christian Hunter and noted that Mr. Hunter was duly sworn.

Mr. Hunter testified that his name is Christian Hunter and he resides at 17157 Sunset Drive. He stated that he is looking to install an 8' x 10' garden shed on his property for housing yard equipment and he understands that zoning has a 90' requirement and he is proposing 15' from the rear property line and because he doesn't have a big property so that is about it.

Mr. Gutoskey said it is 39' on the side, right.

Mr. Hunter said 39' from one side of the property.

Mr. Gutoskey said that puts it behind the house about 20'.

Mr. Hunter said yes.

Mr. Lewis asked Mr. Hunter if he has been before the Lake Lucerne Architectural Review Board.

Mr. Hunter said yes he has, they have already approved it and he has a copy of their signed, sealed application right here.

Mr. Lewis asked if a copy can be made for the record.

Mr. Hunter said yes.

Mr. Lewis said thank you and asked if they accepted his side and rear setback as depicted on his site plan.

Mr. Hunter said they have, he originally had it as 10' but he moved it to 15' for the rear setback just to make it a little bit easier.

Mr. Gutoskey asked Ms. Endres about her lot coverage calculations.

Mr. Lamanna swore in Ms. Karen Endres and noted that Ms. Endres was duly sworn.

Mr. Gutoskey asked if the lot coverage calculations are just for the one lot.

Ms. Karen Endres, Zoning Inspector testified that she calculated it based on both lots.

Mr. Lewis said Lake Lucerne is 10' on the side yards and 30' on the rear, so the ARB granted you (Mr. Hunter) 15'.

Mr. Hunter said yes.

Mr. Lamanna swore in Mr. Torrey McNeal and noted that Mr. McNeal was duly sworn.

Mr. McNeal testified that he lives at 8340 Lucerne Drive and he is on the Lake Lucerne ARB and he got a phone call last night from Vice President Jill Savin and we did approve what he is telling you.

Mr. Lewis said good and thank you.

Mr. Gutoskey said that is kind of low lot coverage for Lake Lucerne on one small lot.

Mr. Lamanna said we have a two lot situation.

Mr. Gutoskey asked if there are any neighbors here to speak on this.

There was no response.

Mr. Lamanna said you have two lots here right and they are separate parcels.

Mr. Hunter said they are separate parcels yes.

Mr. Lamanna said we are looking at this as a single lot and what we require people to do generally with a single lot, rather than requiring them to actually do a lot merge which is a pretty daunting task in a subdivision so we have asked them to file an Affidavit of Fact that these two lots are being treated as one and that the zoning has been based upon being treated as a single lot and the zoning inspector has some forms that she can provide you for doing that so since we are looking at this lot coverage on a combined basis and you also have what otherwise would have some potential issues with interior lot lines technically because of the distance from the interior lot lines we are trying to get these multiple lot situations cleared up because we have had situations where people come back and try to sell off the other parcel after zoning gave a variance based on the whole lot so we want to make sure that that sort of thing doesn't happen.

Mr. Hunter said he was told that they are not allowed to do that in Lake Lucerne but he could be wrong.

Mr. Lamanna said he doesn't think they can stop somebody from doing that because it has happened in the past on one or two occasions because they are technically separately platted sublots.

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

Motion BZA 2020-1 – 17157 Sunset Drive

Mr. Lamanna moved to grant the applicant the following variances for the purpose of constructing an 8' x 10' accessory building as shown in the application.

1. A variance from the maximum lot coverage of 10% to 14.34% for a variance of 4.34%.
2. A variance from the minimum required rear yard setback of 90' to 15' for a variance of 75'.
3. The board also notes that the applicant will also be placing this shed 39' from the sideline so no variance will be necessary with respect to the sideline.
4. This parcel is actually comprised of two lots and with respect to those two lots the board hereby grants a variance with respect to the interior lot lines with respect to any setbacks from those lot lines.

Based on the following findings of fact:

1. The applicant has obtained approval for the location 15' from the rear line and 39' from the sideline from the Lake Lucerne ARB.
2. The existing structure is as-built and the use of the adjacent lot, Sublot 31, for an asphalt driveway serving Sublot 30 as well.
3. The applicant has agreed as a condition to the granting of these variances he will file an Affidavit of Fact with the Geauga County Recorder's Office in a form satisfactory to the zoning inspector to indicate that these two parcels will be treated as a single parcel for zoning purposes and they will not be separated in the future because of the variances granted based upon the combined lots.

Mr. Lewis seconded the motion

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

Application 2020-2 by Steven and Clare Bozarth for property at 17188 Sunset Drive

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

Mr. Lamanna stated that the applicant is requesting a 14' x 14' accessory building on a non-conforming lot.

Mr. Steven Bozarth was present to represent this application.

Mr. Lamanna swore in Mr. Steven Bozarth and noted that Mr. Bozarth was duly sworn.

Mr. Bozarth testified that he resides at 17188 Sunset Drive and he is seeking approval for a 14' x 14' shed, the variances would be to the rear setback line about 9'8" versus 9' and for a lot coverage variance of 15.2% versus 10%. He said he is in a unique position because it wasn't until our ARB reached out to him after he already constructed the shed that he realized that and became aware that we had ARB requirements and then he also talked to Ms. Endres here in the township office and also became aware of the requirements for approval so he does not currently have approval from the ARB, he had multiple conversations with them and he thinks he is in a unique position because he exceeded some of the side requirements and height requirements and setback requirements for the shed.

Mr. Lewis asked Mr. Bozarth if he submitted an application to the Lake Lucerne ARB on their form.

Mr. Bozarth said he has yes.

Mr. Lewis asked when that was.

Mr. Bozarth said he doesn't have the specific date but thinks it was back in October.

Mr. Torrey McNeal testified that it was actually the first week in November.

Mr. Lewis said so the ARB stopped by and said that your structure was non-compliant.

Mr. Bozarth said yes.

Mr. Lewis said and up to that point you had not filed an application with the ARB.

Mr. Bozarth said correct.

Mr. Lewis said and to date, ARB has not approved your structure.

Mr. Bozarth said that is correct.

Mr. Lewis said in looking at Lake Lucerne's Architectural Review Board Standards and the application and it clearly states on there, Bainbridge Township requires that it be pre-approved by ARB.

Mr. Bozarth said correct.

Mr. Lewis said which means before you are here you are there.

Mr. Bozarth said correct.

Mr. Lewis said and you do not have ARB approval at this particular juncture.

Mr. Bozarth said correct.

Mr. Lewis said so ARB meets the last Monday of every month.

Mr. Bozarth said yes.

Mr. Lewis said and right now from ARB, do you have a denied application.

Mr. Bozarth said he believes he does, but actually he doesn't know if he does.

Mr. Lewis said he doesn't have a copy of that.

Mr. Torrey McNeal stated that he just wants to clarify something earlier that you had stated. He said it is not a huge deal but we didn't seek out Mr. Bozarth's project, it was brought to their attention in September and in September at our meeting I brought it up, nobody had really known about this project and at that point he reached out to Mr. Bozarth and said he is inquiring about his project, he didn't drive by and had no idea by looking at it so he submitted to him at that time what his project was, actually not right in September, they had touched base a couple of weeks later and he had told him (Mr. Bozarth) that he needed their approval and yours and he said he was unaware of those things and so once he got the specs of his project he called him back because on the application there really wasn't anything we could do with it because it had already been built and it was nothing that we could approve according to our guidelines so we kind of took the stance that if we retroactively approve this we are opening a pretty big door because honestly the project wasn't really even close to what our standards are so he told Mr. Bozarth that at that time we are not passing down any fines because that is in our by-laws that we can fine if you don't follow the rules and regulations, you need to be on board with the township at that point because there is not really anything we can do so we were not going to retroactively approve it, the Lake Lucerne board also is not approving the project, he is here for Anne Randall, the board president and we don't want to set a trend where the residents can build something and then after the fact come back when it is clearly not within the specs and our worry is that going forward what does the next project turn into. He said that is kind of where they are at.

Mr. Lewis asked if the applicant has made any efforts to revise the structure to meet ARB's standards.

Mr. McNeal said they had a conversation in October but when we were speaking he came to the conclusion that we were at a bit of an impasse because the conversation was we have given you room to build a box and you are outside of that box how do you get in that box and he said well, he is not 100% sure how close can he get and I said well I am not sure we want to go down that road, I think that if you can get it within the box we provide then you are good and that was kind of where our conversation ended because he wasn't going to force him and say we are going to show up at your house and we are taking that shed down, it wasn't our direction but I also knew that he wasn't really going to easily modify it from where he was because it was 80% to 90% built at that time so he didn't know exactly where he was going to go from there, my recommendation to him was that he needed to get the township involved because he didn't know where it was going to go and how big the scope of the project would actually be so here we are.

Mr. Lewis said so the township is being asked to consider zoning variances that contradict and exceed Lake Lucerne's ARB standards to which there are no approvals.

Mr. McNeal said when you asked if we had flat out denied it, the reason that there is not a denial on the application, I basically told him there was nothing we could really do with it, I kind of felt that if he wanted to modify it when we were having discussions, if it was modified to the degree at which it would have been approved he would have given him an approved application, he very well could have written denied on it.

Mr. Lewis said we will go in another direction, the applicant does not have an approved application from Lake Lucerne ARB.

Mr. McNeal said that is correct.

Mr. Gutoskey said it looks about 60% larger than what you permit.

Mr. McNeal said honestly he doesn't want to get into a lot, in Auburn on a different property he should think whoever designed this project did a great job, he thinks it is a very nice looking project, it is just an after the fact issue that if this one is 60% larger and the next one is 80% and the one after that is 120% he doesn't know if that is going to be what happens but we just didn't feel that we can go the pathway of approving it.

Mr. Gutoskey said it doesn't meet your requirements.

Mr. Lewis asked does that put the township in a position of being a party to a non-approved application in Lake Lucerne.

Mr. McNeal said he guesses we will find out, they were unsure.

Mr. Lamanna said let's bring some clarity to this. He said there are two separate independent requirements here although they do interact in some way. Number one, you have to meet both the township zoning requirements and you also have to meet the requirements which are subject by reason of deed restrictions affecting your property. He said we don't enforce those deed restrictions, it is not our job, their deed restrictions are enforced by either the ARB or probably by any property owner within Lake Lucerne if they so choose to do that via civil action.

Mr. Lamanna continued by saying the one place where they do overlap is one of the primary considerations that we use in making a determination on structures like this is character of the neighborhood and in this case there are very well defined restrictions on size and location of accessory structures so if you are outside of those almost by definition you are no longer proposing something that is consistent with the character of the neighborhood and also likely would be because of that as well adverse to the adjacent property owners. He said again, a 9'8" setback starts to look very much like that and we haven't even gotten into the question of whether other locations where this might have been placed which would have necessitated less of a variance with respect to the setback requirements as well, one could move it closer to the house or move it down into this corner of the property, he doesn't know what the property looks like and you say you can't put it over here because there is a giant ravine over here and the property runs down to a ravine so there is a lot of examinations that we would have to go through before we could satisfy ourselves that there is in fact that you would meet the standards in which we would grant a variance and at the moment you are really outside of one of the principal ones and that is the character of the neighborhood without really getting to the question of whether there are other locations on the property where you could place an accessory structure that would require a much less of a variance and this is a problem when people go ahead and build things and then come in and ask for our approval and then we say we are sorry, we just wouldn't approve just this particular structure in this particular location and that is kind of where we are so it is pretty unlikely that we are going to approve this thing if we don't really have a basis for granting a variance, it meets the applicable standards for the granting of a variance. He said there are various possibilities, one you could withdraw your application, the other one is that we are going to deny the application and then you are going to have a decision on the record of a denial which could possibly affect future appeals of a similar nature. He said the other thing we could do is we could table this for a month or two and you could try to come up with a different proposal that might address these concerns.

Mr. Gutoskey asked if there are any neighbors here on this application.

There was no response.

Mr. Lewis asked if this is built on a poured concrete pad.

Mr. Bozarth said no it is not, it is built on piers.

Mr. Lewis said so it is like a sled base.

Mr. Bozarth said it is not a sled base.

Mr. Lamanna said it has got a foundation.

Mr. Bozarth said it has a foundation yes.

Mr. Lamanna said at this point he would toss the ball to you (Mr. Bozarth) and say how you would like us to proceed.

Mr. Bozarth said that is a good question, so in terms of the criteria of in the character of the property of the neighborhood just because it is not meeting Lake Lucerne's ARB standards.

Mr. Lamanna said right because that is pretty much set what the character of the neighborhood is because it has been long established standards and lots of accessory buildings built in accordance with those standards so that has been pretty well established and probably more so than anywhere else in terms of a fairly rigorously applied standard.

Mr. Bozarth said okay and he thinks he would request that he has a couple of months to discuss with the builder what kind of options they have.

Mr. Lamanna said he thinks that is the wise choice so the board will postpone this for two months and that will give you plenty of time to try to figure this out.

Mr. Bozarth said thank you.

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

Motion BZA 2020-2 – 17188 Sunset Drive

Mr. Lamanna moved to continue this application until the March meeting to be held March 19, 2020.

Mr. Gutoskey seconded the motion.

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

Application 2020-3 by Industrial Commercial Properties, LLC for property at parcels with frontage along Aurora Road, Depot Road and Brewster Road

The applicant is requesting use variances to allow heavy retail and multi-family dwelling apartments with first floor residential use, and area variances to allow larger lot area than 50,000 sq. ft. and to allow residential within 500' of the lake. The property is located in the MUP District.

Mr. Dale Markowitz and Ms. Bridey Matheney of Thrasher, Dinsmore and Dolan, Attorneys for the applicant and Mr. Chris Semarjian and Mr. Bill Kern, representatives of Industrial Commercial Properties were present to represent this application.

Mr. Lamanna swore in Mr. Dale Markowitz, Ms. Bridey Matheney, Mr. Chris Semarjian and Mr. Bill Kern and noted that Mr. Markowitz, Ms. Matheney, Mr. Semarjian and Mr. Kern were duly sworn.

Mr. Dale Markowitz testified by giving his name and that he is with Thrasher, Dinsmore and Dolan, a law firm in Chardon, Ohio and his partner Ms. Bridey Matheney is here with him, to her right is Mr. Chris Semarjian from Industrial Commercial Properties and to his right, Mr. Bill Kern also from Industrial Commercial Properties. He said he calls it ICP, it is an acronym that we have all gotten used to. He said what you see up on the screen is a majority but not all of the land that would be considered as part of the purchase by his client.

Mr. Markowitz continued by saying there is a pending purchase agreement with Cedar Fair to acquire 376 acres some of which is in Aurora but the vast majority is in Bainbridge. He said what you are seeing on the screen in the upper left, we own some more land above it and then what you would see at the right side of the lake there is some land that is in both Bainbridge and Aurora but the majority of what would be on the other side of the lake is really in Aurora. He referred to the site plan and said if you see where Squires Road is you can see the area that is shown in the lighter green is the Commercial Hospitality Office and the Commercial Entertainment Office, we have no present proposal for that but it is anticipated that at some point some portions of that will be developed and this other land is actually to the north that will be greenspace. He said the significant amount of land that you see here will become greenspace, it will be more than what your code requires. He said the layout as you see, the retail that is in brown, we don't have any present proposed users for that, we will come back to that, what we are proposing is in the red shaded area and to the north of that would be two retention ponds and then to the north of that right of the retention pond would be our community development and below that would be our multi-family three story apartment buildings. He said they would all surround the lake and the reason why we need these variances as for the retail they are both the kind of uses that would fall into your heavy retail and secondly each of those properties would be owned by the retail operators so they would each have their own lot and each of those lots is more than 50,000 sq. ft.. He said 50,000 sq. ft. is a little more than an acre, 43, 560 sq. ft. is an acre so those lots are significantly bigger and the buildings, one is 157,000 sq. ft. and the other one is 174,000 sq. ft. so those lots are larger. He said also the lake is for the most part in Bainbridge but you can see where that sort of dotted line is over there and below that is in Aurora and at the bottom of the lake there has been a historical public access to that lake that we would not intend to disturb so that is something we will deal with Aurora on when we get there but just so you know. He said the reason why we also need variances for the over 55 and for the apartments and actually for the retail, we are less than 500' away from the lake and under the MUP we are required to stay 500' away from the lake and that is something that, there is a 100 year vision plan for this area by Cleveland State by Cedar Fair and was given to the township and acknowledged by the township and in that plan they had indicated that perhaps that 500' setback requirement should be considered for some variance along with some other things because of the way the land sits there, the benefit of using the lake and the way that the other areas are you need to concentrate development closer to the lake and it can be done without having any negative impact to the lake. He said we need variances also because to allow for the multi-family and in the code it has to be on the second floor or above over retail and we would not be putting our units starting on the second floor, they will be starting on the first floor and we found that and Mr. Semarjian will talk about that, that we cannot find a market for that in fact much of what is in the MUP district, at the time it was adopted in 2015 he thinks it had good intentions but in the last almost five years, four and one-half years now it has been shown that there just isn't a developable scheme for the property based on all of the requirements of that code so we can fit into almost all of it and this is a very large size project and he thinks it is pretty good that we are coming here only asking for a few variances. He said he would like to turn it over to Mr. Chris Semarjian, he will go through it all and Mr. Bill Kern has spent a lot of time detailing the plan to the extent that Mr. Semarjian can answer things he can't, he will be happy to answer any questions the board may have.

Mr. Chris Semarjian testified that just to add to Mr. Markowitz's comments, we are planning out the entire site but right now the activity we have for these four specific developments, there will be two best in class retailers that will build and own their own sites and they are industry leaders. He said they also have an Ohio based multi-family developer that we sought out that really is looking to build a quality product and they are very excited about the lake but to get their product to work and get the economics to function they need to build a three-story product and we feel very strongly that the residential over retail won't work here as much as he likes lifestyle centers and he likes to shop at lifestyle centers and actually people like to live there, just based on the lack of density it is not anything wrong, Bainbridge is a beautiful community, it is just the lack of density and how it relates to interstate access and all of those other things. He said candidly in northeastern Ohio some of our beautiful lifestyle centers are struggling, as much as Legacy Village is a beautiful place it is turning into one large furniture store and a few restaurants so they are all going through their changes and we just don't think it is sustainable, we feel very strongly that the big box even though it will be owned by the specific retailers themselves, they are flexible long term, again they are absolute top class industry leaders so he doesn't see them having any long term issues but if big box has a problem long term, big box gets to put in either smaller boxes or gets converted into offices and we think they have flexibility in the long haul. He said in the back that is a single story product and it is a little more of a greener area, a lot more green space, he thinks ultimately they want to at some point maybe build a clubhouse and continue to grow that but right now that is the plan and we have negotiated a bulk transaction with Cedar Fair and it makes it a little easier for us to come in, work with you and try to split this up and sell these unique pieces so again, they won't be building anything here, we are selling to two class retailers and they are two industry leaders in their product. He said we have also less space on the top end of the lake if you will for hospitality, it could be professional office, it could be some more retail, they would like to have an easement, they are going to provide an easement around the lake at some point, depending on how the development goes and they have heard boardwalk easement areas and so on for people to enjoy the lake. He said Mr. Markowitz mentioned about this group in Aurora that might not have any impact here, with traffic and everything in Aurora and their access, we want to continue to be good to the community whether that stays right there or whether we work with the group to reposition that for maybe a softer landing place for the residents, there might be a better plan there. He said they are going to have an absolute ton of greenspace.

Mr. Markowitz asked Mr. Semarjian to talk a little about ICP and who they are.

Mr. Semarjian said sure, absolutely, Industrial Commercial Properties, we own 42 million square feet in four states, we have 140 buildings, over 300 tenants and we are primarily repositioners, we bought Randall Park Mall and tore it down and brought Amazon in, that was an industrial project, that is not going to work here, we don't want an industrial product here. He said this is something to enhance the community to continue what has been occurring on that road but really enhance it and enjoy the lake.

Mr. Semarjian continued by saying they also bought the American Greetings former headquarters over by the Plain Dealer plant at Tiedeman/480 and have 2,000 people back to work there, American Greetings left so we are really good with taking something that is defunct and turning it back into something that really is meaningful and candidly the economy is pretty good right now, we feel strongly that we can execute this plan, this portion of the plan before the economy dips, he doesn't want to be doing this in three years from now when we fall into a slump and we are half way done, we want to execute it efficiently and more forward but we do need several variances to get this complete.

Mr. Markowitz said we have talked about the commercial and there are still some leftover buildings.

Mr. Semarjian said on the far corner there at Brewster and Depot there is a former aquarium and a former movie theater, they are two really good structures that don't show up on this and we were talking about possibly doing a little historic center for Geauga Lake, that is a possibility, there could also be some professional offices over in that area, it is kind of quaint and has the opportunity to leave the existing structures but enhance them. He said he doesn't want to cause too much office space here but he thinks with the lake there are very few opportunities to be in an office environment where you can have that type of lake view and the lake still looks fantastic and believe it or not Cedar Fair stepped up and they are taking care of some Beaver dams and unplugging some sewers and doing a little bit of maintenance.

Mr. Gutoskey asked if in the residential what the density is, do you have any idea.

Mr. Semarjian said meaning number of units, Mr. Kern should have that.

Mr. Bill Kern testified that on the southern piece, the multi-family, they are looking at approximately 270 units and the site is 18 acres and the other is 20 acres and you are looking at 90 to 100 units. He said the multi-family range is probably going to be 800 sq. ft. to 1,300 sq. ft. and on the 55 and over it will be more like 1,300 sq. ft. to 1,800 sq. ft.

Mr. Gutoskey said so the piece of the land north of Depot there, that will remain all open space, he thinks it is deed restricted.

Mr. Semarjian said it is deed restricted and they are considering whether to preserve that.

Mr. Gutoskey asked if they were aware of the trees they cut down.

Mr. Semarjian said no.

Mr. Gutoskey said the people that live by there know.

Mr. Semarjian said he is sorry for that and their intent is to not develop that area.

Mr. Gutoskey asked about the area between Depot and where the proposed big boxes are, is that pretty undevelopable, is that all wetlands.

Mr. Semarjian said at the very top there is actually like a landfill at the very top and there is a tremendous amount of wetlands and then there is also some already current preserved area so it is a mixed bag that they would not plan on developing, how it is formally put away whether it is fully preserved.

Mr. Barr asked if they have any traffic studies or what the implication on what the traffic would be adding this many units and that number of people to the existing roads.

Mr. Semarjian said they don't have a traffic study they just felt that with Geauga Lake and Sea World that they were not even coming close to what was originally here. He said kind of like when they did Randall people always wondered, Amazon, but that was a full-fledged mall with 15,000 people or more at that site, but they have not done a traffic study.

Mr. Barr said his concern would be when that was Geauga Lake and Sea World there was none of the other retail there and the access was all coming from the front, with you having these houses in the back and everybody with access to the back, Depot Road, Geauga Lake Road, the interchange there to turn left from Depot Road onto Geauga Lake Road is already an interesting turn over the railroad tracks.

Mr. Semarjian said they will have to in their plan, they are going to have to enhance Geauga Lake Road, there is no question about it, but as far as Rt. 43 itself.

Mr. Barr said that is a state route, he is looking at the other side roads that would affect our township.

Mr. Lewis said he has some site questions please. He asked if we can talk first about utilities, does the property already have sewer, water and sanitary and storm.

Mr. Semarjian said no we are working on that with your neighboring community.

Mr. Lewis asked, that would be Aurora.

Mr. Semarjian said yes.

Mr. Lewis said speaking of Aurora, is the JEDD in place.

Mr. Semarjian said not yet.

Mr. Markowitz said we are negotiating it now.

Mr. Lewis asked you are negotiating or Bainbridge Township.

Mr. Markowitz said all three.

Mr. Lewis said or are you doing it jointly.

Mr. Markowitz said all three, yes.

Mr. Lewis said with the residential dwellings, are any of those being allocated as government funded units.

Mr. Semarjian said not that he is aware of, no. He said these are all what we call market rate and then that is age restricted, 55 and older but it is all market rate.

Mr. Lewis said he should have said government subsidized.

Mr. Semarjian said no these are market rate, these are nice.

Mr. Barr asked if these are duplexes and you said there are 90 to 100 units.

Mr. Kern said on the 90 to 100, they haven't fully designed it yet but typically their program is anywhere from freestanding to six to seven units side-by-side.

Mr. Barr said that is a very vague rendering because you said 90 to 100 and he counted like 30 on the picture.

Mr. Kern said one of those could be three or four units.

Mr. Semarjian said those are not individual free-standing homes, so twenty acres would be 90 to 100 units.

Mr. Markowitz said the variances that we need tonight are with the four developers or four future owners, there will be a need for some specific variances somewhere along the line with the residential of some kind, we just don't have enough design detail so what we need to know is we need to be able to say to them we can eliminate the 500' setback restriction and if we can't get that, the project is dead because what you see here between those four elements if we can't get all four the project is not viable so that is the only variances we are seeking now so we need it based on what we know exists is the heavy retail, the 50,000 sq. ft., the 500' setback and the no first floor residential. He said he doesn't expect that they are going to need a density variance for the residential.

Mr. Lamanna asked are you right now submitting four parcels.

Mr. Markowitz said there are a lot of parcels there.

Mr. Lamanna said but there are going to be five parcels.

Mr. Markowitz said there is probably going to be more than that but right now there are 20 to 25, there are a lot of pieces and he referred to the site plan and designated the separate parcels on the site plan. He said what is in the back will be parceled off as well but since we have no plans to develop it we have no idea.

Mr. Lamanna said the total parcel that is owned by the applicants, what is the confines of that piece of it.

Mr. Markowitz said it is 376 acres in Aurora and Bainbridge, the part that is in Bainbridge is 320.

Mr. Lamanna asked where the boundaries are.

Mr. Semarjian said Depot Road.

Mr. Lamanna said so it is everything along Depot Road.

Mr. Semarjian referred to the site plan and said everything from here to here going up that line and then there is also another 70 acres on the other side of Depot Road but we are not looking to develop it.

Mr. Markowitz said we own in Aurora.

Mr. Kern said just to clarify, we don't own it yet, it is under contract, it is proposed.

Mr. Markowitz said right now there are a lot of parcel numbers.

Mr. Lamanna said what he is saying is right now what is before us is seven parcels that are going to be created out of some hodge-podge.

Mr. Semarjian said correct.

Mr. Lamanna said at least that is what you are showing us, right now.

Mr. Markowitz said ultimately there will be seven different parcels for development, the rest will just be either greenspace or conveyed to some conservancy or the township. He said this is one, two, three, four, five, six, seven and eight (he referred to the site plan) so theoretically there will be eight. He said this area here where you see the word residential, that is not going to be able to be developed.

Mr. Semarjian said it is their understanding that with this transaction concluded that Cedar Fair would be out they wouldn't have any retainers, they would be completely out.

Mr. Barr said he is looking at the map here, the turquoise one that jets down, he is looking at the satellite map and it looks like there is some kind of a stream there.

Mr. Kern said that little finger is actually wet.

Mr. Barr said so that is almost unbuildable down there.

Mr. Kern said for the most part.

Mr. Semarjian said there are a lot of piers that were sunk in for rides there in wetlands.

Mr. Gutoskey asked Ms. Endres, when you developed the code for this, the mixed use, what was the purpose of the 500' setback around the lake.

Ms. Karen Endres, Zoning Inspector testified that the commission's intent was that the area around the lake would not be privately owned, they wanted to be sure the area around the lake was available for public uses, for maybe some retail stores, there was a vision about having a boardwalk around the lake and possibly a bridge across part of the lake, they wanted to be sure the lake was not encumbered by private property owners.

Mr. Markowitz said if you uphold that 500' restriction no one is going to be able to develop this site because all of this and all of that would not be developed. He said when you are talking about 500' you are not thinking about the wetlands area.

Ms. Endres said the vertical mixed use component of what was then PUD was permitted within 500' of the lake for whatever that is worth.

Mr. Gutoskey said so the front multi-family would be permitted.

Ms. Endres said yes but they were supposed to have retail on the bottom.

Mr. Lewis said so you are looking for four really, really major variances that pretty much completely defy what the district has been set up to do.

Mr. Markowitz said he agrees with the first half of it.

Mr. Lewis asked why they are not in front of the zoning commission for Bainbridge Township as opposed to asking for a bunch of variances from this board.

Mr. Markowitz said he had that question the other night. He said a large part of it is driven by time, the JEDD and the need to be able to put all of this together all at once and if we can't get relief quickly and work it into getting the JEDD done we lose these four major users and this project sits empty for a long time again. He said it is really a unique opportunity, the developer has a strong history of doing these kinds of projects to pull this off.

Mr. Markowitz continued by saying it is a valid question, if we go through the zoning amendment process we are talking about many, many, many months and we are going to lose these users here and we also have what he would call very good momentum going right now with Aurora, he represents Pulte which is developing on the other side of Squires going down to where the railroad right-of-way is and there is a lot of development that is going to take place there and if we don't do something soon here a lot of the opportunities to develop that are going to get lost.

Mr. Lewis said so the pressure is the potential loss of your two anchor big box tenants because Aurora is not going away and whatever we do if you actually do a JEDD there is a split on the income portion of it anyway and then who brings the infrastructure down Rt. 43.

Mr. Markowitz said that is still under discussion with the city but for the most part it is already there but what we are really talking is more of what has to take place on the site because the sewer tie-in is right near the township line and there is sewer across the street and water.

Mr. Barr said so Aurora is putting in how many units, Pulte is going to be putting in.

Mr. Markowitz said he forgot.

Mr. Barr said he doesn't need to know the exact number.

Mr. Gutoskey said it is a couple of hundred, isn't it.

Mr. Markowitz said it is a lot and behind the Ford dealership is where it is all taking place and most of it is the parking lot, there are four different types of style of housing going there and he honestly can't remember but it is a decent couple of hundred.

Mr. Barr said now that brings up even more traffic concerns to him, Aurora is a great community but one of the things about Aurora, you can't get to Aurora without going through somebody else's community and we already have traffic backups on Rt. 306 at 5:00, it is backed up almost to here. He said and now if you throw those houses in here you are going to have even more people that don't work in Aurora driving those roads through Bainbridge, he would have concerns with that and the answer earlier was it was set up for Geauga Lake but when it was set up for Geauga Lake people didn't live there and getting to your house and having it be 30 minutes to go two miles it might be an inconvenience for some of our township members.

Mr. Markowitz said they are going to be required by Ohio to do a traffic study because of opening up streets and drives off of Rt. 43 and they anticipate that there will be another traffic light that they will have to put in for this project, but yes, there will be additional traffic that will develop from both projects and clearly whatever goes in here there will be additional traffic but your MUP district understood and contemplated that that you are going to have a lot of land at this site that is going to be developed for residential or retail and the density for this area is different than the rest of the township so it is kind of a unique district for this particular area.

Mr. Gutoskey asked how long Geauga Lake has been closed.

Mr. Markowitz said the water park was five years ago he thinks.

Mrs. Lorrie Benza said 2007.

Mr. Gutoskey said the traffic would be directed through the site back out to Rt. 43.

Mr. Markowitz said he thinks that the fire department would say they want dedicated access but the intent is to have the traffic flow go back to Rt. 43.

Mr. Semarjian said everybody, at least the people they have been talking to, they all want to be on Rt. 43. He said going back to the 55 and older community, as you get back there, he thinks the density is going to fall off dramatically, even that commercial hospitality area, it is a pretty soft area, from a wetlands perspective, we don't have our full delineation back, it is a little challenged over there so he doesn't see, he thinks you will see the Bainbridge development with maybe a few other key pieces here. He said if we get somebody who does an office or have a little entertainment district but it is not going to be anything of huge scale, he doesn't think it is practical, he doesn't see it.

Mr. Markowitz said for the commercial entertainment area they were really thinking more like a nice restaurant or maybe some historical.

Mr. Semarjian asked Ms. Endres to display an aerial of the site. He referred to the aerial and said right here there used to be an old aquarium that they were talking about it being a restaurant and to use some of the existing buildings but not much.

Mr. Lamanna said the one little issue he is having here is that what we have presented here is some of a bigger parcel and then you are talking about we are going to do this with this and this with this, that is irrelevant.

Mr. Markowitz said right.

Mr. Lamanna said that is irrelevant, you understand, totally irrelevant, there is no consideration of what might go into any of those other places as far as looking at these because that is not before us.

Mr. Markowitz said correct.

Mr. Lamanna said we can't say we are going to give you some credit for this and some credit for that so we are really kind of looking at this thing as.

Mr. Markowitz said there are four pieces we are working on, the two retail and the two residential areas.

Mr. Lamanna said you've got two residential areas, two retails and two big boxes.

Mr. Markowitz said the two retail areas are really not before you, there is really nothing here for a variance for those, those two little orange retail areas.

Mr. Lamanna said so that is not a part of this then.

Mr. Markowitz said there are no variances, we don't have any plans for them right now.

Mr. Lamanna said here is where he gets back to the fundamental problem and the question always is, you come in and are asking for variances that in these cases are fundamentally changing what was established here, his question is how is your situation different from anybody else in this district.

Mr. Markowitz said we are the district.

Mr. Lamanna said but you are here with all of the property so you are undercutting yourself in a way. He said his question comes down to, if that is the case then really a variance is not the appropriate way to go, variances for particular problems and a particular property is before the board, it is not to say, well we have the same problems throughout this district but instead of going in and fixing the problem for the district through a zoning amendment where they can adequately consider and spend more time doing it than is really feasible for us to do that that is the way that should be approached first and only in a case where they would say no, we don't feel like changing anything, and we are not going to leave people without a remedy so then we would let them come back if that was the decision of the zoning commission that they are not going to change it. He said like right now we have got this 500' thing around the lake, there is only one lake but there is only one little stretch of the lake that is actually before us, there is a big section of the lake that is really not before us right now so now we are making a decision that says okay we are going to grant a variance here and effectively we are almost forced into granting a variance for the rest of the properties around there because they have the same issue, exactly the same issue but they are not here.

Mr. Markowitz said he would agree but what they are only here for is for the 500' setback of these pieces here and that is a significant part of the project.

Mr. Lamanna said people are saying you really can't develop this property around the lake anywhere.

Mr. Gutoskey said for residential though and he thinks what Ms. Endres explained was it is more for the low density residential because from what Ms. Endres explained the one in the front would be okay with first floor commercial and the community and the other one would probably be okay because it is not residential and asked Ms. Endres if he is correct.

Ms. Endres asked what is not residential.

Mr. Gutoskey said the commercial hospitality.

Ms. Endres said around here if this is not single family homes, townhomes then they can be closer than 500'.

Mr. Gutoskey said really the only section you are looking at that applies to the 500' is the lower density multi-family.

Ms. Endres said she doesn't have a scale on this map so she is taking an educated guess that this is closer than 500' to the lake.

Mr. Gutoskey said it is, he has sketched it out, he scaled it out because probably what they are showing on that parcel, probably 60% of it is outside of the 500' just looking at it.

Mr. Markowitz said that is probably about right.

Mr. Gutoskey said so the one thing you would be looking at for a variance would be just that one parcel.

Mr. Markowitz said he thought they needed it for the retail also. He said he can tell you that trying to work with the MUP district is next to impossible, it really is.

Mr. Lamanna said he doesn't disagree but he thinks that it should be fixed for the entire district.

Mr. Markowitz said we may never know what is the real lot coverage.

Mr. Lamanna said he reads it and his head wants to explode and that is before he gets eight pages into it and it takes a lot to get his head to explode.

Mr. Barr said with your heavy box stores, there are already multiple box stores there and one that was empty for quite some time so now it is the world's largest furniture store with no people in it. He said he is just concerned that if the box stores or clients that you have coming in for those if they are going to be similar to the others and struggle, the last thing we would want would be a massive box store sitting there boarded up.

Mr. Semarjian said the Flower Factory was beyond the weakest retailer, they had two or three stores in the world.

Mr. Barr said right but they are still a box store that another retailer could have come into that space but chosen not to.

Mr. Semarjian said it was the way it was set up in the back, it really wasn't conducive for doing that, big boxes are not the problem it is how they are developed and again these two players, they are extremely well healed players, competition likes to be by competition in retail, he didn't invent that, that is just the way it is, Lowes and Home Depot usually aren't that far away from each other, he is talking in general. He said grocery stores are by each other, gas stations are by each other, that is the way this machine works, we didn't invent it, it is not our rule the way they play but all he can tell you is these are both the top in their industry, financially well healed and want to own their own stores so they are not coming in and signing a ten year lease and they can go next door in year eleven, they are going to own these things and they want to live here and he can't say who they are but we are thrilled.

Mr. Markowitz said he did the Market Place at Four Corners and lobbied to the board when we came through that and Walmart is their big anchor and Kohl's and we also had Target and then Target said no, some things had changed and they weren't going to go in the market right now and then low and behold as soon as we got the Walmart built Target came back to McGill and said we want to be there, they said too late, we don't have space but across the street you could buy this and they did and Home Depot and people say why do you have Target and Walmart right across the street from each other and it works, you go to most any larger retail areas they are all in the same general area and people like the idea of being able to say if they can't get what they want at Target they can go to Walmart.

Mr. Lamanna asked Ms. Endres to speak to the PUD aspect of how that ties into it.

Ms. Endres said the intent was for the Geauga Lake property to be developed as a Planned Unit Development, where 30% of the land would be used for residential, 30% would be used for non-residential and 30% would be for vertical mixed use. She said the remaining 10% would be up to the developer to allocate to whatever would fit his business plan. She said the Market Place is in the mixed use district but Market Place at Four Corners and Market Place Square, they are both under a memorandum of understanding, there is a development plan placed on them already and there are provisions in Chapter 190, the mixed use chapter that excludes them from the mixed use provisions and defers to the development plan that is in place for them already. She said that leaves the out-lots on Aurora Road that includes Sherwin Williams and Discount Tire so those two lots were developed, not as a PUD because there was not enough land, those were kind of out-lots outside of the area of 100 acres but when you have a big area of land like Geauga Lake it is to be developed under a PUD.

Mr. Lamanna asked if this were developed as a PUD what flexibility would that allow within.

Ms. Endres said she is not sure what you mean.

Mr. Lamanna said if they came in and said here is our PUD for this entire area does that allow anything that is not otherwise allowed in the district.

Ms. Endres said the mixed use chapter has a list of permitted uses and prohibited uses so the proposed uses would need to comply with that. She said as you know from her staff letter there is a provision that the maximum lot size is 50,000 sq. ft. and the reason for that was the commission wanted to specifically prohibit big box stores and they did that in two ways, one by prohibiting heavy retail and the other one by having a maximum lot size of 50,000 sq. ft. and during the discussion relevant to residential development, as she mentioned before, they wanted to preserve the area around the lake and make sure it was accessible to the public and not encumbered by single family and townhouse owners. She said there was a vision to have a boardwalk around the lake, maybe a bridge across the lake and under the master plan that was created by Geauga Lake through EDG.

Mr. Markowitz said when a JEDD is created the JEDD board would have the funds to be able to do some of those things and that is one of the things they talked about is a boardwalk could be built with JEDD funding.

Mr. Lamanna said the one thing he has a question about is what the whole idea was of developing it as a Planned Unit Development and it becomes a conditional use.

Ms. Endres said correct, PUD was and is a conditional use in Chapter 190 so that PUD would come before the Board of Zoning Appeals for their review and approval.

Mr. Lamanna said the problem he has is if you look at the PUD it talks about providing flexibility for development and then he is trying to figure out what does that mean exactly.

Ms. Endres said they offer different housing types, there is the twin, there is condo-type housing, there are single family homes and then of course the apartments so there is a whole pallet of residential housing that is permitted and then again they are permitting the vertical mixed use and then a variety of non-residential uses but there is a whole list of permitted uses, professional offices are permitted and she believes there is a provision for hospitals, service stations.

Mr. Lamanna said his thought is, is that an alternate way to address what is going on here and should this thing be in here as really a PUD covering all of these aspects.

Ms. Endres said even if it is a PUD she thinks you still have a problem with the specifically prohibited uses.

Mr. Lamanna said at this point we will allow other people who are interested to have a chance to speak. He swore in all interested people, residents or neighbors who were planning on speaking.

Ms. Dodie Lee testified that she lives at 68 E. Bel Meadow in South Russell however she grew up in Lake Lucerne and her maiden name is Henry and her dad's name was Gene and they owned probably 100 acres over on Pettibone and Geauga Lake Road back in the years and they still continue to own quite a bit of that and half of her siblings live on Geauga Lake Road or right around the corner on Pettibone so they came here mostly for fact finding and information getting. She said she doesn't know if the board is making a decision tonight but her concerns would be, a lot of her little nieces and nephews are playing on Geauga Lake Road and she would be worried about the traffic which somebody brought up earlier today. She said they used to be at her brother's property when they could hear seals barking over in Sea World so they have a lot of history with that property and everybody else is going to talk now.

Mr. Scott Henry of 19145 Elizabeth Lane testified that he is part of the family and he thinks it is a very impressive site plan, all of the names of the roads are very visible and his only question would be that there is a road that has been eliminated here, and it is right across the street from where you are going to have your back entrance and that is where we all live, Geauga Lake Road has been whited out.

Mr. Semarjian said they do that as off site, that is the reason why.

Mr. Scott Henry said no Brewster would be off site then too and that is where all of us live.

Mr. Semarjian said it is nothing intentional and you are sensitive about the connection point.

Mr. Scott Henry said that is where your back entrance is and that is where our street is.

Mr. Dan Henry of 18841 Geauga Lake Road testified that he lives very close to that proposed back entrance and he is the most southern property on the east side of Geauga Lake Road and his concerns are about traffic and the fact that his niece just built on Geauga Lake Road and she was required to have at least five acres so that is one of the variances that they wouldn't have to have five acres per residence.

Mr. Gutoskey said no because it is under a different zoning.

Mr. Semarjian said actually their zoning is that they don't want anything larger than 50,000 sq. ft., like one acre, that is the way it is zoned now, it is just the opposite, we are trying to make it bigger.

Mr. Dan Henry said that his main concern is traffic.

Mr. John Leffler of 7799 Lori Lane testified that they are not on the map there, they are just a little bit down Brewster Road and they are far enough away that he doesn't think it is going to impact them that much but he is concerned about the traffic, there are two lanes in Aurora Bainbridge there but Solon gets pretty bad and that is just a one lane road so getting in and out of there for any of us that have to go into Solon that is going to be a lot worse than it is. He said if you traveled down that road on Rt. 43 in Solon between 4 and 6 or so, it is pretty bad, or Brewster too.

Ms. Michelle Henry of 19145 Elizabeth Lane testified that if Pulte is going to come in with all of those homes on Squires and Brewster on the other side.

Mr. Scott Henry said and if you take a ride down Brewster Road you will see there is a lot of traffic.

Mr. Lewis asked if their concern on traffic is based on the residential occupants or is it based on the increase in retail for the two big boxes.

Mr. Leffler said he would think it is a combination of all of those with the two big box stores and the residential because he thinks Pulte if he is correct, he thought it was in the 300 – 400 range was the number of houses that were going in there in Aurora.

Mr. Lewis said he thinks it was 270 apartments and 90 to 100 of the cluster house type so you are looking at 350 to 400 living units gross.

Mr. Leffler said that is what he remembered.

Mr. Markowitz said that is what we would be developing.

Mr. Lewis said he is just taking your rough numbers, we know it is not a hard number yet because it is not platted that far.

Mr. Markowitz said the land that they have in Aurora is designated for office and hospital and uses like that and they don't want any more residential.

Mr. Semarjian said they don't want any more residential, they want commercial, restaurants, they want that.

Mr. Lewis asked how come Bainbridge doesn't get the hospital and we get big box.

Mr. Markowitz said nobody is getting the hospital.

Mr. Leffler said he has another question, if you could go back to that map there, the green area he thinks it was and the brown area, so you are asking for variances there, how is that different.

Mr. Gutoskey said he doesn't think the green area and brown area they are really for any variances.

Mr. Lewis said the green area, yes 500' from the lake and apartments without retail on the first floor.

Mr. Gutoskey said the dark green.

Mr. Leffler said he is talking about the commercial hospitality on Depot Road, the green and the brown.

Mr. Gutoskey said if they are not doing residential they don't need the 500' variance.

Mr. Lewis said you walked into a really interested gray area because although those areas are arbitrarily titled for proposed future uses there is nothing before us right now so those use areas could easily change to other types of structures being built there as what the developer can attract for tenants or whatever.

Mr. Gutoskey said we are in a really preliminary stage here so before any of this can even happen there is going to have to be all kinds of engineering and studies that have to be done because it is going to get developed and there is going to be traffic but the developer or whoever develops it is going to have to do a traffic study and they may have to do some other road improvements.

Mr. Leffler said he knows we talked about Bainbridge and Aurora but Solon is right there too, they are totally out of this home development.

Ms. Gail Leffler of 7799 Lori Lane testified that her concern is water, her water table because we are up here and they are going to be down here, she has a 45' well, they put in Market Place and they had to have an additional water filtrating system so they are getting their water checked now just to make sure that we are putting 400 houses over in Aurora, Pulte is or something like that, that is a lot. She said and then they are going to be disturbing all of this, it was disturbed for Market Place and when we have all wells and we are all a rural community, what are the provisions for us if our water does get spoiled, is she going to have to dig a new well, buy new appliances again, what are they going to do to assure us that if something does happen to our Riversedge and Geauga Lake Road, you don't know, are they going to have a hydrologist, is the township going to protect us from any type of water spoilage or new septic problems. She thanked the board.

Mr. Markowitz said they are going to be using Aurora city water, we will not tap into the water table at all, they are going to preserve the wells, they are creating new significant retention basins which never existed before and as you know under the Phase I and Phase II EPA rules with storm issues, there is nothing that they are doing at all that will impact the aquifer in and around it and if anything they are protecting to the extent the aquifer but they wouldn't be doing anything to withdraw on that aquifer so they should have no impact at all.

Mr. Lewis asked if it is the same thing with sanitary.

Mr. Markowitz said the same thing with sanitary, our water and sewer come in and out of the same place out of Aurora and goes back to the same place in Aurora.

Ms. Leffler said it is with the traffic, it is the back end coming in, Brewster is a very dangerous street and Geauga Lake Road, you know, and we just want to make sure because there are kids out there playing, there are kids getting off the bus and right now there are problems and that is just from Market Place because they do cut down those streets and there is not even a berm on Brewster so when it gets snowy stay off of it, it is just really a dangerous road.

Mr. Lamanna said yes, he would point that out, compared to even when it was Sea World and Geauga Lake the amount of traffic coming to those places through Bainbridge was incontestable, it was a small number of people from the local communities who knew the back way in but on any given day it was a very small number of people and of course they had a limited season, it was only four or five months of the year at the most. He said what is going to happen is if you put more retail there then all of the people from South Russell and Bainbridge and everywhere else will come in the back way because that know that way in, the people who actually move into those areas are going to figure out very quickly that a lot of times of the day it is a lot better to go out the other way than it is to go out to Rt. 43 and try to go to Solon or try to go up the other way which gets you nowhere so there is a substantial difference on how the traffic is going to flow onto Bainbridge local roads given this development versus what was happening in the prior use, everybody says tons of people came but they didn't come on those roads.

Mr. Semarjian said the Pulte development that is going to be in the parking lot which is very close to Brewster, even though that is Aurora, has Bainbridge done anything relative to studying how that is going to impact.

Mr. Gutoskey said he doesn't know that when Pulte did their work that they took that into consideration. He said he doesn't know what traffic studies they had to do for Aurora.

Mr. Lewis said as he gazes over and looks at our Assistant Fire Chief here in the room it brings to mind with 300 to 400 additional residences even though they are not 300 to 400 buildings what impact or burden that is going to have on our township with fire, rescue, police and our township services to support that many new living quarters or whatever you want to call them in our area.

Mr. Markowitz said it is part of the discussion they are having with the JEDD between the township, the city and us and Aurora just put in a new fire station nearby there and the question is should they provide the service to this area and that will be discussed between communities.

Mr. Lewis said he kind of figures that there is always backup by adjacent but the primary burden is still going to fall on Bainbridge Township.

Mr. Semarjian said they are very cognizant of that.

Mr. Markowitz said it could be by agreement that it is provided by somebody else but he is assuming that won't happen that Bainbridge will be the primary for police, fire and EMS and there may be a need already for more facilities in that part of the township independent of what happens here.

Mr. Lewis asked, are you going to build us a fire station.

Mr. Semarjian said the good or bad thing about a JEDD is you get income, right, you don't have income now, you are going to get income and that income is going to hopefully solve some issues.

Mr. Gutoskey said when it was Sea World and Geauga Lake the fire department and police department were there every day.

Mr. Barr said another thing when you put in the multi-family homes there in the front you are going to have a lot of children that are going to be going to school and that is going to be an area for our school buses to try and navigate and our schools have two different bus routes, the older kids go at 2:30 and the school allows about an hour for them to do the bus route and get back, this is at the far end of our district, our buses would have to get out here, drop those kids off, hopefully not get into any traffic trying to get back and then bring your elementary children back out and then you throw Northeast Ohio weather into that, he doesn't know what we would be asking of our school district transporting children to this area and whether a bus would be able to navigate through.

Mr. Semarjian said you already allow residential there.

Mr. Gutoskey said we allow residential in there.

Mr. Barr said he is just going through the traffic standpoint.

Mr. Markowitz said there are two aspects there, first is the majority of the site is not going to be residential and there is going to be a lot of tax provided to the schools who are going to be the main beneficiary of this that don't produce school children but the point that you make which is well taken is that how will the roads be able to or used to service these students and the money doesn't cure everything so that has got to be taken into account but as Mr. Gutoskey said it is already permitted and what the anticipation is is that based on what he can see on this site where he thinks things are going is that we will have a lower percentage of residential than the PUD aspect that the MUP provides for.

Mr. Barr said his concern isn't just with that it is the added traffic to the existing that is already there, that can bring a concern and he is just going along with the excess traffic.

Mr. Markowitz said he has seen probably over 1,000 traffic impact studies and Mr. Gutoskey has probably seen as many and it is interesting because the school buses are not there during peak hours, they are picking up before the peak hour in the morning and they are dropping off before the peak hour at the end of the day so the impacts that they have are not as significant as we may think, if maybe traversing on a particular road is an issue and that has got to be looked at but the way we have it designed for the multi-family is it is going to be the closest to Rt. 43 and he thinks it will be the easiest to maneuver because they will have the ability to pick up right in the development and turn around and go back down Rt. 43. He said he would assume they are not going to go down Depot, they are not going to go down Brewster, they are not going to go down Treat Road.

Mr. Gutoskey said probably the 55 and older probably won't have many kids.

Mr. Markowitz said they are assuming the over 55 will have literally zero kids, it is possible, you could temporarily have some.

Mr. Gutoskey said basically in the residential it will be mostly private roads.

Mr. Markowitz said the entire project will be private roads, except Geauga Lake Road but every new road created will be a private road.

Mr. Lewis asked if those are rentals or are those condos.

Mr. Semarjian said they are all rentals.

Mr. Markowitz said the over 55 are rentals.

Mr. Semarjian said they are all rentals.

Mr. Patrick Henry of 18755 Geauga Lake Road testified that he is the third house on the east side of Geauga Lake Road going north and he was going to talk about traffic but he thinks we covered that. He said his concern is the variances, he heard there are four major variances and he can't figure out what the four are, one he heard about is that 500' setback and it seems to him based on listening to you guys up front that that is not something we should look at as a variance it is more kind of down to going to zoning and have things changed so we don't set a precedent with a variance and then maybe that needs to be looked at more closely and if it takes longer so be it, we don't want to set a precedent to what is there. He said again he is not sure what the other two variances are.

Mr. Lewis said the four variances before us that the applicant is requesting is:

1. Heavy Retail – big box. He said when the area got re-platted and redistricted and renamed Bainbridge residents were pretty much assured and it got baked into the language there would be no big box stores in the area. He said there was one application that was grandfathered before we put this into place but that applicant ultimately withdrew their wanting to do it, they may or may not be part of the current package.
2. The second thing was no individual lot size would be more than 50,000 sq. ft. but both the big box stores appear to be over 100,000 sq. ft. so now you also have the individual lot size being asked for, for a variance.
3. The third is that on the apartment buildings, the multi-floor, the code specifically states that in those types of buildings the first floor would be occupied by retail, professional office, an accountant or whatever, but they would not be living quarters.
4. The fourth is that around the perimeter of the lake in Bainbridge there would be a 500' barrier where nothing gets built and it doesn't necessarily mean a boardwalk or something ornamental, he is talking about a development structure whether it is retail or an apartment building or an individual home site so that is the big four.

Mr. Patrick Henry thanked the board.

Mr. Gutoskey said just to clarify that on the 500' it is the multi-family with the below first floor retail or whatever would be allowed, the duplex multi-family would not be in the 500' barrier.

Mr. Dan Henry said he is asking for clarification and so when those could be within that 500' what would their limit be, do we know that.

Mr. Gutoskey said the code permits other things to within that 500'.

Mr. Dan Henry asked if there is a minimum of 75' from the lake that nothing gets in there.

Mr. Gutoskey said he doesn't know if there is a minimum.

Mr. Lamanna said the riparian setback.

Mr. Gutoskey said he doesn't know if there would be a riparian for the lake.

Mr. Lewis said townhouses are 500', single family are 500'.

Mr. Gutoskey said he is going to have to look at the riparian map because the way the riparian only works is if you have a stream.

Ms. Endres said Geauga Lake is not considered a riparian area.

Mr. Gutoskey said the only way you would have those setbacks to wetlands is if it was part of the riparian areas.

Mr. Patrick Henry said just one follow-up question, there were four variances and thank you Mr. Lewis for explaining that. He asked if there is any precedent in history where we have allowed a variance of those magnitudes.

Mr. Gutoskey said this is first time where it has come into this zoning, this is really the first.

Mr. Patrick Henry asked in what situation would the board go for these variances and allow them.

Mr. Lamanna said it is a very complicated question, there are a whole series of factors that we look at and it depends on whether it is a use variance or an area variance, there are actually two separate standards that apply. He said an area variance, say like a 500' setback although that is kind of a weird one because that is somewhat in between a use variance and an area variance, it looks like an area variance on its face but if you look at the underlying rationale for it it is really more of a use variance because it was designed to affect usage more than it was designed as a setback, it was designed to affect usage.

Mr. Patrick Henry thanked the board.

Mr. Lewis asked if there was anybody else.

Mr. Damon Pollock of 18950 Geauga Lake Road testified that on the previous map he would be on the west side of Geauga Lake Road almost south of Depot Road, right by the railroad tracks by the other property that Cedar Fair also owns. He said as we mentioned traffic is a major concern and he thinks what is being lost in a lot of this, we are still part of Geauga County, we are saturated with retail in Bainbridge, we don't need any more retail, the big box promises that were made under the original agreement those should be dealt with, he is in home repair and he doesn't need a Lowes next door, he has a Home Depot, we don't need another grocery store in Bainbridge, we've got two already in Bainbridge, got one down the street in Aurora. He said we live in Geauga County because it is country, we don't need apartment buildings in this community, we are a fiscally healthy township, we are fiscally responsible and he just personally doesn't see many positives here other than over population and over traffic and more retail saturation.

Mr. Lewis said all of the things that they are proposing are really permitted in that district.

Mr. Pollock said not the big box.

Mr. Lewis said not to that size but as far as you are saying it is like we got the fourteenth pizza store that just opened up in Bainbridge, well if the guy wants to open a pizza store, he can open a pizza store, whether he will survive or not is not our concern.

Mr. Pollock said when it comes to variances, we need to keep that in mind and rein it back a little bit.

Mr. Lewis said exactly so that area can support retail and boutique shops and it can support residential. He said chances are that is going to go in there at some time by somebody.

Mr. Pollock said he has known that for a number of years and we talked about this for a number of years and he got a property that he has his savings tied up in and he doesn't want to see his property devalued because we need another pizza shop.

Mr. Gutoskey said but realize it could be permitted in there, a pizza shop, and the residential is permitted, high-rise apartments are permitted.

Mr. Pollock said no they're not.

Mr. Gutoskey said they are.

Mr. Pollock said no, you just said retail first story that is a variance and you continue to erode what this agreement was originally put in place and we are going to lose that essence of Geauga County and he would hope that comes into consideration here.

Mr. Lewis said big time.

Mr. Markowitz said somebody had asked about the riparian, he has got the map in front of him and none of their property below Depot is in the riparian on the other side of Depot there is.

Mr. Pollock asked north or south.

Mr. Markowitz said the area they are proposing to develop has no riparian period.

Mr. Lamanna asked Ms. Endres as individual lots what is the maximum lot coverage in this district.

Ms. Endres said that gets into that density and intensity formula that she was never able to understand so she wishes she could answer that question.

Mr. Lamanna asked if that applies to the whole district, does it apply to the individual parcels, does that apply to the PUD only.

Ms. Endres said again, that is a question that she has never been able to answer, she said five years ago when this zoning went in she said she did not understand the density and intensity provision in the MUP district and she still doesn't, she is sorry she can't answer that question.

Mr. Lamanna said this is the problem he has, we are trying to unwind something that was put in on the idea that there would be some kind of organized balanced plan over a large chunk of property and now people are saying they can put this in here, this in here and this in here but wait a minute there is a whole bunch of stuff that is not covered, there is a whole bunch of things that individually he questions whether somebody said they can develop this little parcel for a big box retail and have 80% lot coverage. He said we have got apartment buildings just plunked down not part of a bigger plan, not part of something else and who is to say that somebody else with another piece of property says they want to build apartment buildings like that too or there are two parcels over here and somebody may come along and say they would like to develop those areas with apartment buildings and now what, now this whole thing has totally unraveled into a spot by spot zoning. He said it doesn't become zoning anymore it becomes spot by spot development decisions that we are making and unfortunately we can't say the drafting of the ordinance is as clear as it could be in terms of what is supposed to happen here but there is a certain amount of intent in it.

Ms. Endres said she understands because she dealt with Sherwin Williams and Discount Tire, she understands that most of the provisions of the density and intensity she was never able to conquer.

Mr. Lamanna said again with all of these things when you look at it it seems that it was all put together with the idea that there would be some kind of large scale master development plan for this area and all of these things would be allowed in this area because it would be one large scale master plan and you could balance all of these things together in terms of the number of units per piece of property but when you then start saying we are going to do it on a lot by lot basis, wait a minute, is that really what was contemplated here and should all of this be redone with PUD, shouldn't this all be in here at once on a PUD plan, if you want to do this mixed use development because that was really what was contemplated when this thing was created.

Mr. Scott Henry said just for the future, the risk of sounding like Trump, they are asking for a variance and what are we getting in return, he would think that if you do issue a variance on any of these four things we could ask for something in return like you will never do anything with the other side of the property, the other side of the railroad track, we could make some trades here.

Mr. Lewis said he doesn't know if it is our role to strike that bargain.

Mr. Lamanna said in the PUD there is actually a special provision in there that says you don't even have to come in with a detailed plan, you can come in and get approval of sort of a less specific master plan first so it seems like there was some contemplation that this could be done in two stages so that somebody doesn't have to spend a massive amount of money coming up with detailed engineering drawings, they could say here is how I want to do this, can you guys live with this and then the engineering details can be worked out later, you don't have to go to that expense, you can do something like you sort of put together here except it would encompass the whole property.

Mr. Scott Henry said like no back entrance.

Mr. Lamanna said then it is a conditional use permit, then the board has authority to sit there and listen to all these issues say you got to do this here, you got to that there, if you are going to do this you have to fix that intersection at Depot and Geauga Lake Road because if you get any significant traffic moving through there it is going to be a death trap. He said it gives at least the board and zoning inspector some control over the process if you come in that way so that piece of process is built in to the ordinance but instead we've got basically a whole bunch of individual items proposed and he is not sure which any of them standing alone necessarily satisfies what this MUP was designed to do.

Mr. Scott Henry said to clarify, you are representing Cedar Fair right.

Mr. Semarjian said no we are the buyer, we have a contract.

Mr. Scott Henry said so you are in the mood to bargain too, right. He said there is a beautiful little quarry at the end that we would love to have swimming rights to.

Mr. Semarjian said there is some practicality to development and he thinks the plan, unfortunately the design of the current zoning is just challenging, it is hard to understand and he doesn't know if it functions that well so we are kind of coming in and he hates to say it shaking it up because it just doesn't conform. He said he understands backyard, but it was Geauga Lake before and Sea World and you guys knew what that was, good or bad, you got used to it and after it is gone. He said if you think about what is happening closer to you folks in back really.

Mr. Scott Henry said all of the Sea World traffic was coming off of Rt. 43.

Mr. Semarjian said they all like Rt. 43, nobody wants to go in the back. He said unfortunately the density in that teal area back there is soft, does the community want this historical center or the commercial entertainment area, that gold area, could that be a lower density kind of fun place.

Mr. Pollock said that is a big chunk of property, it doesn't need to be that big. He said why in the world would you purchase a property if you don't know the capabilities of it.

Mr. Semarjian said he owns millions of square feet, he owns hundreds of acres and you can't plan enough, he is coming to you with what he has.

Mr. Pollock said he thinks that is all well and good but soft and Geauga Lake tells him and knowing the area quite well there is a lot of wetlands there.

Mr. Semarjian said absolutely, 100%.

Mr. Pollock said there is a vagueness about this that is truly uncomfortable and frankly you should have been more prepared to come to this meeting, you can shake your head but you are dealing with local residents and you are dealing with where we live and we don't want it in our backyard.

Mr. Dave Deavers of 18958 Brewster Road asked if anybody mapped out what the impact is going to look like, with this project plus the Aurora project, he can't visualize two of these together and what kind of impact it is going to have on that core area.

Mr. Lamanna said unfortunately there is no easy way to do that.

Mr. Deavers said you must be looking at a map similar to this, if somebody can see what this whole impact is going to look like. He said he sees a bunch of open area to the south and east of the lake, is that going to be part of the Aurora residential area.

Mr. Lamanna said it is off along Treat Road.

Mr. Semarjian said from their perspective we are buying everything to Squires but there are residences here already.

Mr. Lamanna said there is already a street in there yes.

Mr. Semarjian said so we just have some spotty parcels in here, spotty, this is part of the old water park, he referred to the site plan displayed, which is a lot of concrete and garbage, this will ultimately come up and they want either higher education, medical office, professional office, that is what they would like to see here, a lot of businesses, it is all Aurora and Pulte is basically east of Squires, that is not our development.

Mr. Scott Henry said what if we do two dead ends at the railroad track.

Mr. Bill Lovell, Assistant Fire Chief for Bainbridge Township stated that he heard the conversation about one entrance in and dead ends and things like that, absolutely not, we have to have access to people, if one of those entrances are blocked we have a whole community we can't get to so we are going to be absolutely against that, we fought that and there reasons that we have multiple entrances to other developments for the same reason so he is just throwing it out there as an option right now.

Mr. Scott Henry asked what about a gate for the fire department.

Mr. Lamanna said and several remote controls for each resident.

Mr. Barr said it is called Bainbridge easy pass.

Mr. Gutoskey said he is sure the fire department will look at the ingress, egress of the development.

Mr. Deavers asked if public access will be denied to the lake.

Mr. Semarjian said they are working with the community to create some type of easement around that that would be public access, legal easements around that.

Mr. Patrick Henry said it would be less than 500'.

Mr. Semarjian said yes.

Mr. Lewis said for the property in Bainbridge, the part in Bainbridge you are working on a legal easement.

Mr. Semarjian said he said that earlier, they were going to give an access agreement around the lake but they are not going to build a boardwalk.

Mr. Lewis asked if that would be with Bainbridge Township.

Mr. Semarjian said Bainbridge Township and Aurora both, he thinks it is the consensus they are hearing that people want the ability in the future to get around that lake.

Mr. Gutoskey asked if they can get a couple of restaurants around the lake.

Mr. Semarjian said the aquarium right on the line there that he pointed out, that is something they are talking about a restaurant for, kind of hanging over the lake.

Mr. Gutoskey said he thinks that would be great.

Mr. Markowitz said they also need to have access for the residential areas so they may want that also so you can combine it and allow a use by the public as well as the people who live there. He said one of things we have to think about is who is going to manage it, who is going to maintain it, who is going to own it which obviously we will talk to Bainbridge and Aurora.

Mr. Semarjian said the park system.

Mr. Gutoskey said and to try to separate it and to try to keep the people outside of the development from going into the residential area, you guys can figure it out.

Mr. Barr asked what is the approximate distance you were going to have these buildings from the lake, residential and multi-level, do you have any ideas.

Mr. Kern said they really don't know that detail yet.

Mr. Semarjian said there is probably 75 to 100, he is guessing, you can scale it out better than he can.

Mr. Gutoskey said the one drawing that it is on is not to scale.

Mr. Lamanna asked if anybody else has anything

Mr. Patrick Henry asked where does this proceed.

Mr. Lamanna said he was just going to get to that once he makes sure he has everybody's comments who want to make any comments. He asked if there is anybody else out there who wants to say anything. He closed the public hearing part of this application at 9:14 P.M. He said the board is in a rather interesting position here and from this point we've got multiple possible courses of action we could take. The board could find that the applicant has presented insufficient information on which to go forward and process this application. The applicant has not satisfied the requirements of the zoning code to properly present an application before the board that it can rule on and that the applicant has to come back and give the board additional information.

Mr. Lamanna continued by saying another possibility is that this should have been presented as a request for a PUD and to the board and the process for dealing with all of these properties as a PUD should be followed and because the board can't be addressing individual possibly partially permitted in some cases items and consider the greenspace and the board can't even get to any of those things through the normal application process. The board could deny the request for variances based upon the fact the applicant really hasn't substantiated use variances and other variances. If the board goes that route what will happen is this will be appealed and the township will be the defendant, the township will have the ability to fight that suit or negotiate a settlement with the applicant and that would be the responsibility of the trustees as the acting body of the township and that is a negotiated settlement, it could be whatever the parties are willing to agree to but it will be up to the trustees to do that, those are the possible actions that the board could take at this point in time. The board could dismiss this application and say it should go to the zoning commission.

Mr. Lamanna asked the board if they have any thoughts.

Mr. DeWater said he needs more information and he knows it is just a preliminary plan but more information would help him make a decision and also this property has been vacant since the end of 2007 and nobody has been beating down the door so how long does the township want to leave this property vacant. He said he would like to have some guarantee that what they say they are going to protect that they actually provide us with something that they are going to protect it and he wants more information on how close those multi-family units will be to the lake and also this property has been empty since 2007 not generating any tax revenue for anybody and how long is the township willing to not collect taxes, how long are the residents willing to look at it and quite frankly it is an eyesore of a property right now, not getting any better. He said he would be afraid that if it did go to court the township would probably lose because property owners are entitled to do something with their property and he would like to go down the path that we help control what is going to happen and work with the person who wants to develop the property, that is his personal feeling. He said if they could satisfy the things we are concerned about and work with the township to move forward he thinks that is the step that should be taken.

Mr. Gutoskey said he doesn't see how the board could approve the heavy retail only because it is prohibited in the zoning district but as far as the other variances he really doesn't have a problem with them. He said he has a project in Cuyahoga Falls with apartments with retail on the bottom and the retail still hasn't been leased since 2015 and he doesn't have a problem with the 500' setback from the lake with the 55 and older and the high rises there, the three story buildings are permitted in that 500' setback and when you look at the project only about 40% of it is in there and as long as the developer would provide us passive on the lake, he doesn't have a problem with that.

Mr. Barr said he is in a similar boat with Mr. Gutoskey and another concern that he has that has been talked about to death, he would like to have some kind of a traffic study to see the impact. He said it sounds like it might be the greatest fear, he thinks everybody wants to see this developed and like Mr. DeWater said we would like to have some hand in how it is developed. He said he knows you brought up the restaurant in the aquarium and that brought some smiles to some people who hadn't smiled through the previous 45 minutes so he thinks everybody wants to see something here, we are very happy that you are looking to invest back in Geauga County, that is great, he thinks just the people have the fear of how the impact is actually going to shake out and again even on Sunday you guys see the impact from Parkside Church, it changes your traffic pattern at certain time periods over there and it is an inconvenience, it is not terrible but this is something a little different than Parkside and with not having the information all from Aurora, he knows we can't control what they do but what they do does affect us so he would just like some information on that, he likes where the developer is going and he is with Mr. Gutoskey, he thinks the commercial or the big box he is not with but the housing on the lake, he is completely with that.

Mr. Lewis said it is a dilemma, to support Mr. DeWater and our township we have a really ugly big chunk of property in Bainbridge and as it stands right now isn't benefitting anybody, not its residents, not its merchants, not the adjacent communities, not our schools, it is doing absolutely nothing for us. He said the original vision on this and he knows our trustees are in the room as well, but the original vision on this was a master plan and we heard lots of presentations from some really good folks that took into account all of the property and presented a master plan so the whole thing was laid out so he gets it so now we cut it into pieces even though you are buying a big chunk of it but we are sort of getting half the story, we have no idea what could happen in the other areas and he doesn't think you do either yet because that is going to be driven by economic return and demand for housing or merchants or whatever. He said the two big box stores are kind of a surprise, the residential areas, the lake, the waterways around it but we kind of got ambushed, we are looking at two really, really big retailers whose builders are bigger or twice the size of even what the lots are. He said he thinks our community needs to have a little bit of time to digest this. He said those are really substantial variances and he doesn't personally favor going that route but he is also trying to view that maybe this is first blush, you come in and you ask for the whole world and maybe settle for half. He said make no mistake he has no interest in suppressing the development of the property, it benefits the community and every one of us, everybody walks away a winner, all four of your variance requests are substantial in their own right by how the area is currently zoned, maybe Mr. Lamanna has the right approach, maybe this needs to be presented as a PUD, he brought out earlier, if you are looking for substantial changes while he realizes there is the urgency of commerce and losing a potential or two anchor tenants going the zoning commission route would have been his preference to see you go so here we are as a board, substantial variances, we are way off the beaten path in a lot of ways in what the area was visioned at, we only have half a master plan but we have vacant dormant land that would be wonderful to do something with.

Mr. Lewis continued by saying as he wears his heart on his sleeve maybe the best thing is to say hey folks, first blush, appreciate you being here, he would much rather see this board work with you to develop a viable solution, maybe there are some more compromises and keep this thing out of a legal free-for-all that quite frankly would probably last longer than a trip to the zoning commission would last.

Mr. Markowitz said the one thing he thinks you need to appreciate is we really mean it that the project doesn't work without the two big retailers, it can't happen and he respects your view on it, he understands, we are asking you for a use variance on that.

Mr. Semarjian said and another thing, we were asked, we certainly could spend more time on the teal and gold areas but what good is it, like your previous plan, and no disrespect to anybody but we can come up with the best of plans but the market changes and candidly with technology and all it is changing at a more rapid pace. He said their best plan for that area that we could all fall in love with might sit vacant for another 15 years because that is not where the market place is and he just heard from everybody in the group that everybody wants a cohesive plan but what good is it if it doesn't deliver because you already have a cohesive plan and it isn't getting off the ground in the best economy he has been in in his 55 years of lifetime so that is why it is general, it is not general to try to sneak by it is just because if we guess, we are going to guess wrong, what we deliver is what we have and that is what he hopes the community can appreciate, we are not coming in here and saying one thing and giving you the other, we are saying exactly what we have today and let's work together in the future so that was the intent of their plan just so they clear that up and he thinks honestly from their plan right there we are more like 80% of a direction whether you like the direction or not.

Mr. Lamanna said here of his thoughts, and generally his thoughts on something like this is he thinks it ought to be a matter for the zoning commission and they ought to do it, that is their job. He said realistically in this case if you take the property that the applicant owns here it really pretty much encompasses most of the rest of the currently undeveloped property in the district so handling it as a one-off is not probably as bad a proposition as it might be in other circumstances. He said that still doesn't obviate the need for rewriting this entire section because once you do this, if you do this property, on some kind of single development basis the rest becomes moot and is probably nothing but a bigger source of problems by not just reverting it to a pretty simple commercial business district for the rest of it and get rid of all of this other stuff so somebody can't say, there is a little corner down here, let's go down here and build a whole bunch of apartments and buy up some of these junky commercial properties down here and build a big apartment complex or something like that, there are other properties that you don't even notice as you drive down the road sometimes but there are little residential areas that are pretty old and could be for the right price and something else done with it.

Mr. Lamanna continued by saying although the code he thinks creates a mechanism for doing this as a PUD frankly he is not really all that anxious for the board of zoning appeals to try to undertake the task of doing that and it is more not that he wants to shirk the work or anything like that he can certainly deal with it, it is just not physically practical the way our board meets to try to go through all of the effort that it would take, this would be dozens of hours of meetings and since we generally meet once a month and even if we met twice a month we would be looking at an extended period of time because we don't have the time to have a meeting today, in the middle of the day, we have to give public notice and a lot of other stuff that for example if the trustees were dealing with this they have got much greater time, flexibility and meeting flexibility to get this thing done in some kind of reasonable time so he is just not sure that trying to undertake a project of this magnitude would be a good allocation of the board of zoning appeals' resources and he thinks timewise it is going to be such a long drawn out process that we could be looking at, and he knows what we went through with Judson, and we were more than six months doing that so that is the kind of time frame we would be looking at to try to handle it and he is not sure that is the appropriate way to get this thing resolved. He said if we turn this thing down and he thinks we have ample basis to do that then this thing will move to the legal process and like he said ultimately it will be resolved by a court decision or it will be resolved by a negotiated settlement between the township and the applicant. He said he would point out that if you have appeared tonight and if you have spoken in opposition to this you have certain rights in such an appeal. He said some people live rather far away so they may questionably have some interest to be able to participate in the appeal but he thinks the people who are really close to the property and would have a direct effect you have the right to participate in that appeal if you would so choose but you have to affirmatively take action to do that and there are very strict time limits with respect to doing that but it is available to you just as they have the right to appeal our decision as well.

Mr. Scott Henry asked if it would be an option for Bainbridge to auction off the property to between Reminderville, Solon and Aurora and sell it.

Mr. Lamanna said they can't auction off the property, he doesn't know if you can go to another municipality and say if you really want this property, if you pay us this much money we will consent to its annexation, he doesn't know whether that is legal or not.

Mr. Gutoskey said he doesn't think that is legal and he thanked the audience for being so nice and professional, we appreciate that.

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

The meeting was recessed for ten minutes.

Motion BZA 2020-3 – Property at parcels with frontage along Aurora Road, Depot Road and Brewster Road (Industrial Commercial Properties, LLC)

Mr. Lamanna moved to deny the applicant's request with respect to the following variances.

1. The exception to the use of prohibited uses, heavy retail for two of the proposed parcels.
2. The variance with respect to the 500' setback of the two areas of residential properties.
3. A variance with respect to the multi-family residences without retail on the ground floor.
4. With respect to lots greater than 50,000 sq. ft.
5. The failure to develop the property as a Planned Unit Development.

Based on the following findings of fact:

1. The board would note that generally there is insufficient detail on the plan submitted to determine whether or not as divided up here there may be other area or use variances that may be required.
2. It appears that the multiple use provisions would require this development to be approved on an entire basis including other parcels that are not included in order to get the benefit of the mixed use provisions and also to be able to exercise the control over the relative development density and type that is inherent in the provisions of Chapter 190.
3. It is very clear that Chapter 190 prohibited big box retail stores both specifically and by limiting the lot size to less than 50,000 sq. ft.
4. The applicant has failed to meet his burden to demonstrate that he was unable to obtain a reasonable rate of return on the property or to meet any of the other factors such as delivery of services, impact on the community and the like.
5. The applicant has made conclusory statements and has not presented any evidence to support such a finding with respect to that.
6. With respect to the 500' setback, although this would appear to generally be an area variance it is also a use variance because the purpose of the 500' was to prevent private residential ownership of the property around the lake and to encourage the development of that property to uses that would be more public either via access or via public accommodation facilities or businesses.

Motion BZA 2020-3 – Property at parcels with frontage along Aurora Road, Depot Road and Brewster Road (Industrial Commercial Properties, LLC) - Continued

7. The applicant has failed to demonstrate that without such a variance they would not be able to obtain a reasonable use of the return from the property nor have they demonstrated with respect to as an area variance to satisfy any of the Duncan factors with respect to the determination that a variance should be granted to that requirement.
8. There is also a question as to the total lot coverage that has not been answered.
9. Issues have been raised with potential impact with respect to traffic on primarily Geauga Lake Road and other township roads as opposed to State Route 43.
10. No evidence has been presented to demonstrate that there would not be adverse impact on the township and the provision of township services or the neighboring property owners.
11. The applicant has not yet obtained public utilities for this property which will be necessary to obtain any of these variances.
12. There are some questions with respect to the density of units, multi-family units under the requirements of Chapter 190 and again that cannot be easily satisfied within what has been presented to us or easily determined whether they are meeting the requirement with respect to the information provided to the board.
13. In summary it appears that the entire purpose of this district and the development of this property with these multiple uses is that it be done as part of an overall PUD plan so all of these conditions could be appropriately considered that the requirements of the conditional use procedure would be used to evaluate the trade-offs and the impacts of granting variances and modifications to the specific requirements of Chapter 190.
14. By failing to provide using that process and/or providing the information that should have been provided in that process, the applicants have failed to satisfy their burden of proof to demonstrate that they should be granted any of the variances that have either been specifically requested or that would be otherwise required if there was full and adequate information available to the board.

Mr. Lewis seconded the motion.

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

Application 2019-44 by Kelly's Working Well Farm dba Chagrin Valley School for property at 16519 South Franklin Street - Continuance

The applicant is alleging error by the zoning inspector. The property is located in a R-3A District.

Ms. Karen Endres, Zoning Inspector testified that she has heard nothing more from their attorney or from our attorney but they did have their Board of Building Appeals hearing today that was conducted in Ashland, they went in front of the appeals board and she understands that everything was ruled in the Fire Department's favor, the code violations were confirmed.

Mr. Bill Lovell, Assistant Fire Chief testified that they voted unanimously to continue his citation. He said the debate there was, was he wrong for creating that violation, they have an option of taking all of the citation or part of the citation so as far as the violations and the citation they supported that. He said as far as the fees that we were charging after one day, it was understood that we aren't going to be making a revenue off of this we would prefer that they put money into improving their site or finding another location or something of that sort so what they did is they came up with, and he doesn't remember the exact numbers, but a larger number after six months.

Ms. Endres said they had to pay a \$15,000.00 fine that was reduced, all of the fines that Mr. Lovell had and it was far more than \$15,000.00.

Mr. Lovell said it was \$55,000.00.

Ms. Endres said they were fined \$15,000.00 and they have 180 days to get all of the permits relevant to the property and her understanding is that zoning permits, building permits any health department permits they might need in order to operate and what they decided was, they being the state, decided that it is an educational institution and her understanding is they tried to play the name games or the un-school game there and it didn't fly, they said you are an educational institution and they were being processed at the state level as an educational institution so she thinks that she is good or we are good saying it is a school.

Mr. Lovell said at this point they can appeal that.

Mr. Lamanna said the definitions are a little broad.

Mr. Lovell said it becomes more difficult to appeal.

Mr. Lamanna said if the board did not have substantial basis. He said this is one where mostly a judge is not generally going to want to stick his neck out and say oh the fire guys were wrong on this, he might reduce the fine but he is not going to say they are wrong unless there is absolute dead clear evidence that somebody made a serious mistake.

Mr. Lovell said after a year they can be fined per month on that. He said our intention is to not fine them at all, our intention is to either have them come up to speed so they can occupy or never occupy.

Ms. Endres said she suspects she may hear from them maybe in the next week or two once they figure out what they want to do but she has heard nothing yet, her understanding is we are waiting now on a briefing, she suspects that both attorneys probably wanted to wait until this hearing was completed to complete their briefing for the BZA hearing in February.

Mr. Gutoskey asked since the state determined that it is educational what does that mean for the zoning inspector error.

Mr. Lamanna said it is different definitions.

Ms. Endres said she thought Fire Chief Metz said they are classifying this as an educational institution.

Mr. Lovell said we classified it as an educational institution and they supported his citation that doesn't mean that the state is saying that it is an educational institution.

Mr. Gutoskey asked if they saw all of the evidence, all of the pictures.

Mr. Lovell said he didn't think he even had to go there, he thinks they would have won.

Mr. Lamanna said it is definitional and the thing is when you get into the fire code they are very use oriented.

Mr. Lovell said just like the building department.

Mr. Lamanna said whereas a lot of definitions we pick up that are regulatory oriented, they are oriented from the standpoint if the state wants to control people doing schools so the definitions are towards that whereas the fire people it is more towards you are assembling and you are kind of doing these kinds of things, we don't care what you call yourself, if you've got people coming and you are doing these kinds of things.

Ms. Endres said the building needs to be safe. She added that minutes from the hearing today will be available in the next 30 days is her understanding so she will probably ask for a copy of those minutes and we can review them and she apologizes to Mr. Lovell, she didn't make it, they invited her to go and to meet them at 8:00 this morning but she was worried about getting back for this meeting.

Mr. Lovell said it went from 10:00 AM to 1:30 PM, it was longer than he expected and longer than he has seen but they were giving everybody their opportunity to be on record similar to last month. He said they had two other people who showed and they also testified, Ian and Mr. Demko.

Mr. Lamanna asked if they brought in expert people.

Mr. Lovell said they had Terry from the State Fire Marshal's Office, Chief Metz, and John Dobies from our department and Ms. Linda Applebaum.

Ms. Endres said Emily Collins was not there, it was a different attorney.

Mr. Lamanna asked from the same office.

Ms. Endres said she wasn't even sure it was from the same office, Chief Metz didn't give her that much detail but she would suspect it was the same organization.

Mr. Lewis submitted a list for the record that was created during the BZA hearing on this application of additional information the board would like to request from the applicant and related agencies. It is as follows:

Receipts

Detailed Point of Sale Receipts for the on premises farm produced products sold on premises at the market store for the following years.

2016
2017
2018
2019

Property Insurance

Carrier and Policy Copy

Well/Water Test Results for the following years

2016
2017
2018
2019

Geauga Department of Health

Official Citations and Violations - copy
Letter by Geauga Health notifying EPA of same – copy

South Franklin Circle

The written permission letter to the School from S. Franklin retirement community management permitting the use of their property – specifically the pond – by the School's kids.

School Enrollment Application Form

Joe Weiss, Attorney was asking for a copy of their 20-page school application.

(We don't believe there is an application for Agritourism. We did see in other zoning codes and court cases that some Townships require applications to be filled out for Agritourism. We need to have the Zoning Commission add a section on Agritourism.)

Briefs

Request made to both Applicant and Township Zoning Attorney to submit Briefs on the primary issue being reviewed – Conditional Use Permit for Schools requirement on property classified Agritourism but zoned residential.

Entering into Evidence by Board

Exhibit – Applicant's Website Screen Shots of entire site

Agritourism Application – Blank

Completed Agritourism Application

Mr. Gutoskey submitted for the record copies of the Chagrin Valley School's website and stated that the website uses the word "school" 252 times and "farm" 58 times and the date this was taken off their website was the date of the board's last meeting held on December 19, 2019.

Mr. Lamanna moved to add the documents submitted by Mr. Lewis and Mr. Gutoskey to the record.

Mr. Lewis seconded the motion.

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

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

Motion BZA 2019-44 by Kelly's Working Well Farm dba Chagrin Valley School for property at 16519 South Franklin Street

Mr. Lamanna moved to table this application to the next regularly scheduled meeting to be held February 20, 2020.

Mr. Gutoskey seconded the motion.

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

Since there was no further testimony, the public hearing was closed at 10:00 P.M.

Respectfully submitted,

Brent Barr, Alternate Member
Michael Corcoran
Ted DeWater
Joseph Gutoskey
Michael Lamanna, Chairman
Todd Lewis, Vice Chairman

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

Date: February 20, 2020

AUDIO RECORDING ON FILE

Bainbridge Township, Ohio
Board of Zoning Appeals
January 16, 2020

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 10:00 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Brent Barr, Alternate; Mr. Ted DeWater; Mr. Joseph Gutoskey and Mr. Todd Lewis. Mr. Michael Corcoran was absent. Ms. Karen Endres, Zoning Inspector was present.

MINUTES

Mr. Lamanna moved to adopt the minutes of the December 19, 2019 meeting as presented with two changes, one with respect to the testimony of Mr. Gutoskey changing the word “glide” to “drive” and one presented by the secretary noting that Mr. George Staiduhar, Court Reporter was present for the meeting.

Mr. Lewis seconded the motion.

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

ORGANIZATIONAL SESSION

Election of Chairman

Mr. Lewis made a motion to appoint Mr. Lamanna as Chairman.

Mr. Gutoskey seconded the motion.

Election of Vice Chairman

Mr. Gutoskey made a motion to appoint Mr. Lewis as Vice Chairman.

Mr. DeWater seconded the motion.

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

Sunshine Law

Mr. DeWater made a motion to adopt the Ohio Sunshine Law (ORC).

Mr. Barr seconded the motion.

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

Meeting Schedule

Mr. Barr made a motion to set the meeting night of the Board of Zoning Appeals on the third Thursday of each month at 7:00 P.M. at the Bainbridge Town Hall; which meetings may be continued from time to time, at the discretion of the board, to such other dates as set at the meeting; and also that the board may schedule additional meetings during the month upon its motion.

Mr. Gutoskey seconded the motion.

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

Zoning Secretary

Mr. Lamanna made a motion to reappoint Linda Zimmerman as secretary to the Board of Zoning Appeals.

Mr. Barr seconded the motion.

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

By-Laws

Mr. Lamanna made a motion to adopt the Bainbridge Township Board of Zoning Appeals By-Laws and Procedures effective January 18, 2007 and amended on January 15, 2009.

Mr. Barr seconded the motion.

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

APPLICATIONS FOR NEXT MONTH

Application 2019-44 by Kelly's Working Well Farm dba Chagrin Valley School for property at 16519 South Franklin Street - Continuance

The applicant is alleging error by the zoning inspector. The property is located in a R-3A District.

Application 2020-4 by Daniel Schrickel for property at 17930 Elliott Drive

The applicant is requesting area variances for the purpose of allowing an existing house to be permitted as constructed. The property is located in a R-3A District.

Application 2020-5 by Paul and Rachel Baucio for property at 8559 Beacon Hill Drive

The applicants are requesting area variances for the purpose of allowing a pavilion, hardscaping, shed, above ground swimming pool and deck as constructed. 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 February 20, 2020 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 11:17 P.M.

Respectfully submitted,

Brent Barr, Alternate Member
Michael Corcoran
Ted DeWater
Joseph Gutoskey
Michael Lamanna, Chairman
Todd Lewis, Vice Chairman

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

Date: February 20, 2020