

Bainbridge Township, Ohio
Board of Zoning Appeals
October 15, 2020

Pursuant to notice by publication and ordinary mail, the public hearing was called to order at 7:02 P.M. by Mr. Michael Lamanna, Chairman. Members present via Zoom were Mr. Michael Corcoran; Mr. Ted DeWater; Mr. Ian Friedman, Alternate; Mr. Joseph Gutoskey and Mr. Todd Lewis. Ms. Karen Endres, Zoning Inspector was present. Mr. Jeffrey Markley, Bainbridge Township Trustee was present to monitor and host the Zoom meeting.

Others present via Zoom were Ms. Linda Nolan, Mr. Glenn Knific, Mr. Bob Bell and Ms. Bridey Matheney.

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 2020-30 by Easy Sign/Timber Trails HOA Scott Mackenzie for property at Timber Trail and Chillicothe Road

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

Mr. Todd Lewis recused himself from this application.

Mr. Ian Friedman, Alternate replaced Mr. Lewis on this application.

Mr. Scott MacKenzie was present via Zoom to represent this application.

Mr. Lamanna swore in Mr. Scott MacKenzie and he let the record reflect that Mr. MacKenzie was duly sworn.

Mr. Scott MacKenzie testified that their neighborhood has had a sign in the median of the road since the neighborhood was developed many years ago and they have had continuous situations where swift moving drivers coming down the hill are unable to make the turn and damage our sign so over the past 10 years or so they have had to replace their sign a couple of times.

Mr. MacKenzie continued by saying and prior to that they have had continuous situations of just making major repairs to the signs so what they are looking to do is move it from the center island on their main road going into the development and put it on the north and south side of the entrance to their neighborhood so it is out of harms way and more consistent with what other developments have in the area and so they can replace it once and for all and not have to deal with a long process of rebuilding their signs. He said the sign is similar in size to the dimensions that they had when it was in the island, they are just putting it north and south.

Mr. Gutoskey said it looks like the Board of Trustees have approved this and asked if the township has received the documentation of releasing the township from any and all maintenance issues.

Ms. Karen Endres, Zoning Inspector testified that she didn't know if they recorded that document yet but she wouldn't issue the permit until they recorded that document relevant to the sign and that the township is not liable for maintenance or for any damage to the sign. She said Mr. MacKenzie might be able to update us on that.

Mr. MacKenzie said they actually do have one in place for the existing sign with the island and he did forward that document to Ms. Endres so they were looking to just have it updated.

Ms. Endres said she thinks there was an expectation that a new one would be recorded so you can't just change the old one, you need to record a new one relative to the new locations.

Mr. Gutoskey said what he thinks they can do is modify the document, it looks like it was filed back in 2007 based on two signs. He added that he doesn't have a problem with this.

Mr. MacKenzie asked if this document is something they should have modified or the township.

Mr. Gutoskey said no that would be for the homeowners' association, he would guess and this may be a question, a document could be put together similar to what is here and then probably drop it off to the zoning inspector so the township's legal rep could review it before it is recorded but the recording would be with the homeowners' association. He asked Mr. Lamanna if that makes sense.

Mr. Lamanna said it does. He asked if any of the other board members had any questions.

Mr. DeWater said if the Fire Department and Road Department have no problems with it he has no issues with their application.

Ms. Endres said that is correct, the Fire Department and Road Department did not have any issues.

Mr. Lamanna asked if there is an illumination plan for these lights.

Mr. MacKenzie said they were going to relocate the existing lights, they are low voltage landscaping lights.

Mr. Lamanna said you will want to keep as much of the light on the sign and as little light as possible off to the side.

Mr. MacKenzie said it will be similar to what they had on the island and the existing light points up into the trees, we are just having those redirected toward the sign which is in the same spot where they have some trees right now.

Mr. Lamanna asked if there is anyone else via Zoom that would like to speak.

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

Motion BZA 2020-30 – Timber Trails HOA at Timber Trail and Chillicothe Road (Subdivision Signs)

Mr. Lamanna moved to grant variances for the purposes of constructing two development signs for the Timber Trail Development at the head of Timber Trail as shown in the plans submitted by the applicant as to the size, shape, height and location of the signs.

1. A variance with respect to Chapter 173.10(a)(1) to allow the construction of the subdivision signs within the Timber Trail right-of-way.
2. A variance with respect to Chapter 173.08(e) to permit two freestanding ground signs rather than one.
3. With respect to the construction within the Timber Trail right-of-way the applicant will, prior to receiving the zoning certificate, obtain from Bainbridge Township an approved agreement with respect to the use of the road right-of-way freeing the township from any liability and creating the obligation to maintain the sign that is acceptable to the township and that that agreement be filed once the agreement is reached between the homeowners' association and the township.
4. In addition, the lighting on the signs will be placed so as to minimize the amount of lights that are going past the sign and to minimize the amount of light escaping into the ambient air.

Motion BZA 2020-30 – Timber Trails HOA at Timber Trail and Chillicothe Road (Subdivision Signs) - Continued

Based on the following findings of fact:

1. The applicant has reached an agreement with the township to place this in the road right-of-way.
2. There is really no other place to place it at this point in time.
3. The fact that the road right-of-way is 100' wide at the intersection it would make it very difficult to place the signs outside of the road right-of-way and still provide useful visibility for those looking for the development.
4. There have been no objections by the Road Department and Fire Department and the township has approved this subject to the right-of-way agreement previously discussed.
5. Because of the nature of the entrance and the problems that have been had by trying to have a single sign in the center it is reasonable to have two signs which is often allowed, the only thing here is that there is not a decorative wall although these signs will be placed between decorative posts.
6. It does not adversely affect the character of the neighborhood or the type of situation we have for entrance identification in subdivisions.

Mr. Gutoskey seconded the motion.

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

Mr. Lewis joined the meeting.

Application 2020-31 by Fellowship Bible Church for property at 16391 Chillicothe Road

The applicant is requesting a review and renewal request of an existing conditional use. The property is located in a R-5A District.

Ms. Valerie Aiken of Fellowship Bible Church was present via Zoom to represent this application.

Mr. Lamanna swore in Ms. Valerie Aiken and he let the record reflect that Ms. Aiken was duly sworn.

Mr. Lamanna said this is a renewal of an existing conditional use and asked Ms. Aiken if they are not proposing any changes to this at this time.

Ms. Valerie Aiken testified that they are not.

Mr. Lamanna asked Ms. Endres if there are any outstanding issues or non-compliances or whether there have been any complaints.

Ms. Karen Endres, Zoning Inspector testified that she has heard no complaints relative to the church and she is not aware of any zoning violations, it has just been quiet over there.

Mr. Lamanna asked Ms. Aiken if they have had any complaints from their neighbors about what they have been doing.

Ms. Aiken said they have not.

Mr. Lamanna asked if any of the other board members had any questions.

Mr. Lewis said he just wants to make a point on one thing, following along with Chapter 135.02 (B) conditional uses, it appears that this applicant is conforming to the conditional use restrictions that say “places of worship provide no part of any building or land for place of worship shall be used for business, commercial use or non-place of worship related activities” and it looks like they have held true to that.

Mr. Lamanna asked if there are any Zoom attendees that are interested in this application.

Ms. Karen Haines of 8572 Lake in the Woods Trail said she would like to speak.

Mr. Lamanna swore in Ms. Karen Haines and he let the record reflect that Ms. Haines was duly sworn.

Ms. Karen Haines testified that she wanted to speak about the original agreement and permit that was set up with minimal noise coming from the church to the residents and what happened was the Fellowship Bible Church has not abided by this original agreement, her property in the backyard runs right up against the church property. She said she has two examples of where the church did not abide by the agreement, the first was Mother’s Day, that was the most recent. She said about 7:40 AM her husband and herself heard amplified music and voices from the opposite side of the room, we were woken up and could not fall back to sleep after that. She said Easter Sunday was a similar incident about the same time 7:40 AM or 7:45, this time they heard beeping of horns from multiple cars all at once, they tried to call the church that day but did not reach anyone so they tried the following day and were able to reach a church representative and we stated the problems that we have but we were hoping, her husband and herself that more would be asked of the town to make this renewal conditional use to limit the noise that would be more compatible with a residential consideration.

Mr. Lamanna asked how long these situations lasted from a time standpoint.

Ms. Haines said she would say about an hour, a couple of hours.

Mr. Lamanna said you said one of them had cars with horns honking and asked if that was intermittently over an hour or it just happened once or so.

Ms. Haines said it was intermittently over an hour, she guesses people are speaking and they wanted to get engagement from their audience, people were in cars because this was during the pandemic.

Mr. Lamanna said they were having an outside service.

Ms. Haines said yes.

Mr. Lamanna said so this is not a usual practice and as all things because of the situations and the fact that people have had to do things in nonconventional ways we have been cutting people a little bit of slack for intermittent situations like that that aren't being done on a regular basis that it might happen from time to time and he doesn't really see that as a continuing problem or likely to be a continuing problem. He said he doesn't know if the amplified situation, was that also a situation where they were doing a service with cars in the parking lot.

Ms. Aiken said yes, both of them were outdoor services.

Mr. Lamanna said again he has the same issue that he would say to the church that they should think about the neighbors with the horn honking, he is not sure that the horn honking is and again it is for a short period of time but he would think that they might want to just consider from a neighborly standpoint that maybe that is not a good idea because it does carry a long way and it is kind of annoying. He said again he understands that we are doing things that we wish we didn't have to do as far as conducting services and that sort of thing so he thinks we have been cutting people some slack on some of the maybe technical items that might be violations but basically asking people to keep in mind that there are neighbors around so try not to blast away on the sound systems, try to keep it to a volume that is reasonably necessary to get to where you are trying to get it to and again, the way you are set up there maybe you can look at orienting your speakers so that they try to keep the sound from going as much as possible towards somebody's house, sometimes some extra thought into the placement of the speakers and how they are aimed and that sort of thing can go a long way.

Mr. Gutoskey said maybe push it to the north and maybe start a hair later than 7:00 in the morning.

Ms. Haines said that would be reasonable, definitely.

Mr. Lamanna said at this point in time he doesn't see that what is going on here is creating a major problem and there have been a couple of instances and he thinks the churches are quite willing to try to work around some of these things and get rid of some of the more objectionable parts of it but he thinks the horn honking is maybe something that is a little ill-advised and he understands why you want to get people more involved but he thinks it is a poor choice but again, that was only one event and we are not here on conditional uses to try and write a 20 page set of rules and regulations but to deal with things that are possibly or likely to become persistent problems or have been persistent problems and given the number of instances we have had here and the fact that they are kind of both related to the pandemic and the issues it has created he thinks with this sort of charge with when you do these things just remember that there are neighbors and try to avoid unnecessarily interfering with their lives and look at what can we do and when you want to do something think about it in the terms of also, is this going to really be annoying to the neighbors and is it worth the gain that we are getting, he thinks in that case no and he understands that you can only do so much when you are trying to do an outside service that there is going to be some level of noise that it is going to create from the speaker system that you are going to have to use to project it out to the people in their cars but let's just try to be judicious when we do that and think about when somebody is setting things up sometimes a little bit of thought will go a long way towards curing a problem, you just need to think about it because everybody has got all of the other things they are thinking about but if they just sort of put that on their list and say how can we do this, five or ten minutes of thought and he is sure you can come up with a solution that will help minimize the impact on the neighbors.

Ms. Aiken said they will do that definitely.

Mr. Markley said that the property owner to the east, Mr. Bob Bell is stating the exact same thing.

Mr. Lamanna asked if any of the board members have any comments.

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

Motion BZA 2020-31 – 16391 Chillicothe Road – Fellowship Bible Church

Mr. Lamanna moved to renew the conditional use permit for Fellowship Bible Church for a period of five years.

1. Any and all existing conditions will continue in effect as well as all of the general conditions provided in the zoning ordinance with respect to conditional uses will also be applicable.

Mr. Lewis seconded the motion.

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

Application 2020-32 by Pizzeria DiLauro, LLC for property at 17800 Chillicothe Road

The applicant is requesting a conditional use permit with area variance(s) for the purpose of adding an outside patio and a mobile food truck in the parking lot. The property is located in a CB District.

Mr. Cody DiLauro, restaurant owner and Mr. Larry Shibley, property owner were present in person and Mr. Adam DiLauro was present via Zoom to represent this application.

Mr. Lamanna swore in Mr. Codey DiLauro, Mr. Adam DiLauro and Mr. Larry Shibley and he let the record reflect that Mr. Cody DiLauro, Mr. Adam DiLauro and Mr. Shibley were duly sworn.

Mr. Cody DiLauro testified that they have two requests and we can talk about them separately or go through the whole thing together.

Mr. Lamanna said we will go through the whole thing together.

Mr. Cody DiLauro said they are operating a pizzeria at the Bainbridge Commons over here on the corner of the building so the first request they have is to be able to set up outdoor seating directly in front of the restaurant and they would like to put in tables and chairs for their patrons directly outside of the restaurant for the option for outdoor seating when weather permits. He said the sidewalk there now is covered and there would be no construction, it would be simply just putting the tables and chairs out there, they would like outdoor seating for the pizzeria. He said the second request they have is to have a permit to operate their mobile pizza trailer outside in the parking lot so that is something they have been doing on Wednesday nights the past couple of months here and it offers a different variety of pizza so that the pizza shop will be east coast New York style pizza, an 18" pizza, so it gives them a little bit of a variety and they will use that to kind of offer an option for once a week have a different variety of pizza, specialty pies for guests to enjoy it. He said it has gotten a great following in the community, they have had regulars, they sell out pretty much every Wednesday and he thinks the community has enjoyed it and he thinks it will benefit their business as well. He said they offer a separate quality style pizza outside of what they have in their pizza shop.

Mr. Lamanna asked if it is take away business basically.

Mr. Cody DiLauro said right now yes, it is take away but once the restaurant is open with the outdoor seating.

Mr. Lamanna said so people will be able to go to the restaurant.

Mr. Larry Shibley testified that it is intended for some indoor dining and carryout.

Mr. Lamanna said if he is sitting in the outdoor area he can order a pizza from the pizza truck.

Mr. Cody DiLauro said yes, it is all going to be the same.

Mr. Lamanna said you will just be cooking pizzas in the pizza truck.

Mr. Cody DiLauro said it will be promotional, it will be a Wednesday night thing.

Mr. Adam DiLauro testified that it will definitely work in conjunction with the pizzeria, they compliment each other, it is one business and we finally have the restaurant space that we can work out of for our mobile unit and like his brother said we will be able to offer two styles of pizza that don't exist anywhere in the area and that is what we are trying to do in the space that we have and we want to be able to offer it out of that one space without having to take our trailer all over the place, we want to bring the revenue and keep the people in the community and in our space because the people that enjoy that one style of pizza will be able to come into our shop and it will be very good for promoting our business and advertising as well.

Mr. Lamanna said the outside dining area you are proposing is on the existing sidewalk area there.

Mr. Cody DiLauro said yes on the sidewalk.

Mr. Lamanna said one of the things he has concerns about is because we had an unfortunate incident a couple of years ago is if seating is on the parking lot that there be some sort of barrier to prevent a wayward automobile from finding its way to the middle of somebody's dining table.

Mr. Cody DiLauro said sure.

Mr. Shibley said they have had existing tables there for over 10 years plus at the donut shop for multiple years as well but our plan is ultimately with outdoor dining whether it happened through another food service operation or existing is to ultimately put the bollards so it would be clean and neat looking and where the mishap was those huge concrete things that are there, he guesses they do the job but.

Mr. Lamanna said we have given people flexibility as to how they do that, he thinks most people have chosen the bollards route.

Mr. Shibley said vinyl covered yellow bollards, yellow is probably what we would use and we intend to have more of those because even for a regular shop it is a risk.

Mr. Lamanna said yes when you've got things that close it doesn't take much of a slip by somebody.

Mr. Shibley said and the slightly oversized curb stops do the same thing, they might cause some bumper damage when people pull too close to them but they do stop the vehicles.

Mr. Lamanna asked if there are any questions from the board members.

Mr. Lewis said he has a bunch of questions and the first one is he really agrees very much with our chair's observation that for protection of outdoor patio seating by the parking lot that the safety bollards need to be put in place to head off any potential tragedies and he would say he agrees with it consistently and there would be a requirement. He said he wants to talk about this business venture a little while, he had a couple of observations. He said he does realize that your company's business sign does exist on the upper level of the building, the second floor of the building so you can see it and he also noticed that for quite a long period of time there was a very substantial additional wall sign put up and his understanding is with no permit which also greatly exceeded the amount of sign coverage that that location was entitled. He said staying on that subject because he's got a lot more to talk about he would like to ask the applicant, were you advised by our zoning inspector to remove that other sign.

Mr. Adam DiLauro said yes, he was advised to remove the sign, he misunderstood and he thought it was the real estate sign that he had on the front lawn so he took that down that day and then when the zoning inspector got ahold of him to tell him it was actually the window sign he went up there right away to remove it so he complied in both situations right away, he got his truck and went up there and did it right away, he apologizes for that, he assumed that it was the same thing as covering the windows with brown paper, he had seen businesses that have covered the windows with brown paper and they write on it so he spent the \$500 on a very nice sign and he did it and as soon as he was told to take it down he took it down and threw it in the fire so he apologizes for that.

Mr. Lewis asked if his landlord gave him any guidance as to what his permitted sign, square footage, would be for his unit.

Mr. Adam DiLauro said his landlord has been the best landlord on the face of the earth to work with, we have been working with them the whole time and basically their advice to him was to work with zoning and he did that to the best of his ability, like he said, they are a first time business owner so they are working through this right now and they have given him all of the advice in the world and that is something that he did on his own.

Mr. Shibley said he tells them to comply with code and if it doesn't comply to apply for the necessary variances and before you apply to run it by us with your application, we usually approve the application before they go to the township.

Mr. Lewis said got it, thank you. He said now on the matter of the food truck, he knows that the truck has been out there every Wednesday for two months or maybe longer. He asked if at any point in time did our zoning inspector come to you and advise you that food trucks are not permitted in Bainbridge Township's current zoning code.

Mr. Adam DiLauro said he did hear from the zoning inspector and he thinks that she has done a great job getting ahold of him and kind of portraying the rules to him, the current zoning code, obviously you can just go ahead right now and apprise him of that code and tell him the code that says we are not permitted to set up the food truck if you would because he is not apprised of it and he would like to learn about that so if you could just go ahead and reiterate the code to him please so we can have an equal conversation.

Mr. Lewis said he is sure our zoning inspector or one of our astute members on our board can give you the section of the code and you will find that our code addresses in a section called "permitted uses".

Mr. Adam DiLauro said okay.

Mr. Lewis said if it is not listed as a permitted use it is not permitted so his curiosity was while we have declined other businesses from having a food truck and that is regardless of whether their property meets the physical attributes of making it practical and safe, they have been denied and this is not necessarily to stifle emerging businesses in our town which we all care for and we try to patronize, the bottom line is the code says it is not permitted so his point of view is that needs to stop.

Mr. Adam DiLauro said he completely understands that and in other instances there are some other things going on that create traffic issues and things like that and he thinks that what we need to do is we need to work together and create a code to say hey, it is the same for if you build a deck, if it is on somebody else's property you address that issue you don't say hey nobody can build decks anymore.

Mr. Lewis said until such time as our zoning commission has finalized and modified our permitted uses code and he does understand they are working on code to give some ability to have food trucks but you also need to understand that that is being handled on an event driven basis, maybe even with a fee. He said an event would mean he believes the suggested would be two times a year not happening on a regular basis but something on an intermittent basis keeping in mind that that would also satisfy the needs of homeowner associations having events for their residents in their neighborhoods, July 4th or whatever they want to do so he is wondering how you got a free pass on something that is not permitted for two or three months.

Mr. Adam DiLauro said to be honest if you are thinking about letting food trucks set up for two times a year he doesn't see any reason that you can not let food trucks set up on a regular basis especially if it is a local business.

Mr. Lewis said the code will be the code, you know what I mean.

Mr. Adam DiLauro said they had their last food truck service last night and to be honest with everything that is going on with COVID this year it has been a very hard year and thank goodness that we had that because it really helped them to fund and open their restaurant and introduce the community and he will tell you that people of the town of Bainbridge that you represent really, really appreciated and enjoyed what we did for them because there wasn't a lot of other options right now. He said he thinks if you are going to allow it twice we need to come together and maybe say hey let's figure out something that we can do legally, maybe a permitting process where the township can make money as well and we are totally willing to be a part of that.

Mr. Lewis said if we permit you to have this exception it puts the township in a position where other businesses around town have already been denied because it is not permitted we create a substantial legal inconsistency and he is not trying to be tough on you but until such time as the zoning permits it he feels that the township needs to be fair and equal with all businesses and we all appreciate the dilemmas and the hardships of COVID and hopefully that is a temporary basis but our zoning code will stand for years. He said he will yield the floor back to the chair.

Mr. Lamanna asked when the restaurant is open and the food truck is there, when he comes for pizza does he go to the restaurant and order it and they bring it over from the food truck or does he go up to the food truck and order it from the food truck and pay for it.

Mr. Adam DiLauro said they haven't opened their restaurant yet so we haven't worked out those details but the two locations are at one location, it is not two separate businesses, it is one business.

Mr. Lamanna said what he is looking at is the situation where I have a food truck parked out in the parking lot, nobody can go up and buy anything at the food truck, they can only go into the brick and mortar and say they would like this and then you would tell someone at the food truck to bring out three pizzas and they bring them over to the restaurant.

Mr. Shibley said the reality is that for the season, it is over, they are not going to do it anymore and for next year whatever happens will be compliant so that the restrictions are that it cannot be served from the truck.

Mr. Lamanna said what he is looking at if you are technically not selling any food out of the food truck, it is only being made there and brought to the restaurant and people take it away from the restaurant that might be a very different situation that might be able to come in under the law because you are not selling from the truck. He said the way the code is written you've got a restaurant and the fact that you happen to have a truck out there that is making some of your food it may be a different situation than a guy pulling up in a food truck and people come by but number one you have to have a physical location and number two you have to have a place for people to eat it there so you avoid some of the issues that are created by a free-standing running around food truck.

Mr. Shibley said that is what Café Michaels did.

Mr. Lamanna said you may be able to set this up in a way if there are no actual sales being made at the truck itself, it will be made out of the restaurant it may create a different situation than somebody just comes up in a food truck.

Mr. Cody DiLauro said ultimately what we are going to do is provide a different option.

Mr. Lamanna said obviously another thing too is you have a physical location for the restaurant, you have parking spaces that go with that.

Mr. Adam DiLauro said to be honest and jump in, the bottom line is our food truck is going to be set up, it is going to be set up in Aurora, it is going to be set up in Chagrin Falls, he would like to set up in Bainbridge by his location, their food truck is not going to stop being set up, all of the other communities obviously allow it, we want to be able to get Bainbridge on the same page as everyone else.

Mr. Lamanna said you have the advantage at least at your physical location is that there is a way to operate a food truck that you may be able to do under the current zoning as it is written without any changes.

Mr. Adam DiLauro said yes, absolutely.

Mr. Lamanna said it is a unique situation, it is different from every other food truck who doesn't have a physical location. He said you can operate out of your shop, you are not operating out of a food truck but if you were willing to say the food truck is basically going to be a food preparation area only, the sales are all going to come out of the brick and mortar part of the shop, he is not sure if that is prohibited, he doesn't know what Ms. Endres' thoughts are on that but it is a different situation when you are not selling it from the truck.

Ms. Endres told Mr. Lamanna that he has a very good point.

Mr. Lamanna said he thinks when you are not actually selling it from the truck and you have a brick and mortar location a lot of the issues certainly are different and certainly are ameliorated from a free roaming food truck.

Mr. Adam DiLauro said so as long as the customer is ordering on the inside and we have a food runner basically bringing the pizza to the customer on the inside, they cannot physically walk outside and pick up the pizza.

Mr. Lamanna said they cannot physically pick it up from the truck.

Mr. Adam DiLauro said okay.

Mr. Lamanna said he thinks, his view of it right now, he is not sure that, unless somebody has got something to point to, he is not sure that that would be prohibited, operating in that fashion and it doesn't create the issues that food trucks do.

Mr. Adam DiLauro said he has a question about the code, is the code in place for safety issues or is the code in place for, he is trying to decide that because in those scenarios we still have a food truck set up in a parking lot so he appreciates the fact that we can sell the pizza on the inside and bring the pizza inside but we are trying to solve the greater problem here.

Mr. Lamanna said we can't solve the greater problem here, the greater problem is somebody else's job.

Mr. Gutoskey said basically our zoning commission writes the code and then it goes to the trustees for approval and what the board of zoning appeals does is we legislate.

Mr. Lamanna said we adjudicate issues.

Mr. Gutoskey said we just had a meeting, the board of zoning appeals and the zoning commission and this was one of the items that our board asked the zoning commission to look at and they have come up with a section in the code for food trucks and they will be sending that to the trustees for public hearings and it might be a good idea that you get involved with that, maybe at the trustee level. He said part of the problem is, again, food trucks over the last few years it really became something that our code didn't cover so it is something that we added and part of it is since you are going to be a brick and mortar in the township a lot of things we have to kind of watch out for is just a random food truck that shows up in a parking lot.

Mr. Adam DiLauro said absolutely.

Mr. Gutoskey said that is another concern that we had with that so you are welcome to, he thinks the code is available now for review if you want to look at that and then maybe you want to go to the public hearing with the trustees, you can make some comments with that but again this is the first, we never had this section in our code before.

Mr. Lamanna said like he said there appears there may be a way to operate because of the situation you have that there is a way to operate that doesn't violate this provision.

Mr. Adam DiLauro said absolutely, he appreciates that.

Mr. Lamanna said then you don't then become, you are not a mobile seller of food anymore.

Mr. Adam DiLauro said yes.

Mr. Lamanna said you are not a mobile seller of food, it just happens to be where you prepare your food, it is over here but it is all being sold out of the brick and mortar location.

Mr. Adam DiLauro said it is no different than Giant Eagle cooking ribs outside and selling it inside.

Mr. Lamanna said yes and selling the ribs inside.

Mr. Adam DiLauro said they do that all of the time so that is understood, absolutely.

Mr. Lamanna said he thinks this is a different situation, you can operate in a way by doing that so you won't run afoul of the code and the township is in a position then if somebody comes and says why are they doing this you can say no, they are not really doing this, they are just making the food that they are selling in their restaurant location which is a physical premises that is permitted under the zoning code and that is the business, it is not a question of sales from a tent or anything else, it is being sold out the business. He said not like somebody coming in and setting up in a parking lot and selling food from that tent location or whatever, it is just a different food preparation location, all of the sales are going on out of the permitted business so he thinks that is the way we can resolve that issue. He said you may want to go somewhere else in Bainbridge and set up then you are going to have to deal with looking at the code.

Mr. Adam DiLauro said he doesn't want to promote anyone else's business, he wants to promote his business, his wife is next to him, his brother is above him, his cousins are Buckeye Chocolates across the street and we want to promote our area so we appreciate that. He said they have four businesses within 1,000 sq. ft.

Mr. Lamanna said otherwise we are just looking at the outdoor seating.

Mr. Adam DiLauro asked if we had any more questions from Mr. Lewis, he knows he had some concerns and he wants to make sure that we address everything that you had for us.

Mr. Lewis said thank you. He asked when your food truck is not in the parking lot, where is it stored.

Mr. Adam DiLauro said they have a commissary kitchen.

Mr. Lewis asked that is not at that location, you've got it somewhere else.

Mr. Adam DiLauro said it is in Middlefield right now, they have a commissary kitchen, his cousins have the Buckeye Chocolate factory and they use their facility as a commissary so that is where it is parked.

Mr. Lewis said okay, as the curiosity also came up if it was stored on premises with signage on it it opened up another area of discussion.

Mr. Lamanna said he is not sure when you get into that area of discussion because if we get into vehicles parked on properties that have signage all over them.

Ms. Karen Endres, Zoning Inspector testified that they are challenges and they are definitely a case by case basis.

Mr. Lamanna said everywhere you go there is a vehicle with signage all over it parked in front of a store.

Mr. Gutoskey said that certain Kitchen and Bath place that had that truck parked up on Washington forever was basically inoperable.

Ms. Endres said we got that removed.

Mr. Lamanna said that one was different it could be argued that it was not a vehicle with a sign.

Mr. Lewis said his next observation on the food truck was he does have some concerns because as matters stand today the letter of the law in our code, food trucks are not permitted and he understands the tactic of pursuing it as an outdoor grill and the point of sale and the point of pick up would actually be the restaurant itself and in this case the restaurant is not done so that activity cannot occur.

Mr. Lewis continued by saying he has concerns here that if we have made no exceptions to date and we now start creating exceptions before the zoning code is revised he has concerns with other food trucks coming into Bainbridge from out of town or other areas around Cleveland and just finding a parking lot or working something out with that business owner with revenue sharing or whatever, he is not really inclined to move into the exception area when we haven't granted any to date and the zoning commission is working on this right now and by the way if you folks would like to get in front of the trustees or the zoning commission on it you are local residents, your input is important to the development of this code as well, he just sees it that until that is written we are all kind of between a rock and a hard place here and it puts us in a position where others that have been denied now have to be revisited so that it is fair and equal for all.

Mr. Lamanna said we are not granting an exception, we are not saying that the code doesn't apply we are just saying look at it as the interpretation of the existing code is you set up in this fashion, you are not operating a food truck, you are operating a fixed retail food business and you happen to prepare your food in a different location.

Mr. Adam DiLauro said yes, we appreciate that, absolutely.

Mr. Lamanna said don't look at this as an exception, there is going to be nothing in this decision that says anything about this food truck, we are not making any decision with respect to the food truck, all he is saying is under the present code as it is written if you operate it in a certain way you are operating in a way that is permitted under the code as it is written, it is not an exception for this person.

Mr. Lewis said you are treating it as an outdoor grill but the point of sale and point of pick up is the restaurant.

Mr. Lamanna said the restaurant, right.

Mr. Lewis asked what the timeline is of this restaurant opening because right now it is not.

Mr. Adam DiLauro said you have to ask his contractor on that one, he asks him every day, they are really dragging their feet.

Mr. Lewis said he sees our chair's point once you actually have the restaurant open it becomes a point of sale and a point of pick up and the truck itself basically becomes an outdoor grill but it is not the point of sale.

Mr. Adam DiLauro said we are done for the season so next year when we open the food truck and we will have our restaurant up and running, that will be the case.

Mr. Lewis said so you are done with the parking lot until next spring.

Mr. Adam DiLauro said yes, last night was our last night of sale.

Mr. Lewis said okay so part of this discussion is moot because the situation doesn't exist until next spring and by then maybe our code will have some better defined guidelines for all of us.

Mr. Adam DiLauro said absolutely.

Mr. Lewis said he doesn't have anymore questions and he would like to thank the applicant for indulging him with his quizzical nature, thank you.

Mr. Lamanna said let's get back to the main piece of this thing, it is always an interesting continuing issue of what happens when shopping strip centers that predate the creation of the zoning provisions with respect to shopping strip centers as a conditional use. He said this is a question of if you get a conditional use for the whole strip center or you can operate as a non-conforming use, the problem is, anytime you change a tenant, if you are a non-conforming use, you have to come to the board of zoning appeals and get that approved because you are a non-conforming use. He said if you apply and obtain a conditional use for your strip center then most of your tenants can probably change in and out without ever requiring you to come back to the board of zoning appeals.

Mr. Shibley said he thinks that is in progress.

Mr. Lamanna said okay, good because he is looking at an easier way for you and you don't want to do this over and over again when we can handle it, do it once and you won't have to worry about changing out most of your tenants as they change out you won't have to come back here.

Mr. Shibley said right.

Mr. Lamanna said he doesn't see any issue with certainly this tenant coming in, we had a restaurant there before, he thinks the only thing that has been brought up is if you have outdoor seating we want the bollards put up to protect the people in the area.

Mr. Shibley said they are setting up standards for anybody that wants to use the walkway.

Mr. Lamanna asked if anybody has any issues with respect that this is a substitution of a non-conforming use. He said he doesn't think that it changes anything, the restaurant is going to have the same kind of traffic, it is going to have all of the same characteristics as the previous business for the most part and he doesn't see how it is going to really change in any way the operation of the center and he thinks with respect to the outdoor seating, this is a limited outdoor area, they are going to put in the appropriate protections. He asked if anybody has any issues or comments on that aspect of it.

There was a question on Zoom if proposed zoning amendment Z-2020-3 addresses this particular conditional use or not.

Ms. Endres said it addresses temporary uses.

Mr. Lamanna said it doesn't address this issue.

Mr. Lamanna asked if there is anybody else out there in Zoom land that has any comments on the substitution of use issue.

There were no comments.

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

Motion BZA 2020-32 – 17800 Chillicothe Road – Pizzeria DiLauro

Mr. Lamanna moved to grant the applicant a substitution of a non-conforming use for the purposes of having a pizza restaurant with spaces identified in the application and including a patio table seating area as shown in the application.

1. As a condition to this, the applicant will provide bollards to protect the patio table seating area from automobiles parking in that area and will provide the zoning inspector with a plan for those bollards for her approval showing that they are appropriately placed.
2. With respect to the issue on the food trucks, that matter will be dismissed without prejudice by the board without any determination based upon the applicant's discussion on how he would be using that food truck but no decision is made with respect to that matter and no precedent set either with respect to this applicant or respect to another applicant at a future date.

Mr. Gutoskey seconded the motion.

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

Since there was no further testimony, the public hearing was closed at 8:15 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: November 19, 2020

AUDIO RECORDING ON FILE

Bainbridge Township, Ohio
Board of Zoning Appeals
October 15, 2020

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 8:15 P.M. by Mr. Michael Lamanna, Chairman. Members present via Zoom were Mr. Michael Corcoran; Mr. Ted DeWater; Mr. Ian Friedman, Alternate; Mr. Joseph Gutoskey and Mr. Todd Lewis. Ms. Karen Endres, Zoning Inspector was present. Mr. Jeffrey Markley, Bainbridge Township Trustee was present to monitor and host the Zoom meeting.

MINUTES

Motion BZA 2020-27 – 17765 Fossil Drive – Amended motion

Mr. Lamanna moved to adopt the minutes of the September 17, 2020 meeting as written with the correction on BZA Application 2020-27 for 17765 Fossil Drive which should read that the setback for the patio is 29' and the setback for the pool is 31' based on an updated plan submitted by the applicant.

Mr. DeWater seconded the motion.

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

New Wembley LLC

Mr. Ian Friedman stated that as an alternate he just wanted it on the record that because of the conflict he is not at all involved with the Wembley matters on behalf of the BZA.

The board discussed the New Wembley LLC application and acknowledged a letter from Bridey Matheney, Counsel for The Woods of Wembley Homeowners' Association, dated October 7, 2020. RE: Application to Review and Renew Conditional Use Permit for New Wembley LLC – Application No. BZA 2019-2 asking the Board of Zoning Appeals to consider placing this application on the agenda for November 19, 2020.

Ms. Bridey Matheney and Ms. Linda Nolan, Woods of Wembley met with the board via Zoom to express their concerns.

The board was in agreement to send Mr. David Barr of New Wembley, LLC a letter regarding compliance issues and to notify him that his application, BZA 2019-2, will be placed on next month's agenda for November 19, 2020 and also to send a letter to the building manufacturer, Corle Building Systems, asking for information relative to the building constructed at the New Wembley, LLC.

Motion – New Wembley LLC – 8345 Woodberry Boulevard

Mr. Lamanna moved to place application 2019-2 on the Board of Zoning Appeals agenda for next month's meeting to be held November 19, 2020.

Mr. Lewis seconded the motion.

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

Secretary's note: BZA 2020-6 by New Wembley LLC requesting a modification of a previously approved requirement will also be placed on the agenda for the November 19, 2020 meeting.

APPLICATIONS FOR NEXT MONTH

Application 2020-34 by Jason Dalessandro for property at 7585 Cottonwood Trail

The applicant is requesting area variance(s) for the purpose of installing an in-ground swimming pool, patio with outdoor kitchen and pool house. The property is located in a R-5A District.

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

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

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.

The Bainbridge Township Board of Zoning Appeals set a public hearing on the above applications for November 19, 2020 at 7:00 P.M. at the Bainbridge Township Community Hall, 17826 Chillicothe Road, Bainbridge Township, Ohio and unanimously resolved to request the Bainbridge Township Board of Trustees to issue a purchase order for legal advertising.

Since there was no further business, the meeting was adjourned at 8:51 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: November 19, 2020