

Bainbridge Township, Ohio
Board of Zoning Appeals
November 17, 2011

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

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 2011-13 by Eric Lofquist (300 MPH Acres, LLC) for property at 16533 Chillicothe Road - Continuance

The applicant is seeking to obtain a modification to a previously granted home occupation permit or a use variance for the purpose of conducting light commercial – office space with restrooms. The property is located in a R-5A District.

Mr. Dale Markowitz, Attorney for the Applicant and Mr. Eric Lofquist and Mr. Scott Forster were present to represent this application.

Mr. Markowitz testified that he is here representing 300 MPH Acres, LLC which is the owner of the property on Chillicothe Road or State Route 306. He said that he has a Power Point presentation and he has given each of the board members a copy and he gave them separately the information he got on the improvements from the County Auditor's website. He said this is the barn we will be talking about today and referred to the site plan and these are the garages and this is a garage area where there is an apartment. He said this area (he referred to the site plan) is another garage that is behind this house that is called the little house and the main house is up there. He said behind that barn is an oval track and fenced area. He said when the application was presented by his clients before he appeared on their behalf they were seeking a modification to the township's home occupation requirements. He said his clients Mr. Eric Lofquist and Mr. Scott Forster who are here are the two principals of the company that would occupy the barn that they would use for their office and a number of things have changed since they were here last time and he will go through those methodically and referred to the Power Point presentation. He said when they came in last time the question was raised that they were not going to live there so it is not really a home occupation and the question was what do the neighbors think about this so they thought a lot about what they are doing here and in fact now his client is going to ultimately move into the main house here, it is an 1850 house, they are going to have the tenants move out at the beginning of December, who are in there now, and his client is going to restore it according to the Ohio Historical Society standards and try to bring it back to its former life from the 1850s and so this part of the barn would be used for his clients Mr. Lofquist and Mr. Forster and their secretary and they have one other person who might use it occasionally and he will go into the detail on that.

Mr. Markowitz continued by saying when he read through the minutes of the last meeting he realized that some of the neighbors had questions, objections, concerns and certain uncertainties about the project so they first contacted Mr. Chris Ernst from Wembley and he spoke to him and he sent him a letter with some conditions that they were willing to self impose and he took that back to the board and unfortunately the board didn't want to vote on it, one way or the other, so he is not able to say to the board that they took a position other than he and Mr. Ernst thoroughly reviewed it and gave him the conditions they were willing to impose. He said he then went to the neighbors which is on this side (he referred to the site plan) who are the Callams and Mrs. Callam was at that last meeting and he and Mr. Walt Callam spent some time going over these conditions and then he went to the Barnhizer's and Mr. Barnhizer was actually one of his law professors so he has known him for many years, he owns the vacant parcel here (he referred to the site plan) but he lives on E. Craig so his house would be over here and he connects to an open parcel he has behind his client's and with the hopes someday that he is going to build a house there so he has a great interest in what they are planning to do. He said he met with the Callams and the Barnhizers and they came up with an agreement on what they would impose in the way of deed restrictions on their property to satisfy the concerns they have. He referred to the next slide and said they did two things and he has an attachment that he sent along with the amended application where they said they would agree to self impose certain conditions and in addition to that they would file deed restrictions on the property which would be enforceable by the township as well as the neighbors. He said those deed restrictions were reviewed by Mr. Callam and Professor Barnhizer and needless to say Mr. Callam deferred to Mr. Barnhizer on that because he is a professor and they were satisfied with the deed restrictions and his client has agreed to record those deed restrictions subject to the Board of Zoning Appeals' approval and he assumes the board will want to submit it to the prosecutor for review as was done in the past when he presented these but they asked that this be approved conditioned upon the deed restrictions being approved. He said the conditions that they proposed to self impose and they are making it part of their application for the variance here has basically 13 items to it. He said all of the employees will park their cars inside the barn so that nobody will see the cars during the daytime. He referred to the new slide and said that is going to be the new barn but for some reason the color is not showing up. He said the wood is going to be a light blue and the ramp is going to go away and the milk house is going to go away and they are going to put in a vestibule here (he referred to the slide) so the barn is going to be upgraded. He said the other thing they are going to do is detach part of the garage that is attached to the barn and remove some of it they don't need and it will allow them to pull in some cars and pull into the garage door that will be on this side (he referred to the slide) so they are not pulling in their cars on this side (he referred to the slide) because on the other side is where the Callams have their horses so they thought for them, the best thing to do was move the vehicle entry into this side here (he referred to the slide). He said they are going to get rid of some mass, add more green space to the property and the barn will have that appearance with the vestibule. He said the total number of employees would be limited to four including Mr. Eric Lofquist who is going to use the main house as his residency after the restoration takes place, right now he lives in Canyon Lakes. He said he also lives in Florida and he has a home down there and he will spend half of the year or more in Florida and asked Mr. Lofquist if he is a Florida resident.

Mr. Lofquist said not yet.

Mr. Markowitz said he is working on it so he will be here half of the time and the other half of the time approximately in Florida so that will become his home. He said the other requirements that they put on here is that they would have no manufacturing assembly or machinery taking place and no sales of any product, this is going to be purely an executive office for them to utilize. He said they agreed to limit the hours of operation from 7:00 AM to 7:00 PM Monday through Friday and on Saturday from 8:00 AM to Noon. He said deliveries can only be for typical home delivery like UPS or FedEx type and deliveries can only occur between 8:00 AM to 7:00 PM Monday through Friday with no Saturday deliveries. He said they would meet the sign requirements, right now they have a 4 sq. ft. sign requirement and there will be no advertising other than the name of the company. He said there will be no outdoor lighting on free-standing lights, he knows that was raised by some of the folks in the Woods of Wembley because of the Northwoods restaurant that is kind of a disaster out there but they have some lights and they would meet the down-shielded lighting and they would not have any free-standing lights on the property and there would be no transfer of their use without approval by the Board of Zoning Appeals which is also in their deed restriction. He said there is a go-cart track in the back and referred to the GIS aerial photo and that go-cart track was used by a prior tenant there. He said it was an annoyance to the neighbors and their horses so they will eliminate any use of that property for mechanized motor recreational uses and there will be no on-site recreational uses other than somebody throwing a baseball out or something. He said there would be no tenant living at the property who could have a home occupation in addition to this home occupation and in addition they would agree to relinquish the prior variance that was granted to this property, right now they are allowed to have craft sales because of a prior variance that was granted and they would agree to eliminate that. He said the deed restrictions as he has indicated, the township would have the right to enforce them as well as the neighbors and if you have to enforce them you can recover your attorney's fees and of course you would be entitled to get injunctive relief. He said he wanted to show the board what the plans are for the site but there will be a vestibule at the entrance to the barn and there will be offices for Mr. Lofquist, Mr. Forster, one other person and the secretary and a conference room and essentially that is all they will have other than storage obviously. He referred to the elevations and said they will eliminate the ramp and the milk house. He referred to another slide showing the elevation and said there is a new look to the barn giving it a residential appearance and more in keeping with the neighborhood that is behind us. He said the next slide was taken from Rt. 306 and you are looking at the retail sales that take place at the nursery and the next slide shows the industrial facility to the south of that and that is what we see on our frontage. He said the next slide has the rear elevation and if the Barnhizer's were to build on their lot they would have more of an angled view but as part of their agreement with the neighbor's we are going to be putting up some buffer and we already started that. He referred to another slide and said that shows some of the new trees that his client has already put in, some mounding and some evergreen trees. He said you are looking at the northeast towards their house (Callam), you can see it but not real well and as these trees mature and as we put in more buffer it will screen that side.

Mr. Markowitz continued by saying the next slide down shows more of the trees towards their stable and the next slide down from there shows the existing buffer heading towards their house and there is a big willow tree and there are other trees that they planted so there is a pretty decent buffer there now. He said the next slide shows the existing buffer that is already on the property before the trees were put in and as you are coming into the driveway that heads into the northerly entrance to the barn which will eliminate the need for that when they tear out part of the garage. He said the next slide down shows where they started the new buffer in the back to put in some mounding and some trees and it is a pretty wide area in the back and it is a large area so it is going to take a lot of trees to create that buffer but they are working on it now and will continue next year. He said the next slide down shows a rear view headed towards the Callam property north and added that he took the picture standing at the south end of the current barn at the farthest south end so they are going to be buffered by that rear buffer they are putting in there as well. He said the next slide is the garage they are going to remove. He said this is the current barn and these two overhead garage doors are going to come out so the side will become part of the new siding and they will repair the siding that is on the balance of the barn and they will be separate and he has a calculation at the end of the presentation that tells the reduction in the structures and they will be eliminating about 2100 sq. ft. He said they are adding about 300 sq. ft. for the new vestibule and they are taking out a house and a barn and a milk house and shed. He said the next slide down shows the garage they are going to retain and the next one after that shows the second house, or little house that is about 900 sq. ft. and that house which was built in 1901, will be taken down. He said the tenant that is in that house now has temporarily moved into the barn and we are asking the board to approve, if we tear that house down, to allow the tenant to live in the apartment in the barn. He said he talked to Mr. Wrench about it and no one knows when it was put in, the township has no records of it and there are two houses on the property, not two residences and they would like to keep that apartment available for a caretaker on the condition that they remove that second house. He said the next slide down shows if you are on the south end of the garage, it is looking south and the next slide down shows looking more south and the Pines who live to the south, are pretty far away from where the barn is and they are pretty well sheltered and buffered from anything that goes on on the site now. He said the next two slides are the declaration that they will be recording and pretty much everything that was put in the conditions for the variance is set forth in the restriction part of the declaration that they will record talking about eliminating the use, hours and things of that nature and putting the authority to the neighbors to enforce the deed restrictions. He said the legal description for the property is attached at the end and Exhibit B is the GIS map and if you scroll down a little bit more, four or five slides down, the GIS map is showing the site. He referred to a slide and said it shows the Callam's barn and the house and this is the Barnhizer's property and the Pines are pretty much blocked off to what is going on over here. He said one of the slides shows an email he received from Mr. Barnhizer concerning to presenting this revised variance and in addition to that he went back to them and they came up with this idea to remove some garages and they want to remove that second house and they would like to move whoever could have resided in that second house into the barn and if they had any objection and he (Mr. Barnhizer) thought about it and got back to him (Mr. Markowitz) and said no they had no objection.

Mr. Markowitz said he didn't hear back from Mr. Callam on that, Mr. Callam is not as quick to respond to emails as Mr. Barnhizer and Mr. Barnhizer and his wife are out of town and not able to make it tonight. He said his client bought the property in 2007 and paid \$600,000.

Mr. Lofquist said it was \$25,000 later than that and it was \$625,000 total but the original deal was \$600,000.00.

Mr. Markowitz said the property used to be part of a larger farm, the barn is a left over and the house was part of a larger tract and the barn, there is not much you can do with it and we thought that this made a lot of sense and because the property is on a state route, because it is across from manufacturing and retail and because it has some structures there now and in order to justify maintaining it and trying to improve it, there had to be some viable way to use it and Mr. Lofquist will go through the numbers in a minute but essentially the rent he is getting from the property is about \$10,000 less and all of the expense of maintaining the property does not include debt service. He said if you include the debt service the loss is very significant so there is no viable way to use it based on the current expenses and the marketability of the house that is for rent. He referred to the next slide that is the tax bill and said it is \$6,033 per half so it is \$12,066 per year. He said the county has it valued at \$598,900 which is pretty close to what his client paid for it. He said the next slide shows the future garage removal and it gives a better view of the area and stated what will be removed and what will remain and they will take down the little house, the milk house and the ramp and this is what will be left. He explained per the next slide that it is a site plan of what area is to be removed, what is to remain and the barn and the ramp that comes out, the little house and garage and there is also a little shed behind the house and that is going to come out also. He said the next one is a renovation and it shows what area they will remove from the barn and detach and the next ones are the floor plans and the last slide is the building reduction which is to remove the milk house at 266 sq. ft.; remove the 1901 house at 952 sq. ft.; remove the garages at 1240 sq. ft.; add a vestibule + 348 sq. ft. so that it would become the entranceway and the total net reduction is 2110 sq. ft. He said it is not all going to be new green space because part of the area where they are moving the garages, there is still a driveway to get to the garage in the back. He said the floor plan shows where the new garage door would go in the back, there is a deck there now and the deck would be removed and there will be a garage entrance there. He said right now his client is paying \$12,066 in taxes, the insurance is \$3,000, utilities are \$17,000, snow plowing is \$1200, maintenance is averaging about \$2000 and he is getting approximately \$26,000 in rent for the property and he is losing about \$10,000 per year in operating the premises so they had to come up with some viable way to use the property and that is why they are here seeking the variance. He said the other benefit that they gave to the neighbors and also to the township in addition is to agree to not use the variance for craft sales and his client agreed that they wouldn't use this variance as a basis to seek commercial rezoning and they would agree not to petition for the rezoning to commercial because this property has a lot of impacts on it that could cause somebody to seek rezoning to commercial, the neighbors were concerned about that and had we done the home occupation so we agreed to not seek rezoning or try to use this variance as a basis for rezoning it in the future.

Mr. Horn asked if that will be part of the deed restrictions.

Mr. Markowitz replied yes. He referred to Section 3.2 on Page 3 of the Declaration of Covenants, Conditions and Restrictions that states the neither Declarant shall use the grant of the variance for a request for rezoning to a non-residential use and the Declarant agrees to not initiate any request to rezone to a non-residential use so the Barnhizers and the Callams were happy and it eliminates the argument for some kind of domino effect by keeping this in a residential look with a limited use of the existing barn for the home occupation but the difference being that we are seeking the right to have four people in the barn as the code ordinarily would only allow people living there plus one other person. They said at the time his client wasn't living there so he was seeking a variance on that basis so now his client is going to restore the house and use that for his Ohio residence. He said other than that he is going to have Mr. Lofquist confirm that the expenditures for the property are correct and the rentals he is getting are based on fair market rentals.

Mr. Lofquist said yes it is \$26,000 total if fully rented and expenses are averaging about \$35,000 per year without the mortgage which is about \$48,000 per year.

Mr. Markowitz said if we didn't get the variance he would have to figure out something else to do so the likelihood is that his client would be coming in and seeking zoning to commercial which we don't necessarily need to do, he doesn't think the board wants us to do that, the neighbors don't want us to do that so we thought this was a good opportunity to create a transitional use and because of the difficult concerns of the neighbors, we went to the neighbors and asked them if they will approve or support them if they put all of these restrictions in place and we were successful in getting that accomplished. He said he has some final points he wants to make but he will save them for after any questions or comments the board has.

Mr. Lamanna asked if anybody had any questions or comments about this application.

Ms. Joan Musumeci of 8415 Wembley Court had a question about the apartment and if that affects whether or not if the zoning qualifies for home occupation because there is an apartment in that building and where will that person park when you are having the employees park in the garage.

Mr. Markowitz said the apartment is actually there now, when it went in, they have no idea but it is there and it doesn't affect the variance or what they are asking for. He said as far as where the person will park.

Mr. Lofquist said that is a four car garage there on the far right.

Mr. Markowitz said they would park inside.

Ms. Musumeci said so they would be parking inside with the employees and testified that just because the apartment is there, doesn't mean it is necessarily right.

Mr. Markowitz said we agree.

Ms. Musumeci asked if that will have to be changed to be different from the zoning because there is an apartment in there.

Mr. Markowitz said there are two residences there now and there is actually three there and we have no idea why so we would like to tear down the little house and have the caretaker live in the apartment, it is not a full or three bedroom apartment, Mr. Lofquist called it a study.

Mr. Lofquist said the person built toy cars there and had a big table upstairs and a sink and a bathroom.

Mr. Markowitz asked if it has a kitchen.

Mr. Lofquist said yes kind of a small kitchen.

Mr. Horn asked Ms. Musumeci if that answered her question.

Ms. Musumeci said she guesses but she does not know if the board feels it has to be something different if there is an apartment in that building.

Mr. Lamanna said there are already multiple residences on this site already so technically there is supposed to only be one residence per lot.

Mr. Markowitz said these houses were there long before.

Mr. Horn said that Mr. Markowitz said the house was built in 1850 so it was way before the zoning but if they were coming in now to get the request, yes it would impact it but because they are pre-existing it doesn't have an impact.

Mr. Markowitz said and they don't know when the apartment went in, we just thought it would be better to get rid of the little house.

Mr. Lamanna said but you don't know the apartment is there now.

Mr. Markowitz said no, nobody did and the other reason to have the caretaker in there is because his client won't be living there year-round and he thought it would be good for somebody to be there for maintenance and security.

Mr. Lamanna said whatever it is, it is now and we are not going to expand it into a three bedroom fancy apartment that they are going to try to rent out to a large family etc. but if somebody wants to just keep this for somebody who is going to be there.

Mr. Lofquist said they will have no rentals when they are done.

Mr. Murphy said architecturally that little 1901 house is a lot prettier than the big garage. He said if you are tearing down the middle you will end up with that big two story garage and from a historic and residential and Bainbridge Township sort of thing, did you think about maybe tearing down all of the garages to the right and leave the little house and asked if that is a possibility or is that out of the question.

Mr. Lofquist said it is a good question and they have some concerns about the quality of the house, there is an issue with the furnace, the floor, there are water issues, it is really a maintenance nightmare and we are really concerned about the safety there with the heaters and things like that so that is more of the reason.

Mr. Murphy said when you tear down the garage in the center, is that all we will be seeing is three windows and a big 20 ft. garage door and another garage door so basically it just looks like a garage and it happens to be an apartment for somebody.

Mr. Markowitz said the garage is really in the back and upper part and it is hard to explain from this angle but you don't really feel there is an apartment there; you have to walk in to really understand it.

Mr. Lofquist said when you take out that lower section, it breaks it up and looks pretty good, right now it looks so big and they just need to take away that mass and that really breaks it up nicely, it looks so much better when you would stand and look at it and imagine that piece gone.

Mr. Murphy said but you are still left with that big two-story garage door and asked if they plan on doing anything decorative.

Mr. Lofquist said no they hadn't thought about it right now but the expense of doing the barn and trying to match that it made a lot more sense to remove it right now but it doesn't mean they won't come back and look to do something that more matches the barn down the road but right now the budget is pretty much sunk in tearing down all that they can tear down and make the barn look back to its original condition.

Mr. Horn said the owner of the property is 300 MPH right.

Mr. Markowitz said right.

Mr. Horn asked who is going to be living there.

Mr. Markowitz said Mr. Eric Lofquist and his wife and maybe his daughter from time to time and he still has one in high school so they have to wait for her to graduate.

Mr. Horn said he has a couple of questions about the declaration and on page one it is referenced, the adjacent owners Barnhizer and Callam and asked if that should be referenced by permanent parcel number to identify the property and that is the same thing on 3.3 on page 3 rather than just referencing that as the neighbors etc.

Mr. Markowitz said he didn't have a problem with that.

Mr. Horn said then on page 2, 3.1 E you say typical home delivery trucks and in the presentation you gave us you stated such as UPS and FedEx, would it be better to put that in to identify the type of trucks you are talking about.

Mr. Markowitz said the only reason they might hesitate is 50 years from now and somebody is reading that they might say who is UPS and FedEx. He said he tried to limit it to what would be ordinary deliveries to homes.

Mr. Horn said on page 4, 4.2 regarding enforcing the deed restrictions, attorney's fees and costs and it says "including the right to proceed against the Residential Restricted Property if Declarant does not have other sufficient unencumbered assets."

Mr. Markowitz said that is just saying they could foreclose and try to satisfy any lien for attorney's fees against the property if the Declarant itself isn't collectible.

Mr. Horn said the prosecutor will probably take a look at it and 4.6 regarding the recording of the declaration, somewhere in one of the other documents, you had 45 days after everything is approved and asked if there should be a time limitation on when these will be recorded.

Mr. Markowitz said they don't have a problem with that.

Mr. Horn said when it is approved, put a time limit on it because sometimes they just kind of linger.

Mr. Markowitz said that is in our conditions to the board and he thought they put a condition in that it would be recorded in so many days but if the board wants to make it part of the motion it is fine.

Mr. Murphy asked Mr. Lofquist besides delivery trucks and in terms of the business, how many people come and park in front and come in to see him in a day, do you expect two cars a day or 20 cars a day.

Mr. Lofquist said typically not per day some may come to work on the website and they might have a meeting or something like that but he would say it is probably a couple per week that typically visits their office. He said they are a very decentralized business.

Mr. Lamanna asked about the covenants, 3.1, K about transferring with the approval of the BZA and asked under what standard the BZA would be reviewing that.

Mr. Markowitz said they put that into the deed restrictions because they wanted to make sure that somebody else wouldn't come in and say they wanted a different type of home occupation that would be more intrusive or more intense than what we are doing for the Callams and the Barnhizers.

Mr. Lamanna said he is sitting here and reviewing this and under what standard is he operating, is it at the discretion of the BZA.

Mr. Markowitz said there is always a reasonableness standard across everything the board does in terms of transferring a variance.

Mr. Lamanna said that is what he means, is he doing this de novo like he was back at the beginning and he is looking at whether he would grant this at that point in time.

Mr. Markowitz said the board would look at it in the context of what you approved versus what the proposed transferee wants to do.

Mr. Horn said without that provision being put in, it could be transferred.

Mr. Markowitz said correct once the variance is granted.

Mr. Lamanna said that is what he is trying to figure out because if something comes before him he could say what standard he is making his decision or is he just looking at it and saying this is a mere continuation of what was there before and therefore it is okay and what if circumstances have changed in the interim can he then say he gets to review this based on any changed circumstances.

Mr. Markowitz said you can look at changed circumstances but if it is 50 years from now and the whole area is commercial or if somebody has bought up all of the land and turned it into a preservation area he thinks the changed circumstances apply but he thinks it has to be based on the conditions that are imposed as part of the variance application. He said the self-imposed conditions that make the basis of their application and the basis of the board's approval is what you have to look at in terms of what somebody else wants to do with the property.

Mr. Lamanna said it is the same problem you have with conditional uses where somebody has to come in and get approval of a transfer of a conditional use and what does that mean, does the board look at it de novo and say if we are looking to grant this conditional use today, would we grant it today.

Mr. Horn said the latter part of that sentence says “in no event shall such successor user be permitted to utilize the property in a manner that would be in violation of this Declaration” so he gets to review it and is the use consistent with the declaration.

Mr. Markowitz said he thinks that is part of it.

Mr. Lamanna asked what he is reviewing it to do.

Mr. Markowitz said he doesn't think it can be looked at in terms of it as de novo and would he allow this person to do this under these circumstances because the variance exists and the use is permitted as long as it is conforming to the conditions so he thinks it has to be looked at in terms of would it be granted all over again today is not the proper review, it is, is the transfer a reasonable request based on the proposed transferee. He said other than that he doesn't think there are any standards that would apply just on a transfer of a conditional use permit; there are not provisions in the Ohio Revised code and your code either on that.

Mr. Lamanna said he thinks it is a glaring weakness.

Mr. Markowitz said he doesn't think it is because you are held to a reasonableness standard and you have to look at what are the site conditions, what are the proposed uses and the impacts on the community.

Mr. Lamanna said the appropriate review is if people have been complying with the conditions that have already been established there and if it doesn't appear that they will not be complying the board might say they won't allow this to change and he also thinks that ideally there would be something that says at the time of transfer the board can look at it and see if there are other reasonable conditions that need to be possibly enacted to meet the requirements of the zoning based upon the current circumstances and that is what he would like to see here. He said if somebody comes in and says they want to use the building this way, we are looking at it to see if the proposed transferee is going to use it in a way that is consistent with this document and whether or not given the current circumstances of the area would warrant additional restrictions being imposed at that time.

Mr. Markowitz said he can add that language and modify the deed restrictions to add that and also agree that that would be one of their self-imposed conditions.

Mr. Lamanna said he just wants something there so if in some point in the future somebody gets this property and asks what are they are supposed to be doing there he wants it clear and that is what they are looking to see if the next guy is doing something that is consistent with what we are doing here today so if the next guy wants to have 150 customers a day coming in here the board can say no that is not consistent with what we were talking about.

Mr. Lamanna continued by saying he would also like the opportunity to say 25 years from now if somebody comes in with something and the area has changed and things have happened the board may say all of this is fine but the board may want to impose some other conditions so we would have to wipe out the current conditions.

Mr. Markowitz said they would agree to amend their application to include a condition as part of their self-imposed conditions that the board would have the right to review the reasonable conditions based upon the site additions and existing conditions in the area.

Mr. Lamanna said he just wants to make it easier for somebody in the future if they have to look at this to make sure they did what they were authorized to do or didn't or what standard does the board apply, reasonableness or is it substantial evidence or discretion.

Mr. Markowitz said he thinks they would have to use the reasonableness standard based on Chapter 2506 today but the part about putting reasonable conditions on it is something that should be included here now which we are so we would ask the board to modify their variance application by adding the condition that when their successors seek to transfer ownership they come before the board and the board will have the right to impose reasonable conditions upon any transfer or rejecting a transfer based on the application presented based on the then existing site conditions and other conditions that exist in the area. He said they would ask to amend their application to include the condition that they will agree to tear down the little house and shed behind it and the two garages in-between the barn and the south end of the barn and just use the studio apartment in the south end of the barn for a caretaker and then the main residence will be the main residence of the property.

Mr. Lamanna asked Mr. Markowitz what his understanding is with the main property owners behind there on this buffer, is there something definitive there and are they expecting this.

Mr. Markowitz said they (applicants) have to meet with them to establish the buffer and it is in the deed restrictions to agree on the location of the buffer.

Mr. Lamanna asked if anybody else had any comments or questions.

Mr. Lamanna closed the public hearing portion of the meeting.

The board discussed the application and the regulations for Home Occupations.

Mr. Markowitz said they are okay on item a. because there is no exterior indication of a home occupation.

Mr. Lamanna said except for the permitted sign.

Mr. Murphy said per Chapter 173.09 (Signs) they are not allowed to put any sign out other than the address.

Mr. Markowitz said right so they are complying with item k. He said they will have no outside storage or commodities etc. He said they meet item d. regarding the 25% of the gross floor area, so they don't need anything with d. He said regarding item g. you can technically say they don't need it but it depends on what you call the barn as an accessory building. He said they don't need any variance from item h. He said item i. is the additional one that came in for the variance.

Mr. Lewis said he wants to talk about item i. and that is the carry over from the preceding meeting which was the hinge-pin for the whole application which it says "A Home Occupation shall be owned and operated by the person, or his immediate family, living and working within the dwelling unit or an accessory building." He said that really doesn't talk about absentee owner or a non-majority of the year.

Mr. Markowitz said he doesn't agree with that part but clearly they came in here with the intent to seek the variance for him not occupying the house but since that time it has changed because of some opportunities with him buying a house in Florida that he has the ability to use this as his other house.

Mr. Lewis said he sees it as a secondary residence and his pursuit to gain residency in Florida at 51% which diminishes our standard to an inconsequential or un-find something.

Mr. Markowitz said your code doesn't say he has to live there all year; he doesn't have to live there more than an hour.

Mr. Lewis said so he can be there for ten minutes.

Mr. Markowitz said the way your code reads it doesn't say he has to live there full-time.

Mr. Lamanna said if somebody is maintaining a house and they are living there some reasonable period of time and then the rest of the time it is not being given off to somebody else which would not really be a residence.

Mr. Lewis said it also sets up when it changes hands down the road and we end up with an absentee owner and they are there for a very small portion of time you see the comfort level he is trying to get here.

Mr. Markowitz said he knows where Mr. Lewis is going but they are not asking to approve this merely that Mr. Lofquist is going to live there, that just happens to be the present circumstance that he is going to move in there now. He said independent of that all of the things they have done to secure the restrictions on this property it should not matter if he is living in that house or not because he has got this barn and two houses on a state highway across from an industrial and commercial facility where you can have craft sales and you have got a massive barn structure, what we are saying to you is that a reasonable variance to look at here is that there is no viable use of the property under its current circumstances and no one is going to continue to operate it and own it under those circumstances when they can't get a return on their investment here so we are saying it shouldn't matter if Mr. Lofquist lives there or not because we are not going to let whoever lives there have a different home occupation and we are limiting the barn usage to four people who have to park inside and you can only have deliveries just like a home and we are saying it is appropriate to allow the variance to be granted whether he lives there or not. He said we are presenting it to you today because of the fact that he has decided that he wants to restore the house and use it as his residence there but it would not be a condition of approval.

Mr. Horn said he thinks it is important that he is living there because it is a home occupation. He said people live in their homes and work out of their homes and last time he said he was thinking about perhaps living there and now you are saying he is going to live there and that makes a difference to him. He said it is not defined and he thinks that if you live part of the time in Florida and part of the time here he thinks that is living here.

Mr. Markowitz said it is not a problem for Mr. Lofquist, for 300 MPH but in the future if you are asking him to agree to be deed restricted, no commercial change, no non-residential uses, only so many people can be there and we've got a substantial structure that is going to have very limited use and then you are saying that person also has to live there, he thinks it is unrealistic to believe that there is a marketplace out there where this is going to happen again in the future, it is unusual that you have someone like Mr. Lofquist who is willing to buy, spend the money and improve it and be willing to use it as a very limited office so if we would be prohibited from transferring it to anybody in the future unless they also lived in that house but yet wanted to use the barn for the same executive office, that marketplace might exist of four people in this country so he thinks you have to find that there is a basis for meeting the spirit and intent of the code because of the restrictions we are putting in place and because of the uniqueness of this property because it is across from industrial and it is across from retail and it is on a state highway and it has got existing structures with two houses and a very large barn and there is no viable way to use that property and get any kind of economic return but it is appropriate to grant the use variance not only to allow four people rather than one non-resident employee but to also say that you don't have to reside there because whoever does reside there won't be able to have their own home occupation because the deed restriction will prohibit that as well as the self-imposed conditions they put in place.

Mr. Lewis said he would be more comfortable still seeing it quantified because to waive our anchor standard to accommodate the economic well being which is the primary basis for the whole application for the applicant and he is just not real comfortable with that compromise.

Mr. Markowitz said that is the basis for the use variance, a use variance is when there is no viable use and there is an unnecessary hardship and there is a unique circumstance.

Mr. Lewis said it existed that way before they bought it so somebody makes a purchase and discovers afterwards.

Mr. Markowitz said but that is not all they are saying and there is a hardship they are saying that hardship existed before he bought it. He said if he hadn't bought it, whoever owned it would have had the same argument and would have come in and said there is no viable way to use it; I want to use it for something else or come in and seek commercial rezoning.

Mr. Lewis said agreed but they may have very easily said it qualifies as home occupation and he agrees to make this his permanent residence and he will then be able to use it for other things and it would then be usable. He said he could go either way with that.

Mr. Markowitz said he would have to confirm with his client.

Mr. Lewis said he would be looking for something in the deed restriction or the covenant or the filing because if this thing changes ownership, he is also looking for a baseline criteria that this is based not a converted piece up to a quasi-commercial property with a live-in caretaker and a complete absentee owner which does not satisfy home occupation so he is not real comfortable with that element.

Mr. Horn said he said he is going to live there.

Mr. Markowitz said yes but not right away because he has to sell his house and restore this house.

Mr. Lewis said and when Mr. Lofquist's daughter graduates from high school, he is seeing an exit pattern in a year and a half and a permanent residence in Florida and 51% there to establish state residency which may open up everything from college tuition, relief in tuition costs in Florida and a lot of other things but he is seeing it as an exit pattern.

Mr. Markowitz said he has significant ties to his business.

Mr. Lofquist said he is not going anywhere.

Mr. Lewis said he hasn't heard that.

Mr. Lamanna said the way it is written, as long as it is maintained as a legitimate residence there is really no restrictions on how long he has to live there. He said there is a point at which one would say if you were there one day a year then this is no longer really a legitimate residence but if somebody is there three or four months a year, then yes probably it is legitimately a residence if you are splitting up your time among several locations.

Mr. Markowitz said he is going to be here more than three or four months and the point of it is if he wasn't living there and you had somebody else living there it is not a more intense use of the property.

Mr. Murphy said but the fact that he said he is going to fix it up and live there and there will not ever be a rental unit again.

Mr. Markowitz said that is correct.

Mr. Lamanna said he is saying if you went to sell it the only person they would be able to sell it to is somebody who would not reside there because they already have a residence locally.

Mr. Markowitz said he doesn't think it is speculation in the sense that you could say it would be an extremely small marketplace where people would be interested in buying it if they knew that they had to live there and use the barn for the home occupation.

Mr. Murphy referred to item j. where there would be more than one person so we are looking for a variance on that.

Mr. Markowitz said correct.

Mr. Murphy referred to (4) of the home occupation regulations regarding multifamily dwelling units.

Mr. Markowitz said that section doesn't apply to them at all and he is saying if you have multifamily dwelling units which we don't, we have two separate houses, they are talking about more than one dwelling in the structure. He said he doesn't even know why it is in the code but it might have made sense when you allowed multi-family but it may still because of the cluster, Tanglewood and a few other places.

The board discussed multi-family homes.

Mr. Olivier said so you aren't seeking a variance from item i. because he will be living there.

Mr. Markowitz said they are seeking a variance from i. only because they don't want to be restricted in the future from being able to sell it or transfer it. He said when he first got into this case they weren't necessarily saying that Mr. Lofquist was going to live there it has only since he got involved and things evolved that he has been able to determine that that is what he wants to do and can do.

Mr. Olivier said so it is your position that if the property transferred with these declarations, whoever bought the property could not have a second home occupation in the actual home itself and whether they live in the home or not they are restricted to one home occupation on that property which is the barn.

Mr. Lofquist said correct.

Mr. Markowitz said it is not only in the deed restrictions it is also in the self-imposed conditions that were made part of the application. He said you won't have any more intense use of the property it is just a question of who is living in the front house.

Mr. Ken Polanka of the Woods of Wembley asked regarding the time-frame for all of this because he (Mr. Lofquist) said he is going to remodel the house to live in, he has a child still in school, in a different school district.

Mr. Markowitz said it is Kenston.

Mr. Polanka asked if he is going to start remodeling his barn and in two years from today start remodeling his house and would the intent be to remodel the house and never move in. He asked if there are any restrictions as far as when all of this is going to take place.

Mr. Lamanna said we haven't gotten to that point yet but your question is valid.

Mr. Murphy said but if the board is giving a variance for item i. do we really care as long as somebody moves out of that house.

Mr. Horn said if he doesn't have to live here it doesn't matter.

Mr. Lofquist said they are moving out by the first of December of this year.

Mr. Lewis asked if everything is vacant.

Mr. Markowitz said there are people in the barn.

Mr. Lewis asked if the caretaker lives in the house or the barn.

Mr. Markowitz said the barn and he is not saying they will always have a caretaker but they just want the ability to use that studio for the caretaker.

Mr. Lamanna asked if a year would be enough time for the house and also asked about the barn.

Mr. Lofquist said they would like to get started on the barn as soon as possible so 30 days or so after, we already have people doing the drawings so they have them come in and do whatever work that they would do for approval for the build-out and also then they will have to go and seek the permits for taking the house down and so all of it would be happening this winter of course.

Mr. Horn asked about renovation of the house so he can move in there.

Mr. Lofquist said that will be after the barn so probably they will start in the summertime and do some historical work, we will work it through Columbus and other things.

Mr. Lamanna said if the board gives six months to remove the buildings that are going to be removed and a year to do the barn and to the end of next year to do the house.

Mr. Markowitz asked until 2013.

Mr. Lamanna said yes.

Mr. Lofquist said that is workable.

Mr. Lewis said so we have six months for the removal of the buildings or structures and to the end of 2012 to complete the barn and the end of 2013 to complete the house.

Mr. Horn said they have been very accommodating and a lot of self-imposed restrictions and declarations etc. etc. but he is uncomfortable for giving a variance for the living, it is home occupation and he has indicated that he is going to move in there and he is going to be living there but that is the only problem he has.

Mr. Lamanna said the question here is we have a really difficult property that we are going to substantially improve in terms of both its appearance and its non-conformity and we are going to tighten down the potential use of this property immensely and sometimes it comes down to looking at the trade-off of saying what are you giving to get what you are getting. He said obviously it is not the perfect situation but it is such a huge improvement over where we are today that leaving open the possibility that somebody might want to reside elsewhere and use this for an executive office, ultimately it is not going to change the intensity of the use, it is pretty small, and also this is a seven acre property, it is not a house in Lake Lucerne or Tanglewood or something like that where you have 30 houses in the same area so the impact is small and there is an industrial facility across the street from it anyway. He said just the improvement in the visuals of this is going to be better.

Mr. Horn said it is a home occupation and he said he is going to live there.

Mr. Lamanna said he is making a rather sizable investment and what is going to be done here is within the spirit of what a home occupation would be.

Mr. Horn said he assumes he is going to do a good job on the house too.

Mr. Lamanna said there is a good chance that he will end up living there.

Mr. Lewis asked Mr. Horn if he is suggesting to quantify that somehow.

Mr. Horn said no he thinks that that would be a variance that they would be requesting, living there as indicated, part of the time here and Florida and he has obviously a lot of connections here, he has a child in school so he doesn't think he is going to put money in his house to not be there. He said he doesn't think it needs any quantification because then we might get into a problem going forward and setting a precedent in terms of defining living.

Mr. Lamanna said if somebody wants to define that it is up to the zoning commission to work on that and they can consider all of the factors.

Mr. Olivier asked what about the hypothetical six months from now or a year from now and that front house isn't rehabbing and is not able to be retained, are we setting us up for that house to be bull-dozed under these conditions and under the waiver of the home occupation that we then just allow the barn to stand on its own at some future date. He said he is not necessarily saying he is against that.

Mr. Lamanna said there has to be a residential structure maintained there.

Mr. Lewis said so restore one or raise it and rebuild it, is that what you are suggesting.

Mr. Olivier said if the board is not giving that opening to allow that to be raised and if we are waiving the home occupation are we then waiving that too.

Mr. Lamanna said no because there still has to be a dwelling there. He said the board is allowing a home occupation but in this case we are allowing the occupant not to be necessarily residing at the principal dwelling so there still has to be a principal dwelling and the board can make that clear. He said it is still a home occupation so there still has to be a home there.

Mr. Lewis said the studio apartment in the barn does not set the criteria for the home.

Mr. Lamanna replied no, it has got to be a separate free standing home and the board should make that clear. He said the way the board is granting this is it is still a home occupation.

Mr. Olivier said it is just that you don't have to reside in it.

Mr. Lamanna noted that the applicant has provided the board with a presentation that will be entered in as part of the record.

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

Motion BZA 2011-13 – 16533 Chillicothe Road

Mr. Lamanna made a motion to grant a modification to an existing home occupation permit on the property for the purpose of conducting a home office involving commercial type office space as follows:

1. A variance to Section 135.02 (c) – Home Occupation (3) subsection d. The applicant may use the entire space of the existing accessory barn building for the home occupation.
2. With respect to subsection j. there will be allowed to be up to four people working at the home occupation at one time.
3. With respect to subsection i., although the applicant has indicated his intention to occupy the dwelling unit, there shall be a variance from this requirement and the property may be used by an owner who is not actually living within the dwelling unit.

Based on the following conditions, which conditions have been agreed to voluntarily by the applicant and also which this board finds are necessary to make a finding in favor of granting these variances and to prevent unreasonable impact on the surrounding property owners and to make this use consistent with uses within the area.

1. There are a series of covenants, conditions and restrictions which the applicant has submitted which will be filed with the Geauga County Recorder within ninety (90) days of today's date which the applicant has submitted as part of his application with the modification which was discussed during the public hearing with respect to Section 3.1 (K) on the standard of review by the BZA.
2. The applicant is going to remove an existing garage, a small house, designated as a 1901 house and a small building designated as the milk house within six (6) months of this decision becoming final.
3. The applicant will have one year to complete the renovations identified in the application to the barn building and will have until December 31, 2013 to make renovations to the existing principal structure, a residential dwelling structure on the property.
4. A major principal dwelling unit at least the size of that existing house must be maintained on the property in connection with this home occupation.

Motion BZA 2011-13 – 16533 Chillicothe Road - Continued

Mr. Lamanna also moved to grant a variance for the purpose of maintaining an existing apartment in the garage building at the premises. The apartment will be used by a person who is engaged as a caretaker for the property and the size of the apartment will not be increased beyond that which currently exists.

Based on the following findings of fact:

1. This is a very unusual and unique property within the township.
2. There really is no other property like it.
3. There is an existing large building on the property and the applicant has proposed a use which will substantially reduce the potential for adverse impact on the adjoining properties and will be less intensive than the uses that were previously permitted under the former home occupation permit which allowed craft sales from the property.
4. This is also a 7.3 acre property and because of its large size the allowance of additional people in the home occupation will not have any adverse impact on the adjoining property owners.
5. Additionally, the applicant is making renovations and improvements to the property which will give it a more residential feel than it currently has and therefore will make it more consistent with the use of the residential neighborhood.
6. The vehicle entry to the barn will be from the south.
7. The final version of the deed restrictions shall be submitted to the Geauga County Prosecutor's Office for their approval as well.

Mr. Olivier seconded the motion.

Vote: Mr. Horn, nay; Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye.

Application 2011-25 by Brian Dezman for property at 17689 Westview Drive -
Continuance

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

Mr. Brian Dezman was present to represent this application.

Mr. Dezman testified that he came back this month and was told back in October when he came to this board to get some more measurements and see where else the two-car garage could be placed. He said after further review he really couldn't find a better place to go, to the north of the house there is the supply line to the septic. He referred to the GIS aerial photo and said there was a request to put it there and with the septic tank being in the front yard that is not accepting in his eyes and the neighbor's eyes. He said back over here was another request by the board that also has an abandoned leach field and also there is a well that he believes the board advised him that he can't be within 30' anywhere around the well.

Mr. Murphy said he believes the distance is 10'.

Mr. Dezman said if he were to put the building back here (he referred to the GIS aerial photo) and the driveway to get a vehicle back there, the well would be obviously in the way and obviously taking away more green space on the property than where the proposed spot is up there which is really only taking up a 24' x 24' plot of building. He said he could put it back there (he referred to the GIS aerial photo) but the primary use of the building is going to be a residential garage because he doesn't have a crawl space or a basement so it would house one car with shelves to hold boxes, Christmas trees, etc. He said there would be no reason that he couldn't put it back there except he would have to travel that distance with the object in snow or whatever, depending on the season. He said the building that he is proposing would be the same general construction as the house, same roof line, same color, basically more or less making it look like it belongs on a building and is not going to be a couple of two by fours with a couple of sheets of plywood. He said he will match the house and he does plan on putting in windows to make it look more cosmetic appealing to the street. He said he talked it over with his neighbors and they are not opposed to it, there is one in the audience here that was able to make it but the other neighbor who lives across the street was unable to make the meeting.

Mr. Lamanna asked how close he is planning on putting this to the existing structure.

Mr. Dezman said he believes from the corner of the southeast of the house to the edge of the northeast corner of the garage is roughly 30' and the only reason that is because there is a big Maple tree there. He showed the board on the GIS aerial map and said if he puts it back there he would take that tree out and put a driveway back there which he didn't physically want to do. He said the pad is 20' long and 20' away from this corner.

Mr. Lamanna asked how far back the house is right now.

Mr. Dezman said from his measurements that he took, 118' he believes from last month's meeting.

Mr. Lamanna said there is an existing garage there now and asked Mr. Dezman if he is going to continue to use that garage.

Mr. Dezman said correct.

Mr. Lamanna said the house is 50' away from the south line so even if it were right at the edge of that house with the front of the new garage it is still going to be at 25' or 26' with the overhang.

Mr. Dezman said he is not sure why it doesn't show that on the GIS but when you walk on the grounds there is actually room between the tree line and the pad for a 32' concrete pad because that was his original intention so he doesn't know why.

Mr. Olivier asked if he will be coming off the pad with the garage or is the garage going to sit on the existing pad, it is all behind it.

Mr. Dezman said to the south of it.

Mr. Lamanna said it is going to be straddling the pad right.

Mr. Dezman said no the pad is going to be part of the apron.

Mr. Lamanna said it is going to be down to about 10' away.

Mr. Lewis said last month's minutes read "The existing pad is 36' off the property line and you are 24' deep on the proposed building so you are now 12' off the side yard so you are going from a 50' requirement down to 12' so you are now looking at a 400% variance." He said he thinks that is rather substantial.

Mr. Dezman said he understands that, cosmetically for the street, he would have no problem if they made garage doors that look like just plain wood but he has two bedrooms on that side of the house so if he were to put a garage here (he referred to the GIS aerial photo) he would not have windows facing the house and windows facing a board more or less and also for his neighbors, he does not think two garage doors on either side of a house is cosmetically appealing so that is why he chose where he put it because he understands zoning.

Mr. Lamanna said normally if we want to do this kind of orientation, let's bring those two buildings up as close as we can get them on the corners there so that basically the corner of the new accessory structure would be touching the corner of the existing house and at least then give 25' to the property line and the side and 90' to the front, 25' to the side, there is some pretty good screening there, it is not ideal but it is probably doable given the fact that there are issues with the other places it could be put.

Mr. Horn said if you put it up on the northwest corner, the cul-de-sac is there and on the northwest corner of the property you can enter directly into the cul-de-sac then.

Mr. Dezman said he could but he was more or less thinking of instead of having a 24' building out in the middle of a wide-open space, for re-sale value and it is mostly going to be storage, it is not going to be a maintenance garage so again he was trying to keep it contained and he was also thinking resale.

Mr. Olivier said you (Mr. Dezman) don't want to lose that Maple tree to allow the garage to sit closer to the south end of the house.

Mr. Dezman said he personally does not.

Mr. Lamanna said sometimes we don't want to cut down more trees than we need but sometimes that is what you have got to do, sometimes there is a tree right where you want to build a house so unfortunately the tree has got to go.

Mr. Dezman said he is trying to disturb as little as he can.

Mr. Lamanna said the board understands and all things being equal he would rather not cut the tree down but in this case it is causing substantial variances to be necessary both in the front and the side. He said he can understand, the board is looking at the other side and can see that that might look like it is just hanging out there at the end of the street. He said if it is abutting the house, it just looks like an L-shaped house, it doesn't look like there is a free-standing garage sitting in the front yard, it looks like it is part of the house so if it is just about touching then we achieved that. He said now the side yard variance would be down to 25' and the front yard variance would be down to 92' or 93' so we reduced the variances substantially and it is unfortunate that a tree will have to be cut down but in this case given the size of this being 12' off the property line that really just is not reasonable in this case, it would have too much of an impact and be too inconsistent with what is going on. He asked if anyone had any comments about pushing this right up to the corner there.

Mr. Lewis said he thinks he (Mr. Dezman) wants some kind of a pass-through between the two buildings.

Mr. Lamanna said there could be 3'.

Mr. Dezman said there will be no doors on the south end of the building but there will be two windows.

Mr. Lamanna asked if there is a door at the back of his garage.

Mr. Dezman said yes but there is no man-door on the south side.

Mr. Lamanna said he didn't know if he wanted a passage-way through there but there will probably be one because the roof over hangs, if it is brought up pretty close there will still be 3' or 4' between the buildings just because of the roof overhang.

Mr. Olivier asked Mr. Dezman if he understands what the board is suggesting.

Mr. Dezman said yes but the reason why he didn't suggest that was and why he was requesting a hearing was so it didn't crouch down on the house, it still left it open, you put the garage here and what you are suggesting is a 3' space.

Mr. Lamanna said if you want to but his inclination is to make it as much as possible as part of the house as one continuous structure rather than a free-standing garage in the front yard.

Mr. Dezman said the reason why that was, it was the tree and also too having two garage doors right next to one another.

Mr. Lamanna said they are going to be right next to one another pretty much anyway and people are looking at them coming down the street and the house faces the other way so it will be hard to notice the garage doors on the side. He said in this case we need to keep the variances down to a minimum and we can do that by moving this up as close as we can.

Mr. Lewis said and the reason for not putting it in the backyard in that green space was the convenience access to store things.

Mr. Dezman said he would be putting a driveway through to park a vehicle.

Mr. Lewis asked if he is going to store vehicles in the building.

Mr. Dezman said one vehicle and that is why he chose the first area.

Mr. Lewis said it was still reachable in the backyard, we just had to clear the well-head by 10'.

Mr. Dezman said correct.

Mr. Lewis said and he thinks there was about 31' of available space.

Mr. Dezman said in order to get back there, you figure 8' for a driveway.

Mr. Lewis said it keeps the Maple tree, which do you like better.

Mr. Dezman said he was going to go right through the Maple tree and either way the Maple tree was going to go if the board accepted it back there and with the cost of concrete and he was in green space.

Mr. Lewis said you could do gravel.

Mr. Dezman said he could.

Mr. Lewis asked if the motion could be crafted that embraces the 90' front setback and 25' side and whether he puts it in the front or the back, either way it will satisfy the motion or should there be an exact location.

The board discussed the variance request.

Mr. Lamanna said if he wants to put it in the backyard, he doesn't have a problem giving him a 25' setback variance if he decides to put it in the backyard. He explained to Mr. Dezman that the board could give him a variance to either put it in the front on the corner or if he decides he wants to put it in the back, a 25' variance which would be the same variance so he could put it back behind the house.

Mr. Olivier said but keep it 25' off the side yard in the rear of the garage.

Mr. Lamanna told Mr. Dezman that he can make his choice wherever he wants to put it either off the corner of the front or he can put it in the backyard on that side over there.

Mr. Lewis said and the board can give him a front yard setback variance.

Mr. Lamanna told Mr. Dezman that he can think about it some more and decide where he wants to put it so the board is saying it has to be 90' from the front property line and 25' from the side property line if it is placed in the front and if it is put in the rear yard, then he can have the same 25' side yard variance in the rear yard as well and suggested getting prices for the construction etc.

Mr. Dezman said he has all of those prices.

Mr. Horn asked Mr. Dezman which way he wants to do it and if he has a preference.

Mr. Dezman said right there, the original place because he is not going to go around the well-head and possibly crack the well-head with a snowplow etc. plus putting the extra money in the green space that he is going to lose putting the driveway in. He said again, he is looking at the resale value of the house and yes he did buy the house with the freeway to the north of him, but he would think that adding a garage would not only help him but it would also be good for resale.

Mr. Lamanna said the board will give him a 25' side yard variance and a 90' front yard variance and he will have to fit it within that space and it is going to be closer than he wants to the house but those are reasonable variances.

Mr. Horn said it is only a 10' difference than what he was asking for.

The board discussed the variances requested.

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

Motion BZA 2011-25 – 17689 Westview Drive

Mr. Lamanna made a motion to grant the following variances for the purposes of constructing a 24' x 24' garage which will be constructed similar to the style of the house.

1. A variance to the minimum required front yard setback of 100' to 90' for a variance of 10'.
2. A variance to the minimum required side yard setback from the south property line of 50' to 25' for a variance of 25'.

Based on the following findings of fact:

1. A practical difficulty exists because of the shape and size of the lot and the fact that the house is setback more than 100'.
2. It would be very difficult to put the garage behind the house because of the narrowing nature of the lot and the existing septic fields and lines.

Mr. Lewis seconded the motion.

Vote: Mr. Horn, aye; Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye.

Application 2011-28 by Linda and Douglas Halfacre for property at 17885 Kingswood Drive

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

The zoning inspector's letter dated November 17, 2011 was read.

Mr. Douglas Halfacre was present to represent this application.

Mr. Halfacre testified that the board should have gotten a copy of his application and a copy of his drawings and said he also brought a panoramic view just off of his back deck that shows there is no lake back there now but where the proposed shed would sit in that back area. He said the reasons for the variance request is primarily for the setback because they need 50' and the main one and probably the most important is that it pushes it over too far and the shed that they are looking to build would be 16' long by 12' deep. He showed the area on the GIS aerial map and said that is an area where he does a garden every year and it is a pretty good slope right there and it drops off from the road down to where the lake is, it drops off roughly 16' – 20' and when you are standing down there, you cannot see the road bed, it is above the line of sight so consequently there is a pretty big elevation change down through there.

Mr. Halfacre continued by saying he has leveled a 12' x 12' area out so he was hoping to use that as the center of the bed for his shed because he is going to cut that back in to level it off. He referred to the lake and said what he thought would be a mud-hole has turned into a lot nicer area than that so they now have a series of Maple trees and Tulip trees across there but the most important thing (he referred to the GIS aerial map) he doesn't know exactly where but it is his leach field but he doesn't know the borders of it so again if he moves it over to 50' it puts his shed right in this area here and he will have tree trouble and he would also have leach field trouble so that is probably the most important reason for the variance. He said there are established trees and then also it would move his shed from right smack in the middle of his backyard blocking the view of the creek and it is a good looking shed that they propose to go back there but that wasn't part of the purpose to put that back there to see it but over in the corner better. He said it will be well off the front and back property lines and there will be no problems with the setback there just mainly the side yard. He referred to the GIS aerial and pointed out a storm ditch where there is a break-off where the ditch and the west side of Kenston Lake comes underneath the road and then splits off and continues down on the side and it also splits off right there and feeds down. He said several years ago the township put a culvert in there so that has always been thought of as the property line. He explained the location of the two telephone poles that are at his property lines so he always figured that the ditch was the property line. He said he told his neighbors and they have no concerns with putting the shed back there. He said by meeting the statute and you have the setbacks is to control the amount of green space usage which is less than 10%.

Mr. Lamanna said the other thing too is if somebody wants to build a shed and they don't want to look out their backyard and see it but the trouble is the neighbor doesn't want to look out his backyard and see it either.

Mr. Halfacre said when the neighbors received the letter about this they thought he was going to put it, now that we have the creek down there, right down there on the creek but he doesn't know if that ground would even hold a shed anyway.

Mr. Lamanna asked what the maximum distance is he can come over and right now it is 15' but asked Mr. Halfacre if he can bring it over another 5'.

Mr. Halfacre said yes 20' would give him a starting point and he would just have to move it over a little further but that would help.

Mr. Horn asked if this is replacing an old shed.

Mr. Halfacre said no this would be a new one in addition to the other one and this one is much bigger so the other one will probably disappear over the next couple of years because he won't really need it.

Mr. Horn asked if he could put the new one where the old one is.

Mr. Lamanna said that is just as bad.

Mr. Lewis said we would now have two buildings.

Mr. Halfacre explained the tree line so it is kind of sitting back there.

The board discussed the variance request.

Mr. Halfacre said they would paint the shed the same color as the house.

Mr. Lamanna said typically the board does not like to go below a 25' setback unless there is a really good reason.

Mr. Halfacre said 25' is probably doable with the trees and the leach field because it won't be that much further over.

Mr. Olivier asked if it could be oriented the other way.

Mr. Halfacre said it could.

Mr. Olivier said it would bring it over.

Mr. Lewis said either way, it is Mr. Halfacre's choice.

Mr. Halfacre said he wanted it sideways because that is where he wants to have a couple of windows and could look out onto the creek but it could go either way.

Mr. Lewis said he is okay with the 25' setback but he would like to see the old shed go away and put a clock on it.

Mr. Lamanna said the board will give the applicant a year to remove the old shed.

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

Motion BZA 2011-28 – 17885 Kingswood Drive

Mr. Lamanna made a motion to grant the applicant the following variance for the purposes of constructing a 12' x 16' shed as set forth in this application.

1. A variance from the minimum required setback on the northeast property line of 50' to 25' for a variance of 25'.

Based on the following findings of fact:

1. A practical difficulty exists because of the steep drop off into the former lake area and the location of the applicant's leach fields.

Mr. Lewis seconded the motion.

Vote: Mr. Horn, aye; Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye.

Application 2011-29 by Mark A. Murphy for Thomas Poultney III for property at 7114 Cedar Street

The applicant is requesting an area variance for the purpose of installing a landscape wall. The property is located in a R-3A District.

The zoning inspector's letter dated November 17, 2011 was read.

Mr. Mark Murphy recused himself from this application because he is representing the applicant.

Mr. Mark Murphy and Mr. and Mrs. Thomas Poultney were present to represent this application.

Mr. Murphy testified that the Poultney's would like to do something about the continued flooding of their property and they have been in the papers along with the other people involved, they are the first home on Cedar Street right behind the roller rink down there in Chagrin Falls. He said when that beautiful little creek jumps out of the bank as it has four times now in the past year it has ended up over their garage floor and Mr. Poultney restores pianos in the garage workshop there part of his time so flooding grand pianos is not a good thing. He said the water comes right up to the threshold of the front door (three or four times this year). He said two years ago the Geauga Soil and Water District and everybody else from the Bainbridge Township Board of Trustees to the county, got involved but apparently they didn't get the Army Corps of Engineers involved.

Mr. Murphy referred to the GIS aerial photo and explained the location of the creek where it is behind some of the houses on Cedar and then it comes across the street to the culvert that was just replaced this year and the creek goes this way right behind the roller rink and it goes right up against the back end of the plumber's building, then goes down here and over and maybe two more houses and runs across South Street and becomes Chagrin's property. He said downstream from here it never floods because the creek bed seems to be a little bit wider, four or five feet wide and deep enough for that water to go. He explained the location of Mr. and Mrs. Poultney's house and said they own the next lots as well and they built the house in 1959.

Mrs. Poultney testified that they moved into the house in 1959.

Mr. Murphy said as everybody upstream has poured more concrete and we have a new culvert here, there is a storm sewer that comes under this area from up here in the parking lots and so as the floods we had up there, there is a three foot pipe that comes right out of the concrete right here (he referred to the GIS aerial photo) from these drains up here and they are working on clearing them out up here right now so the last storm deposited about 1.5' of gravel right in the side yard of their house right now, river washed, beautiful stone right onto the lawn just in a plain regular rain storm because the creek jumps the bed here (he referred to the GIS aerial photo) and deposited stone on the lawn. He said they just put the culvert in and the big storm they had last year had lawn chairs and lawn furniture and things that plugged this side of the culvert so the water from the stream completely jumped on top of the road and carried boulders and tree trunks down Cedar Street this way strewing all the way down the street but unfortunately their driveway falls right off and is down hill to their garage door so their house got flooded again there and what they would like to do is stop that. He said when Kyle Dreyfuss-Wells was out there with them Mr. Poultney asked what can they do and she said build a wall so what he is going to try to do is build them a wall. He said they are going to do several things and they are going to start with their driveway apron which off of the road berm it runs down hall. He said they are going to change that, they are going to start at the road berm and they are going to elevate their driveway apron and eliminate that worthless garage drain right there. He said from the road they are going to climb 16" in about four feet and then from there kind of level out and then back down to the driveway. He referred to the GIS aerial photo and said they are going to add protection from the road so the next time this floods over here again and it is coming down the road there has got to be at least 16" of water on Cedar Street to get into their yard and then starting at that high point of 16" right there on the side of the driveway we are going to start a concrete block wall down to footer depth, frost footers at 42", 8" masonry blocks, we are going to go at an angle to the property line and then straight back along the property line to the tree line, maybe four or five feet from the creek bed, flip this corner and we are going to go down the length of their property to the end of their house. He explained that the top of the wall is 3' high, the Poultney's are going to spend some of their money to protect themselves and the only reason he is here is for the riparian purposes, since they are building a decorative landscape wall, along the back and side of the house, they are supposed to be 25' off of that creek but the back of their house is 25' from the creek so there is no way you can build them a protective flood wall anywhere back here without requiring a variance.

Mr. Horn said their lot is .15 acres.

Mr. Murphy said yes and the two other lots are the same size. He said part of the other problem is that it is narrow and floods all of the time. He explained the neighbors behind them and said one of them poured giant concrete footers right in the bed of the creek, like a retaining wall, so right behind them it gets worse and it narrows down, the neighbor downstream has a shed right on the back of the stream. He said when it rains it takes about three seconds to fill up and come right out of the banks. He said what they are proposing on doing shouldn't change anything downstream, they are not changing the amount of water that will or won't come through here, if the water is out of the banks and trying to go through their house, they are going to divert it around the back a little bit, we are not going to go to the edge of the creek, we are going to stay 5' off, there will be a little bit of bank to go on. He explained the area that is low and flat and fills up with water and then takes weeks to drain so they are going to pull the bank off so it will drain and put some pipe underneath that and once the water goes beyond this, if in fact they have another giant flood situation here, the water will have the ability to come back and fill this whole lawn back over here, we are counting on it not backing up uphill to come back up to the front door.

Mr. Lamanna asked if a berm will be put in across the front of the house.

Mr. Murphy said yes, once we raise it 16" we will take the berm down the driveway or possibly having a 16" high landscape wall across the length of the house so if in fact it is coming down the street again, we get it at least past their front door. He said they will work on that but they don't need the board's permission for that, what we need is just permission to build within 25' of the riparian.

Mr. Horn asked if it will be 5' off.

Mr. Murphy said from the edge of the existing stream, before they build this, they need to get a surveyor out there to find that line. He said according to what he has seen, their property doesn't actually reach the stream. He said there is the stream and about 4' or 5' of shrubbery and then their lawn so he would like for them to keep their 20' of lawn and then it would be about 5' from the stream or actual defined creek bed.

Mr. Lamanna asked if the stream has a pretty good defined bed.

Mr. Murphy said it does yes and they are asking for a variance from the riparian setback from 25' to 5'.

Mr. Lamanna asked how clean the edge of the stream bed is and if it is pretty straight.

Mr. Murphy said it is pretty straight.

Mr. Lamanna said if the board gives a 5' variance and if the stream bed is now eroded.

Mr. Murphy said they should have gotten the Army Corps of Engineers in there and they should have widened this to seven or eight feet and they should have torn all of that concrete out from back here and everything else and by eminent domain, fixed the creek bed to the point where it might hold the water because once it crosses over to Chagrin it is five or six feet wide and four feet deep and that much water just goes every time because it is big enough. He said they put this brand new culvert across there and it is now half filled with silt, they built giant pits on either side to make sure it wouldn't fill in right away but it filled in the very first rainfall and it is now solid silt from here all the way across and it is only 2 ft. high instead of the 4 ft. culvert and it is 12 ft. wide and half full of silt already again this year.

Mr. Horn said yes that is what happens, it gets filled up and then it backs up and the stream gets higher.

Mr. Murphy said it will be across the street again even without jumping the street because of that culvert pipe there jumping into the stream on a good rain, it is jumping out of the banks here and flooding all of this area right up against their house and that is just on regular rain storms.

Mr. Lamanna asked if they are far enough away along that one property line.

Mr. Murphy said a concrete ramp by the roller rink on old timbers is collapsing and they tried to contact somebody to take that down because when that collapses it will just flood the neighbors again and it is on its way down and when it does collapse it will block this stream bed and their house will be flooded again and so they are trying to prepare for that.

Mr. Murphy asked if the person is here who owns the roller rink.

Mrs. Poultney said she had to leave.

Mr. Murphy said the owner of the roller rink is thinking about digging it deeper perhaps which won't do anything and even widening it to this point will do nicely for that lot but will not do anything for the Poultnes and without being able to do anything downstream, this is what they would like to try to do. He asked if there are any questions.

Mr. Lewis asked the board if they feel this falls under a practical difficulty.

Mr. Lamanna replied yes. He asked Mr. Murphy how far off the property line the stream is. He said he hates to give a variance and then find out it is only 23' from the property line because in some places it is bowed out just because of erosion so he was thinking of giving a variance, whatever it is along that east property line and along the north property line, so many feet from the property line.

Mr. Murphy said he could go within one foot of the stream but he will try to go bigger.

Mr. Lamanna asked if the wall will go in a straight line.

Mr. Murphy said absolutely and added that there is a complete row of shrubs, the creek goes down there and then the bank sits and the bank of course has been built up and is part of the reason why they have a giant lake here (he referred to the GIS aerial photo) is that people on the bank keep stacking more stuff up on the bank trying to keep the channel thinking that the channel is going to get the water away quicker as opposed to the opposite that is true so there is the center of the stream and according to this that is not even on their property. He asked Mrs. Poultney if the stream is on their property.

Mrs. Poultney said when they built the house the lot line was in the center of the creek then and the man behind them started building the wall and he went out in the creek and built the wall without any permission and after the first storm it collapsed so he rebuilt it and put pipe down through the concrete block and it is still standing and the guy next door built the wide part. She said what really caused the big problem is when they put the new culvert in and then they connected the drain that comes down the side of the road and it angles right towards the back of their house.

Mr. Murphy said he would like to go right to the property line so he is asking for a 24' 9" variance.

Mrs. Poultney said also where the driveway is now when the last flood came down, they closed in their garage and have half of it as music and an exercise room and there are patio doors and it comes in there and soaks the carpet and runs down the steps lower where his shop is and storage room and it just goes in there.

Mr. Lamanna suggested going parallel to the lot line.

Mrs. Poultney said they get a lot of mud also.

Mr. Lamanna said at least 2' from the property line but no closer than 2' to the stream.

Mr. Murphy said okay. He said he doesn't know where the corner is and depending on what day you are on Access Geauga they either show the property line or he has seen it in the stream or even a little bit closer this way, it was really off the one day he was looking at it, it wasn't even centered on the street so this looks different than the one he printed up.

Mr. Lamanna said the board can give a variance to build it 2' from the property line and you would have to stay at least 2' from the stream.

Mr. Murphy said that would be wonderful and he doesn't want to get that close to the stream.

Mr. Lamanna said if you find you can build it farther away, he assumes it will be built as far away as it can because if someone in the future does want to widen the creek, the wall won't be in the way.

Mr. Murphy said that will work.

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

Motion BZA 2011-29 – 7114 Cedar Street

Mr. Lamanna made a motion to grant the applicant a variance from the riparian setback of 25' as follows:

1. A variance to build a retaining wall along the east side of the property line from the front to the rear property line (adjacent to the roller rink property) and then along the north property line, parallel to the property line to just past the west end of the house.
2. A variance to build 2' off the property line but maintaining at least 2' from the defined stream bank along that northern property line which covers both parcels (PP# 03-013200 and PP# 03-013100).

Based on the following findings of fact:

1. A practical difficulty exists.
2. This work is being done to put in a retaining/landscape wall as shown on the applicant's plans in order to prevent a stream overflowing with regularity from entering into the property dwelling.
3. These are very small lots.
4. The distance from the house to the stream is such that this protective retaining wall could not be installed and satisfy the riparian setbacks.
5. The applicant has also consulted with the Geauga Soil and Water District and they don't have an objection to placing this retaining wall at this location.

Mr. Lewis seconded the motion.

Vote: Mr. Horn, aye; Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Olivier, aye.

Since there was no further testimony, the public hearing was closed at 9:42 P.M.

Respectfully submitted,

Christopher Horn
Michael Lamanna, Chairman
Todd Lewis, Vice Chairman
Mark Murphy
Mark Olivier

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

Date: December 15, 2011

AUDIO RECORDING ON FILE

BZA PH 11/17/2011

-36-

Bainbridge Township, Ohio
Board of Zoning Appeals
November 17, 2011

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 9:42 M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Christopher Horn, Mr. Todd Lewis, Mr. Mark Murphy and Mr. Mark Olivier.

Minutes

Mr. Horn made a motion to adopt the minutes of the September 15, 2011 meeting as written.

Mr. Lewis seconded the motion.

Vote: Mr. Horn, aye; Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye.

Applications for December 15, 2011

Application 2011-30 by The Wembley Club for property at 8345 Woodberry Boulevard

The applicant (new owner) is requesting a conditional use permit for the purpose of maintaining an existing tennis club. The property is located in a R-3A District.

The Bainbridge Township Board of Zoning Appeals set a public hearing on the above application for December 15, 2011 at 7:00 P.M. at the Bainbridge Township Community Hall, 17826 Chillicothe Road, Bainbridge Township, Ohio and unanimously resolved to request the Bainbridge Township Board of Trustees to issue a purchase order for legal advertising.

Since there was no further business, the meeting was adjourned at 9:54 P.M.

Respectfully submitted,

Christopher Horn
Michael Lamanna, Chairman
Todd Lewis, Vice Chairman
Mark Murphy
Mark Olivier

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

Date: December 15, 2011