

Bainbridge Township, Ohio
Board of Zoning Appeals
November 21, 2013

Pursuant to notice by publication and certified mail, the public hearing was called to order at 7:05 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Joseph Gutoskey, Mr. Todd Lewis, Mr. Jason Maglietta, Alternate and Mr. Mark Murphy. Mr. Mark Olivier 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. He then explained the hearing process and swore in all persons who intended to testify and noted the procedures of the meeting that were posted.

Application 2013-28 by The Montefiore Housing Corporation for property at 16695 Chillicothe Road

The applicant is requesting a review and renewal of an existing conditional use permit for the purpose of a Residential Care Facility and Skilled Nursing Facility. The property is located in a R-3A District.

Mr. Dale Markowitz, Attorney for the applicant and Mr. Evan Lubine, Director of the Weils were present to represent this application.

Mr. Markowitz testified that they are here tonight because Ms. Endres astutely determined that it has been about fourteen years since their permit was issued and they haven't been asked to come back in so she invited them to make an application to renew the permit. He said at the time that the approval was granted and even when they came back for their modifications, they came back a few different times, there was never any time limit put on the permit so they didn't realize they had to come back but the code has that provision.

Mr. Lamanna said right but we haven't been totally as efficient as we would like to be about those, the board has been trying to be more effective in making sure everybody understands what the schedule is and keeping track of when these things are up so people don't get caught in a difficult situation.

Mr. Markowitz said they handed out an aerial view and Ms. Endres had it up a minute ago and added they are not at full capacity for lot coverage yet, their original plans when they came in in 1999, they indicated at the time they were going to do 150 total beds for the assisted living and they have 74 now for the assisted living and they have 29 for the rehab which they acquired from Geauga Hospital that they got approval for. He said there may be sometime in the next year or two that they will be back and it will probably be on that but nothing definitive right now. He said they are just here because they want to get their conditional use permit renewed and as far as they know their relationship with all of their neighbors has been better than it ever was when they first started the project and things seem to be going well. He said that Ms. Endres actually, if he understands correctly, came to the site because they had speed bumps in the driveway and the emergency crews for the township preferred that they remove those which they

did because they didn't think it was a good idea for anybody being carried out of the facility to be going over those speed bumps. He said they had put them in to try to make people drive slowly because it is a long driveway so those are gone and as you can see the site certainly has the capability expanded and they are providing the same kind services they always have since they were approved. He said things are going well and they think they are a great asset to the community.

Mr. Lubine testified that there are 32 residents in their assisted living that live in the Chagrin Falls area.

Mr. Markowitz said the Bainbridge-Chagrin Falls area and they couldn't break it down because of the zip codes but a big portion of their residency base comes from the area and they pay equivalent to the real estate taxes that would have come to the township if they were not exempt and they worked that out when they did the permitting and their expansion. He said they will answer any questions the board has and ask the board to approve the conditional use permit renewal for the maximum of five years.

Mr. Lamanna asked if there are any outstanding issues.

Mr. Markowitz replied no.

Mr. Lamanna asked about the turn lane issue.

Mr. Markowitz said ODOT said to forget about it.

Mr. Lamanna said the board acknowledged that the last time. He asked Ms. Endres if she had any issues.

Ms. Endres said the speed bumps were removed and the fire department is grateful.

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

Motion BZA 2013-28 – 16695 Chillicothe Road (The Montefiore Housing Corporation)

Mr. Lamanna made a motion to grant the applicant's conditional use to be approved/renewed for a period of five years commencing on the date this decision becomes final.

Based on the following findings of fact:

1. The applicant is complying with all of the requirements for the conditional use and there are no significant issues with this use of the facility since it was last approved.

Mr. Lewis seconded the motion.

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

Application 2013-32 by Parkside Church for property at 7100 Pettibone Road

The applicant is requesting a modification of an existing conditional use permit for the purpose of adding an expansion to the existing Fellowship Hall. The property is located in a R-5A District.

Mr. Lamanna stated that since Mr. Markowitz is representing two applications, one was at the front and one was at the back, the board is going to move BZA 2013-32 up.

Mr. Dale Markowitz, Attorney for the applicant and Mr. Mike Bowerman were present to represent this application.

Mr. Lamanna said he understands that this is a modification to a plan that was previously submitted, it is actually a contraction to that plan with some changes to it.

Mr. Markowitz testified by saying yes. He said when they had gotten their last two approvals it was for the additional driveway which is in place and that is not an issue and before that the approval was for the expansion of the sanctuary and the children's wing and then they decided to just do the children's wing. He said the children's wing is actually under construction now and so what they are doing is they are expanding the fellowship hall. He referred to the site plan on a power point slide and said this section right here is where the addition will go and explained the kitchen area and it will be used for meetings and smaller events that they have at the church. He said this area here is where the children's wing is going which is an additional wing, the traffic will be here and explained where the Truth for Life is going.

Mr. Bowerman testified that it will be located on the other side of the railroad tracks, south of that.

Mr. Markowitz explained the location of the expansion which will be a little over 4,000 sq. ft. and because they are conditional use everything they do, they have to come back in. He said they have added a significant amount of parking when they were going to do the children's wing and the sanctuary expansion and that is in place so they have a surplus of parking, they have 938 more spaces than they need, even including the expansion of the fellowship hall. He said the way the expansion works, they are adding about 70 sq. ft. of hard surface and referred to the next slide. He said this is the addition here and they had some areas that were hard surfaced that become green and the lot coverage was 36.09% and because of rounding it is staying at 36.09% because the 69 sq. ft. is so insignificant in the overall size of their property. He said the traffic study they had done, when they got approval for the sanctuary expansion, there was going to be significantly more traffic flow from that than there is from the small addition for the dining hall so they didn't see a need to go back and do that study and the traffic light they put in has been working really well and the board required them in the past to have Root Road blocked off when they are having services on Sunday and that is working well and it seems that this is a much smaller expansion than what the sanctuary is going to be.

Mr. Markowitz continued by saying should they come back in the future with the sanctuary expansion plans they will have to redo it again because it will become another approval just like this again and the sanctuary if it is expanded will probably be totally different than the last plan that they had and they are a long way off from that. He introduced Mr. Mike Bowerman to the board along with Mr. Jason Kekic, Project Engineer. He said they did not do a power point tonight because the board has already seen this a lot.

Mr. Lamanna said so basically you are doing the children's wing which is part of the previously approved expansion.

Mr. Markowitz said correct.

Mr. Lamanna said this is going to be an additional expansion and the expansion of the sanctuary is really defunct at this point.

Mr. Markowitz said right. He asked Ms. Endres to go back to the prior slide. He referred to the site plan and said a lot that will happen will be in this area here.

Mr. Bowerman said the current sanctuary yes and the larger one was to be built to the north in the green space and also on the parking lot, it was about a 50,000 sq. ft. plate.

Mr. Markowitz said in the lot coverage calculations that Mr. Kekic did, they now show the children's wing in there but they don't show the sanctuary expansion because that is not planned.

Mr. Lamanna said so you are really scratching that plan.

Mr. Markowitz said right and they are still almost 4% below their permitted lot coverage.

Mr. Murphy asked if it is a two-story expansion.

Mr. Bowerman said it is a single story.

Mr. Murphy said it seemed tall in what he is seeing and asked if there was an elevation.

Mr. Markowitz referred to the slide and said from the tallest part of the north elevation, it will be down here.

Mr. Bowerman said that is a 23' cap to the top of the mansard.

Mr. Markowitz said there is really no grading there so the level where you see it now is where it will expand out.

Mr. Murphy asked if the board has to acknowledge that the applicant is pulling the other approval off the table.

Mr. Markowitz said they have no problem because they know they have to come back for the sanctuary.

Mr. Lamanna asked if there are no other outstanding issues at this point.

Ms. Endres said there are no issues that she is aware of.

Mr. Lamanna said one thing the board has never been clear about is when people come in for modifications to conditional uses when the time period then starts to run when they have to come back for renewal and it seems to him that if somebody comes in and there is a modification of a conditional use that the board starts the clock.

Mr. Markowitz said when they came in for the driveway the board gave them five years for that so if the board wants to give them five years from now, that would be preferred.

Mr. Lamanna said it makes sense from a management standpoint.

Mr. Markowitz said he would like to state that they will be back here in less than five years.

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

Motion BZA 2013-32 – 7100 Pettibone Road (Parkside Church)

Mr. Lamanna made a motion to grant the applicant a modification to a conditional use for the purposes of constructing an approximately 5,000 sq. ft. addition in accordance with the plans submitted with the application.

Based on the following findings of fact:

1. This change represents an insignificant change to the use of this property.
2. It will not increase the traffic flow into or out of the property in a material way.
3. The addition also adds an insignificant amount to the lot coverage and it is still below the permitted lot coverage and the applicant has more than sufficient parking already in existence.
4. The board also notes as part of this approval that the applicant has abandoned the previously approved plan with respect to the sanctuary expansion so although they are completing other parts of that change that particular expansion will no longer be considered approved.

Motion BZA 2013-32 – 7100 Pettibone Road (Parkside Church) - Continued

5. Since there are no pending issues with this conditional use, the board will extend the conditional use permit for a period of five years from the date this decision becomes final.

Mr. Lewis seconded the motion.

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

Application 2013-29 by Henry J. Prijatel for property at 18063 Harvest Drive

The applicant is requesting area variance(s) for the purpose of constructing an attached garage. The property is located in a R-5A District.

Mr. and Mrs. Henry Prijatel were present to represent this application.

Mr. Prijatel testified that he is here with his wife Gail and they are basically looking for a side yard variance from 50' to 33' 7" as using Access Geauga for calculation and basically the garage will be for his recreational vehicle for storage and protection and the location they picked was a convenient access from the existing driveway and still maintains access to the home. He said on the north area there are trees that will shield the proposed addition from the street and also from their neighbor to the north to who has no objection to it. He said he and his wife contemplated putting the structure back in the backyard but at this point in time after 27 years they would have to cut down a serious amount of trees and put a roadbed in because the RV would sink in the mud unless they put a roadbed in. He said the other thing they thought about was moving but being close to 60 years old they didn't think it was a practical thing for them to do and the other thing he would like to mention too is within the development, within the 52 homes in the Old Meadow Estates, 28 being on 1-1/2 acre lots and the rest being on three acre lots, a precedent was established by the township/zoning board as far as allowing other residents in the vicinity to construct or add onto their existing homes with a similar sized addition and if the board wants he can give addresses and we can look at those on the map.

Mr. Lamanna said the first thing the board has to resolve here is this property was the subject of a previous request.

Mr. Prijatel said he understands.

Mr. Lamanna said back in 1996.

Mr. Prijatel said that was 17 years ago when he was looking for a garage which is something he wanted to do.

Mr. Lamanna asked if this is a garage.

Mr. Prijatel said yes, for his recreational vehicle.

Mr. Lamanna said the purpose of this doesn't change.

Mr. Prijatel said it is a garage and it is going in a similar footprint but it is for a different function, an RV. He said the difference between a garage for an RV is two different issues as far as he is concerned because of the size of it.

Mr. Lamanna said the RV garage is a much bigger garage he assumes.

Mr. Prijatel said it is going back so you are not going to see it from the street.

Mr. Lamanna said the difficulty here is there is a provision in the law known as res judicata which means that once an application comes before this board for a particular variance and a decision is rendered unfavorable to you that you then cannot come back and request a similar variance unless you can demonstrate that there are changed circumstances with respect to the property.

Mr. Prijatel said as far as from the original proposal there is a definite change because the size is larger if you want to look at technicalities.

Mr. Lamanna said that actually makes it worse because you are saying there is already a denial for something this big and now you want to make it bigger which if the board doesn't approve something of this size the board certainly is not going to approve a greater variance than what was being requested before.

Mr. Prijatel said if that is the case he has to back off to that original denial the first time because there is information he put in the file as far as an appeal basically saying there are other residents in the area that have done the same type of thing and actually on a larger scale and that wasn't approached at that point in time. He said in the development there are situations where you have instead of maintaining a rural character you have a place that looks like it is in a city or business actually.

Ms. Endres displayed Access Geauga for the board.

Mr. Prijatel referred to 9955 Old Meadow and asked how something like that is acceptable and how does that get approval. He said that is a 66' x 30' structure that is right on the property line and it is on a 1-1/2 acre parcel.

Mr. Gutoskey asked how he knows it is on the property line.

Mr. Lamanna said you can't judge by the red line.

Mr. Prijatel said not exactly but it is an 1-1/2 acre parcel and he has got a 66' x 30' structure on it and he has three acres.

Mrs. Gail Prijatel testified that it is a simple little garage is all he wants.

Mr. Lamanna said unfortunately there is no way to know and he does not see any of this in the minutes from the previous meeting.

Mr. Prijatel said he pulled the notes and it was not in the previous meeting because he hadn't scoured the neighborhood and he did afterwards.

Mrs. Prijatel said it happened afterwards.

Mr. Prijatel said he went afterwards and looked and if you would pull the folder you can see that there is an appeal in there that points out these types of houses and there was no ask for his appeal by whoever was here at the time. He said he got no written, no verbal and no phone call in regards to asking him about that.

Mr. Lamanna said there is no right of appeal, if you want to appeal the case you have to appeal it to the court of common pleas.

Mr. Prijatel said he asked a question and he didn't get an answer.

Mr. Lamanna said he can only go by what the minutes are. He said he was here back then but.

Mr. Prijatel said he understands. He said it went to the zoning officer at the time, probably Mr. McIntyre.

Mr. Lamanna said he can't answer that and it probably was never approved.

Mr. Prijatel said the case in point is, whether it is approved or not approved, it exists and there are other examples in this development where the residents made additions to their homes to make their houses how they want to make it and you granted, he can say you specifically, granted because we don't know if they are legal, he just knows that they exist and these people are happy with their additions and you are telling him that he can't do his but you can tell everybody else to do theirs.

Mr. Lamanna said first, every case has to be addressed on some matter and fortunately we can look into this and see why this is the way it is. He said if somebody does something without a permit, without getting zoning approval, other people can't then come in and say that this guy went ahead and built something so I should now be able to go ahead and build something.

Mr. Prijatel said he has other examples he would like to use in his defense. He said he has another one where there is a garage at 9130, essentially across the street, they have a larger garage and they increased the size of their house.

Mrs. Prijatel said both sides they went.

Mr. Prijatel said once again these are 1-1/2 acre parcels and basically through the roof-line they added the addition to the left and a third garage on the right and once again it is something they wanted to do to their home to make it what they want and they did it and were allowed to do it.

Mr. Lamanna said first, he can't tell what their setbacks are at this point in time or whether they ever got approval for that, we would have to go look at the files.

Mr. Prijatel said you can go up to 9020, you have a 40' x 50' garage on the property line, it is right next to his house but the fact of the matter is the size of the structure and its location to the property line, once again on a 1-1/2 acre property.

Mr. Gutoskey said one thing you have to take with a grain of salt is where these property lines are showing up on the GIS. He said he lives in Pilgrim Village and the property line goes through his house.

Mr. Prijatel said he understands.

Mr. Gutoskey said it is a tool but without our zoning inspector going through the files on these, they could be legal at 50' off of the property line.

Mr. Prijatel said he can guarantee they can't be 50' off the property line on all of those parcels and added he is using these as examples.

Mr. Lamanna said a person with a 1-1/2 acre lot, it is a platted lot, has a built in a practical difficulty because of the size and width of his lot that somebody with a wider lot doesn't have. He said if it starts out with a narrower lot, it is easier for the board with a narrower lot to give a variance to the side setbacks than it is for somebody with a wider lot. He said for example if you have a 250' wide lot you would have to have a really, really good reason why the board would give you a variance to a 50' setback. He said if you have a 150' wide lot you would probably get some kind of variance to the setbacks because it would be really hard to stick the house in that 50' you would have left.

Mr. Prijatel said they are at 165' he believes. He said the other thing he points out too as far as there is another structure at 17934 Harvest and 17965, it has a two-car garage, he doesn't know if it is on the property line or not but it is a two-car garage, about the same size, a 26' x 30' garage and it is sitting there off to the side and it is probably close to the property line but like you say the lines may not be exactly right.

Mr. Lamanna said what else exists in the neighborhood is one consideration that the board can take into effect to see how it would affect the character of the neighborhood. He said one or two does not make the character of the neighborhood, if 5% of the houses are like that it is not the character of the neighborhood, if it is 20% it is a different story.

Mr. Prijatel asked what about 9965 that has a 42' x 60' two story structure in the back yard.

Mr. Lewis said if it met the setback requirements it is permitted.

Mr. Prijatel said he understands.

Mr. Lamanna said the first problem is basically the board has already made a decision that says that adding an attached garage 37' from the north property line was not allowed so that decision has already been made.

Mr. Prijatel said it is 33.7'.

Mr. Lamanna said the first time was 37' so it was a 13' variance.

Mr. Prijatel said they are going from 37' to 33' so it is not exactly the same.

Mr. Lamanna said what you said is that now you added 3.3', you are further into 3.3'. He said if you came back in and said you turned me down at 13', how about 10' that is probably different enough that the board would reconsider it but you can't go the other way. He said if you asked for a 13' variance before and was denied that means you cannot come back and ask for a 14', 15', 18', 20' or 25' variance. He said if you came back and asked for 12.5' the board would probably say that is not a big enough change but if you came back and asked for 10' the board would probably re-hear it on the basis that that might be enough of a difference that the board could come to a different decision with a smaller amount.

Mr. Prijatel said that Ms. Endres had mentioned that that might be a problem, she didn't say that was going to be a problem. He asked why it is considered a problem.

Mr. Lamanna said it is a rule of this board that once a matter is decided it cannot be re-litigated.

Mrs. Prijatel asked even to appeal it.

Mr. Lewis said that would be to the court of common pleas.

Mr. Lamanna said you would had to have appealed it in 1996.

Mrs. Prijatel said he did.

Mr. Lamanna said to the court in Geauga County so the decision is final so the board is not supposed to re-hear matters that have already been decided unless there is a change in circumstances. He said for example if the property changed, if suddenly they came through and put a big drainage easement through the back of your property that wasn't there before or something was discovered like a naturally flowing spring that erupted on your property that wasn't there before that would prevent you from building.

Mr. Prijatel said actually there is a spring on the property.

Mr. Lamanna said something like that or if somebody comes back and said before I wanted a 20' variance now I would like to come back to get a 15' variance, then the board would say that is enough different from what was requested before to re-hear the matter.

Mr. Prijatel asked if it was rejected the first time because it was too big.

Mr. Gutoskey asked isn't this bigger.

Mr. Prijatel said the depth does not make a difference it is the distance from the property line.

Mr. Lamanna said the depth does not make a difference, it is only the side yard that matters and what the board is saying is that in the prior case there was a request for a 13' side yard variance that was denied.

Mr. Prijatel said at the time what they were trying to do was to store a boat and the consideration or the board's thoughts at the time that he should put that somewhere else on the property because it was presented as a two-car garage at the time. He said at present this is not a two-car garage this is a garage for an RV and the situation as he can see it is different because he can't just manipulate an RV in the backyard the same as a boat or tractor so it could go in that third garage. He said from that standpoint he thinks he should get some consideration as far as being different even though the side yard is similar.

Mrs. Prijatel said it is not hurting anybody but they just want to protect their RV and it will look nice. She asked the board if they can re-think it.

Mr. Gutoskey asked if there is anybody in the audience that is here for this case.

Mrs. Prijatel said there are no problems with the neighbors because we have talked to them.

Mr. Prijatel said his neighbor across the street put up a barn in the backyard and it is within the setbacks and his other neighbor put an addition on his house and got a variance for a third garage with a higher ceiling and he got what he wanted to do, his neighbors on the other side have not done anything but they don't have a problem with what he wants to do.

Mr. Lamanna said this will be sitting next to the existing garage.

Mr. Prijatel said right. He added that he has been here for 27 years and he has watched people do what they can with their property.

Mr. Lamanna said people do things that they didn't get permits for and we deal with that when we find out about it.

Mr. Prijatel said he is trying to do it the right way. He said the only thing he can do is cite examples of somebody doing something similar so the board has an idea.

Mr. Lamanna said one thing is to consider this, the board will not be able to consider it tonight because if we are going to look into these other instances you cite, we will have to review the files and find out why those situations exist and what the relevant situation is.

Mr. Prijatel said that is fine.

Mr. Lamanna said the only thing he is inclined to look at is since this is now for an RV and not for a boat, it does change the consideration because moving a boat into a barn in the back, it seems to be a lot of the issues here is whether or not a separate structure could be built in the backyard somewhere. He said moving a boat back there is one thing, moving an RV is another thing.

Mr. Gutoskey asked Mr. Prijatel as far as on the side yard how he is determining what his side yard is, does he have an old site plan for the house.

Mr. Prijatel said it is a combination between the site plan for the house and Access Geauga.

Mr. Gutoskey asked if a survey was done to determine its accuracy.

Mr. Prijatel said no not exactly.

Mr. Gutoskey said that may help or hinder depending on what the survey says.

Mr. Prijatel said he was going by the original layout of the yard and actually the house is in the wrong place, the builder put it in the wrong place from where it is supposed to be within the township. He said as far as hindering, yes it might hinder him but it still is around the same footage, you are talking plus or minus a foot so he thinks the difference is not going to be significant enough to worry about the side yard. He said if you look at the property it is going to be blocked by trees except he looks into their yard.

Mr. Lewis said it is a larger building, the setback variance request is more substantial than it was before and quite frankly from his point of view it is a structure and what a homeowner parks in it doesn't mean a whole lot to him as long it is not a business being operated in there like a machine shop or something like that. He said vehicles in the recreational world change continuously for folks so he is looking at whether there is a boat in there or an RV or who the next homeowner is down the street that buys your property, to him it is just a big structure being added. He said it is not specifically purpose built.

Mr. Lamanna said the issue was the prior application was based on he was going to put a boat in there and the board was looking at why he couldn't build it back here so it is a lot harder to make the argument that he has a practical difficulty in trying to get a boat back there and now if he is saying he is trying to move a very large vehicle back there, that may raise different issues than was previously raised. He said if all this was, before he wanted to have a storage garage to put stuff in this big and now he wants one 50% bigger, the board would be inclined to say no but he can at least see that by bringing an RV into it may change the question of what is the practical difficulty associated with trying to locate this in another area and create a practical difficulty because of the septic and other things factoring back there so the board has to obviously explore all of that in a full hearing.

Mr. Lewis asked where the RV is now.

Mr. Prijatel said it is sitting on the concrete pad next to the garage.

Mr. Lewis replied okay, it is occupying that space, it just doesn't have a roof over it.

Mr. Gutoskey asked if the neighbors are okay with it but he would feel better if he had something in writing from them that they are okay with it.

Mr. Lewis said they should be here and testify.

Mr. Gutoskey said the applicant says they are okay but how does the board know.

Mrs. Prijatel said they all got notified.

Mr. Lamanna said if they are not here, they are okay. He asked the applicants if they considered putting some windows in it.

Mr. Prijatel said they already changed the windows over the primary garage so it blends into the other roofline and there are windows on the side.

Mr. Lamanna asked the board to discuss this application on whether it should be heard or not.

Mr. Murphy said to him it sounds like it is slightly different, it is not the exact same thing.

Mr. Lamanna said it doesn't have to be the exact same thing but he would think that because of the nature of how this is going to be used it is different enough that it might, at least by looking at the minutes, that there might be some different considerations on whether or not there is a practical difficulty. He said he is not saying the decision is going to come out any different but at least the board will listen to what is said and the evidence submitted and the applicant is going to have to address why there is a practical difficulty and why there are no other alternatives.

Mr. Prijatel said the only alternative he has is to go backwards.

Mr. Lamanna said without getting involved in detail, the board could hear this again next month after it has a chance to look at these other situations as well that was brought to the board's attention so the board will know what this history is on them.

Mr. Maglietta said if we do that what needs to happen is let us get all of the information in front of us instead of just going off the properties mentioned.

Mr. Lamanna told Mr. Prijatel to make a list of those he thinks are relevant so the board can find out what the exact situation is and why they are in that situation.

Mr. Lewis said he is willing to look at it next month.

Mr. Lamanna said the board would like to know what the lot line is.

Mr. Prijatel said he can do that.

Mr. Gutoskey said the mortgage I.D. would be within a foot.

Mr. Maglietta said the board needs to have all of the facts so the board can look at it properly.

Mrs. Prijatel said they really appreciate that.

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

Motion BZA 2013-29 – 18063 Harvest Drive

Mr. Lamanna made a motion to table this application to next regularly scheduled meeting to be held December 19, 2013.

Mr. Lewis seconded the motion.

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

Application 2013-30 by Ryan Sanders/Premier Custom Builders for Cynthia Vasu for property at (PP# 02-421250) Ober Lane

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

Mr. Brad Camposo of Premier Custom Buildings and Ms. Cynthia Vasu were present to represent this application.

Mr. Lamanna asked if this is the lot the board granted the lot split on.

Ms. Vasu testified by saying yes.

Mr. Lamanna said the board did not expect to be seeing this back again.

Mr. Camposo testified that they didn't either. He said he has a copy of the original hearing minutes from the board.

Mr. Lamanna said this lot split was granted based on, and if you read in there, it was very clear that it was based on the fact that there were not going to be any additional variances requested for this property.

Mr. Camposo said this was the original map that was submitted when they asked for the variance and this is what they are submitting now. He said the original site plan that they submitted was this way back when they had the house on there, they had the diameter of the setback on there as well and so they were under the assumption that when it got approved, if you read line three, and you have this connected to it, it actually states that there are no other variances needed. He said they didn't know they needed another variance when they submitted this to the board. He said if they would have known, they would have asked for the variance then but after doing some research on the lot and the best placement for the home itself and really trying to protect the Chagrin River and the neighboring resident's view as best they can to that. He said where they have the house, that is where they originally had proposed the home and they are trying to make the house look like it grew there, not like they put it there and it just seems to be the best spot for it taking into account all of those factors.

Mr. Lamanna asked if that was submitted originally.

Mr. Camposo said yes sir. He said he thinks it is important for them that the board understands that they didn't come asking for one variance knowing they would have to come back and ask for another, they went before the board with the house placed where they wanted to build it and it hasn't changed that much. He said they had to tweak a few things in order to make the back setback line and had to put a driveway in because a shared driveway wouldn't be allowed by the planning commission as they kind of went past the board and kept moving forward but besides that the overall placement of the house hasn't changed much. He said he is not saying it doesn't need a variance he just wants to make sure the board understands that is why they didn't ask for it previously when they came before the board.

Mr. Vasu testified that the suggestion that was made when they came the first time was that they basically square off the lot and ask for an easement but when they got up to Geauga County they said no, you can't do that so they had to do the bowling alley in order to satisfy their requirement.

Mr. Camposo said one of the other things that might be worth considering is they are not coming in here, they are building a home that is similar in size and exterior to surrounding homes, it is an 1,800 sq. ft. footprint with a two-car garage.

Mr. Murphy asked when you were here before the existing asphalt driveway that goes right across the front of that, was that considered as part of your lot or were you guys on the same lot.

Mr. Vasu said when they proposed it originally they showed the bowling alley but the board said you don't need to do that just square off your lots and have an easement so then they went that way.

Mr. Lamanna said he thinks that is because the lot also fronts on Chagrin Road.

Mr. Camposo said the planning commission didn't agree with that.

Mr. Murphy said so you added your own driveway back to Ober Lane.

Mr. Vasu said yes they wouldn't let us share even a portion of that beyond the apron, the public right-of-way.

Mr. Lamanna asked how wide that is, another 20' wide that little sliver.

Mr. Gutoskey said it is about 20'.

Mr. Lamanna said so this is the only variance the board is looking at.

Mr. Camposo said yes.

Mr. Lewis said one side yard.

Mr. Camposo said yes and he brought the neighbors here tonight and he is the one that is going to be impacted the most.

Mr. Lamanna said we would have had 35' or something. He asked if this is a standard two-car garage and not a six-car garage.

Ms. Vasu replied no.

Mr. Lamanna asked why the garage is positioned like this.

Ms. Vasu said it is because of the driveway.

Mr. Vasu said it falls off pretty quickly.

Mr. Gutoskey asked if the house can be rotated with a side-entry garage.

Mr. Lamanna asked why the garage can't be put on the end.

Mr. Camposo said if you do what you are speaking of you can see that your elevations continue to drop very quickly.

Mr. Gutoskey you have about 20' from your garage to the back of the house so if you rotate your house more parallel with the contours you would have less distance from the front of the house to the back of the house. He said the 100' setback would have to be off the right-of-way even if the right-of-way is over here (he referred to the site plan) but the question is, is it easier to turn the house.

Ms. Vasu said so you won't see it from the street.

The board discussed rotating the house.

Mr. Camposo said if they rotate the house counter clockwise they won't be able to maintain that side entry and there were some views of the Chagrin River they were trying to capture there that it would affect.

Mr. Gutoskey said if it was rotated it would be easier to build.

Mr. Camposo said if you were out there looking at it you might feel a little differently about it.

Mr. Gutoskey said there is 20' of elevation to make up for from the back of the house to the front.

Mr. Camposo said yes with the side entry.

The board discussed the elevations.

Mr. Murphy said he totally agrees and they are bringing the driveway in within 3' or 4' of grade from the start to finish and parking and living out here all of our lives, in the wintertime he appreciates their drive here as opposed to dropping 3' or 4' even deeper.

Mr. Gutoskey said if they rotated the house the garage would be right on the contour line.

Mr. Murphy said it falls off pretty quickly, there is no question.

Mr. Gutoskey said it is going to be hard to build it as it is.

Mr. Camposo said he builds houses all day long and splits rocks.

Mr. Lamanna said if you started rotating that you could maybe get to 25'.

Mr. Camposo said they would get into some other things there. He said those contour lines are pulled off of the Geauga GIS and are somewhat accurate but when you are out on site, if that house rotates back we are looking at thousands of dollars in costs.

The board discussed the elevation lines.

Mr. Camposo said the other thing with the positioning of the house at the minimum setback there to kind of stagger it.

Mr. Lamanna said when you start looking at where the neighboring houses are.

Mr. Vasu said the idea was to bring the garage and house as low as possible to minimize the view to the neighbors.

Mr. Lamanna asked if there is anybody else in attendance that is interested in this application.

Mr. Brett of 7320 Ober Lane and Mrs. Norma Bobbitt of 7295 Ober Lane were present.

Mr. Lamanna asked where their houses are in relationship to the proposed house.

Mrs. Norma Bobbitt testified that her house is across the cul-de-sac.

Mr. Lamanna asked if the Kramers are here.

Mr. Dale Kramer testified that they are here.

Mr. Lamanna asked if the neighbors have seen how the orientation of the house is proposed.

Mr. Brett said we knew how it was from the last zoning variance hearing and saw that but when you talk about rotating it, we didn't see that. He added that they agreed upon a 50' setback.

Mr. Lamanna said basically from what they had at the last meeting, it is the same shaped house. He said what they were looking at before was the distance all the way from the corner to the darker line so when the actual lot split was done, it was done to the line up above that because they had to have the driveway on the other lot so that changes the amount and it looks to him like the house has moved slightly.

Mr. Brett said towards us 36'.

Mr. Vasu said they were limited by the 100' setback.

Mr. Lamanna said it hasn't moved that direction, he is saying it hasn't moved any closer because at least 21' of it was because of the change in the lot line so it looks like the house has moved maybe about 10' or 12' from what was shown on here (he referred to the site plan) and that is why the board is looking on whether it can be rotated back.

Mr. Lewis said right now we are at 35' off the original line.

Mr. Lamanna said the house has moved 15' from that line. He said the 21' or 22' was done by the county so what has happened is the house has turned a little bit towards the south so as far as looking at it, its profile is pretty much the same as it was, in fact it is probably a little bit less because by turning it you actually make the visible profile smaller if you are looking at it from the south and by turning it slightly, they have actually made it slightly smaller.

Mrs. Norma Bobbitt testified that her concern is that the board grants variances that allow a house to be built at all. She said three of us now have had water issues and we brought this to your attention at the last zoning meeting and he was so kind as to say drill deeper. She said her question is if we have to drill deeper because you allow variances to allow a third house to be put in this aquifer when we have had two other houses built within the last eight years, we did not have water problems until these two new houses were put in and we will have a third house added to our aquifer and if all of us have to drill deeper as he told us to, who is responsible for that, who is liable, is the township liable, is the builder liable, that is a question she wants to know because we are making it public that there are water shortages and water problems. She said for the first time she had to have water trucked in because her well did not have enough water to power wash the side of her house. She said ten years ago she had no problems with the quantity of water, she has already had to spend over \$4,000 to block a view from another house that you let be built right next to her and you granted a variance to cut off part of what used to be the property on her house to a 1.7 acre lot when it should have been a three acre lot and the way her house is situated and the way they could put their house to have a septic system, her view out her dining room window was their garage door so she spent \$4,000 to put up a buffer. She said last week in the Chagrin Valley Times there was an article about a zoning request to build a house, it was turned down because it didn't fit the characteristics of the neighborhood and what is characteristic of our neighborhood is the woods, they moved there because they wanted it to be rural, they prefer woods so she has two issues, lack of water and the fact that this is not the characteristic that she moved into to have three additional houses on a cul-de-sac when she moved there.

Mr. Lewis asked her if she owned all of that land originally.

Mrs. Bobbitt said she did not own that land, the person she bought the house from requested a variance and split off 1.7 acres and sold it as a separate lot. She said for ten years she was told that lot was unbuildable now the Norbutas bought it and built there.

Mr. Lewis asked which aquifers she is in, there are two primary aquifers in this part of the county.

Mrs. Bobbitt said she has no idea.

Mr. Brett said they went from over 200' down to an additional 20' and that was \$3,000 and now the same symptoms are coming back, before this house is built.

Mr. Lewis said his well is down 460'.

Mrs. Bobbitt said that is what you told us the last time.

Mr. Lewis said that is what he had to do to get what he needed.

Mrs. Bobbitt said if you want to come and drill for her and pay for it she would be happy to let you do that but she doesn't think she should have to incur that expense because the township can add one more house to their tax rolls.

Mr. Camposo said he understands the impact on the community but this lot has been approved.

Mr. Lamanna said yes, the board has already made a decision that this lot is created so the lot is there and it is one lot and frankly to try to tell somebody that they can't build on their lot, one house, because some people think it might affect their water, he thinks that would be a very hard basis to make a decision because if you get experts to start talking about this and you talk about one house, it is going to be very hard to get somebody to say one house is going to have a major effect on somebodies aquifer.

Mrs. Bobbitt said it won't be one it will be the third.

Mr. Lewis said bottom line, if you rotate this house and you pick up the 15' and you are 50' you are not even here tonight but you are here because of the property line change but as far as distance from other people's homes, nothing has changed.

The board discussed the setbacks.

Mr. Dale Kramer testified that he is adjacent to the property and his concern is where the garage is right now to the property line, what is that distance and what is it supposed to be.

Mr. Lamanna said it should have been 50' and right now it is about 35' but here is the dilemma from his point, there are things that can be done to push this house around to make it fit, the trouble is it actually makes it worse because it makes the house appear bigger, it will impair your line of site more. He said the worse thing would be to push the house down, put the garage on the end and now the house would be 35' longer and to him it doesn't sound like a very good deal for other people that live over there because they designed this house to minimize its profile for everybody's view. He said it does not make sense to force this into the setbacks and have something that is actually more adverse for all of the neighbors from a viewpoint standpoint which is a big driving factor here so would you rather have the house longer and be a little farther away or would you rather have it more compact and slightly closer and his personal view is it is better that the smaller the house is profiled to everybody else the better off everybody is over there and it seems to him they have tried to keep the house compact.

Mr. Camposo said the other thing they are doing is because Ms. Vasu is very green friendly, they are trying to get even this drip system they designed to minimize the amount of trees they had to clear so they are actually going before the Geauga County Health Department to do a new environmental septic system that will even reduce it more so they did put some thought into the impact of the neighbors, he knows nobody likes new houses being built but they put some thoughtfulness into where they are placing the house and how many trees they could leave and it was something that was very important to Ms. Vasu.

Mr. Kramer asked about the pad.

Mr. Vasu said it is a parking pad.

Mr. Brett said he heard that the county may not have approved this.

Mr. Camposo said it is recorded.

Mr. Gutoskey said the board has the legal description.

Mr. Camposo said they have a drip system approved right now.

Mr. Brett said he is concerned with the footprint taking the water down to the river and he can see another \$3,000 bill come up, he did it once and made his contribution.

Mr. Lamanna asked where the water well be located for this property.

Mr. Camposo said it will be 50' away from the septic.

Mr. Lamanna asked where they are planning to drill it to, are they planning on drilling it to the deeper aquifer.

Mr. Camposo said of course yes.

Mr. Kramer said he is looking at the plans where they have the pad next to the garage to park which again it looks like it is right up against the property line.

Mr. Lamanna said yes that is a question, do you need that pad.

Mr. Kramer said when we would be coming out of the driveway we would see a car there.

Mr. Lamanna said he agrees.

Ms. Vasu said they were trying to figure out where the extra cars would park.

Mr. Camposo said they would be willing to get rid of that pad. He explained the location of the front door and part of what happened was when they came before the board the garage was here (he referred to a site plan) because they thought they could do the shared driveway which was a recommendation that the board made and then the planning commission came in and said they didn't like that. He said this is stone on the siding and they took some care that it will face the front, it doesn't look like a garage. He said they are trying to keep a cottage style feel to the house and they have got stone on the side and they have invested money for the neighborhood.

The neighbors looked at the house plans.

Mr. Camposo said the main footprint of the house is 1,800 sq. ft.

Mrs. Bobbitt said her house is the original house in the development so when the well was drilled they went down as far as they needed to get water.

Mr. Lamanna said at least they will drill into the deeper aquifer which is the most productive one anyway.

Mr. Paul Foster of 7340 Ober Lane asked if it has to be 50' off the property line and the variance is going to less than 50' off the property line and asked if he understands that correctly.

Mr. Lamanna said that is correct.

Mr. Foster asked what property line they are talking about, are you talking about Kramer's property line or the property line on the divided land which is going to have the existing driveway for the original house, there are two property lines.

Mr. Lamanna said it is 50' from the property line that runs along the driveway, the divided one. He said the board is just trying correlate what happened when the lot split was done and we were talking about the distance off the property line and the assumption was that the property line was where the Kramer's property line is but ultimately it is not where it ended up, it ended up 21' farther away but as far as it affects the Kramers it is not changing how it affects the other property owners where that line is drawn and we have a property here that drops off to the river there so there is definitely an issue as to where you can build on it.

Mr. Camposo said actually the lot is not unbuildable.

Mr. Brett said it costs more.

Mr. Camposo said where we set the house was not motivated completely by money it was motivated by protecting the Chagrin River, protecting the trees around there and if you look at the riparian setback obviously Geauga County has said they want you to stay a minimum amount of feet from these waterways and their motivation was to try to protect that and not hurt it.

Mr. Brett said it was mentioned preserving the view of the Chagrin River, we also have a view that needs protected and in a previous case it was stated about the character of the neighborhood changing and that is exactly what we have here and he is sure it is in the minutes from the previous hearing. He said there are a lot of ways to look at this.

Mr. Lamanna said the lot has been approved so the people own a valid lot here at this point in time.

Mrs. Bobbitt said thanks to you.

Mr. Lamanna said the board felt they were entitled to have a lot split under the circumstances. He said the question is they have a right to build on the lot and what we are arguing about here is the side setback and we can make the side setback closer and closer in and they have a situation where there is a very steep ravine which is a pretty clear case for a practical difficulty for obtaining some kind of variance relief on that setback. He said the board can do things to manipulate this but is it going to improve the situation. He said if they do x, y and z he will be happy as far as locating the house, the board can look at that to see if it is practical but would you rather have the house 25' longer and cutting out 25' more of your view or would you rather have it compacted the way they have it designed now.

Ms. Vasu said actually she doesn't think they will be able to see it.

Mr. Brett said he can see the original house.

Ms. Vasu said only in the winter.

Mrs. Bobbitt said she will see the roof.

Mr. Brett said he would like to see the letter of the law used.

Mr. Kramer asked what they would think of moving the house further down.

Mr. Lamanna asked if he meant being farther away, just keep pushing it back toward the ravine.

Mr. Vasu said one of the challenges is right about at the riparian setback are at least four beautiful trees that they didn't want to get close to to jeopardize the roots because that would take even more of the character of the neighborhood down.

Mr. Lamanna said you don't want to pull those out of the embankment too.

Mr. Camposo said and erosion.

Mr. Lamanna said it could have adverse effects on the stability of the embankment.

Mr. Camposo said they were discussing the negative impact by pushing the house back closer to the river and the view from the other neighboring properties, he does not think it is going to change at all for that matter.

Mr. Brett said push it back, the liability falls on the developer and homeowner. He said at the last meeting the final verdict was to not come back for anything else.

Mr. Camposo said the one you see with the lighter dotted line, that is the riparian and he believes that is the riparian setback as it is shown there and he thinks the board understands that they are asking for the variance because they want to protect that land and added that this is a buildable lot and somebody is going to build a house on this lot and they are building a one-story ranch with a walkout basement at 1,800 sq. ft.

Mr. Lamanna said in theory he can drive the house to the left and back or put the garage in the front and drive the house back to the left and end up with a house that is 25% longer within the setbacks.

Mr. Camposo said or they could build a three-story structure, there is a ton of stuff and no one is ever happy about these things going on but they took some care to really think this out to have as little impact as we could and still preserve their rights to build a home.

Mr. Brett said it could have more care when we had the meeting, then you wouldn't be here.

Mr. Lamanna told Mr. Brett he doesn't see how it affects him at all.

Mr. Brett said stand at the side of house and look at it.

Mr. Lamanna said the fact that there is going to be a house there, nobody likes a house to be built, everybody wants a vacant lot next to them to always be left undeveloped and unfortunately if you want the vacant lot next to you to be undeveloped you had better buy the vacant lot next to you.

Mr. Brett said this isn't what we agreed to at the last meeting and then six months out we receive another letter because something else has popped up and has to be taken care of.

Mr. Lamanna said sometimes unforeseen things happen and when he looks at it, they came in with a better plan than a plan that would satisfy all of the required setbacks. He said you would end up with a structure that would have a worse impact on the environment and a worse impact on the neighbors but it would meet the letter of the law. He said the reason we are here is because sometimes the letter of the law is not the best outcome so we have the opportunity to look at it and say under these circumstances given the conditions of this property and what the alternatives are that the better solution is to grant a variance to the letter of the law because in the end everybody benefits from it and right now as he looks at this he doesn't see anybody saying that there is a better plan than what that is before us right here and they have agreed already to get rid of that little side parking area so that it is even less intrusive and it looks like they have taken a fair amount of care in trying to design this with the rest of the neighbors in mind so he thinks the neighbors should be thankful that they have a neighbor who is fairly concerned about how this is going to impact them. He said there is plenty of people who come in and say they are going to build this two-story high building and it would meet all of the requirements and drive pylons down on the side of the hill and if there is an erosion problem twenty years from now so be it but that is not the attitude of these people who have tried to make the best possible solution that you can see here and from the way he sees it what they have proposed will have the lowest impact on everybody here and nobody is saying anything that there is a better way to do it than what they have proposed and he would rather minimize the impact on all of the neighbors and ultimately in the end you will want to preserve your views and it looks to him that they have tried to make the visual impact of this house as small as it can reasonably be here.

Mr. Brett said there are three things, the placement of the house, what is going to happen to the water and the aesthetics.

Mr. Lamanna said the placement of the house does not affect the water.

Mr. Brett said an additional house certainly could affect the well, we had two of them.

Mr. Lamanna said first there is an assumption that there will be a house on this property and the impact on the water is not really an issue before us. He said where the setback is located has no effect on the water, if you can tell me that by moving the house back it will improve the aquifer then fine the board will visit that, but you are asking the board to say, how do you place the house that won't affect the water.

Mr. Brett said there are three straws on a camel's back and one is the placement, one is the aquifer and the other is the characteristic of the neighborhood, it is no one thing in itself.

Mr. Lamanna asked how it affects the character of the neighborhood, how does this house change the character of the neighborhood.

Mr. Murphy said it doesn't, it is a three acre lot, Bainbridge Township has zoned and the character of our neighborhood is to try to keep large lots, three and five acre lots in Bainbridge Township, we have fought all of our lives to do that, you've got a neighbor that has a three acre buildable lot that happens to be right next to your property. He said the character of your neighborhood is not going to change by building a house on that lot, there is no argument in that and what happens would unfortunately be the same thing that happens anywhere when somebody puts another house or a development or anything else in Bainbridge is that it may affect your aquifer, it may affect your well and you may have to go deeper, we don't know until after the house goes in, they have every right in the world to build that house. He said as far as the setback off the road it seems that that garage at 14' is close, it is very special circumstances with the ravine behind it so if there is no way to get that garage any further off if it, that is what we are being asked to approve. He said those other things are important to you as a neighbor, he understands that but they are not relevant to what we are talking about here tonight, they are requesting a variance off of the side yard setback.

Mr. Brett said we still have a right to appeal this.

Mr. Lamanna said you can appeal it, yes.

Mr. Brett and Mrs. Bobbitt submitted letters to the board.

The board discussed rotating the house to increase the setback with the applicant.

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

Motion BZA 2013-30 – (PP#02-421250) – 7300 Ober Lane

Mr. Lamanna made a motion to grant the applicant the following variance.

1. A variance to a side yard setback requirement from 50' to 20' for a variance of 30' which is a slight difference from the plan submitted by the applicant.
2. The applicant agreed to rotate the house so that the distance will change from 14.5' to 20'.

Based on the following findings of fact:

1. The reason for granting this variance is a practical difficulty because this lot has a very large ravine with a steep slope off and in order to position the house in an area that is not on a steep incline it is necessary to keep the house closer to the property line.
2. The house on this lot that was originally contemplated there would have been an additional 20' that is now a driveway access area to an adjacent property so there is no affected neighbor on that 20' so there will be a total of 40' to the next property owner.
3. It will be a minimal impact.
4. The board has also looked at other configurations of the garage and house and they have reduced the amount of variance required but the changes that would be required would increase the size of the house which would increase the impact on the neighboring properties and that the impact would be substantially less by allowing this variance to their views.
5. The applicant has also agreed that there will not be the parking area to the south side of the garage and that the driveway will go directly into the garage to minimize the impact to the neighboring properties.
6. The board notes that this lot has been previously approved and it is a full three acre lot and conforms with all of the zoning so the addition of this one house will not change the character of the neighborhood in any way.

Mr. Lewis seconded the motion.

Vote: Mr. Gutoskey, nay; Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Maglietta, aye; Mr. Murphy, aye.

Mr. Lamanna swore in all of those who were not sworn in earlier.

Application 2013-31 by Dr. Caleb Chou, The Church in Solon for property at 7765 Country Lane

The applicant is requesting a modification of an existing conditional use permit that was approved 8/15/2013 (2013-7), Condition #2, from the maximum capacity of 80 people to 135 people to conform with septic capacity. The property is located in a R-5A District.

Mr. Jason Maglietta recused himself for this application because he is a contiguous property owner.

Mr. Arthur Wu and Mr. Kevin Bouyer were present to represent this application.

Mr. Arthur Wu testified that based on the meeting of August 15, 2013 they were granted 80 members for the worship on Sunday and based on two letters from the EPA indicated 80 people is all that the system could handle, 80 people on August 15th and in September they had the EPA evaluate the septic system and the number is 135 so they would like to request respectfully to increase from 80 to 135 including the children and their parents.

Mr. Kevin Bouyer testified that the church said from the very beginning and always stated that their intentions were to use the building to the maximum capacity but when they were here the last time and once he got involved, he spoke with the EPA and they actually agreed to the 135 number. He said the paperwork he had didn't have the actual numbers on it for the last hearing so the board stated that they were going to go by the numbers that were on the original letter and he stated then that he was going to go the next day to the EPA and get this resolved and taken care of and that is what he did so when he left the last meeting the EPA came out to the site and looked it over and issued the letter stating that it was okay for the maximum capacity.

The board reviewed the request.

Mr. Murphy asked if their plan is to have 135 people at a single church service and can you actually get 135 people in that building for one service.

Mr. Wu said based on the rules given by Mr. Lovell how to calculate the inside and this 135 is including children and we have 26 children so we will not have 135 in a meeting, in a worship because the children will be in a different place.

Mr. Murphy asked if the board had anything from the fire department that had a maximum occupancy for that building. He said 135 people sounds like a lot of people in that building.

Mr. Bouyer said the fire department put 150 on it and then you guys said to use 90% of that and that is how they came up with 135.

Mr. Murphy asked if the board has a letter on that.

Mr. Gutoskey said there were some calculations in the beginning.

Mr. Lamanna said they did a room by room maximum occupancy based on size and usage.

Ms. Karen Endres, Zoning Inspector testified that maximum occupancies are established by the fire department and it is routine with documents posted in the room.

Mr. Bouyer said there should be an evacuation program also.

Mr. Gutoskey asked where they are going to park all of these cars.

Mr. Wu said for the parking they have arranged for a van and maybe people bussed so they will reduce the cars, that is their plan and in order to not disturb the neighbors they also will have traffic control at their entry and exit in between 10:15 AM – 11:00 AM and 12:45 PM – 1:30 PM to make sure the traffic is controlled.

Mr. Lamanna asked if there is anyone else that wishes to make a comment.

Mr. Donald Sheehy of 7825 Country Lane testified by saying we are here again back to review, what I believe, will be the first of many requests to either ignore or significantly modify the conditions placed on the conditional use for this property. While I am not personally surprised that this request is being made, I am disappointed that the applicant has not at least attempted to operate the facility a single day based on the design they submitted as requested. Since the conditions placed on the site are interrelated, I think it is important to point out how certain other conditions and allowances made on the approved plan would be affected if the proposed request is granted. Currently, the proposed use shows two ADA accessible parking spaces. ADA guidelines require four parking spaces for 76-100 occupants and 5 five for 101-150 occupants. The requested modification will increase the ADA access deficiency of the site. This will lead to handicapped individuals having to park in the primary parking lot and struggling to work their way to the front of the building which is a health and safety concern. The proposed 69% increase in occupancy will add approximately 15-20 additional vehicles to the site. This increase will surely guarantee that the number of approved parking spaces will be inadequate, and will result in a violation of the other conditions placed on the site (Conditions 8 and 16). The BZA permitted a narrow driveway to the back parking lot. This decision should be re-evaluated in relation to the additional vehicles. The decision of the EPA to allow this increase is based on an estimate, but is ultimately “performance-based” per their letter. To date, we have no performance data to determine if this requested increase in occupancy will be appropriate. If the applicant had perhaps six months of data that provided a water usage rate, and that the 30 year old system was functioning without a violation, an increase in maximum occupancy could be better evaluated based on real-world data.

Mr. Sheehy continued by saying when this system fails, it will affect surface water and ground water, and it will pollute a sensitive aquifer with shallow bedrock. Any system upgrades will likely require a new replacement field, additional grading and tree removal on the site. These activities will further degrade the natural tree buffer. As a practical matter, this applicant has stretched out the approval process and construction activity to the point where they will be up against the weather to make the improvements already granted under the conditional approval. Whether this intentional or not, the effect of these delays will make it difficult to install a hard, striped parking surface which is condition #8, force a delay in the installation of the landscape mounds and tree screening which are conditions #'s 9, 10, 11, and 12 and compromise the storm water plan which is condition #13. He said the Ohio Administrative Code 3745-42-05 specifically notes that the estimated daily flow is based on one church service per day, that is just for clarification. Also, if there are any daycare facilities being provided on the premises, the calculation needs to be revised to address that use specifically. As of today's date, the applicant has not applied to the Ohio EPA for a public drinking water permit, even though the applicant was told repeatedly by me and others in previous meetings that they would need this permit. How aggressively will the applicant monitor this water system if they have no regard for performing the necessary tests or obtaining the required permit from the Ohio EPA? They have also not received any approval yet from Geauga Soil and Water. I urge extreme caution on the relaxation of any of the requirements placed on this conditional use. There should be no temporary occupancy permit given for this site until all the conditions are met. The requirements should not be waived or modified piecemeal. They are interconnected and they are our only protection, and will adversely affect all of us, the adjacent property owners, if they are not upheld together in their entirety.

Mr. Bouyer stated that from the very beginning nothing that they have stated has changed from the very beginning their intentions were to use it and what the numbers were to use it. He said he got involved and went to the EPA and he let them know, the letter didn't state what it needed to state and he reiterated it six or seven different times that he would get that documentation and they would have it within a week. He said it is not their intentions to be here five, six, seven or eight or nine times, they have done everything that they are supposed to do, they applied for everything, Geauga County Soil and Water has had the plan and the reason we don't have an okay and Mr. Sheehy knows because he is very involved in this process, it is not because we are not doing what we are supposed to do because we jumped on everything we did, what we are supposed to do.

Mr. Lamanna said just so we don't have an issue with that, part of our concern is we spent multiple, multiple meetings going over in agonizing detail all of the aspect of this particular project and after tremendous amount of consideration and bouncing and weighing we came to a decision. He said based upon a lot of factors, not just the sewer capacity and he thinks at this point in time it is really premature to be considering any increase in this and he thinks after it is been in operation six months or a year then the board can evaluate how everything is working out and maybe it will turn out that here is not really a big traffic problem, there are a few more cars coming in because they moved it up to 100 people, there are always a bunch of parking spots available so it is not going to be a parking issue, we don't see a lot of traffic problems, there are not any noise issues, it is all working out well, fine, then the board can look at it and say the way this is running, the board can make some adjustments here then the board is assured that the system is actually working properly with the people in it and there are no issues so at this point in time we have done so much work on this and the thing is 47 moving pieces interlocked and working together and to step in and pull something out and change it, now how does that affect everything else and frankly at this point in time it is just not conducive to go through that whole exercise again. He said what the board really wants to see is how is this going to work in the real world and then the board can deal with it.

Mr. Gutoskey said he agrees and that is why the board set the two year review to review how it is working. He asked if any services have been held there yet.

Mr. Wu replied no we have not.

Mr. Lamanna said six months or a year after you have been in full operation, then the board can talk about this. He said obviously the board should update the reference to the most current EPA letter but he would table any further consideration of this.

Ms. Endres explained that if the application is tabled it can be reopened when the board is ready to consider it again.

Mr. Lamanna said it doesn't really matter if it is tabled or otherwise, if we don't table it, the applicant will just reapply, if it is tabled at least six or seven months of operation and then the applicant can come back and request another time-frame. He said if they had to pay for this application he doesn't think they should necessarily have to pay again, it will not change anything from a procedural standpoint. He asked the applicant if they want it denied or tabled because technically if it was denied the decision could be appealed.

Mr. Bouyer said that is up to the church.

Mr. Wu said they would prefer to table it.

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

Motion BZA 2013-31 – 7765 Country Lane (The Church in Solon)

Mr. Lamanna made a motion for the following:

1. To update the references in the conditional use to be the most current applicable letter from the Ohio EPA as it exists now and to include in that reference for the future any subsequent updates for amendments to by the EPA.
2. With respect to the change in maximum capacity the board will table that application until the applicant has actually been in full scale operation for between six months and one year.

Mr. Lewis seconded the motion.

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

Since there was no further testimony, the public hearing was closed at 9:27 P.M.

Respectfully submitted,

Joseph Gutoskey
Michael Lamanna, Chairman
Todd Lewis, Vice Chairman
Jason Maglietta
Mark Murphy

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

Date: December 19, 2013

AUDIO RECORDING ON FILE

Bainbridge Township, Ohio
Board of Zoning Appeals
November 21, 2013

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 9:27 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Joseph Gutoskey, Mr. Todd Lewis, Mr. Jason Maglietta, Alternate and Mr. Mark Murphy. Mr. Mark Olivier was absent. Ms. Karen Endres, Zoning Inspector was present.

New Business

Ms. Lorrie Benza, Township Trustee met with the board and suggested that it add a blanket statement at the end of every hearing that anyone can file an appeal with the court of common pleas.

Minutes

Mr. Lamanna made a motion to adopt the minutes of the October 17, 2013 meeting as written.

Mr. Lewis seconded the motion.

Vote: Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Maglietta, aye; Mr. Murphy, abstain.

Applications for December 19, 2013

Application 2013-29 by Henry J. Prijatel for property at 18063 Harvest Drive -
Continuance

The applicant is requesting area variance(s) for the purpose of constructing an attached garage. The property is located in a R-5A District.

Application 2013-33 by Scott & Jessica Munn for property at 8301 Valley Drive

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

Application 2013-34 by Wembley Properties, LLC for property at 8345 Woodberry Boulevard

The applicant is requesting a conditional use permit for the purpose of a change of ownership for a recreational club (The Wembley Club). The property is located in a R-3A District.

Application 2013-35 by Eric Smith (C-4 Holdings) for property at 16625 Wren Road

The applicant is requesting variances for the purpose of expanding a warehouse. The property is located in a CB District.

Application 2013-36 by Kurtz Bros. Inc./John Ziss for property at 7045 Aurora Road

The applicant is requesting area variance(s) for the purpose of establishing a landscape supply store with outdoor bulk material sales. The property is located in a CR District.

The Bainbridge Township Board of Zoning Appeals set a public hearing on the above applications for December 19, 2013 at 7:00 P.M. at the Bainbridge Township Community Hall, 17826 Chillicothe Road, Bainbridge Township, Ohio and unanimously resolved to request the Bainbridge Township Board of Trustees to issue a purchase order for legal advertising.

Since there was no further business, the meeting was adjourned at 10:03 P.M.

Respectfully submitted,

Joseph Gutoskey
Michael Lamanna, Chairman
Todd Lewis, Vice Chairman
Jason Maglietta
Mark Murphy

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

Date: December 19, 2013