

Bainbridge Township, Ohio  
Board of Zoning Appeals  
November 19, 2009

Pursuant to notice by publication and certified mail, the public hearing was called to order at 7:03 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Todd Lewis, Mr. Mark Murphy, Mr. Mark Olivier and Ms. Lorrie Sass.

Mr. Lamanna welcomed everyone to the regular meeting of the Bainbridge Township Board of Zoning Appeals. He then explained the hearing process and swore in all persons who intended to testify.

Application 2009-28 by Lou Belknap of Agile Sign & Lighting for Giant Eagle for property at 8535 Tanglewood Square - Continuance

The applicant is requesting area variance(s) for the purpose of installing signage. The property is located in a CB District.

Mr. Lou Belknap and Ms. Melissa Cobb were present to represent this application.

Mr. Belknap testified that they changed out to the one sign on the building instead of asking for two for the drive-thru and submitted a new drawing to the board. He said they had asked for one over the canopy or on the canopy because of the setback and they had also asked for the top corner one.

Mr. Lewis asked which one they are going with.

Mr. Belknap said they are going with the building sign, not the canopy sign.

Mr. Lewis asked if that is what this rendering is.

Mr. Belknap said correct and he believes that was the only actual question they had from the last meeting which they would like to do and it seems to make more sense for the building and it serves the purpose.

The board reviewed the new submitted drawing.

Mr. Olivier asked if this is just a height variance.

Mr. Belknap said one was the additional sign (variance) and one was the height (variance) so they have two variances.

Mr. Olivier asked if one is being taken away or is there still one additional sign.

Mr. Belknap said yes, there were two variances before and the overall height was a variance and then adding that sign on the corner was a variance. He said they removed one sign so there is no longer a variance needed for that one. He added that he can go through these if the board wants.

Mr. Olivier said as long as the square footage is okay.

Mr. Lamanna said there is the Giant Eagle sign, the Food and Drug sign, the Drive-thru Pharmacy sign and then two ground signs.

Mr. Belknap said correct but the ground signs are not variances, they are within code.

Mr. Lamanna asked about the bank sign.

Mr. Belknap said there will be a bank sign at some point, he just does not know when that is and added they are not sure who the tenant is.

Ms. Cobb testified that the current bank that is in the store will be moving into that area so there will not be a new tenant and she believes there is already a sign on the building.

Mr. Belknap said there will be no square footage change for that.

Mr. Lamanna said an existing sign is going to stay.

Mr. Belknap said yes.

Mr. Murphy said and that is 29 sq. ft. so we are at 428 sq. ft. which is under the total allowed.

The board discussed the variances requested.

Mr. Lamanna said there are two signs on the elevations and the total number of wall signs.

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

Motion BZA 2009-28 – 8535 Tanglewood Square (Giant Eagle)

Mr. Lamanna made a motion to grant the applicant the following variances for the purposes of installing signage.

1. A variance to permit four wall signs including the main Giant Eagle sign, Food and Drug sign, Drive-Thru Pharmacy sign and the existing Bank sign which will be relocated from its current area.
2. A variance for the Drive-Thru Pharmacy and Giant Eagle signs to the maximum height level from 15' to 21' for the maximum height of the sign.

Based on the following findings of fact:

1. Due to the large size of the building and multiple types of operations it is appropriate to have some additional wall signs for the purpose to direct people to the correct locations on the building especially in the case of the Drive-Thru area.
2. The variance on the height is consistent with the architectural style and shape of the building and places the signs in reasonable locations on the architecture of the building and therefore is not inconsistent with the intent of the height limitation on signs.

Mr. Lewis seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye; Ms. Sass, aye.

Application 2009-30 by Alexander Kourakine for property at 8105 Bainbridge Road

The applicant is requesting area variances for the purpose of installing an in-line pond. The property is located in a R-3A District.

The zoning inspector's letter dated November 19, 2009 was read and photos of the site were submitted.

Mr. and Mrs. Alex Kourakine were present to represent this application.

Mr. Kourakine testified that he designed and started building this pond and said this is how it is going to look (he showed the board a drawing of the pond). He said he submitted an application for this pond but the zoning inspector said that the pond could not be located there because of the setback. He referred to Chapter 160.06 (c) and said the pond can be considered as a retention facility and it can be located on a stream. He said he submitted an application on October 7<sup>th</sup> and that time he applied for a variance.

Mr. Kourakine continued by saying the second part of this application is the bank stabilization and both parts on this stream, the stream was too big and he could not afford to make stabilization but the inlet and outlet of the pond, he would like to make stabilization by putting in rocks on both sides and between the garage and house it is about 57'-60' of the beginning of the stream from Bainbridge because his driveway is too close to the stream and he would like to keep it from soil erosion. He said soil erosion is too deep for the stream, the stream is much deeper than the water that goes through it and it is actually a storm water ditch and usually water is there when there is a heavy rain but it is too deep because of soil erosion. He said mostly he would like to have a legal permit for this pond and he found out the pond is considered a construction unit and a permit is required for that.

The board reviewed the application.

Mr. Murphy asked Mr. Shane Wrench, Assistant Zoning Inspector to put the 2' contours on the GIS map and add rivers and streams and turn off the aerial. He asked how much land is upstream of this and how big of a watershed there is.

Mr. Kourakine referred to the amount of water coming through this stream and referred to the soil and water department.

Mr. Murphy asked how many acres are upstream.

Mr. Kourakine said he knows the amount of acres and the 100 year storm capacity. He said he asked the soil and water department for some assistance to help him but they said this is his responsibility because it is on his territory. He said due to the amount of water coming through this stream a 36" pipe would be fine but to do it himself it is too expensive, he cannot afford to do it and had to find a more cost effective way. He said the most important thing on the project is to decrease the capacity of the stream so it is unlimited water and has overflow and all additional water will go the same way like it used to be on the stream. He showed the board a site plan of his house. He said this paper shows where he built his house more than two years ago and it shows the location of the stream and the pond is actually designed to have an inlet and outlet because of maximum water level and regular water level. He said the maximum water level is designed to be no higher than the bottom of the stream from this point and it is designed so it will not raise the water level of the stream behind this point. He said the actual project stopped two months ago and it is about 90% complete and everything works fine, however he would like to decrease it a little bit. He showed the board on the site plan and said the pond is located more than 50' from the border of his property.

Mr. Murphy said the only variance the board is being asked to assess tonight is an area variance for lot coverage and asked if that is correct.

Mr. Kourakine replied no.

Mr. Lewis said it is built in a riparian, there are no permits and it is being challenged by the Army Corps of Engineers, it is in violation and it is under consideration by them right now, the applicant has been notified of that.

Mr. Murphy said all construction has stopped and before the Army Corps of Engineers or anybody else would even think of it, he has to find out whether in fact this local zoning board would allow this structure. He said this board is not assessing the Army Corps of Engineers impact and we are not assessing because the Geauga Soil and Water is involved, this board is not assessing their evaluation, we are being asked to evaluate this as a local zoning appeals board as if it were a structure prior to construction and asked if that is true.

Mr. Lewis said there are setbacks and the intrusion on the riparian.

Mr. Kourakine said he submitted an application for a permit to the Army Corps of Engineers and they are in control of this project, not the zoning department. He said they shut it down and this project was scheduled to actually to be not more than 8 – 9 days and on the 6<sup>th</sup> day it was closed with 90% complete, nothing has happened, no movement. He said he applied for a permit from the Army Corps of Engineers and he also hired a lawyer to help him with the Army Corps of Engineers because he questioned two things about it. He said he questioned that does this water ditch qualify as a stream and because it is a stream it should be a natural source of water and this one is not a natural source, it is just rain water and second the point of discharge and the construction that he was doing is exceptional permit and a permit is not required for that so he is working on this matter and he requests a zoning permit. He referred to Chapter 160.06 (c) and said it is required by permit and said this pond is a retention facility because there is always water in it and it has overflow if too much water is to go downstream. He said it is good for nature and to attract nature and wildlife and fishing.

Mr. Olivier said it also says in 160 (c) that storm water retention and detention facilities are located at least 50' from the ordinary high watermark of the designated watercourse and you are in the watercourse; you are supposed to be 50' from the watercourse.

Mr. Kourakine said from 50' you cannot locate anything and maybe you can explain.

Mr. Olivier said he is just explaining what 160 (c) says.

Mr. Kourakine said the high watermark is probably the high point where the water starts collecting to the stream and this stream is bringing water through.

Mr. Murphy said in fact just looking at this site drawing, if the entire pond is moved ½ to the backyard, it is not in the stream bed, you will have a pond and it is a retention basin and there wouldn't be the problems with Geauga Soil and Water and the Army Corps of Engineers and the EPA.

Mr. Kourakine said he does not have a problem.

Mr. Murphy told Mr. Kourakine that he thinks he (Mr. Kourakine) has a problem with everybody.

Mr. Kourakine said no, the problem is the Army Corps of Engineers and your department.

Mr. Murphy said and Geauga Soil & Water.

Mr. Kourakine said no.

Mr. Murphy said according to that letter you showed the board, and it should be added to the record, there is a letter here from the Geauga Soil & Water Conservation District.

Mr. Kourakine said the Geauga Soil & Water Department sent a letter which involves channelizing the stream.

Mr. Murphy said right but a permit has to be obtained from Geauga Soil & Water to not only channelize the stream but they say you are not allowed to build a pond in the channel.

Mr. Kourakine said the Geauga Soil & Water was here a couple of weeks ago.

Ms. Sass asked to see the letter.

Mr. Kourakine said it is not about the pond it was one year before he started the pond.

Mr. Murphy said there is a letter here from Geauga Soil & Water that says to the board, from Carmella Shale, that storm water ponds shall not be located in-line with a stream.

Mr. Kourakine asked why he was not informed so he is not prepared.

Mr. Murphy said he does not know why Mr. Kourakine does not have the letter.

Mr. Kourakine said he sent in his application October 7<sup>th</sup> and he made several calls to the zoning inspector and he told me that he has to get permission from the soil and water department. He said he contacted the soil and water department and they said nobody contacted them.

Mr. Murphy said you (Mr. Kourakine) contacted Geauga Soil & Water.

Mr. Kourakine said yes and the people here told me that he should contact Bob.

Mr. Murphy said Bob Griesmer, whose name is on the letter.

Ms. Sass said the date of the letter is January 12, 2009.

Mr. Kourakine said it was not about the pond but he contacted him.

Mr. Murphy said you asked him about channelizing and what you were worried about is the stream next to your driveway and if you could pipe it or reinforce the banks with rocks. He asked Mr. Kourakine if he informed Mr. Griesmer that he was putting in a pond in-line before that letter came back.

Mr. Kourakine said this letter was sent a year ago, he contacted Mr. Griesmer two weeks ago and he came out and looked at this pond in the condition it is now and said he has no question about it.

Mr. Murphy asked if Bob Griesmer was out there and saw the pond, then your construction stopped.

Mr. Kourakine said yes the construction stopped.

Mr. Murphy said his boss in response to the zoning inspector's letter in asking about your project says in fact that a storm water pond shall not be located in-line with the stream and it is something that is highlighted here for us and we got this from the zoning inspector and we have a letter from the Department of the Army Corps of Engineers that said you had to stop because you were filling parts of the stream in and put on a stop work order.

Mr. Kourakine said at this point it cannot be allocated because the pond is formed, the shape of this pond is designed to go around trees and not touch the big trees. He said it cannot be moved closer to the house because there is the septic field, it cannot be moved to the left or right because he would violate the requirement of 50' from a border so this pond is in an appropriate location.

Mr. Murphy said but you (Mr. Kourakine) have to work it out with Geauga Soil & Water whether in fact they will allow you to keep that pond.

Mr. Kourakine said he does not have a copy of this letter.

Mr. Lewis said and we don't have a representative here with expert testimony from Geauga Soil & Water and at this point they need to speak for themselves.

Mr. Murphy said no matter what this board says tonight, you (Mr. Kourakine) still have to have their permission to do whatever you plan on doing, whether or not they are going to let you keep it there.

Mr. Kourakine said he wants to speed up the process and he told them himself.

Mr. Murphy said he must have understood that his boss told us that the pond is in a riparian stream.

Ms. Sass said no, all his boss did was send to Mr. Joyce a copy of their regulations, a page of their regulations, it doesn't say anything, and it is just a page out of their regulations.

Mr. Kourakine said they don't care about projects less than one acre and his pond size is about ¼ of an acre.

Mr. Murphy said that may very well be that she did not understand the size of the pond and this may not have anything to do with you and he can appreciate that and he can understand that, this may or may not be about you.

Ms. Sass said that is not our issue.

Mr. Murphy said that is not our issue but we have to look at this from a Bainbridge Township zoning issue and do we have an area variance and by how much.

Mr. Lewis asked what the board's position is about doing things in the riparian.

Ms. Sass said that is the issue.

Mr. Lewis said the setbacks are easy, the riparian is the challenge.

Mr. Kourakine said the letter you are reading is old, my contractor stopped and the zoning inspector came and said you have to apply for a permit and for me to give them a drawing and was the incorrect size and based on the incorrect size that is more size between the border of the property and the border of the pond. He said after he created the drawing, and the drawing you have now meets the requirements so with the distance, everything is fine now. He said the only point is Chapter 160.

Ms. Sass said the riparian, right.

Mr. Olivier said it is really 160.06 (a), (b) and (c) and the crossings because he is crossing the riparian with the bridge, there is a stream bank stabilization issue and there is storm water retention and detention so he needs to get approval from the Geauga Soil & Water and the Army Corps of Engineers before this board can allow it.

Mr. Lamanna said we are not going to get into which comes first.

Mr. Kourakine said it shouldn't be a condition of the permit if another approval is required.

Mr. Lamanna said that is a condition to that proceeding and the board will look at it as to whether or not assuming they obtain approval from these other agencies we would allow it from that standpoint and we basically have several different things going on here and one is the stabilization which he assumes there is an issue. He asked how the stabilization will be done.

Mr. Kourakine said he would like to put rocks on the side of the stream to prevent erosion.

Mr. Lamanna said he is assuming that if it is already coming in as natural materials, he is not creating a structure.

Mr. Wrench said there is a concrete retainer for the bridge.

Mr. Lamanna said he is starting off with the stabilization along the side of his property and if he is just using natural materials, he is not creating a structure, so there are no setback requirements and if he meets the permit requirements in 160.06 (d) that might apply then he is okay and he really needs no action by this board for that part of it, there is no variance required.

Mr. Kourakine said it is not required by the Army Corps of Engineers because it is covered by the Nationwide Permit.

Mr. Lamanna said it is just a blanket permit so that would satisfy the requirement so that part of it is really not an issue that we need to address from what he sees, there is no variance required for him to do the stabilization project as long as it is all natural materials, he is not creating a structure and he does not think putting the rocks in creates a structure so there is nothing the board needs to act on for that and that is item #1. He said item #2 is the bridge or crossing.

Mr. Lewis said he is looking at a series of photos but he was under the impression that the job was shut down but he is looking at some pictures taken over a series of a week or so and he is looking at the bridge on the 17<sup>th</sup> and it is in rough and then there is no back-filling, nothing else and then he is looking at a picture from the 19<sup>th</sup>, that is two days later and he is seeing that has been capped, back-filled and now there is a steel structure so he is confused. He said Mr. Kourakine made a statement earlier that the job has been shut down for two months but it doesn't appear to be. He asked Mr. Wrench that if in any of the zoning department's visits if there have been any construction crews or excavating machinery or anything active there in the last few weeks.

Mr. Wrench replied yes.

Mr. Kourakine said this application involves a pond and the project was shut down by the U.S. Army Corps of Engineers but this bridge existed before, the same size and the same location, we just repaired this bridge and we put in the same size and same location and he does not consider it as new construction. He said the zoning inspector knew about the bridge and did not ask any questions at that time. He said his contractors contacted the U.S. Army Corps of Engineers and asked them about the bridge and they said they did not care about the bridge, they can do it so they did the bridge. He said in a violation letter he received from them, they are concerned about discharging materials into the stream so he will raise the water elevation.

Mr. Lamanna said the bridge itself is a crossing and a separate issue and it is an inlet to this proposed pond.

Mr. Lewis said it is crossing a riparian.

Mr. Lamanna said it is a separate structure and the issue on that structure is if it is within a side yard setback.

Mr. Kourakine said it is an interesting point and if the board does not approve it today, this project, he would like the board to approve it in parts. He said one part is the bank stabilization, the second part and is most important for him is the pond and the third part is the bridge.

Mr. Lewis said those are all separate applications.

Mr. Kourakine referred to the bridge and said he was just informed that the zoning inspector was interested in it just a couple of days ago, nobody told him to apply for that because it is just rebuilding the same.

Ms. Sass asked Mr. Wrench if that is his understanding that it is just a rebuilding of a bridge that was there before and there is no issue.

Mr. Wrench said he was not aware of the bridge until the neighbors called and there is nothing on the application regarding a bridge so it could be viewed as separate from the whole U.S. Army Corps issue, it is still a Bainbridge Township structural issue.

Mr. Kourakine showed the board a site plan with the house and said as you will see the bridge is here.

Mrs. Kourakine testified that he needs the bridge to drive on with the tractor and the old bridge was dangerous.

Mr. Lamanna said he does not know what was there before and asked if there are pictures of what was there before but based on what he has seen with these pictures, this is something entirely different, this is not rebuilding what was there and this is a new structure.

Mr. Kourakine said you call it new construction but the bridge was always there.

Mr. Murphy said the old bridge is shown on the drawing.

Mr. Lamanna said if a house is encroaching and it is torn completely down and you rip out the foundation, you can't come in and say it is a pre-existing, non-conforming use and build a new house.

Mr. Murphy asked if it is encroaching or too close to the 50' setback.

Mr. Lamanna said it looks like it is just over the setback. He said he is trying to figure out what is really before the board.

Ms. Sass asked what the issue is.

Mr. Lamanna said the stream stabilization has been eliminated because that is not the issue, the same thing with the bridge itself, as long as it complies with 160.06 (a) 1, 2, and 3, he can go ahead with that but the only issue is the structure is slightly encroaching into the side yard setback.

Mr. Kourakine said it is in exactly the same spot.

Mr. Lamanna said it looks like it is less than 10' into the side yard setback.

Mr. Kourakine said this map indicates that it was there.

Mr. Lamanna asked what the top structure of the bridge is going to be.

Mr. Kourakine said it will be wood logs and the base was made in a concrete box with steel beams and the cover will be wood.

Mr. Lamanna asked if there will be sides.

Mr. Kourakine said there will be sides.

Mr. Lamanna said a railing so the only thing the board has to deal with on the bridge is the question of encroachment into the side yard setback requirement.

Mr. Lewis said yes.

Ms. Sass said although he hasn't submitted a permit request for that right.

Mr. Lamanna said he still has to go through the request to satisfy A before he can go ahead with it.

Ms. Sass told Mr. Kourakine that he needs to submit an application to the zoning inspector for the bridge.

Mr. Lamanna said and also for the stream stabilization.

Mr. Kourakine said he did submit an application for the stream stabilization and the bridge is steel construction with concrete.

Mr. Murphy asked about the original bridge and if it was concrete or steel.

Mr. Kourakine said it was concrete with steel also on it.

Mr. Lamanna said on that part we will have to deal with a variance potentially to the side yard setback.

Ms. Sass said the bridge.

Mr. Lamanna said yes.

Ms. Sass told Mr. Kourakine to work with the zoning inspector on that.

Mr. Kourakine said on what, the bridge.

Ms. Sass said yes.

Mr. Lamanna asked if there are any measurements on the bridge.

Mr. Kourakine said the zoning inspector did not have a question on the bridge when he came over and now he poured concrete based on that and now you are going to decide that he has to move it.

Mr. Lewis said no what the board is trying to do is if a side yard variance is needed we need a set of dimensions for it.

The board discussed the location of the bridge.

Mr. Kourakine said the existing bridge met the requirement because it is a little over 50'.

Mr. Lewis said the board is not suggesting that it has to be moved, we are trying to find out if it is 45' off the property line and it should be 50', then a 5' variance is needed, so the board is trying to quantify the variance and we are just trying to get a dimension.

Mr. Kourakine said okay and he understands.

Mr. Murphy said it seems to indicate that it may in fact be closer to the property line than 50' to either side yard setback and he understands that an old bridge was re-built but once you tear it down and new construction was started, when Mr. Joyce was here last week, he said the construction project was on hold until all of the things have been taken care. He told Mr. Kourakine that he is sorry he has done more but at this point, he needs to at least present the board with the evidence with what is going on with the bridge and that is something entirely unrelated to the pond or the stream.

Mr. Lamanna asked Mr. Kourakine if he has any drawings for this new bridge construction.

Mr. Kourakine said no, and nobody told him.

Mr. Murphy told Mr. Kourakine that he did not go for a permit for everything he started before this first so, the board is sorry about that but if he had said he was rebuilding a bridge, he would have had drawings and the board might have known about it earlier than this. He said a month ago, Mr. Joyce was here and said that this project was completely on hold until now so the board will deal with the bridge next month.

Mr. Kourakine said the pond project is completely on hold yes.

Mr. Lamanna said the board needs to deal with the bridge and we need to know exactly where it is relative to the property line and we need the dimensions. He said we need to know where the bridge is and what it looks like and the orientation and how much of it that is going to be in the side yard setback on a drawing.

Mr. Kourakine said okay.

Mr. Lamanna said the board needs some actual measurements then the board can consider whether or not to grant a side yard setback variance.

Ms. Sass said but that is next month's issue.

Mr. Lamanna said yes and in all probability the board is not going to have a problem if it is a few feet over but if it is 10' away from the side line then that may be an issue.

Mr. Kourakine said it is exactly in the same place and the size of the bridge is exactly the same.

Mr. Murphy said that might end up being just fine and it may just be a bridge over a creek too but at this point there are other issues that may or may not allow you to build the pond where you have planned on building the pond too and it is not just us that are talking about it, there seems to be a lot of other people involved with the county and the state that may have an issue with the pond so we had better deal with our end of it.

Mr. Lamanna said that is what you (Mr. Kourakine) need to do on the bridge, come back and show the board where it is. He said now we come to the pond.

Mr. Murphy asked if this classifies as a storm water retention or detention facility.

Mr. Kourakine said detention facilities completely dry out.

Mr. Murphy said so then this is a retention facility because it holds water and we don't really care because they are both the same under our zoning and referred to Chapter 160.06 (c) and these are permitted structures. He read the following: Storm water retention and detention facilities may be constructed in the riparian setback provided (1) Storm water quality treatment consistent with current Ohio EPA and Geauga County Soil & Water Conservation regulations is incorporated into the basin. He said issue #1 and issue #2 – Storm water retention and detention facilities are located at least 50 feet from the ordinary high watermark of the designated watercourse. He said it seems that you (Mr. Kourakine) may or may not be working on #1 of that but #2 does not seem to fit at all.

Mr. Kourakine asked Mr. Murphy if he is a professional on this matter and asked what is the high watermark or what point exactly on this example is his stream and what is the designated watercourse and his understanding is the designated watercourse is where the stream goes to.

Mr. Lewis said you (Mr. Kourakine) have a watercourse and the high watermark is here (he referred to the site plan).

Mr. Lamanna said the high watermark is where you can see basically visible soil.

Mr. Lewis said you can't build a detention or a retention pond anywhere within 50' of that course's high watermark and you built a pond right smack in the middle of it, you have got to be 50' to the left or 50' to the right and if there is no place on the property, you might be able to do it.

Mr. Kourakine said a detention facility cannot be 50' from a stream, it can be only downstream.

Mr. Lewis said there lies the question sir. He said our code says you can't be within 50' of it.

Mr. Kourakine said within 50' he can build anything from the setback because any construction is allowed.

Mr. Lewis said he was talking about the watercourse of the stream, it is not a side yard variance and it appears that it says you can't build within 50' of the watercourse.

Mr. Kourakine asked the board to show him where the watercourse is.

Mr. Lewis said he can't anymore because there is a pond there.

Mr. Wrench explained and said per the county, a stream can be intermittent or dry with no water but it is a stream. He showed the board via the GIS the location of the bridge and the pump and said it needs to be 50' from the designated watercourse.

Mr. Kourakine said the watercourse is where it brings the water to.

Mr. Murphy said that is the riparian setback and that is the stream that is on the property whether it runs everyday 24 hours a day or only runs during rain events it is still considered a riparian stream by Geauga County.

Mr. Kourakine asked if he cannot put a detention/retention facility 50' to this area and referred to the site plan.

Mr. Murphy said that is the way it looks like to him but he is not an expert.

Mr. Kourakine said you have to know for sure.

Mr. Lamanna said what this is designed for is a big piece of property, someone builds something on it and collects all of the storm water and brings it down and on that property there is a riparian aka the property on Savage Road and they are going to have streets and collect the storm water and they are going to run it down to the riparian in there so if they want to build a storm water retention basin for the run off, they will have to keep it 50' outside the riparian. He said the idea being is so the riparian does not wash out the detention basin so what he is talking about is not at all within the contemplation of this section.

Mr. Murphy said we don't have anything in here that says an allowable structure inside a riparian is a pond, we don't have that at all. He said what we do have though is that everything about his pond actually improves the riparian.

Mr. Lamanna said the purpose of the riparian is to do all of these things none of which the pond really impacts adversely.

Mr. Murphy said this is for the construction of parking lots right up against a stream or a home that goes right into a stream because in fact his pond is going to reduce flood impact, it is going to assist in stabilizing banks, it is going to reduce pollutants in the watercourse and everything about his pond actually provides water for habitats, provides shade and food but the problem is that the people who are experts in this are Geauga Soil & Water and the Army Corps of Engineers and the Ohio EPA and you (Mr. Kourakine) have to get their permission to put that pond in or you don't and say it is 1/4 of an acre and you can come back here and say they don't care.

Mr. Kourakine said all of the departments are informed about this project and the only ones who request applications for a permit is the zoning department and the U.S. Army Corps of Engineers.

Ms. Sass said soil and water has not done that.

Mr. Murphy said soil and water has to approve it.

Mr. Kourakine said approval is not required from soil and water.

Mr. Murphy said there are crossings, permitted structures and one of which is a crossing which would be the bridge where we need a site plan and you need the Army Corps of Engineers for that.

Ms. Sass said that is fine.

Mr. Murphy said the Army Corps of Engineers for a stream bank stabilization and Geauga Soil & Water if it is considered a retention basin and that is what the zoning regulations say and what we are here for, we did not make this up, this is Bainbridge Township's Zoning Regulations and we are here to enforce or to allow certain people the right to do something slightly different than what the zoning says, we are meant to evaluate it and take a look at it.

Mr. Kourakine said if you (the board) are not sure how to qualify it, what do you expect from me.

Mr. Murphy said because if you (Mr. Kourakine) had gone to Geauga Soil & Water first and the Army Corps of Engineers first and get the permits you need from them too. He said what he has from Geauga Soil & Water states that this structure is not allowed and it states that "a storm water pond shall not be located in-line with a stream".

Mr. Kourakine asked if that is directly for his project.

Ms. Sass said no it is not.

Mr. Murphy said it may or may not be.

Mr. Kourakine said if he has a problem with the soil & water it is another question.

Ms. Sass asked if we have any kind of correspondence between the zoning department and the soil and water conservation district where there has been any kind of an inquiry.

Mr. Wrench said the only thing he has is this letter.

Ms. Sass asked if that is the email.

Mr. Wrench said there is one other and everything came through email.

Mr. Kourakine said he would like to speed up the project and the soil and water inspector came and said no permits are required and there is no question about this project.

Mr. Murphy asked if that is in writing.

Mr. Kourakine said no, he does not have it in writing but he has evidence and confirmation.

Mr. Murphy said we will need to see that in writing.

Mr. Kourakine said the zoning inspector should have it because actually he thinks it is not required for the variance commission on this matter, it would be considered a detention facility and no zoning required if violated and it was a month ago and he does not have a form from the zoning inspector about his application, he said it was wrong, it is another application.

Ms. Sass asked what he means regarding another application.

Mr. Kourakine said he means this application, what the board is looking at.

Mr. Murphy said the board has his (zoning inspector) letter to you dated September 25<sup>th</sup>.

Mr. Kourakine said this letter is based on the first application submitted by my excavator/contractors and it was incorrect information and after that he submitted another one which the board has dated October 7<sup>th</sup> and he does not have a form for this one.

Ms. Sass said what she is hearing is you (Mr. Kourakine) submitted a subsequent application which has not been ruled upon by the zoning inspector and asked if that is right. She said you (Mr. Kourakine) said after this you submitted a second application and you don't have a ruling on that.

Mr. Kourakine said he did not have a response on that.

Ms. Sass said so until such time that you get a response from the zoning inspector we don't know from the zoning department's perspective what you should be here on. She said the only information that the board has is the correspondence from the zoning inspector dated September 25<sup>th</sup> and you are now indicating that this is not the matter that you are talking about because there have been some revisions and some changes.

Mr. Kourakine said maybe you can explain why it is more than a month; it is in the ordinance that the zoning inspector should have informed me in a month.

Ms. Sass said denied.

Mr. Kourakine said it was October 7<sup>th</sup> and November 7<sup>th</sup> was exactly one month and he made several phone calls, many phone calls to the zoning inspector and he just did not answer and in the beginning he asked him to verify with the soil and water inspector so after two weeks contacting him there was no feedback from him (zoning inspector) so he contacted soil and water himself and asked them about the no correspondence and that is what Bob said, what is exactly his request.

Ms. Sass asked to look at the correspondence from Mr. Joyce.

Mr. Murphy said the board has a letter here.

Mr. Olivier said it is dated October 16<sup>th</sup>.

Ms. Sass asked if it is on Bainbridge Township letterhead.

Mr. Murphy said it is from Mike Joyce to Bob and assumes it is Bob from soil and water.

Ms. Sass said she does not know what that is.

Mr. Murphy said it appears to be a letter from Mike Joyce to Bob Griesmer asking him to rule on this exact thing we are talking about here so in fact what it looks like to the board is that Mike Joyce sent a letter to Bob on October 16<sup>th</sup> after you (Mr. Kourakine) applied on October 7<sup>th</sup> for a new ruling.

Mr. Kourakine said he does not have the letter.

Mr. Murphy said if in fact that is a letter to Bob Griesmer, we don't have a response.

Ms. Sass said we don't have anything.

Mr. Lewis asked what the date of the letter is.

Ms. Sass said October 16<sup>th</sup>.

Mr. Lewis said then Carmella Shale responded to it in an email form on October 22<sup>nd</sup>.

Ms. Sass said but she didn't, we don't know what she did and the email doesn't answer the question.

Mr. Lamanna asked if there is a complete set of soil and water regulations here.

Mr. Wrench said no.

Ms. Sass asked if there is anything in the zoning file that would appear to be an official request or submission of this particular question from the zoning department to the soil and water conservation district, any kind of letter from Mike Joyce on Bainbridge Township letterhead, any kind of email.

Mr. Wrench said he does not have access to Mr. Joyce's email.

Mr. Murphy asked where that came from.

Ms. Sass said it came from Mr. Wrench's file.

Mr. Murphy said that is the zoning inspector's file so that is in Mr. Joyce's file. He said we are guessing that it is what it looks like Mr. Joyce sent a letter on October 7<sup>th</sup> and October 16<sup>th</sup> a week after you (Mr. Kourakine) came back asking for details on those three points. He said a week later on October 22<sup>nd</sup>, Carmella Shale sends Mr. Joyce an email that says here is a page out of our regulations that says no storm water ponds in-line.

Ms. Sass said and then we don't have any kind of official denial from the zoning inspector.

Mr. Murphy said correct, we don't have his ruling or anything else at this point.

Ms. Sass said she thinks that all needs to happen before the board can look at this fully.

Mr. Lewis said there is an amended application floating around somewhere.

Ms. Sass said somewhere which the board has not seen.

Mr. Lewis said not only has the board not seen it but there is no ruling from zoning on it.

Ms. Sass said correct.

Mr. Lamanna said there is an application for what.

Ms. Sass said the applicant has indicated that he submitted an application to the zoning department on October 7<sup>th</sup> which appears to be consistent with some kind of inquiry submitted from the zoning inspector to somebody named Bob.

Mr. Lamanna asked if there is a copy of the application.

Ms. Sass said she does not know. She said on October 16<sup>th</sup> we then have a provision from soil and water conservation regulations back to us with no indication that it is relative to the property.

Mr. Lamanna said it doesn't answer the question and it still begs the question if this is a storm water retention pond.

Ms. Sass said correct so we are now more than 30 days.

Mr. Murphy said he has to assume that Mr. Joyce put this package together for him and nobody else got this package and this is from Mr. Joyce so this letter from Carmella to Mike Joyce in an email to him is in fact a response to several of his requests, maybe not the one to Bob, maybe the fact that she got a copy of this first one from September 25<sup>th</sup> because she was copied on this.

Ms. Sass said right but the applicant's testimony is that what was submitted on September 25<sup>th</sup> has been changed, so regardless of what Carmella may or may not have subsequently indicated on here may have no bearing to the one that was submitted on October 7<sup>th</sup>, we don't know.

Mr. Olivier said he (Mr. Joyce) says in his letter here that he rejected an application in the first paragraph of his letter but that was prior to what you are saying is a revised application.

Mr. Kourakine said the second one is a different form from the first one and mostly he mentioned about sides.

Mr. Olivier said and he is asking for a second application, he rejected the first and he is asking for the second.

Ms. Sass said and do we know if he rejected the second, we don't know.

The board discussed the applications submitted.

Mr. Wrench said he submitted the variance application October 22<sup>nd</sup>.

Ms. Sass said she does not have it.

Mr. Lewis said it would not have been on this agenda anyway because the 22<sup>nd</sup> would have been after the 30 days.

Mr. Kourakine asked about his application on October 7<sup>th</sup>.

The board reviewed the applications that were submitted by Mr. Kourakine and was in agreement that the variance application has nothing on it.

Mr. Lewis asked if there is any substance of change or if it is just a new application.

Ms. Sass said there is an application for a zoning amendment and it said “incorrect form see attached zoning certificate application” but it was never ruled upon. She referred to the zoning certificate application and said it would have needed to be denied in order to get him here before us tonight. She asked if there is anything indicating that it has been denied. She referred to the zoning application and said nothing is indicated but there is a note saying it was being held for a response from Geauga Soil and Water but that is not a response.

Mr. Lewis said he may have deemed it was an adequate response but you get into the definitions and everything else.

Ms. Sass said if that is the response from soil and water then official action needs to be taken on the request that was submitted either in a form of approval or of a denial to the applicant.

Mr. Lewis said absolutely or some finite action either way.

Mr. Lamanna said if he is appealing the denial, he could have told him he needs to apply for a variance.

Mr. Kourakine said he was not sure of his point.

Ms. Sass said she understands that and that is why he asked for additional guidance from the soil and water conservation district albeit not on letterhead and not in official form and we don't have any kind of official information having been received from soil and water conservation that would indicate anything one way or the other.

The board reviewed a letter dated January 12, 2009 regarding run-off and pipe size.

Mr. Lamanna said he would like to review the zoning commission file on this.

The board discussed storm water retention ponds and stream management.

Mr. Kourakine asked the board if it is just a guess or are they sure what they are talking about. He said if you Google retention ponds, it will give you an explanation of what it is.

Mr. Lamanna said the definition is not perfectly clear and it doesn't really clearly address the situation that we are talking about. He said the definition is more designed for somebody that is collecting water on their property, managing it and then releasing it, not somebody who is doing something to a stream coming through where they are not trying to manage water coming into that stream from their site and the board does not have enough of soil and water's definitions to see how they would treat this and whether they treat anything on a stream like this as being some kind of storm water management.

Mr. Olivier said but it is a structure in a riparian setback.

Mr. Lamanna said it is by definition but.

Mr. Olivier asked if it is doing damage to the riparian.

Mr. Lamanna asked was this the kind of thing that nobody thought about and if you look at the purposes this doesn't really create any of the impact because it is not a detention or a water management facility. He asked the audience if they had any questions or comments on this application.

Mrs. Grace Heun of 8114 Bainbridge Road testified that she is a neighbor across the street and unfortunately they have four foot ditches on her side of the road because all of the water comes down from Westview all through her backyard and goes under a cement culvert into this where he is talking about putting stone on the ditch along the side so that way any water that would come there would seep into the ground as it goes along and asked if he is not putting in a concrete pipe.

Mr. Lamanna said it is to keep the banks from eroding.

Mrs. Heun said she wishes they would do it for her because her yard gets flooded.

Mr. Lamanna said as far as he can see here, nothing he is doing is going to slow down the flow of water to his property and if anything it will slow down the flow to the people below him a little bit maybe but it is not going to be backing up water upstream to other people and in fact it wouldn't be good for him because his property would be the first to flood if it starts backing up.

Mr. Olivier asked Mrs. Heun where her property is in relation to this property.

Mrs. Heun said she is across the street at 8114.

Mr. Lamanna said the water goes through her property first then under the street onto this property.

Mrs. Heun said with Osborne's two houses down, the water comes the other way in the ditch and goes under there because they are at the bottom and it is deep.

Mr. Dennis Martin of 8081 Bainbridge Road asked what happens to the mound of dirt in the backyard. He testified that there is a 10' - 20' mound of dirt in the backyard and asked what happens to that.

Mr. Lamanna asked if he means the excavation soils.

Mr. Kourakine said nothing, it will remain as a hill.

Mrs. Kourakine said it will be seeded.

Mr. Kourakine said there is very good soil on his property and the top soil will be distributed across his yard and in the front yard and some clay will remain so he created a 10' high mound and on top of it is top soil also and it is located in the forest and no neighbors are around.

The board viewed the photos of the mound.

Mr. Lewis asked Mr. Kourakine if that is the mound in the photo.

Mr. Kourakine replied yes and said it is upside from his neighbors.

Mr. Lewis said it is pretty substantial.

Mr. Kourakine said it is not a structure.

Ms. Sass asked if it is going to be seeded.

Mr. Kourakine said yes.

Mr. Olivier asked if we can get soil and water to comment on whether or not this pond fits our purpose of this resolution and have them look at the purpose paragraph.

Mr. Lamanna said it is not up to soil and water to interpret but he would like their opinion as to whether they think this is actually a storm water retention basin and why they think it is a retention basin, it is not managing storm water originating from the site. He said the other question he would have for them is assuming this is not a storm water retention pond, what thought do they have about somebody putting a non-stream management pond into a stream and is there something that says no you can't create an aesthetic pond in a stream.

Mr. Kourakine said he does not completely agree with you (Mr. Lamanna), he does manage storm water because to prevent soil erosion you have to slow down the stream in a high watermark and a retention facility exactly for that to slow it down so it won't wash all of the soil away fast. He said it is for soil erosion prevention and it is 1/4 acre and a good capacity.

Mr. Olivier said that is what streams do, streams erode the banks and it is a natural course of a stream to erode the banks. He said he does not think our retention basins were about, not to manage or control the erosion of a stream it is for storm water run-off.

Mr. Lamanna said it is to manage the run-off itself, not to manage the stream and that is the question he has for soil and water, how do they deal with a pond that is not really put there to manage on-site storm water run-off, it is an incidental effect of managing the storm water that is coming through the site in a riparian but it would seem to him that it is a benefit, anything that is done to slow it down.

Mr. Olivier referred to the lakes around here and said even though they are old, they are effectively lakes that were created out of a stream, and they are all in-line lakes or ponds.

Mr. Kourakine said before the board makes a decision, he asks the board to consider this project in a positive aspect and a negative aspect.

Mr. Mike Steele of 8091 Bainbridge testified that he is his neighbor and they split the creek/stream and he has lived there all of his life and Mr. Kourakine has only lived there for a couple of years so he hasn't really seen the full potential of the creek and the problem is, it is about five or six feet deep by our properties and he has seen it at least a dozen times get within six inches to a foot to the top of the bank. He said his question is what the impact would be seeing as he is not an engineer to figure it out, if something he does, if it would flood his property. He said if you do something and flood your property, that is your problem but he does not want to be impacted and he is not saying what he is doing is right or wrong but he wants to make sure he is covered and that is his concern. He said most of the time there are a couple of inches of water or it is dry but he has definitely seen that thing go up and it is a concern of his because he has property that would be damaged.

Mr. Kourakine said with this pond, he (Mr. Steele) will not see any difference on his property and he has seen this capacity of the stream and if it overflows or reaches maximum water elevation all water will just go downstream and that is it.

Mr. Steele said he has seen that stream climb from a foot of water to five feet of water in hours and if that water comes down and hits the pond or the dam.

Mr. Kourakine said it will slow down there.

Mr. Steele said whatever is slowing it down and holding the water.

Mr. Kourakine said the pond itself is holding the water because it is level, one is coming out an area and one is maximum and the amount of water between the regular water elevation and maximum water elevation works as a buffer for storm water and after it is filled up it will overflow.

Mr. Steele said that may be true but he is questioning it because he is not an engineer and he wants to make sure that he won't have an impact and if he is not then he does not care.

Mr. Kourakine said don't worry about it.

Mr. Murphy said the Army Corps of Engineers said they won't permit this without doing the water calculation and if in fact the pond is going to slow it down enough that it affects the neighbors they will not allow it so the engineering has to be done, the Army Corps of Engineers will do that, Geauga Soil and Water have their own issues about whether in fact it is going to be allowed or not.

Mr. Lamanna said it is creating its own natural floodplain or unnatural floodplain.

Mr. Murphy said the board needs to make a decision on whether to table this and wait until we hear from Geauga Soil & Water and the Army Corps of Engineers and if they both come back and say this is a great project.

Ms. Sass said she does not think the board needs to get that far.

Mr. Henri Preuss of 17815 Kenston Lake Drive testified that a couple of years ago his neighbors who no longer live there, across the street from him, wanted to and they don't have the ditch that goes through this gentleman's property, it is almost all grass, and all they wanted to do was clean out the ditch and make it an accessible waterway and they were told that they could not touch that because it is a waterway even though it is dry and now we have a gentleman, and he is not being disrespectful, he has gone about and built a pond in the middle of one of these things and his objection is he did not follow the proper channels of communications and he happens to know the neighbors next door and he is concerned and one of the concerns that was mentioned is the gentleman has put a lot of dirt right up to the property line of their home where when it rains heavy the water comes through their property and now it is going to be dammed up because he has raised the level between the two properties where that water would go through and get into the stream.

Mr. Kourakine said well it's a game, this project does not decrease the capacity of water going through the stream.

Mr. Lamanna said that is another issue and in fact you are not allowed to impede the natural flow of water.

Mr. Kourakine said he found a regulation to permit him to do it.

Mr. Murphy said but you (Mr. Kourakine) did not find any regulations, you just went ahead and did it, you didn't even ask if there were any regulations.

Mr. Lamanna said there are no regulations to do that and we have no grade change or elevation change regulations in the zoning at all.

Mr. Murphy said we do have some riparian regulations and the Army Corps of Engineers already has issues with what was done.

Mr. Lamanna said let's assume that he decided to go and not in the riparian and fill in an area and raise the elevation of it, we don't control people filling in and making elevation changes unless it is in a riparian.

Mr. Wrench said we would contact Geauga Soil & Water.

Ms. Sass said correct.

Mr. Lamanna said yes but they don't have any authority outside of the riparian areas either.

Mr. Wrench said they have state power so to speak where they can stop work.

Mr. Lamanna said yes but they have to have a basis for doing that and some places do have regulations that require approval if you change grade elevations by more than six inches and that is why because one of the things you worry about is the elevation is changed, it can prevent potential run-off from one property and going somewhere else or it just fills up.

Mr. Kourakine said he had a question. He said you asked the soil and water department what they think about it and asked what the board's question is and is it to find some definition.

Mr. Murphy said you have to apply to them before coming to us you need to apply to soil and water.

Mr. Kourakine asked Mr. Murphy to show him please.

Mr. Murphy said it says right here in the zoning and you are in a riparian setback and in a stream, you are in a watercourse and anything you do including stream bank stabilization you have to go to the Army Corps of Engineers, if you are going to do any rocks in there you have to do that, if you are going to put in a structure which is a pond according to Bainbridge Zoning, a pond is a structure, if you are going to try to put a structure in the pond, you have to go to Ohio EPA and Geauga Soil & Water and it is right here in Chapter 160.07 (a) and any kind of structure, you have to go to them and a pond is a structure.

Mr. Kourakine said he disagrees and he did not find it required a permit from soil and water and the soil and water department has their own regulations and they say no.

Mr. Murphy said he does not have that letter in front of him so the board can't deal with this.

Mr. Kourakine said it is up to you.

Mr. Murphy said the board can put this off for a month.

Mr. Kourakine said no permits are required and he does not have to.

Mr. Murphy said you need a zoning permit.

Mr. Kourakine said that is his problem and you can do it conditionally.

Mr. Lamanna said on the storm water retention and detention facilities it only shows that it is consistent with current Ohio EPA regulations, he does not have to show any kind of permit or anything else from these people.

Mr. Murphy said it is not a quality treatment so we are not dealing with storm water quality.

Mr. Kourakine said it is quality treatment.

Mr. Murphy said then it says it has to be consistent with Geauga County Soil & Water Conservation District regulations and in order to be consistent with that you have to apply to them to evaluate your project.

Mr. Lamanna said what would happen is Mr. Joyce would have to take his submitted plans to them and ask if this meets the regulations.

Mr. Kourakine asked if everyone sees the ponds around him, everybody has a pond and asked if there is an example of a case like his.

Mr. Lamanna said no the board does not have an example of a case like his and that is the problem and that is why the board is trying to figure out how to deal with this situation and the information we have in front of us right now is unfortunately not complete enough for us to come to a determination as to where this fits in the whole regulatory scheme and that is the board's issue. He said right now what the board has here is if this is a storm water retention pond, it is not permitted by our code to be within 50' of a riparian where the stream is, it is not permitted to be there but he has a separate question as to why this is really a storm water retention pond.

Ms. Sass said we don't know.

Mr. Lamanna said we don't know because it is not designed to do what it is supposed to do.

Mr. Kourakine said if you don't know who knows.

Mr. Murphy said Geauga Soil & Water.

Mr. Lamanna said the board has to go back and look at the file when this was originally adopted by the zoning commission as to whether they had this issue come up in the course of enacting this thing and that may give the board some guidance and we will consult with the soil and water people to find out whether they are looking at this thing the right way or whether they have their own regulations. He said they may have a different set of regulations than we have that could create some issues but we have to investigate that.

Mr. Marc Strauss testified that he has sat here for one hour and twenty minutes listening to this and having been a developer now for ten years and dealt with the Army Corps, Summit County Soil & Water, Geauga County Soil & Water his understanding of his request is that to be able to put this structure within a riparian setback and riparian rights and streams are controlled by the Army Corps of Engineers or the Ohio EPA whether it is an intermittent or ephemeral stream, that is the issue. He continued by saying you are exactly right that Geauga County Soil & Water controls this issue because the issue isn't retention/detention it is whether sediment is leaving the property and going downstream. He said the issue of his mound goes to the same issue which Geauga Soil & Water will get involved in because it is creating erosion and sediment leaving the property and infiltrating a waterway. He said a new structure such as this needs to be approved first by Geauga County Soil & Water and needs to be addressed by the Army Corps because it is affecting a ephemeral or intermittent stream that is governed by the United States Army Corps of Engineers or the Ohio EPA and they are the first line of action. He said once the structure is approved you won't have a setback issue and he told Mr. Kourakine that his personal opinion is as a developer and having put in ponds and streams and things like that is that he is never going to get this pond approved if it affects a stream that is a navigable water controlled by the United States Army Corps of Engineers. He said they are exactly right, if you want a pond on your property as decoration and that is what it sounds like it is more decoration than anything else, you can put one on your property but it has got to meet setback requirements not only of streams and bodies of navigable waters but it also has to meet riparian setbacks unless they give you a variance. He said this board has just spent about one hour and twenty minutes of doing things and they can give you a variance but the structure has to be approved first. He said if the Army Corps of Engineers say it is not a structure that they control or the stream is not under their jurisdiction, then you need a letter from them and that is the issue.

Mr. Kourakine said there are two different points of views on this approach and one is from the U.S. Army Corps and the other is zoning.

Ms. Sass said the board does not have sufficient information in front of us to consider any request. She told Mr. Kourakine that he needs to present this additional information.

Mr. Kourakine asked what additional information is required from him.

Mr. Lewis said a letter from Geauga Soil & Water either approving or denying it.

Ms. Sass told Mr. Kourakine to go back and deal with the zoning inspector, you have submitted an application to the zoning inspector, he has requested information from the soil and water conservation district, that information needs to be given to him and conveyed to us.

Mr. Kourakine asked what the position is of this commission.

Ms. Sass said once we make a decision.

Mr. Kourakine said for example for the zoning inspector, he submitted the application and it should be approved or denied in one month and he mailed this form and asked what he should do with that.

The board discussed the applications and action by the zoning inspector.

Mr. Lamanna said the board is going to table this application to the next meeting to be able to figure out exactly what is going on here and we will ask the zoning inspector to find out what the soil and water district's position is with respect to this type of pond and what his opinion is to whether or not this is, under our zoning regulations, a storm water pond and we are also going to pull the file from the zoning commission enactment of this to see if it sheds any light on how the structure that you (Mr. Kourakine) are contemplating is treated under our provisions here. He said ultimately you are going to have to reconcile this with, even if the board grants a variance to put this in, which he thinks the board will have to do because it is a structure within a riparian, his only question is how the board is going to look at this, are we looking at it as a storm water retention facility or a structure or are we looking at it just under the general provision here. He said part of what we are interested in looking at is how soil and water treats these facilities and whether they would allow or permit this type of facility generally and if they tell us no, they don't allow this type of facility, then what the board does to a large extent is a moot issue because if they aren't going to go ahead and let you build it you are not going to be able to go ahead and build it. He said the board has to deal with the issue of whether or not granting a variance for a structure in a riparian, that is one aspect of it and the second aspect of it is there may be a lot coverage issue because when you add in the coverage provided by the stream, it is over the 10% limit and that may also have to be addressed, that is a separate consideration and the more important thing is to try to resolve exactly what this structure is, where it falls into the classification system and how it relates to what the purpose and intent of section 160 is and we are going to have to collect some additional information to do that.

Mr. Kourakine asked what prevented the board from collecting this information before.

Mr. Lamanna said the board only reviews this information right before the meeting and unfortunately this is a somewhat complicated situation and we don't have any real precedents to deal with it and we haven't addressed a situation like this before so our only way to proceed on this is to collect sufficient information on which we can render a decision. He said right now unfortunately the application is really not complete and we could have tabled this from the beginning and said come back next month and get the application in order and he does not want to renew the same discussion next month. He said right now, everybody should understand what information we need to collect and he will be involved with the zoning inspector to make sure before the next meeting we have the information we need so we can move forward on this and he will be back in touch with you (Mr. Kourakine) if there is anything else the board needs.

Mr. Kourakine asked the board what is expected from him.

Mr. Lamanna said on the pond, he is not sure what is needed at the moment.

Mr. Kourakine said just wait another month.

Mr. Lamanna said after the board talks to the zoning inspector, he will get back to you (Mr. Kourakine) if we need anything more.

Ms. Sass said wait until you hear from the zoning inspector and he will direct you if you need to obtain anything.

Mr. Lamanna told Mr. Kourakine that he may have to come in and finish this paperwork up and get that corrected so the board has in the file exactly what the variance requests are.

Ms. Sass said because we don't have anything.

Mr. Lamanna said the board will have Mr. Joyce get in touch with him (Mr. Kourakine) about getting the paperwork in order.

Mr. Kourakine asked when the board can make a decision because the work has already stopped for two months.

Mr. Lamanna said the board will try to make a decision next month.

Mr. Kourakine said the longest permit he is going to have is from the U.S. Army Corps of Engineers and asked the board if they can ensure the permit before that.

Ms. Sass said they can if they get sufficient enough information to consider the matter, their issue is separate from ours and once we get the additional information the board will give it full consideration.

Mr. Kourakine asked if it is the information from Geauga Soil & Water.

Mr. Lamanna said yes from Geauga Soil & Water and the board also needs to review the enactment of this section of the zoning code and look at the history when it was enacted to see if it will tell us something about what was intended with respect to the issue raised. He said until we have a chance to go back and pull that file and look at it so that is part of what we need to consider.

Mr. Kourakine asked from this meeting today will he receive some paper.

Mr. Lamanna said there will be minutes from the meeting.

Mr. Kourakine said he needs to show his lawyer.

Ms. Sass asked him who his lawyer is.

Mr. Kourakine said he can't remember his name, he just contacted him once.

Ms. Sass said if his lawyer has any questions about the zoning issue, he can contact the township zoning inspector, Mr. Lamanna will chat with the zoning inspector, and the attorney can contact him.

Mr. Kourakine asked if what happened at this meeting will all be in the minutes.

Mr. Lamanna said yes or he can contact him about the meeting and we will work with the zoning inspector and move this forward and get the information together that we need. He told Mr. Kourakine that he will have to proceed with the other two items, the bridge has to be addressed and information has to be submitted as to where it is located and the other one, you just have to get a zoning certificate regarding the bank stabilization, there is no action that this board has to take with respect to that application, you just have to have an application for a zoning certificate and meet the requirements in the code for that. He said the bridge will be the same way except a variance is needed for the setback, not on the actual construction on the bridge and the last one is the pond and the board will deal with that more completely once the information is collected.

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

Motion BZA 2009-30 – 8105 Bainbridge Road

Mr. Lamanna made a motion to table this application to the next regularly scheduled meeting to be held December 17, 2009.

Ms. Sass seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye; Ms. Sass, aye.

Application 2009-22 by ECHO Real Estate Services, Inc. for Getgo Partners South for property at 17675 Chillicothe Road - Continuance

The applicant is requesting area variance(s) for the purpose of constructing an access drive. The property is located in a CB (Convenience Business) District.

Motion BZA – 2009-22 – 17675 Chillicothe Road (Giant Eagle/GetGo)

Mr. Lamanna made a motion to table this application to the next regularly scheduled meeting to be held December 17, 2009.

Ms. Sass seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye; Ms. Sass, aye.

Since there was no further testimony, the public hearing was closed at 9:04 P.M.

Respectfully submitted,

Michael Lamanna, Chairman  
Todd Lewis, Vice Chairman  
Mark Murphy  
Mark Olivier  
Lorrie Sass

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

Date: December 17, 2009

AUDIO RECORDING ON FILE

BZA PH 11/19/2009

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Bainbridge Township, Ohio  
Board of Zoning Appeals  
November 19, 2009

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 9:04 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Todd Lewis, Mr. Mark Murphy, Mr. Mark Olivier and Ms. Lorrie Sass

Tanglewood National Golf Club

Mr. Marc Strauss, owner of Tanglewood National Golf Club met with the board to discuss the conditions regarding BZA application 2009-18. He said he believes there was a misreference to one of the conditions that was approved regarding the “preferred tee times for members” and referred to the newspaper articles and the interpretation the public is reading and he would like the condition to read differently. After some discussion the board was in agreement to modify provisions two and eight of the conditions placed on this application as follows:

2. The applicant will use all reasonable efforts to implement his annual membership drive plan as he has outlined in his business plan/development strategy that he submitted to the board and while he is doing that he will be permitted to have open play. ~~for all times not being occupied by the membership parties.~~
8. This action the board is taking relates only to the operation of the golf course and the operation of ancillary facilities in connection with such operation. In particular, this decision applies to the use of restaurants or bar facilities only as ~~completely~~ *(1)* incidental to course use, ~~specifically~~ *i.e.* serving ~~only~~ golfers during the time that they are actively involved in playing golf or immediately prior or subsequent thereto *or (2) for members*. Any other use of such facilities requires a separate application to this board.

Minutes

Mr. Lamanna made a motion to adopt the minutes of the October 22, 2009 meeting as modified.

Mr. Lewis seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye; Ms. Sass, aye.

Applications for Next Month

Application 2009-22 by ECHO Real Estate Services, Inc. for Getgo Partners South for property at 17675 Chillicothe Road - Continuance

The applicant is requesting area variance(s) for the purpose of constructing an access drive. The property is located in a CB (Convenience Business) District.

Application 2009-30 by Alexander Kourakine for property at 8105 Bainbridge Road - Continuance

The applicant is requesting area variances for the purpose of installing an in-line pond. The property is located in a R-3A District.

Application 2009-31 by Michael G. Lanzilotti for Edgewater Reserve Homeowners Association for property at the entranceway to the Edgewater Reserve Subdivision (corner of Nighthawk Drive and Snyder Road - PP# 02-420133)

The applicant is requesting an area variance for the purpose of installing a natural stone subdivision sign. The property is located in a R-5A District.

Application 2009-32 by Parkside Church for property at 7100 Pettibone Road

The applicant is requesting a modification of a prior conditional use permit and an area variance for the purpose of permitting the sanctuary addition to be 45 feet in height. The property is located in a R-5A District.

The Bainbridge Township Board of Zoning Appeals set a public hearing on the above applications for December 17, 2009 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 9:40 P.M.

Respectfully submitted,

Michael La manna, Chairman  
Todd Lewis, Vice Chairman  
Mark Murphy  
Mark Olivier  
Lorrie Sass

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

Date: December 17, 2009