

Bainbridge Township, Ohio
Board of Zoning Appeals
January 21, 2021

Pursuant to notice by publication and ordinary mail, the public hearing was called to order at 7:04 P.M. by Mr. Michael Lamanna, Chairman. Members present in person were Mr. Michael Corcoran; Mr. Ted DeWater; Mr. Joseph Gutoskey and Mr. Todd Lewis. Members present via Zoom were Mr. Brent Barr, Alternate and Mr. Ian Friedman, Alternate. Ms. Karen Endres, Zoning Inspector and Mr. Steven Averill, Assistant Zoning Inspector were present in person. Mr. Jeffrey Markley, Bainbridge Township Trustee was present in person to monitor and host the Zoom meeting.

Due to the COVID-19 Social Distancing guidelines this meeting was held virtually via Zoom.

Mr. Lamanna welcomed everyone to the regular meeting of the Bainbridge Township Board of Zoning Appeals, explained the public hearing process and stated that individuals will be sworn in when the application is started.

Mr. Lamanna swore in Ms. Karen Endres, Zoning Inspector and he let the record reflect that Ms. Endres was duly sworn.

Application 2021-1 by MM Washington LLC for property at 8531 E. Washington Street

The applicant is requesting a transfer of ownership and renewal of a conditional use permit. The property is located in a CB District.

Mr. Jim Ptacek and Dr. Ghiba, property owner were present via Zoom to represent this application.

Mr. Lamanna noted for the record that this property is subject to a judgment entry and asked if there is a copy of it.

Ms. Endres, Zoning Inspector said she did not include the judgment entry because this is a transfer of ownership.

Mr. Lamanna asked does the judgment entry have a bearing on this.

Ms. Endres said not on the transfer, no.

Mr. Lamanna asked how are we to determine that without a copy of it.

Ms. Endres said she has copies of it and per an opinion by prosecutor's office it was correct to send the applicant to the Board of Zoning Appeals for a transfer of ownership and that the Board of Trustees would act on any changes to the building or the site.

Mr. Lamanna said he would like to see it and is it possible to be shown on the screen. He said he only says this because we are being asked to look at a transfer of a conditional use permit but unless he sees what the judgment entry says, how can he say they meet the standards for a conditional use permit or what under that judgment entry can we address or not address.

Mr. Gutoskey said usually when we transfer it it is with the conditions that were part of the original.

Mr. Lamanna said right.

Ms. Endres said she can put it up on the screen. She said she emailed all of the paperwork to the board and this is the beginning of the judgment entry, there were 19 pages prior to this, it has to do with BZA actions and minutes from BZA hearings.

The board reviewed the judgment entry.

Mr. Lamanna said the only thing it appears they have done is they have attached an Exhibit A, he assumes it is a site plan, it is more than just a building.

Ms. Endres said Exhibit A is in here too. She said further down in the attachment are minutes from Board of Trustees meetings where there were changes that were approved also.

Mr. Lamanna said that was the final plan that was put in at the end of the procedure in the judgment entry.

Ms. Endres said right, Exhibit A was referenced in the judgement entry and it appears that there were modified plans and we don't have copies of those, that is a note that you see. She said Mr. Averill is going to be doing some research at the county to see if we can find the amendment to the judgment entry and the modified plans, they are not in the zoning file.

Mr. Lamanna asked if they modified the judgment entry only by changing the site plan.

Ms. Endres said she doesn't know, we need to see the site plan and there is another resolution in 1983 where they communicated compliance with the judgment entry. She said 1988 is when they adopted the resolution saying they are in compliance.

Mr. Lamanna said five years later they adopted a resolution saying they are in compliance.

Ms. Endres said she doesn't know what to tell you.

Mr. Lamanna said the township can say that the owner has satisfied their requirement, they certainly can do that. He said the first question is if they want to change the property, does the terms of the judgment entry allow them to do that, period, short of going back and actually amending the judgment entry.

Ms. Endres said she thinks that is what we are doing. She said the trustees were sent this information, the applicant will be sending a letter requesting to be on a Board of Trustees meeting agenda to discuss amending the judgment entry to allow for the new proposed plan.

Mr. Lamanna said which technically is purely the discretion of the trustees. He said one way you can look at this is that judgment entry is, you came in and you said you wanted to build that, yes okay, here is the site plan, this is what we are going to build, thank you, goodbye and you can never change anything unless you change that judgment entry because it isn't clear in the future what happens or whether actually anything happens in the future and you get these other judgment entries, they have a different language as to what happens. He said one way to look at it is, and actually it is worse for the applicant because it is purely discretionary because the board of trustees could say they don't have to do this, you've got no appeal route if we say no we are not going to change it you can't go to the court like you can in the zoning case and say you are entitled to a variance, you agreed to a judgment entry, you said you were going to build this and that is it.

Ms. Endres said she understands.

Mr. Lamanna said you could take a really hard-nosed approach that that is what you agreed to. He said the judgment entry is a little bit vague about what happens in this situation and whether or not at that point in time, you wanted to build it, you built it and now you want to change it, yes you can come back but all bets are off. He said you are not coming back and saying you want to build something new on this property, you have an existing judgment entry that is now essentially null and void if you want to change it and if you want to change it then you have to come like you were making a new application and you have to resume being subject to current zoning requirements to the extent that you are changing things, what you have you have.

Ms. Endres said they are changing the façade and she believes they are planning some driveway improvements but administratively she didn't think she could approve that administratively given that it is under a judgment entry from 1980, it would be a conditional use under today's zoning and the opinion she got from the prosecutor's office was it should go to the trustees for modifications to the judgment entry or an amendment. She said they did that already one time at least.

Mr. Lamanna said every time he looks at these judgment entries people are just not thinking about the future, they are not thinking about how these things work going forward and what happens in 20 or 30 years as changes occur and the like. He said he thinks some of the things they put in them and some of them he thinks there are some constitutional issues because he thinks they are attempting to prevent all future legislative agencies from ever changing anything and he is not sure that if somebody properly brought a case to the Supreme Court that they might not say no that is not enforceable, you can't forever prevent changes from being made to the zoning for one particular area in the jurisdiction.

Ms. Endres said right and the property owners have owned the property for some time now and he did want to cooperate and come into compliance with getting the conditional use in his name, taking that first step even though she can't see where it was done before, once Mr. Shaw got his conditional use she can't see where it ever went back to the BZA.

Mr. Lamanna said he can never remember a conditional use coming back and this one is kind of interesting because it says you can build this building it doesn't say anything about what zoning applies or doesn't apply.

Ms. Endres said they applied the minutes.

Mr. Lamanna said it certainly says that anything in the minutes does apply.

Ms. Endres said the conditions apply.

Mr. Gutoskey asked if these are the conditions here.

Ms. Endres said this is the approval motion right here. She said this is 81-20C and the judgment entry referenced 81-20C but the conditions are to apply.

Mr. Lamanna asked why they needed a conditional use at that time.

Ms. Endres said at that time everything needed a conditional use, there was a period of time in Bainbridge Zoning where everything was a conditional use, she would have to go back and do the research but the Zoning Inspector at that time sent it to the Board of Zoning Appeals for a conditional use and the Board of Zoning Appeals granted the conditional use, the Board of Trustees actually opposed the granting of that conditional use and the trustees are the ones that actually challenged the decision in court so the trustees were the plaintiff.

Mr. Lamanna said he didn't think you could do that anymore.

Ms. Endres said she doesn't think you can do that anymore.

Mr. Lamanna said he thinks there has been a subsequent decision by the Supreme Court that says you can't appeal your own board. He said they can take a position as a board but once a decision is made you can't do anything. He asked at that time was there any general conditions applicable to all requests for conditional uses like we have now.

Ms. Endres said she is not positive but probably, generally there are.

Mr. Lamanna said the question is are they meeting all of those requirements, have there been any pending complaints or are there any issues, do they have outside storage of materials.

Ms. Endres said not that she is aware of, the biggest problem right now with this building is signage, some of the businesses like to put up non-permitted signage and the new owner actually cooperated with her in cleaning up some of the sign issues. She said there was a truck that was routinely parked out there with a billboard and he facilitated in removing that truck so the new owner has been cooperative with issues that were brought to his attention.

Mr. Lamanna asked if the owners are here or someone representing the owners.

Mr. Jim Ptacek and Dr. Ghiba were present via Zoom.

Mr. Lamanna said he is sorry we had to go through this whole rigmarole but he is a little bit of a stickler for making sure that we get these things properly handled and that all of the I's are dotted and the T's are crossed and we follow through with this thing in accordance with the legal requirements so that is kind of why we are bouncing around with this thing and unfortunately as a new owner you are stuck with what was done with this judgment entry originally and what was originally approved by the Board of Zoning Appeals many years ago so we are trying to make sure we understand what was done then and how we carry this forward in the future. He said at this point in time looking at the specific conditions that were there without investigating it there is a question of whether the zoning ordinance had other kinds of conditions. He said there doesn't seem to be any major outstanding issues here and he thinks at this point in time since it looks like the changes are going to go to the trustees anyway to decide how that is going to be handled then he thinks at this time maybe the easiest thing for us to do is we will approve the transfer of the conditional use permit and the duration of it will be until such time as what the trustees agree to or modification of the structures will continue on until that time but then will be superseded by whatever the final resolution of that process is because in the course of that process some of the issues about how this thing carries on in the future and is managed from a zoning standpoint in the future need to be addressed and he thinks it is easiest if it is addressed in that form and then we will know just what the ground rules are going forward plus the negotiations of whatever that lead up to a revised building and site plan may also necessitate some other conditions as part of that.

Mr. Lamanna continued by saying at this point in time we certainly can't speculate on it so the easiest thing to do is say okay we will approve the transfer and it will be in effect until the final resolution of your application before the trustees or for five years whichever comes first in case that ends up not going forward so he thinks that will at least answer this for the moment. He said we are not making any final interpretation on what this judgment entry means at this point in time because it has not been fully reviewed and examined but given that going forward through the other means hopefully that that resolution will eliminate some of the questions that were left by this 1983 judgment entry. He said at least the applicant will be going forward in compliance and until that time and then we can deal with it in the future with hopefully a better and more clear statement of what is before us. He asked if anyone else has any issues.

Mr. Lewis said he concurs.

Mr. Markley said he would just say that given our recent history with the judgment entry going forward we will probably amend and restate the judgment entry to clean it up.

Mr. Lamanna said yes.

Mr. Markley, Bainbridge Township Trustee said we will do that and what he has seen of the plan so far from the applicants he just had his first look at it a few minutes ago and it looks promising so beyond that we will have a conversation.

Mr. Lamanna said on some of these things your best bet is these things should roll over and just become okay you can build this and build this thing now but going forward you are still subject to zoning.

Mr. Markley said for sure.

Ms. Endres said the amended judgment entry will refer to our current zoning and the fact that shopping strip centers are conditional uses in the current zoning.

Mr. Markley said you've got another meeting guys before that can happen, legal counsel and the applicant and the trustees.

Mr. Lamanna said you can see what these things do because people never think about how is this going to work in the future in five or ten or fifteen years.

Mr. Markley said we will know by the exhibit because the exhibits are supposed to be attached but he is sure we can clean it up completely.

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

Motion BZA 2021-1 – 8531 E. Washington Street

Mr. Lamanna moved to approve the transfer of ownership and a renewal of the existing conditional use for the property to the new owners.

1. The board is making this transfer based on the fact that the applicant is seeking to negotiate some modifications to the property and with the trustees because it is subject to a judgment entry and the modifications will require a modification to that judgment entry.
2. The current text of the judgment entry is somewhat vague as to how the issue of the conditional use continues forward.
3. At this time the board is not making or forming a decision with respect to the application of the terms of that judgment entry and how it operates because we anticipate the modification of that entry which will clarify these points.
4. The period of this renewal will continue until the resolution of the matter of the modifications to the property with the board of trustees in anticipation that that may modify the nature of the conditional use permit or its conditions or in the event that there is no such resolution or change to the negotiations then this will terminate in three years as a maximum.

Mr. Lewis seconded the motion.

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

Application 2021-2 by Grace M. and James F. Henry for property at 7589 Pettibone Road

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

Mr. and Mr. James Henry were present via Zoom to represent this application.

Mr. Lamanna swore in Mr. James Henry and Mrs. Grace Henry and he let the record reflect that Mr. and Mrs. Henry were duly sworn.

Mr. Henry testified that they would like to build an unattached garage, it would be right off the turnaround and he is sort of hoping that you have a drawing and the reason they are going for a variance is one corner of the garage is 9' away from the property line that is next to their daughter and her husband.

Mr. Lamanna said he assumes that they are not complaining.

Mr. Henry said they get firewood and they know they are going to get cut off.

Mrs. Henry testified that her daughter Mrs. Erin Kearns is on the Zoom.

Ms. Karen Endres, Zoning Inspector testified that she has an aerial view showing the existing condition of the property and she is scrolling through the application paperwork and the deed.

Mr. Lamanna asked do we have the distance from the corner of the house, the square distances not the diagonal.

Mr. Gutoskey said it looks like it is 20' because they've got the pull-up in front of the drive.

Mr. Lamanna said his question is, there is a gap there showing now, between the driveway and he would like to know what that distance is and why it has to be that, can it be moved forward at least to meet the driveway, he doesn't know what is driving that position, is there some good reason it needs to be there or could it be moved up closer.

Mr. Henry said they were just hoping to extend that turnaround driveway a little bit.

Mrs. Henry said for the bumper of the car or vehicle.

Mr. Lamanna said you want to be able to park a car in front of the garage and have it not blocking the other garage.

Mr. Henry said just giving a little more room, if we were to pull that garage up we would still be here requesting a variance because it is not that much room.

Mr. Lamanna said right but the rule is the minimum variance necessary to overcome the practical difficulty. He said it is 24' x 28' deep.

Mr. Henry said yes and actually that includes the 4' overhang.

Mrs. Henry said there is a little roof overhang.

Mr. Henry said right and the southern corner of that garage includes from the drawing a 4' overhang and 24' x 28' is the actual building.

Ms. Endres said there are awnings on three sides of the building.

Mr. Lewis said this drawing makes it look narrow and long but it is actually wide and short.

Mr. Lamanna said it is 28 x 24 so it is actually wider than it is deep. He said he is looking at the picture and is beginning to wonder about the dimensions.

Mr. Gutoskey said this drawing is not quite to scale.

Mr. Lewis said he would say not at all or at least the building.

Mr. Lamanna asked if the building is anywhere close to being to scale.

Mr. Gutoskey said no because he is scaling the building at 20 x 35 but the drawing isn't quite to scale because he got a line that is supposed to be 322' and he is scaling 300' on it.

Mr. Henry asked if the board has a copy of this one, it is a little more to scale.

Ms. Endres said she gave them the building plans that were submitted with the variance paperwork and on the screen is the one that shows the awnings.

Mr. Lamanna said the 9' doesn't match with the dimensions.

Mrs. Endres said this was turned in with the application for the zoning certificate and what is projected on the screen was turned in with the appeal paperwork.

Mr. Gutoskey said part of the problem he is having is he doesn't really have a scaled drawing to even see if it is 9'.

Mr. Lamanna asked if they have a surveyed line there.

Mr. Henry said yes we do, that is how he came up with the 9' off that one corner, he pulled a string between the two pins and then measured from there.

Mr. Lewis said the building is wider than it is deep and on this picture they've got it deeper than it is wide so it is tricky.

Mr. Gutoskey said it is 20' wide by 30' deep.

Mr. Lewis said he thinks part of what we can maybe look at, we are looking at the one corner of the building, that lower left corner as you are seeing it, that is the one closest to the property line. He said if we set an acceptable dimension, measurement for that corner as long as they don't encroach on that area they can move it maybe a few feet forward to meet the existing driveway pavement and then if it is wider than it is narrower, as long as they are not intruding what we give on a side yard variance, if we offer one up, and even if the building was 40' wide, it is going into their yard not towards the property line at that point.

Mr. DeWater said the situation is though they have 6.74 acres there and to ask for a 9' variance, they have plenty of room on the property to place that building.

Mr. Lewis said absolutely.

Mr. DeWater said it is not like we are dealing with a Lake Lucerne lot or Pilgrim Village lot.

Mr. Corcoran said the only problem being is in the rear is the septic.

Mr. Lamanna said the way the driveway comes in and the house there is a limit to where they can put it but also they could very easily move it up to where the existing corner of the house is even with the other garage.

Mr. Gutoskey said and even rotate it a little.

Mr. Lewis said draw a straight line across the back to that garage heading to the lot line, the other direction, go horizontal, go up to the garage itself. He said extend it the other direction to the left towards the property line that way and have the new garage be even with the back line of the garage.

Mr. Gutoskey said their drive is wide enough to back out, his drive is only 32' on the side entry, 30' to 32' is what we design for.

Mr. DeWater asked if they know where the septic is at because they could slide it over.

Mr. Gutoskey said or even rotate it.

Mr. Lamanna said yes, rotate it a little bit.

Mr. DeWater said he just feels because of the size of the lot.

Mr. Lamanna said he thinks if he goes even with the house and even with the pavement so it doesn't go to the left of where the pavement is.

Ms. Endres said we do have a setback distance between buildings now of 10', they need to keep a 10' distance from the house.

Mr. Lamanna asked if there is some reason.

Ms. Endres said it was part of the amendment that went through in November and was effective in November.

Mr. Gutoskey said unless they attach it.

Mr. Lamanna asked if there was an underlying reason for that, is it a safety issue.

Ms. Endres said safety, if a fire truck had to get through.

Mr. Lamanna said okay. He said this is a case when it is better to give a variance to that dimension than pushing it over to the property line.

Ms. Endres said she is not suggesting that you couldn't do it.

Mr. Lamanna said we just have to deal with it.

Mr. Lewis said it is good to know and it may require another variance if we are going that direction.

Mr. Gutoskey asked what setback would we be comfortable with off the property line.

Mr. Corcoran said if it were moved this way just to the right it could still be 10' off the house but it would give you a lot more room to the property line.

Mr. Gutoskey said pulling it forward and parallel with the house.

Mr. Corcoran said move it north to be parallel with the garage.

Mr. Gutoskey said scaling this it looks like that corner of the garage is about 80' off the existing garage, that rear corner and it is probably a hair more than that because this drawing has shrunk a little bit more.

Mr. Corcoran said he would like to see a scaled drawing if it was moved over a little bit.

Mr. Gutoskey asked how many feet are off the existing garage.

Mr. Lewis said lining it up with the back side of the garage, so you are moving it pretty far forward.

The board discussed the proposed setbacks.

Ms. Endres said he wanted to leave enough room to back around so his wheels would still be on the concrete but his bumper wouldn't hit the building.

Mr. Gutoskey said they may have to put a little pad right here off of this and he doesn't think they have a problem with lot coverage.

Ms. Endres said there is no trouble with lot coverage.

Mr. Lamanna said he can still come over here and he is still going to have more than 10' in there so if he puts his garage door so it is on the edge of his existing pavement. He asked what it is going to be then.

Mr. Gutoskey said 25' off that one corner, the back corner, because the front corner ends up being 35' and the distances are more than he is scaling.

Mr. Lamanna asked if it is safe to do 25'.

Mr. Lewis asked if it is actually more because it is shrunk down.

Mr. Gutoskey said it is more than what he is scaling only because the drawing is not quite to scale. He said it would be 26.8' so we can do 25'.

Mr. Lamanna said if we do 25' you should be okay.

Mr. Lewis said it gives them an index point for the back corner.

Mr. Gutoskey said as long as it is 25'.

Mr. Lamanna said what we are talking about is we have calculated 25' which would mean putting it somewhere near in line with the back of the house and place it so that the pavement kind of comes into that one garage door so it would be just behind it.

Ms. Endres showed the applicants on the screen the proposed site plan for the detached garage and told Mr. and Mrs. Henry that she can give them a copy of it.

Mr. Henry said he thinks what he is seeing is pushed up even with the main part of the driveway.

Ms. Endres said correct.

Mr. Henry said it is taking the place of the turnaround, is that what he is seeing.

Mr. Lamanna said yes.

Ms. Endres said it will be on the turnaround area.

Mr. Lamanna said partially.

Mr. Lewis said and that is moving your side yard setback from the 9' or so feet to 25'.

Mr. Henry said okay.

Mr. Gutoskey said he would suggest to give 25' and he could work it however he wants to.

Mr. Lamanna said there is still some wiggle room so that is generally where it is so you could adjust around it a little bit when you decide your final placement, go out and take some measurements and you can decide exactly where you are going to put it.

Mr. Henry said the idea is to put it up sort of to take the place of the current turnaround.

Mr. Lamanna said yes, generally in that area and then you will have a 25' variance and that will get you a little bit of room to play around with and finally position it.

Mrs. Henry said we have four kids and we get cars, it is not a favorable decision on our part to remove our turnaround so she guesses what they are looking for from the board is your decision is we cannot encroach any closer than 25' and so basically we have to start over.

Mr. Corcoran said you could put a pad extension of the driveway on the south end to create a different turnaround.

Mr. Lamanna said or on the other end, come out this way.

Mr. Lewis said bump to the left right out the garage doors of the existing just heading right towards the property line.

Mr. Henry said the one garage you were thinking would be parallel to the other garage.

The board discussed the triangular piece.

Mrs. Henry said she just wanted to point out and her daughter is on the Zoom, as far as the use of that triangular piece and the protection of that and the relationship to their house.

Mr. Gutoskey said he looked at maybe trying to get some out of the triangle but the problem is you show per the adjacent house the proposed drip zone for the septic there so you have two zones on the lot for the primary and two for the replacement which was approved by the health department to be able to build on the lot so there are minimum setbacks you have to keep from the drip systems otherwise he was going to suggest maybe doing a property swap or something there but he doesn't know how possible that is with the septic being there or proposed or reserved for the lot.

Mr. Lamanna swore in Mr. Jeremy Kearns and he let the record reflect that Mr. Kearns was duly sworn.

Mr. Jeremy Kearns testified that he is the property owner of 18705 Geauga Lake Road, and he just wanted to mention that their replacement septic is in the front of their lot, the existing septic is on far perimeter of the field, very far from where this proposed garage is so it is not encroaching near our septic whatsoever.

Mr. Gutoskey said we don't have a plan that actually shows where the septic is on your lot, the drawing that was submitted to the board shows proposed drip zone number two in that triangle.

Mr. Kearns said they are closer than that shows, they basically run back to back on the field so they take up the entire field, they don't go into the woods.

Mr. Gutoskey said so you are saying we can do a property line adjustment to get room for the garage.

Mr. Kearns said he is just saying that that land there is basically their yard for all intents and purposes, it is so close to their driveway.

Mr. Lewis asked can the triangle just be cut off and added to Jim and Grace's property.

Mr. Gutoskey said it looks like there was a swap before, it looks like there is a triangle in the front swapped for the triangle in the back.

Mrs. Henry said no that is not exactly true, the property line was moved in two places, the triangle in the front is just a remaining botched up piece that was not transferred. She said the triangle in the front was part of the land transfer for Patrick and Lorie Henry in the back, the triangle extends back into the south side, that was made narrower and the property on that western property line to adjust that property lot, for some reason that triangle at the front was to be part of the Jeremy and Erin Kearns lot, the property line initially went whatever so.

Ms. Endres said they don't have area to give up and still be a conforming lot.

Mr. Gutoskey said it is not conforming now, it is 4.88 acres.

Ms. Endres said right, there is already a variance, it is a corner lot so it is including the right-of-way it is 5.4 acres inclusive of the right-of-way.

Mrs. Henry said that secondary zone is not in the triangle it is in a different place as Jeremy said, that is not staged for your septic.

Mr. Kearns said right.

Mr. Gutoskey asked how is that relevant to where the position of the garage is, he doesn't understand.

Mrs. Henry asked why can't they just build 10' to 12' from that property line.

Mr. Gutoskey asked what is the practical difficulty.

Mrs. Henry said because of their family we park cars when our family is home in that turnaround, along that turnaround and even now we have two cars parked in that turnaround all winter for the last year so it makes sense from our viewpoint to build a second garage just as an extension of that turnaround space but not have it so close onto that back bumper, it depends on the size of the vehicle and the two that are in there right now take from that back to the corner, they take all that space so we need ample space to turn around but we often have family here and several cars in the space.

Mr. Lewis said which would now be parking in the garage.

Mrs. Henry said they would like to store a lawn tractor and have it be a little bit of a workshop for Jim.

Mr. Gutoskey said then it really doesn't need to be next to the driveway then.

Mrs. Henry said and it will have garage doors on it so it will provide a two-car garage if needed.

Mr. Lewis said so the practical difficulty we are trying to establish, because this is an area variance, would be the physical attributes of your property, not necessarily your personal desires and your lifestyle so in this particular case we are not encumbered by a well, a septic, a riparian, a radical slope change, a stream, the only thing dictating is your personal preference, we are trying to establish a practical difficulty and that has yet to have been displayed.

Mr. Lamanna said one other option would be to rotate the garage so that the entrance was right onto your existing turnaround, behind their garage so it would be slightly offset, the front of the new garage would be slightly offset to the east.

Mr. Gutoskey said or attach it to the existing garage.

Mr. Lamanna said that would be another option, you could position it like that so that it wasn't entering your turnaround at the end it was entering your turnaround at the side and with a 25' setback that would give you a lot of jockeying room as to exactly where you position it along there.

Mr. DeWater said another option would be just to add an additional two-car garage attached to the existing house.

Mr. Lamanna said he thinks they may have a roofline issue.

Mr. Gutoskey said you just turn the peak or gable.

Mr. Lamanna said that is essentially what we are talking about, instead of just attaching it just shifting it back and they could shift it towards the property line some and still maintain 25' very easily.

Mr. Gutoskey said he is good with the 25' and they can figure out how they want to fit it in.

Mr. Lewis said how and where is fine.

Mr. Gutoskey said the other thing is the drive setback only because there is a gas well road there.

Mr. Henry said what is sounds like he is hearing is the garage can be right up against and sort of take the place of the existing turnaround or in that area.

Mr. Lamanna said yes, put it so it faces out onto the side of the turnaround rather than the end of the turnaround.

Mr. Henry said okay.

Mr. Lamanna said that is east of the turnaround.

Ms. Endres said you are going to grant a variance from the sideline setback.

Mr. Lamanna said they can bring you a final plan of exactly where they want to put it.

Mr. Lewis said tinker around with the orientation. He said we have a housekeeping on the driveway that is less than 2'.

Mr. Lamanna said right at that location.

Mr. Gutoskey said where it ties into the gas well.

Mr. Lamanna said we will just clean that up.

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

Motion BZA 2021-2 – 7589 Pettibone Road

Mr. Lamanna moved to grant the applicant the following variances.

1. A variance to the 2' setback of the driveway. The board will grant a variance at the point where the driveway encroaches the western property line where there are some existing gas well tanks and where the driveway curves in to allow access to those tanks on the neighboring property.
2. A variance for the purposes of constructing a proposed 24' x 28.5' detached garage for a variance of 25' from the slanted western property line of the property. The applicant is to prepare a scaled drawing showing the exact position of the new garage in a location conforming to that variance and submit that to the Zoning Inspector for review prior to the issuance of the zoning certificate.

Mr. Gutoskey seconded the motion.

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

Application 2021-3 by John Crabb for property at 17117 Cats Den Road

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

Mr. John Crabb was present via Zoom to represent this application.

Mr. Lamanna swore in Mr. John Crabb and he let the record reflect that Mr. Crabb was duly sworn.

Mr. Crabb testified that he would like to build a little garden shed in the back for lawn tools, it is 12' x 16' with a 4' porch that would make it 16' x 16' and where he wants to put it requires a variance for 34' from the property line. He said Ms. Endres has spent time with him to figure it out and it is basically what he needs. He said the picture Ms. Endres is showing looks like a recent one.

Ms. Karen Endres, Zoning Inspector testified that it is a fairly current aerial.

Mr. Crabb referred to the aerial and said that area right there is where his garden is and he has 14 raised beds right there and he wants to put the shed in that area.

Ms. Endres said she has his site plan here and showed the overview. She said she doesn't have the measuring tool on this one though, this is a screen shot.

Mr. Crabb said that is the general area.

Mr. Lewis said two months ago our code was a 90' rear yard setback and in the last couple of months it has been reduced to 50' so you essentially in the last two months with a code change have been granted 40' and you would like more.

Mr. Crabb said he has been working with Ms. Endres before you made that adjustment and he would like it to be 34' if possible. He said he talked to the neighbors on Cats Den and nobody objected to it and he thinks it is a fine idea. He said back there is just forest and he thinks it is an attractive building.

Mr. Lamanna said how about we put it midway between the back of your house and the rear property line.

Mr. Crabb said we don't have much yard and grass back there and another place we might consider is the southwest corner but it is pretty wet back there in that area and we had to have a swale put in.

Mr. Lamanna said it doesn't look like the grass goes back that far.

Mr. Crabb said he is hoping that we can put this garden shed/potting shed near the tree line opposite the garage. He said nobody is going to see it but us.

Mr. Gutoskey asked if the septic is in the back or is it in the front.

Mr. Crabb said it is way down in the front closer to the road.

Mr. Gutoskey said so there is no limitation to the septic system.

Mr. Lamanna asked where the tree line is.

Mr. Crabb said you see where the grass is.

Mr. Lewis asked if this is available on ReaLink or other sites so we can see what is around the lot.

Ms. Endres said there is something she just found recently that kicked into this and she hates to admit to a mistake here but in the 1977 zoning they had a provision for a 10' setback for accessory buildings from the rear lot line.

Mr. Lewis said oh my.

Ms. Endres said she just recently found that.

Mr. Lewis said well let's take a peek. He asked where on this page will he find that.

Ms. Endres said number four. She said we are still getting used to the 1977 Zoning Resolution, the 50' setback was for dwellings,.

Mr. Lewis said not accessory.

Ms. Endres said right, the 50' wasn't plucked out of the air, she found that provision today.

Mr. Lewis said so this was before the 1977 – 1978 changes and then the more recent ones, this is from real early on.

Ms. Endres said this page here is from the 1977 Zoning Resolution.

Mr. Lamanna said it is relevant if somebody built something 10', it is not relevant today other than it is historical.

Ms. Endres said right, this is a non-conforming lot and she didn't find that provision, the 50' setback was for dwellings. She said back when she processed this application several weeks ago she hadn't found that provision in the 1977 resolution. She said the upshot is she doesn't think he needs a variance and she has to apologize to everybody for not finding this earlier.

Mr. Lamanna asked about the lot coverage.

Mr. Gutoskey said the lot coverage is okay, it was approved at 18.2%.

Mr. Lamanna said so you are saying we should dismiss this as moot.

Ms. Endres said she thinks it should be dismissed as moot. She said the only variance was just for the rear lot line, the only other issue that possibly could have been was lot coverage that was approved back when the Murphy house was originally built but the driveway that was constructed was much smaller than the driveway that was approved so he had a lot of excess lot coverage.

Mr. Lewis said he has some in the bank.

Mr. Lamanna told Mr. Crabb that the board is going to dismiss his application because the zoning inspector is going to grant your application so you are done.

Mr. Crabb said excellent and he thanked the board.

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

Motion BZA 2021-3 – 17117 Cats Den Road

Mr. Lamanna moved to dismiss this application because the board has determined that the application can be granted by the zoning inspector within her authority.

Mr. DeWater seconded the motion.

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

Additional Discussion

Mr. Lamanna asked when the changes were made to the zoning resolution did we realize that this provision existed and now people can build 10' from the rear property line.

Mr. Gutoskey said he was going to ask the same thing.

Ms. Endres said we knew that there were provisions that were much closer but once she was drilling down on it there were different provisions for dwelling units than there were for accessory structures. She said she always wondered how some of these accessory buildings existed where they did and she found the answer.

Mr. Lewis said particularly stuff that was built 20 or 30 years ago.

Mr. Lamanna said the question is do we really want to be propagating it.

Mr. Lewis said that is our Zoning Commission's responsibility.

Mr. Lamanna said they may want to think about some corrections.

Mr. Lewis said they may not be aware of your find.

Ms. Endres said we knew it was much closer and the answer is yes.

Mr. Lewis said they should be made aware of it completely.

Mr. Lamanna said it is always the attention if somebody is putting up an 8 x 12 shed if they put it 10' off the property line.

Ms. Endres said on his it was 256 sq. ft. so he was under the 300 sq. ft., also we spent a lot of time drilling down on lot coverage.

Mr. Lamanna said 256 sq. ft. is not that big.

Mr. Gutoskey said yes it is not that big.

Mr. Lamanna said when the 45' x 50' come in at 10' it is a different animal.

Mr. Gutoskey said they would have to come in for a variance because they would be over the square footage but it should help all of the sheds in Lake Lucerne.

Application 2019-2 by New Wembley LLC for property at 8345 Woodberry Boulevard -
Continuance

The applicant is requesting a review and renewal of an existing conditional use permit. The property is located in a R-3A District.

Mr. Lamanna moved to table this application to the next regularly scheduled meeting to be held February 18, 2021 for the purposes of obtaining additional information from the applicant.

Mr. Corcoran seconded the motion.

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

Application 2020-6 by New Wembley LLC for property at 8345 Woodberry Boulevard -
Continuance

The applicant is requesting a modification of a previously approved requirement. The property is located in a R-3A District.

Mr. Lamanna moved to table this application to the next regularly scheduled meeting to be held February 18, 2021 for the purposes of obtaining additional information from the applicant.

Mr. Corcoran seconded the motion.

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

Application 2020-35 by Dangelo, Ltd. for property at 16965 Park Circle Drive -
Continuance

The applicant is requesting area variance(s) for the purpose of maintaining a pavilion. The property is located in a LIR District.

Mr. Lamanna moved to table this application to the next regularly scheduled meeting to be held February 18, 2021 for the purposes of obtaining additional information from the applicant.

Mr. Corcoran seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, abstain; Mr. Lamanna, aye; Mr. Lewis, aye.

Application 2021-4 by Dangelo, Ltd. for property at 16965 Park Circle Drive -
Continuance

The applicant is requesting area variance(s) for the purpose of constructing a restaurant/event center. The property is located in a LIR District.

Mr. Lamanna moved to table this application to the next regularly scheduled meeting to be held February 18, 2021 for the purposes of obtaining additional information from the applicant.

Mr. Corcoran seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, abstain; Mr. Lamanna, aye; Mr. Lewis, aye.

Since there was no further testimony, the public hearing was closed at 8:35 P.M.

Respectfully submitted,

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

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

Date: February 18, 2021

AUDIO RECORDING ON FILE

Bainbridge Township, Ohio
Board of Zoning Appeals
January 21, 2021

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 8:35 P.M. by Mr. Michael Lamanna, Chairman. Members present in person were Mr. Michael Corcoran; Mr. Ted DeWater; Mr. Joseph Gutoskey and Mr. Todd Lewis. Members present via Zoom were Mr. Brent Barr, Alternate and Mr. Ian Friedman, Alternate. Ms. Karen Endres, Zoning Inspector and Mr. Steven Averill, Assistant Zoning Inspector were present in person. Mr. Jeffrey Markley, Bainbridge Township Trustee was present in person to monitor and host the Zoom meeting.

ORGANIZATIONAL SESSION

Election of Chairman

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

Mr. Gutoskey seconded the motion.

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

Election of Vice Chairman

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

Mr. DeWater seconded the motion.

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

Sunshine Law

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

Mr. Gutoskey seconded the motion.

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

Meeting Schedule

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

Mr. DeWater seconded the motion.

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

Zoning Secretary

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

Mr. Gutoskey seconded the motion.

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

By-Laws

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

Mr. DeWater seconded the motion.

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

MINUTES

Mr. Gutoskey moved to adopt the meeting minutes of December 17, 2020 as written.

Mr. Corcoran seconded the motion.

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

APPLICATIONS FOR NEXT MONTH

Application 2019-2 by New Wembley LLC for property at 8345 Woodberry Boulevard -
Continuance

The applicant is requesting a review and renewal of an existing conditional use permit. The property is located in a R-3A District.

Application 2020-6 by New Wembley LLC for property at 8345 Woodberry Boulevard -
Continuance

The applicant is requesting a modification of a previously approved requirement. The property is located in a R-3A District.

Application 2020-35 by Dangelo, Ltd. for property at 16965 Park Circle Drive -
Continuance

The applicant is requesting area variance(s) for the purpose of maintaining a pavilion. The property is located in a LIR District.

Application 2021-4 by Dangelo, Ltd. for property at 16965 Park Circle Drive -
Continuance

The applicant is requesting area variance(s) for the purpose of constructing a restaurant/event center. The property is located in a LIR District.

The Bainbridge Township Board of Zoning Appeals set a public hearing on the above applications for February 18, 2021 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.

BZA 2020-37 – 7273 Miller Properties LLC/Handy Rents – 7812 E. Washington Street

The board was in agreement to reschedule BZA 2020-37 to the regularly scheduled meeting in March to be held March 18, 2021.

Since there was no further business, the meeting was adjourned at 9:00 P.M.

Respectfully submitted,

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

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

Date: February 18, 2021