

Bainbridge Township, Ohio
Board of Zoning Appeals
October 15, 2015

Pursuant to notice by publication and ordinary mail, the public hearing was called to order at 7:00 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Ted DeWater; Mr. Joseph Gutoskey; Mr. Todd Lewis and Mr. Mark Murphy. Ms. Karen Endres, Zoning Inspector was present.

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

Application 2015-29 by Kamyar Alaei for property at 8454 Rockspring Drive

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

Ms. Kristina Alaei was present to represent this application.

Ms. Alaei testified that they purchased a home on Rockspring last fall and they need to have a shed because they could not park in their garage all last year and they both fell in the driveway and broke a bone last winter so they are really ready this year to build a shed. She said they put in an application and obviously the township's requirements are much larger than what our lot size allows so that is why she is here, for the approval, but she is also here for the variance for the distance for the sides and the back of the lot.

Mr. Lewis asked if this structure is already up.

Ms. Alaei said they started it because they didn't know they had to get an approval from Bainbridge, they went to Geauga and got the approval from Lake Lucerne and it wasn't until she went to the architectural review board with Lake Lucerne that she found out she even needed approval from Bainbridge so nothing has been done to the building, it is partially built, but nothing has been done to it for several weeks now.

Mr. Lewis asked what part has been done.

Ms. Alaei said it has a frame but none of the walls have been put up.

Mr. Lamanna said it is not on a foundation.

Ms. Alaei replied no, it is a moveable shed.

Mr. Lewis referred to the Lake Lucerne ARB approval and asked whose writing it is.

Mr. Jonathan Baker testified that it is his writing.

Mr. Lewis asked if he is from Lake Lucerne.

Mr. Baker replied yes and said he is here representing the ARB for Lake Lucerne and he and Ms. Alaei have spoken prior about this.

Mr. Lewis asked if what is going in if that is what the ARB approved back in 2014 for the size, height and location.

Mr. Baker said that is where we have a challenge because we have a copy of the approval that includes the site plan but we do not have a copy of the plans and it is entirely possible that we misplaced that as a board.

Ms. Alaei said it was submitted with the application but it has been, apparently, misplaced since the approval because they started a new program of scanning their documents in so they scanned in the application but not the actual plans in the brochure that was submitted with it.

Mr. Lamanna asked if they are talking about the plans for this building itself.

Ms. Alaei said there was also a copy of this submitted with it.

Mr. Lamanna asked about the location.

Ms. Alaei said it is in the location we said it would be.

Mr. Lamanna said the board is less concerned with the building, it is really the location that is an interest to the board given the size of it, 12' x 16' x 12' high.

Mr. Baker said the gutter line is 10' high, the peak of the roof is 13-1/2', the building as it stands right now is outside of their ARB standards and as a board they are working with the family to review and come to a solution that is beneficial to both them and to Lake Lucerne.

Mr. Lamanna asked in terms of size.

Mr. Baker said size, correct, but without the documentation of plans we are trying to come up with an equitable solution for not only the homeowner but also for the ARB and the residents.

Mr. Lamanna asked what the Lake Lucerne size is.

Mr. Baker said the square footage is 120 sq. ft. maximum and a height requirement limit of 12'.

Mr. Lewis asked Mr. Baker if he was on the board.

Mr. Baker said yes, he was on the board at that time.

Mr. Lewis asked if he would have approved a structure that was bigger than what your by-laws are.

Mr. Baker said he would not have and he speaks for the board that we do not recall approving a barn that is outside of our standard and he also recognizes that they don't have the plans. He said they absolutely approved the shed, he does know that.

Mr. Murphy asked, besides the 120 sq. ft., how big is the shed you (Ms. Alaei) are proposing.

Ms. Alaei said it is 12' x 16' but she doesn't know what square footage that comes out to be.

Mr. Lamanna said it is 192 sq. ft.

Ms. Alaei said in their defense that is what they submitted for and that is the approval they received.

Mr. Lewis said unfortunately it does not state the size you got approval for and you can't substantiate either one of your claims, all the board has is the case of the mysterious submittals and documentation.

Mr. Lamanna said that is something they will have to sort out and he thinks the issue here is given that this is within the sideline of the building, the side yard setback is really not an issue it is just the rear yard setback is the question.

Mr. Lewis asked what is behind the lot.

Ms. Alaei said it is another home on Summit and she actually has checked with all of the neighbors, they have talked to all of them.

Mr. Murphy asked if any of them are here.

Ms. Alaei said she is not sure.

Mr. Murphy said there is a neighbor and we will get to him.

Mr. Lamanna said the historical rear setback is 30'.

Ms. Alaei said not in Lake Lucerne, it is 10'.

Mr. Lewis asked Mr. Baker if he would have approved something at less than 30'.

Mr. Baker said his understanding was it was 10' in the rear but the approval was based on the standard and there are many sheds in Lake Lucerne that are within that 30' setback.

Mr. Murphy said you mean closer than 30'.

Mr. Baker said correct.

Mr. Gutoskey said the one in Lake Lucerne at the last meeting came in at 21' and ended up setting it at 25'.

Mr. Baker said the Lake Lucerne standards are 10' on the side and 10' on the rear.

Mr. Murphy said we have standards from 1977 that shows Lake Lucerne subdivision.

Ms. Endres said she provided current zoning regulations and what the applicant is proposing, the Lake Lucerne architectural standards and what zoning was in place in 1977. She said under our current standards there is a provision where the side lines can be as close as 20' and that non-conforming structures can be in line with the house but no closer than 20'.

Mr. Murphy said this 12' setback will require an 8' variance.

Ms. Endres said the current zoning is a 90' setback from the rear property line.

Mr. Lamanna said the current zoning allows within the house but no less than 20' but we still have to go back and look at the fact that the prior zoning was 10' in Lake Lucerne so we are sort of going back to the 10' standard and the board generally applies those standards unless there is a strong reason not to apply it because of some particular situation. He said the board will follow what the prior zoning was unless there was something that says in this particular situation it is not appropriate to follow the prior zoning either because of the size of the lot or locations of other structures so on the side we are looking at 10' and if it is 30' away from the rear lot line it would be not much of a consideration and could easily be approved.

Mr. DeWater asked if there is a reason the shed cannot be moved forward.

Ms. Alaei said that it would put it in the middle of their yard but they need the storage, it is a small house.

Mr. Lamanna said there is 100' behind the house which is pretty significant.

Ms. Alaei said she thinks there are some tree issues and Lake Lucerne won't let them cut down any trees without their approval. She said they were thinking about putting it on the left side of the lot which is totally clear but we can see it from the street and Lake Lucerne doesn't allow being able to see sheds from the street so that is why they are back to that rear corner.

Ms. Endres said we can look at Pictometry.

Ms. Alaei said they did remove some dead trees and is trying to remember if there are still any live trees there.

Mr. Murphy asked Mr. Manke if he is the neighbor to the rear.

Mr. Jon Manke testified that he lives directly behind Ms. Alaei.

Mr. Lamanna asked Mr. Manke if he has a shed.

Mr. Manke said no.

Mr. Lewis said when the board was looking at the other aerial showing all of the lots on Rockspring and noticed Summit on the other side, on the 8 or 10 lots, where they all abutted up against one another, he didn't notice any other sheds in the backs of any of those other lots at the rear property line.

Mr. Manke said the neighbor to their right, if you look at their house on Summit, does have a shed at the back of their house.

Mr. Lewis asked if it is way back on the property line.

Mr. Manke said it is not at the property line and he doesn't know how many feet it is away from the property line.

Mr. Lamanna asked if that is a large evergreen tree there.

Ms. Alaei said yes and another concern of theirs is the house to the left of theirs has been vacant for a couple of years now and they have a tremendous amount of dead trees in the back yard that has not been addressed, a couple are laying on the ground now and along that line there are a lot of dead trees in there so it would be a concern to her to put it under a bunch of dead trees and have it damage the shed. She said she just had 11 dead trees removed and she is trying to remember if there are still any large trees there if they would move it further towards the house. She showed the board a picture on her laptop and it is in the back right hand side there where they are planning on putting it.

The board viewed the photo from her laptop.

Mr. Gutoskey asked if she is orienting it the long way with the side property line.

Ms. Alaei said the doors will be facing the house and looks a little cottage like and looks nicer from the house.

Mr. Lewis asked if it could be rotated.

The board discussed the proposed location of the shed.

Mr. Murphy asked if there is any window or decorative thing to the back of it.

Ms. Alaei replied no.

Mr. Manke stated that he thinks with respect to Lake Lucerne he thinks every homeowner, if they want to, is entitled to have a shed because it is in the by-laws of the development. He said he did know about the plans and story about things being lost or transposed but he too has empathy and understanding in going through this process because they had to do so years ago when they built their house so he understands what Ms. Alaei is going through but he also sat on the ARB just like Mr. Baker has a number of years ago so with respect to the shed he thinks that when you talk about that 16' and there are no windows, all they will see is just a flat wall and he is not saying to rotate it but if there were window boxes or some kind of decoration to add it would look more aesthetically pleasing. He said he knows the shed was moved from one side to the other and he is trying to understand where it is going to be positioned.

Ms. Alaei said where it is now.

Mr. Murphy said from your house looking backwards it will be on the left side.

Mr. Lewis said he has not seen a practical difficulty demonstrated for this structure, it intrudes on the Lake Lucerne's standards and it intrudes on our zoning.

Mr. Lamanna said it certainly looks like it can be moved out another 5' off of the rear line.

Ms. Alaei asked if the side will be okay at 12'.

Mr. Lamanna said if it is behind the house but the board will probably ask that you put some shrubs behind it.

Ms. Alaei said we have no problem working with Mr. Manke on that.

Mr. Lamanna said it is only 16' so if you could put a few evergreen shrubs behind it so when they look at it they are not just looking at a plain wall and to make it more aesthetically pleasing to look at.

Mr. Manke asked since it is was moved from one side to the other and it has no foundation, what does that mean, will it move another time and he understands she is trying to secure a variance for where it is but how is it going to stay put.

Ms. Alaei said it is a moveable shed and if you move you can actually take these with you. She said the reason they moved it was because of the street line you could see it that is why it was put in the other corner.

Mr. Lamanna said we talked about giving her a variance to 25' from the rear property line and 12' from the side but it still has to be worked out with the Lake Lucerne ARB because we are two separate approval processes with different standards and different requirements.

Ms. Alaei said okay.

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

Motion BZA 2015-29 – 8454 Rockspring Drive

Mr. Lamanna made a motion to grant the applicant the following variances for the purposes of constructing a shed according to the plans submitted by the applicant.

1. A variance from the minimum required side yard setback requirement of 50' to 12'.
2. A variance from the minimum required rear yard setback of 90' to 25'.
3. A variance from the maximum permitted lot coverage of 10% to 23.20%.

Based on the following findings of fact:

1. A practical difficulty exists due to the size of the lot being below normal requirements for this district.
2. The 12' side yard setback is greater than the 10' from the previous zoning applicable to this area.
3. With respect to the rear yard it represents only a 5' variance from the 30' previously required for this area.
4. The applicant has agreed to plant some decorative shrubbery behind the barn to provide some screening and reduce the impact on the neighboring properties.
5. The board finds this will not adversely affect the character of the neighborhood.

Mr. DeWater seconded the motion.

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

Application 2015-17 by Dennis Guritza for property at 17727 Lost Trail - Continuance

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

Mr. Dennis Guritza and Mr. Alan Tatro were present to represent this application.

Mr. Lamanna swore in Mr. Alan Tatro.

Mr. Tatro testified that he was asked to explain the procedure of the architectural review board of Pilgrim Village and what we do. He said the architectural review board is an assistant group, it is not part of the board, they don't have the final say according to the by-laws, we are just there to assist the board and help the homeowners and that is the way we operate.

Mr. Lamanna asked if technically you review an application and you recommend approval or not and then it goes on to the actual association board to decide.

Mr. Tatro said that is correct and basically he just tells them this is what the guy wants to do, what do you say, it is not a very structured environment. He said part of the problem they have is that there are a lot of people in Pilgrim Village that will do something and never contact us and the board doesn't act on that, they don't want to incur legal fees to try to chase people down so we, being the board and largely himself, there are three people and two are on the form. He said if they get a call he tells them several things and what we want is something aesthetically pleasing to the village and the neighbors, something that is structurally sound, something that is not a 30' x 40' pole barn. He said they do have written guidelines but they are not in the by-laws so they are just judgments for themselves and future boards to utilize. He said there are guidelines in the by-laws as far as structures and we have been in front of the board 1-1/2 years ago for the palace on Rt. 306 and there are specific guidelines for fences and he brings that up because those guidelines, to his knowledge, have been ignored in years past and nobody did anything. He said when there is a situation when they have at least two occasions where what is stated in the by-laws has not been enforced and that becomes a problem as you know. He said when somebody calls him, if they call him, he tells them the forms are on their website, fill it out and get your neighbors to look at it and you are supposed to go in front of the zoning board and get a variance and he tells them that because of his knowledge of the zoning regulations and he has been here two or three times on behalf of the neighbors, unless it has changed, is that you require a 90' setback from the rear property line and a 50' setback from the side setback and he also tells them that if they do go through the zoning board they come out okay, it might be something different than what they initially planned but they are okay with the guidelines and they want you to keep it behind the house and a certain distance from the back line which is much less than 90'. He said the reason he tells them that is he wants them to know what the guidelines are but it is up to them to do it, he does not make them do it, he advises them as to what is supposed to happen with everyone who calls.

Mr. Tatro continued by saying this situation came up and Mr. Guritza called him and he is sure he said everything he just said and he gets maybe three or four calls a year for sheds, some never call, there is a neighbor across the street from him that put up a shed and never called and never said anything and he was on the board. He said the board doesn't want to do anything about it and that is why he functions the way he does and most of the calls he gets are for sheds and they are supposed to call for anything and the by-laws say basically that any improvement has to go in front of the board but they don't have any set guidelines except for fences and the guidelines for fences are no stockade fences and no chain link fences in the neighborhood. He said they have denied sheds in the past and basically what they say is 16' x 16' and certainly not higher than the house, we do not want to see two-story sheds and he knows there are a lot of sheds that are too close to the lot line but they may have been put in without approval or grandfathered in.

Mr. Lamanna said most likely they were put in without getting approval.

Mr. Tatro stated that even the ones that do come in front of the ARB board the first thing he says that he wants to make sure the neighbors are okay and it is up to you to do the zoning board of appeals and get that approval. He said he has had some people move them because he wanted it behind the house and there was one that they denied and the guy that made this form quit because of this issue and it was because a guy on the corner of Apple Hill and Birch Hill that wanted to buy a house and the realtor lived in the neighborhood and the guy wanted to put up a 30' x 40' shed and he was the president of the board at the time as well as on the ARB and he had a business and wanted to run his business out of the shed so that is when we adopted the guidelines that we currently use.

The board discussed the current setbacks, lot coverage and square footage for sheds.

Mr. Lamanna said the board could argue that if the structure gets big enough it is no longer an accessory structure and becomes closer to the principal structure on the property.

Mr. Tatro said there was a resident in PV that came to the board and the detached garage had to be attached to the house.

Mr. Lamanna stated that there is a limit on the number of accessory buildings and there have been some circumstances where the board has required people to tie the garage into the house to solve the issues that would have arrived if it was a free-standing detached garage or suggested that as a solution to what would otherwise be a difficult problem for the board to resolve, when it is made to be a part of the main structure, then some of those issues go away.

Mr. Lewis said in reading here of your section on page four regarding storage sheds and other outbuildings in your procedure and it says "Permission to erect a storage shed will generally be approved by the Board if the structure is made as unobtrusive as practicable." He said this is the part that he really wants to speak directly to Mr. Tatro about and in considering the proposed structure the board will consider: A. Location and asked if the applicant gave you a site plan.

Mr. Tatro replied no he did not and asked Mr. Lewis what he is reading from.

Mr. Lewis said Pilgrim Village Colony Board of Directors and this is your association's document.

Mr. Tatro said he has been looking for this.

Mr. Lewis said that gets to the core of this matter which is why the request was made. He said the only thing the board had was the signature page and there was no site plan for it.

Mr. Lewis said you can't make a recommendation to your board of directors without knowing everything that pertains to the structure, its location, its size, its height, its proximity, did it pass muster somehow with the adjacent property owners. He asked if the Pilgrim Village ARB and the directors got a site plan and approved this for 4' off of the side line and asked Mr. Tatro if he knowingly did that.

Mr. Tatro said no he called me and asked me what the procedure was and he told him there is the form and you have to fill it out and get it back to him and get the neighbors to sign.

Mr. Lewis said so you approved an application without a site plan.

Mr. Tatro said they didn't approve it, he didn't know he was building it, he never heard back from him and he doesn't necessarily follow up on things.

Mr. Lewis said you sort of signed on this.

Mr. Tatro said he doesn't remember seeing it, he remembers the discussion that he described. He said basically, from Pilgrim Village's standpoint, if the neighbors approve it that is what we want and in this particular case he went over after the fact and saw the site and even though it is 4' from the line, from our standpoint and the aesthetics of the development, he would say it is fine, he thinks it is acceptable for their standards, is it hidden from view, no, but that is not necessarily the case, he thinks it looks nice and on his lot there are not a lot of other places to put it where it would be less intrusive and on the other side of his house with trees, he doesn't think it looks as good there.

Mr. Dennis Guritza testified that he has been speaking with the neighbors again and also with Mr. Tatro and his intent was not to circumvent this board and going back to the discussions that they had between the two of them his interpretation was to get the neighbors to sign off on the PV form and that the Pilgrim Village board, in his mind, and the immediate neighbor to his left is on the board at PV who was supportive and all of the neighbors continued to be supportive, it was never his intent to circumvent this board or to do something obviously that was in conflict with the zoning scenario.

Mr. Lewis asked Mr. Tatro if he advised the applicant of the 50, 50 and 90 and if you went beyond that scope you had to come before the board of zoning appeals.

Mr. Tatro said he can't swear that he did that, he always does it but he can't remember the particular conversation with him. He said a statement needs to be added to help cover the BZA and the PV ARB in the future in that regards.

Mr. DeWater asked if they have homeowner association meetings or parties etc.

Mr. Tatro said yes, four or five times a year.

Mr. DeWater asked if they discuss your development and make sure the new residents get these guidelines.

Mr. Tatro said we do but he doesn't know how it is done, years ago when he was on the board there was a guy that was supposed to visit every new homeowner and give them the by-laws and explain the procedures. He said if changes are made they will be presented at the annual meeting but it is not very well attended, minutes are available but they don't send stuff out to homeowners.

Mr. Lamanna said usually when a change is made you have to get the homeowners approval.

Mr. Tatro said absolutely.

Mr. Lamanna said it has to be circulated to all of the homeowners for their vote, everybody will get a letter with a copy of the changes.

Mr. Tatro said these things don't necessarily get sent to every homeowner.

Mr. DeWater said longtime residents of the development probably realize but the newer ones might not.

Mr. Murphy stated that he is a long-time Bainbridge resident and he has never been in a homeowner's association but even if somebody created a homeowners association around him he wouldn't know about it and wouldn't be at the meetings or know anything about those things so there should be someway if you have that that somebody ought to be able to get a copy of that.

Mr. Gutoskey said when he moved in somebody from the board came and met with him and his wife and went over the community.

Mr. Tatro said the last he heard is that the Women's Club was going to do that but to clarify the homeowners should get everything that they expect and it still doesn't mean they are going to abide by them.

Mr. Lamanna said the board understands but people should be sent a certified letter that says to the resident, please understand but your house is subject to recorded deed restrictions and before you do anything you should investigate what those deed restrictions are and whether they apply to you plus additional information they should be aware of so people can't say they didn't know about it. He said technically the recorded deed restrictions is hard to argue that they didn't know about them because they have every legal obligation to understand and know what they are. He said regarding the fences, etc. it would be smart of the homeowners association to be sending new people when they move in a notice.

Mr. Tatro told the board he appreciates their advice and will take it back to the PV board and suggest that they do that.

Mr. Lamanna said the advantage of having some kind of written guidelines is you will have some kind of consistency and if somebody does challenge it you will have something to fall back on.

Mr. Lamanna asked how tall the barn is.

Mr. Guritz said he believes it is 16'.

Ms. Karen Endres, Zoning Inspector testified that it is 16-1/2' and she should have called that out and added that the application says it is 16-1/2' high and the zoning limit is 15'.

Mr. Lamanna said he needs a variance for that as well.

Ms. Endres said yes.

Mr. Lamanna asked how big the little pad is outside the door.

Mr. Guritza said 6' x 12' and the whole base footprint is 12' x 24' and the ramp is 6' x 6'.

Mr. Lamanna said that means you might be actually over 300 sq. ft.

Mr. Lewis said there is no practical difficulty, it could go in the entire center of the lot with the exception of the swale at the very end of it because everything was re-graded before this was built, the entire interior of that lot is a suitable building site.

Mr. Lamanna said he can't disagree with that at all.

Ms. Endres said she went out today and took some pictures.

Mr. Murphy asked Ms. Endres if those were her pictures and what we are looking at.

Ms. Endres said yes those are her pictures and described the different views of the shed which are from the road and the side.

Mr. Guritza said that Mr. Tatro suggested that we add some plants in the front there behind that tree so we installed some high grasses there.

Mr. Murphy said the picture at the top left is after you have walked beyond the shrubs and trees and then you have an open view of the back.

Ms. Endres said yes, this is of his backyard on the right side.

Mr. Guritza said that is the east side of the property looking west. He said he revisited with all of the neighbors since the last meeting and they are in support of this location.

Mr. DeWater asked Mr. Guritza if he has letters from them.

Mr. Guritza said he does not but they both offered to come to a meeting and they are very supportive of the location as we have been working with the water drainage and the aesthetics of all of the properties.

Mr. Lewis said with these trees that are in front of it as you are looking down the driveway it appears screened now but those trees all lose their leaves, they are not Pine trees.

Mr. Guritza said the one to the right in the picture is deciduous but the other is mixed Pine and we just put in some high permanent grasses between the shed and the driveway.

Mr. Lamanna said high grasses go away in the winter.

Mr. Guritza said if additional shrubbery would be practical they would have no problem with that.

Mr. Lamanna asked if the overhang is away from the house and is pointing to the backyard.

Mr. Guritza said correct and it is designed to be a potting shed.

Mr. Murphy said he would recommend that the Pilgrim Village home improvement approval process change that if your home improvement also requires township approval it should probably say that anything you do may require township approval and recommends that you (Mr. Guritza and Mr. Tatro) go back to Pilgrim Village and change that last sentence.

Mr. Tatro read from the Pilgrim Village rules that states "Please note that certain home improvement projects require advance approval by Bainbridge Township Zoning Board and/or the governing body. It is the homeowner's responsibility to secure this approval. Pilgrim Village can't authorize any home improvement that is a violation of the board of regulations."

Mr. Lewis said prior to beginning construction.

Mr. Tatro said advance approval.

Mr. Lewis said although it might not be practical to move this structure, there is still no basis and he thinks you gather that this one would have never made it through here, not even close.

Mr. Tatro said in the future should he tell them, on a shed, what the likely guidelines are, in other words, if the board is granting variances for a shed, something less than 50, 50 and 90.

Mr. Lamanna said every variance request stands on its own, it has to be decided on its own merits and we tell people the fact that if somebody in the past may have been granted a variance for a particular shed there is no certainty that the board will grant a current variance, there really is no precedence, there may be some relevance in some cases but if previous things have been approved there is no guarantee that the next one that comes along that looks similar to it will be.

Mr. Tatro said the reason he is saying this is when he does discuss that with them, the 50, 50 and 90 and they do have to go through this process and the variances he has seen, you ask that it be no closer to the lot line than the house is to the lot line and you have allowed them to go closer.

Mr. Lamanna said it is on a case by case basis with topography and the size of the lot etc. He said some houses are closer in and some are farther back so if the house is far back and you only have 100' to the rear property line we might allow you to put it half-way in between at 50' or if the house is 150' from the rear property line then we will make you be farther away because that is a different circumstance.

Mr. Tatro said what he thinks may happen here is when the word gets out that it is 50, 50 and 90 and not a lot of people in the development have heard those numbers but they may say they are not going to go to the zoning board because they don't want to put a shed in the middle of their lot. He said he would like to give them some hope that if they follow the rules like they are supposed to they would get something they can live with.

Mr. Lamanna said they are one acre lots so they would get some relief and there actually is some relief built in already so the best thing for people to do is talk to the zoning inspector and she will look at your situation and advise the homeowner.

Mr. Tatro said he would like to be able to advise the homeowners to follow the process so you get something you can live with and he tells them that.

Mr. Lamanna said the process is there and it is good to know the general parameters but they can talk to the zoning inspector to find out what special things apply and there is a possibility of getting some relief because the lots are smaller than the standard for the zoning district.

Ms. Endres said they need to go through the proper channels and if they don't they could end up having to tear down the building. She said like Mr. Lamanna said, they look at them on a case by case basis.

Mr. Lewis said that would be any structure from a swimming pool to a shed, to putting an addition on your house, adding two more bays to your attached garage it is not just limited to a shed and it is still 50, 50 and 90.

Mr. Lamanna said since all of these lots are non-conforming, if you build anything on them you probably need a variance. He said if you add a second floor it is probably okay because it doesn't change the footprint but literally if you change the footprint or add a new footprint of buildings or structures or paving then you are almost certainly going to need a variance.

Mr. Gutoskey said because then you will start to get into lot coverage issues.

Mr. Lamanna said you can get there really quick on some things. He said the problem people have is you go and do something and then you go to sell your house and if somebody does a thorough job and they discover that you have a non-conforming structure then you are going to have a problem.

Ms. Endres said she is getting more and more calls from appraisers.

Mr. Lamanna said sometimes they pick up on it and sometimes they don't but he thinks they are a lot more careful than they used to be.

Ms. Endres said she pulls the file and if she sees something that was built without a permit she lets the appraiser know.

Mr. Lamanna said then people will get a surprise when it goes to close and they find out they have a non-conforming shed on their property.

Mr. Lewis said if you don't want to see it in the middle of your backyard, don't build it.

Mr. Lamanna said these situations leave us with a big problem.

Mr. Guritza said he understands that.

Mr. Lamanna said it becomes an enforcement issue because people will build it and if they get caught they will just go to the BZA and they will just approve it because it is already built and what are they going to do then. He said believe him that happens and the board certainly does not want that message out there that you can go ahead and build something and come in and ask for forgiveness afterwards.

Mr. Tatro said for this particular lot, for that shed, he doesn't know where else he could have put it that would have been any better.

Mr. Lewis said in the middle of his backyard which is a perfectly buildable location without any impact and no variance required.

Mr. Tatro said he understands the no variance standpoint.

Mr. Lamanna said the board has authority to grant variances and to be entitled to a variance you have to demonstrate that there is a practical difficulty that should allow you relief from the standard. He said the trustees passed the ordinance, we are not here to decide we want to give somebody a variance because we feel that this was a nice thing or they did the best they could do, it is a legal standard that says the board's authority is to grant a variance if we find there is a practical difficulty and the big problem here is there is no practical difficulty, it could have been located in a way that conformed to zoning and then even with a practical difficulty it is the minimum variance required to overcome the difficulty so if there is a ravine on the property and he can't build it 50' off the side line he wants to build it 20' but it turns out that you could build it at 35' you wouldn't be entitled to a variance at 20' you would be entitled to a variance at 35' because that would solve the practical difficulty.

Mr. Tatro asked if the practical difficulty in your terms is purely physical, aesthetics don't enter into at all.

Mr. Lamanna said no. He said there is no authority to zone for aesthetics, it is a secondary factor from the standpoint of one of the items of practical difficulty is the impact on the neighboring properties and character of the neighborhood, adverse impact on those things so from that standpoint it comes in sort of on the negative side so the board could say it is not going to grant the variance because it would adversely affect the neighboring property or it is not within the character of the neighborhood even if there was a physical problem that said you couldn't put it anywhere else but here, the board could still say that is fine but the adverse impact on the adjacent properties and it would be so out of character with the neighborhood because there is no other thing like that there so it would still be a basis for denying it so that is where the aesthetics comes in it is not that the board can say we can use aesthetics to say that yes we are going to allow this thing here because aesthetically we think that that is the location that works best for everybody.

Mr. Tatro said Mr. Guritza has claimed that there are drainage issues with this property.

Mr. Lewis said we have his testimony from the first time that all those were resolved prior to him starting, that is not a consideration.

Mr. Tatro said therefore with this case, you wouldn't give him anything.

Mr. Lamanna said we would give him some variance on the side just based upon the fact that the overall lot width is 150' and generally the 50' setbacks are based on lots that are 250' wide.

Mr. Tatro asked how that is a practical difficulty.

Mr. Lamanna said if you start with only 150' it is not fair to be confined to a narrow little strip down the middle so for this size lot maybe 35' is okay or a lot of times the board will look at it and say if the house is 20' off the side line already if you get behind the house then the board will allow it to go down to 20' if the house is 20' or closer.

Mr. Gutoskey said that is why he believes the shed across from you (Mr. Tatro) was built because they met the setbacks. He asked if there was an application for a shed at Apple Hill and Birch Hill recently.

Ms. Endres said that was awhile back and it is the shed you see from Apple Hill.

Mr. Tatro said it is right across the street from him.

Mr. Lewis said they would have still needed your ARB approval just because it is an accessory structure.

Mr. Tatro said they didn't do it and all of a sudden one day the shed is there and it probably came in in one piece.

Ms. Endres said it is roughly 80' from the pavement.

Mr. Lamanna said we cannot accept or deny applications based on whether they have gotten homeowners approval but do ask and tell people that just because we approve it doesn't mean they don't have to get their homeowner's association approval, that is a separate obligation that they have and we tell them that if they don't have approval already so they can't go running out later and say they got approval from the BZA to do this but if somebody looks at our resolution they will see something that says they are still obligated to get ARB approval.

Ms. Endres said that she always asks but she can't enforce the by-laws though.

Mr. Lamanna said that way nobody can say they said it is okay.

Mr. Tatro said by the same token that is why we say we are one body but there is a zoning board.

Ms. Endres said she has thirty days to issue a permit and she holds off until she hears something from an HOA such as Canyon Lakes because there is a lot of architectural review going on there so she prefers to have some approval.

Mr. Lamanna said some things confuse people because if the sheds are under 200 sq. ft. you don't need a building permit and some people think that if they don't need a building permit they don't need a zoning permit or they don't need approval of the HOA but these are all separate regulatory bodies and they all have their own rules.

Mr. Murphy asked how wide this lot is.

Ms. Endres said it is about 150'.

Mr. Murphy said to Mr. Guritza that he doesn't even have a backyard neighbor.

Mr. Tatro asked the board if they had any more questions of him.

Mr. Guritza asked if it would be of any benefit if he discusses this again with the neighbors about the location and if they continue to be supportive.

Mr. Lamanna asked what is in the upper part of the shed.

Mr. Guritz said it is wood storage and dry wood for carving. He said he just retired and started hobby carving and started to acquire some cherry and black walnut to season.

Mr. Tatro asked if there are any other questions or if he could help further to please let him know.

Mr. Lewis said he thinks your (Mr. Tatro) desire is to coordinate with the zoning inspector as you see people in your area come through and encourage them to come to zoning and head off any potential issues.

Mr. Gutoskey suggested when Mr. Tatro talks to the board and when they send out the annual newsletter, is maybe put a little blurb in there also, have them add a one page item about zoning.

Ms. Endres said she has contacted all of the homeowners associations offering to meet with their HOAs to explain zoning as it pertains to their specific subdivisions. She said a couple of weeks ago she met with Lake Lucerne and she is meeting with Tanglewood in January. She added that she put it out there to the homeowners associations and she only heard back from two.

Mr. Tatro said he needs to leave because their board is meeting right now and added that if there is something else he should know to contact him. He left the meeting at 8:35 P.M.

Mr. DeWater said he has a real issue that he never consulted zoning in the beginning and the 4' setback, yes other people have been granted variances, but predominantly at 20'. He said he personally feels that he knew some of these regulations and as they say ignorance isn't the answer to the law or even an acceptable excuse and it is hard for him that he did his own project and followed the zoning laws to even waiver towards granting any type of variance and it is a hard decision for the board to make when people do this but it is a decision that has to be made.

Mr. Guritz said all he wants to say is he doesn't refute what you are saying but the intent was never there to put up a shed and avoid this and in discussing this with the neighbors and discussing it with Mr. Tatro and his interpretation when he said the board, he meant the PV board and it was in his mind hearing what he heard and perhaps wanted to hear to make it go easier and his neighbor is on the board at PV and he was very supportive and when he offered to give him more greater detail than the drawings that he submitted he indicated that that was not necessary and he certainly understands the circumstances that he created.

Mr. DeWater asked how long he has lived in the township.

Mr. Guritz said 30 years.

Mr. DeWater asked if he ever read in the newspaper about the BZA or zoning commission dealing with issues.

Mr. Guritz said no he hasn't.

Mr. Murphy said he thinks it is a perfect spot for the shed.

Mr. Lewis said he has no legal basis to stand on a variance and there are a lot of other locations on the property.

Mr. Lamanna said this location wasn't ever really approved by Pilgrim Village.

Mr. Guritz said verbally it was, we discussed it.

Mr. Lamanna said he (Mr. Tatro) just said it wasn't and he could make a real issue out of the fact that a piece of paper was presented to the board that says his name, verbally approved and he then comes in and says no he never did it and that is a serious, serious problem. He said it is a potentially criminal issue because that is putting a false document before the board and he came in and said it he never approved it so now we have a situation that was never really approved by Pilgrim Village board, it never came before us and that makes it difficult for us to have leniency and again it is not that we may not want to do something for you it is that we have a legal obligation to grant variances based upon a legal standing which has not been demonstrated to us. He said it is not a practical difficulty that you went and built the thing without getting approval from where it should have been and if it was a close case, yes, we might have some leeway but this is not even close. He said if it was 18 feet away we probably would have granted it at 20' so we will live at 18' but this is so far out of the realm of anything we have granted, we can't even stretch to get there and we have that problem aside from the other problems that he mentioned because it can become a real issue for the township if people can just build things and come in and say they didn't know, give me a variance for what I have done and that is a whole separate can of worms to deal with but he thinks the biggest problem is that we don't really have a legal basis for saying it is a practical difficulty here. He said the board has searched and looked at all of the avenues and the board generally looks very close to see if we can find some reason but he just doesn't see it in this case and at this point in time he thinks the board is going to have to turn down this particular location.

Mr. Guritz said that being the case he would like to understand some guidance in terms of where to put it.

Mr. Lamanna said the board could also consider an alternate location.

Mr. Lewis said 25' would give him the opportunity to put permanent Pine tree type screening on the left side of it so there is a gap between the house and the trees could grow to their normal 6' or 8' diameter or whatever so he is looking for a space big enough to put something permanent in there as well and because it is 16-1/2' tall and the gutters are pretty high up because of the roof style. He said 25' and screen the daylights out of it with permanent screening on the property line side.

Mr. Guritza said in other words moving it basically 21' in from its present location.

Mr. Lewis said it is 85' from the rear line so the board wouldn't care about that.

Mr. Guritza said he will have to reconsider the whole project because of the cost involved and the neighbors and obviously your view is to move it into the center of the lot and he needs to decide whether that is something he aesthetically wants to do and discuss it with the neighbors because this was the ideal location that we thought would be best.

Mr. Lewis said that doesn't stop the board from going forward with a motion tonight setting parameters that the board finds acceptable.

Mr. Lamanna said you can choose not to use the variance.

Mr. Guritza said one serious consideration as he is sitting here right now thinking out loud is to just cancel the whole project and tear it down, he has a lot of design and dollars built into this and he doesn't know another place to move it and it may just be a total removal.

Mr. Lamanna asked Mr. Guritza if he would like the board to give him a modified variance.

Mr. Guritza said he would request a modified variance on where this shed needs to be moved to.

Ms. Endres said she is looking at the other side and asked if he could move it further from the northeast lot line so it wouldn't be seen from the house but it would be closer to the rear lot line and the rear lot line variance is a common variance.

Mr. Guritza said he discussed that with the Hoffman's and they much preferred the existing location.

Mr. Murphy asked if it would help to continue it for one more month.

Mr. Lamanna said that may make some sense to take a month to reconsider if there is another option and that way the board can address that other option and won't have to have another application and go through the whole process again, we have all of the information here now on the record so that probably makes a lot of sense.

Mr. Murphy asked how far off the property line the shed is now.

The board discussed the rear yard setback and noted that it is 85'.

Mr. Lamanna said if you need to move it back a little bit and certainly if it is more than 75' it would probably be okay and then the board is looking at 25' on the side based on everything here.

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

Motion BZA - 2015-17 - 17727 Lost Trail

Mr. Lamanna made a motion to table this application to the next regularly scheduled meeting to be held November 19, 2015.

Mr. Gutoskey seconded the motion.

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

Since there was no further testimony, the public hearing was closed at 8:50 P.M.

Respectfully submitted,

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

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

Date: November 19, 2015

AUDIO RECORDING ON FILE

Bainbridge Township, Ohio
Board of Zoning Appeals
October 15, 2015

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 8:50 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Ted DeWater; Mr. Joseph Gutoskey; Mr. Todd Lewis and Mr. Mark Murphy. Ms. Karen Endres, Zoning Inspector was present.

Minutes

Mr. Lamanna made a motion to adopt the minutes of the September 17, 2015 meeting as written.

Mr. Lewis seconded the motion.

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

Applications for Next Month

Application 2015-17 by Dennis Guritz for property at 17727 Lost Trail - Continuance

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

Application 2015-30 by John Paglia for Dave and Diane Kater for property at 8172 Quarry Circle

The applicant is requesting area variances for the purpose of constructing a covered terrace. The property is located in a R-3A District.

Application 2015-31 by South Franklin Circle for property at 16575 S. Franklin Street (corner of Rocker Road and Chagrin Road

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

Application 2015-32 by Kevin Duffy for property at 7033 Pine Street

The applicant is requesting a use variance for the purpose of maintaining a multi-family dwelling. The property is located in a R-3A District.

Application 2015-33 by Bruce Vernyi for property at 16811 Savage Road

The applicant is requesting a use variance for the purpose of maintaining two dwellings. The property is located in a R-3A District.

Since there was no further business, the meeting was adjourned at 9:11 P.M.

Respectfully submitted,

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

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

Date: November 19, 2015