

Bainbridge Township, Ohio
Board of Zoning Appeals
November 19, 2020

Pursuant to notice by publication and ordinary mail, the public hearing was called to order at 7:00 P.M. by Mr. Michael Lamanna, Chairman. Members present in person were Mr. Mr. Ted DeWater; Mr. Joseph Gutoskey and Mr. Todd Lewis. Mr. Michael Corcoran, Mr. Brent Barr, Alternate and Mr. Ian Friedman, Alternate were present via Zoom. Ms. Karen Endres, Zoning Inspector was present in person. Mr. Jeffrey Markley, Bainbridge Township Trustee was present in person to monitor and host the Zoom meeting.

Others present via Zoom were Martha Cathcart, Colleen Ryan, MBlace, Jarrod Turner, Kathleen Dangelo, Tommy Chesnes, Jamie Brotherton, Laura Simmons, JP Ayappen, Megan Donahue, Robert Jones, Chris Weathers, Glenn Knific, Shannon Holodinski, Anne Backus King.

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

Mr. Lamanna swore in those present in the room: Mr. David Cathcart, Ms. Bridey Matheney, Mr. Joe Laehu, Ms. Lynette Laehu, Ms. Linda Nolan, Mr. Bruce Corson and he let the record reflect that Mr. Cathcart, Ms. Matheney, Mr. Mr. Laehu, Ms. Laehu, Ms. Nolan and Mr. Corson were duly sworn.

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

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

Mr. Jason Dalessandro, property owner and Mr. Shane Heckert of American Construction Group were present via Zoom to represent this application.

Mr. Lamanna swore in Mr. Jason Dalessandro and Mr. Shane Heckert and he let the record reflect that Mr. Dalessandro and Mr. Heckert were duly sworn.

Mr. Shane Heckert testified that they are requesting a variance to install and build a pool house structure, an in-ground pool and an outdoor kitchen which is outside of the setback requirement for that lot and they are asking for a variance for that.

Mr. Gutoskey asked what color the roof is going to be for the pool house, it looks like the siding will match the house.

Mr. Heckert said it will match the existing home, for the pool house structure.

Mr. Gutoskey asked if the roof will match the house.

Mr. Heckert replied yes, it will be a metal roof.

Mr. Gutoskey said the only problem he has is the encroachment into the front setback with the kitchen area, you already have a variance for 44' versus 50' on the house on Mystic Ridge and typically we try and keep any buildings or improvements behind the shoulders of the house.

Mr. Lewis asked if he is going to go through all of the elements of this in a little bit more detail to make sure we understand what you are asking for. He said it looks to him like there may be as many as five variances being requested and he just wants to get a clarification on each component exactly so let's start with the arbor/grill pizza oven area. He said on that one, as Mr. Gutoskey had already mentioned, that there is a pre-existing variance on the shoulders of the house, it was 44' off the side yard and what you are asking for on this is to go to 26' 6" off the side yard and asked if that is correct.

Mr. Heckert said that is correct.

Mr. Lewis said now let's look at the patio area and that would be a rear setback and you are asking for a variance on that from 50' to 24' 1", is that correct.

Mr. Heckert said that is correct.

Mr. Gutoskey said there are no structures involved.

Mr. Heckert said that is correct.

Mr. Lewis said the pool itself, the rear setback on that, 45' 1" versus the 50' requirement, is that correct.

Mr. Heckert said that is correct.

Mr. Lewis said the pool house, 30' 9" versus the 50' requirement, is that correct.

Mr. Heckert said yes.

Ms. Karen Endres, Zoning Inspector testified that one is for the arbor and one is for the pool house itself.

Mr. Lewis asked which one is for the arbor, the 30' 9" or the 41' 2"

Ms. Endres said the arbor is the 30' 9" and the pool house with the roof on it is the 41' 2".

Mr. Lewis said that matches up with the drawing as well. He said he needs to ask the applicant if he is aware that Canyon Lakes has a lot of very heavy restrictions on it that were negotiated years ago along with a journal entry with the township.

Mr. Jason Dalessandro testified that he was not aware of that agreement, he is not exactly sure when that was done but Canyon Lakes definitely has some tight restriction requirements.

Mr. Lewis said right so the restrictions on that require 50' front and rear setbacks and 15' on the sides so your plan encroaches beyond what the township has with the legal judgment entry agreement with Canyon Lakes and he thinks it goes back 10 to 15 or 20 years when Canyon Lakes was set up and originally proposed.

Mr. Lamanna said it was 30 years ago.

Mr. Lewis said when the home got built the builder was gifted the one variance on the side yard setback of a few feet less than 50 and as Mr. Gutoskey mentioned to offer additional relief on the existing variance in lieu of the journal entries seems a rather extravagant request. He said moving the kitchen area to within the shoulders of the house or the pre-existing approved setback making it more appropriate, you may want to revisit your plan. He said he is sure other board members will want to comment, he had some things that he wanted to get into the record.

Mr. Lamanna said the major issue here is you have got to demonstrate, number one, we are kind of in an interesting situation because this property is subject to a judgment entry where the setbacks that are allowed are substantially less than the setbacks that were in the applicable zoning so we could probably be pretty hard-nosed and say this is a judgment entry and we are going to follow the judgment entry and even if we are going to consider an area variance you have to demonstrate some kind of practical difficulty and he is not seeing much of a practical difficulty here. He said the other thing is he wants to put a lot of stuff on his lot and his lot is not very big and therefore he is going to build out to the edges of it, that is not a practical difficulty so he thinks we need to address some of these things and in some cases we are talking about we want 50% from setback requirements so again like he said we are starting off with a judgment entry which is substantially less than what would normally require and that is a pretty big variance so it would take a significant standard to show some kind of practical difficulty to allow that kind of a variance. He said to get down to four or five feet, that is maybe something we can consider here. He said he has a question for the Zoning Inspector and asked Ms. Endres. He asked if the kitchen area is another building. He asked the applicant, there is an astro-turf area shown on here, is that for a particular reason, is that designed for some kind of volleyball court or something like that or is it just an area in lieu of grass or patio.

Mr. Dalessandro said it is actually grass, it is just a grass area, it is not a hardscape or any concrete, it is literally grass, it was originally designed to be turf but we decided to go with just sod and we proposed it to just kind of soften the area.

Mr. Lamanna said just so he understands, currently there is a small existing deck behind the house.

Mr. Dalessandro said there is no deck behind the house.

Ms. Endres said there is a patio.

Mr. Dalessandro said they tore out the patio, right now it is just grass. He said that would be removed, the concrete area, because that is where the pool is going.

Mr. Gutoskey said he considers the trellis as more decorative and added that the pizza oven and kitchen are sticking out into the front setback.

Mr. DeWater asked if that area that was marked artificial turf is just going to be a lawn area surrounded by sandstone why couldn't you move your pizza oven/kitchen into that grass area and that would remove one of the variances and probably gives you a little bit better use and it maintains some green space for you.

Mr. Dalessandro said the whole purpose of them having that grass area, and it was one of the things they liked about the design was so you are not having all hardscape and you can actually use the grass area for a lot of different things. He said you can have different options for that grass area and it was one of the more unique designs was to have that grass and they have little kids rather than the hard concrete.

Mr. Lamanna said we are having a little technical problem hearing you at the moment, we are getting feedback from something.

Mr. Dalessandro said on the grass area, probably one of the favorite features is the grass area and they designed it for the purpose of having something soft around the pool so you don't have hard concrete, we have little kids and we want to be able to have that area set aside for that so he definitely wouldn't want to move the grilling area to there plus the reason the grilling area is where it is, their patio door comes out there on that side, on the back corner of the house, so they are trying to keep it as close to that side of the house as possible and we have those Pine trees, those Pine trees are along about 30', it is screened off from the road completely and the rest of it going back to the sidewalk off of their driveway, they have a landscape plan from Breezewood, they are going to screen all of that as well so none of that area will be visible from coming in the drive or from Mystic or anything like that from the backyard.

Mr. Dalessandro continued by saying they planted another 15 Pine trees along the back property line this summer similar to how they did it on Mystic to kind of keep it screened around the whole pool area. He said the picture you are looking at there, he doesn't know how old that is but those Pine trees are kind of filled in along Mystic and it is pretty much screened off. He said where you see those Pine trees along Mystic, we continued that Pine all the way around the back property line too this summer and then it also wraps up the other side so the entire back yard, preparation for this we want to make sure we have plenty of screening back there with landscape and whatnot so if that makes a difference.

Mr. DeWater said he is going to go back to the pizza oven again, it is just a convenience for the location for your sliding glass door, it is not out of necessity so there is no hardship there and with you expanding the hard surface as it is with the pool and all of the patios you really should consider tucking that into some of the other areas, maybe eliminating one of your arbors on the side of your pool house and put it over there, you just have to get further back from the right-of-way there so we are not giving you so many variances to accomplish a project that should not have that many.

Mr. Heckert said so you do not want it there at all, it is 27' there, it is not a matter of moving it a little bit or it is a matter of not encroaching at all.

Mr. DeWater said no more than 44' that has already been granted because the judgment entry already gave you 50' and it is way outside the envelope of your house.

Mr. Heckert said they can take a look at that, there are some other options they can look into and more than likely it is going to have to get moved to the side of the pool house if that is what they have to do, he can do that, that was another option he was looking into, they just like the way it was, the pool house at one end, the bar at the other end, it would work nice but they realize it is encroaching quite a bit there.

Mr. Gutoskey asked if there is anybody else in the audience or on Zoom that wants to comment on this item.

Mr. Corcoran said he has no other comments he thinks the board covered pretty much everything.

Mr. Lamanna asked if this is a second accessory structure or not.

Ms. Endres said it is part of the patio, a lot of times patios have firepits.

Mr. Lamanna said this is a little more than a firepit.

Ms. Endres said you are right.

Mr. Lamanna said it has got counters, a refrigerator, a pizza oven, a bar, stools and a permanent roof, it is another accessory structure. He said it can be solved by attaching it to the pool house and then they would have one accessory structure. He asked Mr. Dalessandro if he understands what the board is saying here.

Mr. Dalessandro said yes.

Mr. Lamanna said there is an issue about having two accessory structures and he thinks that this area here would be another accessory structure so one way out of that problem would be to attach it to the pool house and it would solve the setback problem for the most part and it would also solve the second accessory structure problem.

Mr. Dalessandro asked Mr. Lamanna to explain the accessory structure problem.

Ms. Endres said accessory buildings.

Mr. Lamanna said this has kind of become a building so you can only have one accessory building.

Mr. Dalessandro asked if this is considered a building.

Mr. Lamanna said yes, he thinks so, when we get this elaborate it has become a building, it is not like an outdoor grill, you've got seating, a refrigerator.

Mr. Dalessandro said it has a trellis over it for some lighting to get some light in there, they are basically doing a grill, the configuration you see there is correct but it is basically a grill and a bar, that is about it, it is a knee wall with a counter top and he doesn't know if the drawings are included in what the board is looking at but there is a page in his set that has the elevations and details of it.

Mr. Gutoskey said we have that.

Mr. Lamanna said he needs some clarification on what we have on what is in the setback line right now. He said he would say to bring back a whole new plan because we have so many moving pieces here that he doesn't think that we can really address this without seeing the revised plan because there are so many details that to try to sit here and craft something that brings all of these things in and not forget things or make mistakes. He said if you were standing here before us and you could come up and mark up things we probably would be able to do it but he thinks at this point he thinks you (Mr. Dalessandro) see where the board is coming from.

Mr. Lamanna continued by saying if you can go back and revise the plan, you have to make it very clear on what structures remain or don't remain and whether we've got issues with pieces of patio, where there are walls or patios that stick out, we've got to make sure that we've identified all of these encroachments into the setback areas.

Mr. Dalessandro said in terms of the bar area, if that is a problem, it is gone, consider it gone, he won't do it, he will figure something else out but he doesn't want that to hold this up if we can, if that is acceptable then he won't even build the bar area but we haven't really gotten to the pool itself yet which is really the whole reason he is here, you guys are talking about this other stuff but he will agree right now that they won't build that structure and they will get a revised plan without it but he is kind of up against the time here of getting the pool started and he really needs to get this because they were supposed to start back in September and now it is December but in terms of the other structure the only other structure is the pool itself and the pool house. He said the pool house and the pool you will see the pool itself is, the one corner of the pool is 45' which is 5' encroaching on the 50' setback. He said the pool house structure is 41' so it is encroaching 9' to the setback, the other side is not encroaching into the 15' setback so we are really talking about the one west, south side of the pool house and the southwest corner of the pool itself.

Mr. Lamanna asked what about on the other side of the pool, do we have anything that is other than the flat patio that is allowed to encroach.

Ms. Endres said the flat patio is within the 50' setback but that is nothing major, the biggest thing was the setback from the road right-of-way.

Mr. Lamanna said you say nothing major but it still requires a variance.

Ms. Endres said right, that is why we listed it here. She said the most intrusive thing was against Mystic Ridge.

Mr. Lamanna said we are still talking about variances, it may not be intrusive but it is still not permitted without a variance.

Ms. Endres said right.

Mr. Gutoskey said you also have variances on Mystic Ridge.

Mr. Lamanna asked where is that patio going to end now.

Ms. Endres said the 44' setback goes with the property.

Mr. Gutoskey said he thought it was just for the house, does the 44' setback go to the property or is that just for the house.

Ms. Endres said it is one of those fine technical points.

Mr. Gutoskey said the variance was granted specifically for the house, not for any other structure.

Ms. Endres said right.

Mr. Lamanna said be that as it may he thinks the board would allow 44'.

Mr. Gutoskey said he would agree with that.

Mr. Lamanna said we still have to figure out what else extends beyond that.

Mr. Gutoskey said it looks like the pool from Mystic Ridge is 47' 1" and then you've got 45' 1" from the corner to the rear.

Mr. Dalessandro said if he was to get rid of the grilling area, basically he would just take that straight line across there with the concrete.

Mr. Lamanna asked which straight line are you talking about.

Mr. Dalessandro said he wouldn't have that bump-out, there would be a 10' straight line across there, they wouldn't have the grilling area at all so when you are talking about concrete, there is a 44' setback basically to his garage corner so it might be a couple of feet beyond that it looks like.

Mr. Gutoskey said the concrete pad is not a problem so it would be 47' 1" as the closest to the pool, the 10' pad around is okay. He said there is a stone border.

Mr. Dalessandro said it is not hardscape it is landscape. He asked why is a stone border, a dry set paver in the grass a problem, he doesn't understand, it is not poured concrete or anything like that, it is not a hard surface.

Mr. Lamanna said it is hard surface, the question is if it becomes a structure or not.

Mr. Gutoskey asked if it is a retaining wall.

Mr. Dalessandro said no, it lays flat, it is just a border to outline the grass.

Mr. Lamanna asked if it is just a mowing edge.

Mr. Dalessandro said yes.

Mr. Lamanna said to divide the grass from the non-grass, that is okay.

Mr. Dalessandro said that is all it is, that is a good way to put it, a mowing edge.

Mr. Lamanna said we are okay with the pool.

Mr. Gutoskey said it is 47' 1" on the Mystic Ridge side.

Mr. Dalessandro said 47' 1" is to the corner of the pool it appears and then if he can get 10' so that it would be 37' 1" to the edge of that concrete that keeps him at 10' for a walkway around the edge of the pool.

Mr. Lamanna said there will be a variance for the pool, maybe two variances for the pool, 47' 1" from Mystic Ridge and 45' 1" from the south property line.

Ms. Endres said from what she understands, the biggest issues are the vertical structures, is that what she is understanding.

Mr. Lamanna said right and to get rid of the south arbor, the pool house will be 41' 2".

Mr. Lewis asked if the chimney counts.

Ms. Endres said chimneys are okay.

Mr. Lamanna said we've got the setbacks to the pool, the pool house and then for the patio. He said the patio will have a setback of 35' from the rear property line and the board is allowing 10' around the pool. He said the patio will end at the corner of the pool house.

Mr. Dalessandro said correct.

Mr. Lamanna said we will have the Zoning Inspector calculate what these numbers are and then we will add them to the decision. He said the pool will be located where it is. He said we have three corners to the pool and two dimensions to the rear property line from the corner of the pool and two dimensions to the Mystic Ridge property line for the pool so we want to get those accurate numbers for the location and right now we know that one is 45', one is 47' 2-5/8" and one is 47' 1" so we will get those numbers and that will be for the pool and then the patio will sit back in 10' beyond that. He said the pool house will remain where it is as shown as 41' 1-3/8" so get those dimensions back to us confirmed to the pool corner.

Ms. Endres said to provide her a new site plan, remove the vertical structures.

Mr. Lamanna said what we would like is for you (Mr. Dalessandro) to submit to the Zoning Inspector a revised site plan as soon as you can that shows all of these changes you agreed to with the appropriate numbers.

Mr. Dalessandro said 10' around.

Mr. Lamanna said right so all of the distances are identified.

Mr. Gutoskey said no trellis.

Mr. Dalessandro said wait, can we talk about that for a second, that throws the entire pool house off without the pergola on there, what is the harm with that, what is the issue there.

Mr. Lamanna said please understand, the issue is not what's the harm, it is your burden of proof to demonstrate there is a practical difficulty that requires us granting you a variance to allow you to build in the setback area. He said we are being pretty generous here already.

Mr. Dalessandro said okay.

Mr. Lamanna said that is really pushing the envelope to push that structure out that far. He said he understands that it doesn't look exactly the way you'd like it but that is sometimes the price you have to pay for the configuration of your property so that will be your job to get a revised site plan to reflect these points and then we will go ahead and we will act on this and then you will be able to go ahead and get your zoning certificate when you bring your site plan in to the Zoning Inspector and she reviews it and approves it as being in compliance with what we decided here.

Mr. Dalessandro said okay.

Mr. Lewis said he wants to know exactly what color that roof is going to be.

Mr. Lamanna asked if there is a color for the roof.

Mr. Dalessandro said yes, everything is going to match the house, the stone on the fireplace is the same stone we have on the house, all of the cladding and whatnot will be the same and the roof on his front porch is a copper seam roof as well as the bump-out in the dining room and they plan on doing the same thing on their pool house and that is to match the existing roof. He said over his porch from the front of the house is a copper roof.

Mr. Lamanna said you have the unfortunate happenstance that you happen to be on the agenda with another application where roof color has become a major issue. He said we don't want any issues like that again in the future if we can avoid that. He asked if anyone else has any further comments.

Mr. Corcoran said he had nothing further to add.

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

Motion BZA 2020-34 – 7585 Cottonwood Trail

Mr. Lamanna moved to grant the applicant variances with respect to the construction of a pool, pool patio and pool house with a modified design submitted by the applicant.

1. The applicant in general terms will be removing a grill and bar area and will also be removing a trellis shown on the backside of the pool house and patio underneath that and will have around the back on the Mystic Drive side a 10' wide patio in front of the pool area.
2. The pool house, the nearest corner to the rear property line will be 41' 1-3/8".
3. The corner of the pool will be 45' 1-1/8" with the other corner to be determined.
4. The distance from Mystic Ridge will be approximately 47' 1" (front setback for the pool).
5. The applicant will provide, prior to issuance of the zoning certificate, a revised site plan showing these changes and with the calculations of the actual distances from the corner of the pool and the patio from the property lines for review by the Zoning Inspector to assure consistency with this decision with the understanding that if there are changes of a few inches or so it is at the discretion of the Zoning Inspector to adjust those to conform to the actual final site plan as approved for the final actual variances with respect to those structures.
6. The board does note that the applicant has consented to these changes.

Based on the following findings of fact:

1. The board grants these variances based upon practical difficulty due to the nature of this lot which is somewhat a shorter distance behind the house to the property line.
2. The board does not believe that as granted this is unduly burdensome to the neighboring properties or inconsistent with the character of the neighborhood.
3. The board also notes that the applicant has planted Pine trees around the property line, around the edge of the property which will help screen this area which will mitigate the impact on the adjacent property owners.

Motion BZA 2020-34 – 7585 Cottonwood Trail - Continued

4. The board notes that the applicant's metal roof will match the existing metal roofs on the residence on the property.

Mr. Lewis seconded the motion.

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

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

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

Mr. Joe Gutoskey stated that he is going to recuse himself from this application.

Mr. Lamanna let the record reflect that Mr. Gutoskey has recused himself from this application.

Mr. Brent Barr, Alternate stood in for Mr. Gutoskey via Zoom and represented the fifth member on this application.

Ms. Kathleen Dangelo, applicant and Mr. Tommy Chesnes were present via Zoom to represent this application.

Mr. Lamanna swore in Ms. Kathleen Dangelo and Mr. Tommy Chesnes and he let the record reflect that Ms. Dangelo and Mr. Chesnes were duly sworn.

Mr. Lamanna asked the Zoning Inspector to give a brief outline of what is happening here.

Ms. Karen Endres, Zoning Inspector testified that a zoning certificate was issued for a patio a while back and the patio was inspected but in addition to that patio a pavilion was also constructed and it was not part of that approval. She said the pavilion does encroach into the rear yard setback which is why we are here today.

Mr. Lamanna said tell us how we ended up in this situation.

Ms. Kathleen Dangelo testified that she does apologize for being in this situation, it was our assumption that the architect for the Ohio Valley Group which built the building received a permit for the pavilion at the same time he requested and received the overall landscape design permit, he thought it was permitted, he did not know otherwise and unfortunately he is no longer our employee.

Mr. Lewis said the copy of the zoning certificate merely states that the patio and patio only is what was approved and the site plan at that time showed a possibility of a pavilion designated as future so there were no plans submitted on it and it was not part of the original application for the patio.

Mr. Lamanna asked Ms. Dangelo if she heard that.

Ms. Dangelo said a little bit of it.

Mr. Lamanna said in reviewing the documentation there is nothing on the zoning certificate or on the previous plans that show any approval of this, there was only an indication of a possible future expansion.

Ms. Dangelo said it was her belief and it was explained to her that the pavilion was included on the landscape plan.

Mr. Lamanna said here is the problem, by very definition, of a landscape plan is a landscape plan, it is not a building site plan, you can't go and submit a landscape plan and put a building on it. He said the building has to be separately approved and the building was never approved.

Ms. Dangelo said she understands now.

Mr. Lewis said and once again, Knowles is governed by judgment entries, legal judgment entries with a ton of restrictions on them with Bainbridge Township. He said this pavilion encroaches substantially on the guidelines that were legally pre-agreed upon and had the pavilion come before the Board of Zoning Appeals for a variance he is not so sure that the outcome would have been to your satisfaction.

Ms. Dangelo said it encroaches on a piece of land that is currently landlocked, it has severe ravines.

Mr. Lewis said he appreciates that but the journal entry is what it was regardless of what the adjacent property is.

Ms. Dangelo said she understands.

Mr. Lamanna said the problem is whether the adjacent property is landlocked or not there is no guarantee it would stay that way, it could be sold to somebody else unless the owner of that property is willing to come in and abandon his rights with respect to that property in some way, that is really not a self-cause to do that and again we have this problem of we have a judgment entry, the judgment entry allows things that the current zoning would not allow and it sets a whole bunch of standards for that that are different than what the zoning allows so when you come in and start asking us to change those things it is very difficult to do that because all of this was negotiated in terms of trade-offs and certain satisfying concerns and at the time it was done and now coming back and asking us to do something different especially after this was already built it places a significant burden on you to demonstrate why we should grant a variance under these circumstances.

Ms. Dangelo said this would not be her ideal situation because they have been very diligent in complying with the consent judgment entry all along during this element in fact we just recently planted 66 trees along the north border despite the fact that we had already planted evergreens on the mound that expired over 12 years ago but Ms. Endres thought we needed additional trees there and despite the fact that she did read what the judgment entry said and they are trying to be good neighbors so they planted trees along that north border.

Mr. Lewis said let's take up the issue of police reports and noise complaints. He said he is going to donate to the secretary of the Board of Zoning Appeals for the record 29 police reports that go back to early 2018 to present that were provided to him as a public record with Bainbridge Police Department.

Ms. Dangelo said she would be happy to talk about that.

Mr. Lewis said he would like to also talk about that over the last couple of years 2-1/2 years with regards to noise complaints there have been a total of six complaints filed, the first one back in September of 2018 by a Martha Cathcart on Knolls Way, there was one, and by the way that was on a Saturday night at 10:30 at night and these police reports are all being put into the record, they are a matter of, anybody can have these. He said the point is that all but one of them were on Saturday evenings, one was on a Friday, two of them there were no names given, one actually recanted, the other three which were done this year in July, August and September all on Saturday evenings, were all done by a Mr. Mark Consolo at 16940 Knolls Way and one was even phoned in at 7:30 in the evening so he wanted to talk about noise. He said he is sure there are some folks here that are Knolls residents that are going to want to speak to this.

Mr. Lewis continued by saying outdoor music in the Bainbridge Township zoning code is not listed as a permitted activity or use so therefore it is prohibited, it doesn't mean you can't have a band or a combo indoors, inside a structure with the windows and door closed, examples of that might be the Greenville, Coyote, Cowboy, Crooked Pecker, we have got a lot of them around town here so what has been happening with outdoor music and the pavilion is not permitted.

Ms. Dangelo said they haven't had outdoor music in the pavilion, not one time.

Mr. Lewis said he is just kind of reviewing because is going by the police reports and once again since this is a type of structure it is important that we get some of this stuff into the record.

Ms. Dangelo said she understands but there has never been music in the outdoor pavilion ever, it is mainly used as a rain back-up for outdoor wedding ceremonies.

Mr. Lewis asked if there ever was a DJ.

Ms. Dangelo said no.

Mr. Lewis said no DJs, no loud stereos, no outdoor music at all has been in there right.

Ms. Dangelo said not in the pavilion, no.

Mr. Barr asked what about under the covered patio.

Ms. Dangelo said they never had music under the pavilion ever, under the covered patio, until this year they never had any music under there, this year with COVID there have been several weddings where they decided to put their music outside to allow for guests to mingle more outside, this is purely a COVID concern and they would never normally allow that.

Mr. Lewis said it is not permitted outdoors whether it is a patio, a pavilion, a parking lot or out on the lawn.

Ms. Dangelo said okay.

Mr. Lewis said it is prohibited because it is not listed as permitted.

Ms. Dangelo said they can immediately stop putting any music out there although it is covered with screens, is that still considered outdoor.

Mr. Lewis said it needs to be in a completely enclosed structure, windows and doors closed.

Ms. Dangelo said okay, that is fine.

Mr. Lewis said and he also thinks that even if that is until midnight his guess is that if it is cranked up pretty loud you still may get a complaint or something from an adjacent resident.

Ms. Dangelo said with the exception of one wedding this year all of our music ends by 11:00 P.M., weddings have to be out of the building by midnight and in terms of the police reports that were generated for noise complaints we welcome the Bainbridge Township Police to come and check out all of those noise complaints which they have and every single one was found to be unfounded, we were not cited any time.

Mr. Lewis said right, one of the complaints and you can read these in the police reports is that said a DJ was asked to stop playing at midnight at 11:00 P.M. and he refused. He said he doesn't want to dwell on the exceptions or get real nitty gritty about it, the point of it is that the music has got to be contained and in the building with the doors and windows closed for any event you are doing under any circumstances so he is going to donate these to the secretary.

Ms. Endres said she is going to address parking with the upcoming application.

Mr. Lewis said let's talk about that, since we are talking about this property, we've got one unauthorized structure up right now that is encroaching and is in direct violation of the judgment entry and he thinks we have solved the recreational sounds coming from the property and he is understanding that there is a master plan and there is also now to be considered another structure that is going to go up on this property.

Ms. Dangelo said they filed a zoning application for another structure, yes.

Mr. Lewis said when we are only seeing half the plan today he is looking at it as an overall site plan, somewhere on here there is going to be another structure so there is going to be more variances possibly, there is going to be parking calculations to be configured and there is going to be the use and the hours of it. He said he does want to talk to you (Ms. Dangelo) also about the lighting in your pavilion, light travels a long way, the photos he has seen do not necessarily depict our lighting code which are full cut-off so the light is shining downward but horizontally there is no lateral bleed of the light or visibility. He asked what kind of lighting is in this building.

Ms. Dangelo said it is just a small chandelier that is turned off at 10:00 when we close.

Mr. Lewis said we will wait for the neighbors to comment on the hours that the lighting is on.

Ms. Dangelo said they are actually on a timer, she just confirmed it with our electrician today.

Mr. DeWater said he has a question about the pavilion. He said as he sees on the plan it said future pavilion and you did construct it so buildings require building permits so did the Geauga County Building Department inspect the construction of this and if so how did you get a building permit for it without a zoning certificate.

Ms. Dangelo said she did speak with Dan Spada on October 20, 2020 of the Geauga County Building Department and asked him about the pavilion and he told her that they had a permit for it and she didn't have to do anything else, she doesn't know if her architect gave it to him, she is not really sure what happened but she did speak with him and she asked him what he needed from her for this and he specifically said nothing.

Mr. DeWater said so the poles don't go in the ground on footers like a pole barn that would require a permit. He said who inspected it to make sure the poles were put in according to building code, who made sure that the roof structure was passing a snow load, all of that stuff requires plans and stuff approved by the building department and inspected by the building department so he doesn't understand if there is no building permit the building should not exist.

Ms. Dangelo said she did ask Dan Spada if it should be inspected and he said it was not necessary and she doesn't know why.

Mr. DeWater said he believes it would be necessary, it is a building of assembly too, you are having people under there.

Ms. Endres said she might be able to shed a little bit of insight on that, she doesn't think the building department typically gets involved with looking at structures that are already built. She said she doesn't want to speak for the building department but her understanding is they won't go back and try to inspect the building after the fact.

Mr. DeWater said okay so in that case if they did not pull the proper permits then there is no way we can give them forgiveness on here because if we gave them forgiveness and something happened that that building fell on somebody he would hate to put the township in that type of liability position. He asked Ms. Dangelo if she understands what he is saying.

Ms. Dangelo said she would be happy to have the Geauga County Building Department come, that is why she called Dan Spada about it in October.

Mr. Corcoran said when you talked to Mr. Spada and he said he didn't need to come and look at it does that imply that there was no permit pulled, is that what you are saying.

Ms. Dangelo said he told her that he had the plans and he looked at them and they looked fine to him, she is assuming her architect got the plans to him.

Mr. Lewis said he believes the direct question was a yes or no question, was there a building permit pulled.

Ms. Dangelo said she does not know.

Mr. Lewis said she is the property owner and she doesn't know and she paid to have this building put up but she doesn't know.

Ms. Dangelo said she did not see a building permit and when she spoke with Mr. Spada about it he told her everything was fine so she doesn't know why he did not come and inspect the building.

Mr. Brent Barr asked if the building was already built when you had this conversation.

Ms. Dangelo said yes, she had this conversation in October 2020.

Mr. Lamanna said he doesn't see any way that we are going to grant a variance for this unless we have in our hands some assurance that the building department, either you go in and apply for a permit after the fact but until we have something from them that indicates either they won't do that in which case that we are going to have to deal with some other way with the potential issues here, the problem is it is a structure that people go in and if something bad happens here we could be in a horrible situation if we don't have some assurance that this building was built in accordance with proper standards, we don't want to contribute to potential problems if there is a variance on it. He said he thinks it seems to him that the first thing that has to happen is you are going to have to go back to the building department and tell them that the zoning board is not going to go ahead unless you can get a permit or they can explain to us why they won't do that and whether or not they will send us a letter saying yes, we are satisfied with this building.

Ms. Dangelo said she can go back and talk to him again and tell him that.

Mr. Lamanna said he doesn't know what their policy is, if they have a policy and whether it is a valid policy, it might not even be a valid policy, they may be derelict in their duties if they don't deal with situations. He said they should tell you sorry, you didn't get a permit, tear it down.

Mr. DeWater said and this is not a unique request, we have had other people within the township do the same thing and we made them go to the building department and he believes the building department in one case may have had someone expose the posts so that they can prove that they were installed properly so that may be the hoop you have to jump through.

Mr. Lamanna said this is not the first time we have been through this rodeo, he thinks they have a way of dealing with it somehow but they are going to have to deal with it, we are going to have to have some formal response from them that we can look at and then we will decide what we do with that.

Mr. Lewis said he would also like to comment that in the interim you discontinue all activities and use of that pavilion as it could be a public safety issue and it is not a certified permitted building and that doesn't even touch the zoning issues.

Mr. Lamanna said he assumes given the date and the weather.

Ms. Dangelo said she actually has a wedding ceremony, 15 minutes, scheduled for Saturday this weekend.

Mr. Lewis asked when are we going to get to review your master plan.

Ms. Dangelo said she has a 15 minute wedding ceremony scheduled this Saturday under the pavilion and was wondering, she will have to tell the couple they can't have it under there, it is the last one of the year.

Mr. Lewis said correct.

Mr. Lamanna said all we can tell you is we are not going to approve further use of this building so you are violating the zoning ordinance by continuing to use it, we are not an enforcement agency here, we don't send somebody out but understand that you would be violating the zoning ordinance. He said if something happens you will have to explain that.

Ms. Dangelo said understood.

Mr. Corcoran said he has another question about the pavilion, it looks like the picture we are looking at on the screen from 2019, that is grass underneath the pavilion, is it still grass or is it hardscape now.

Ms. Dangelo said it is synthetic grass or synthetic turf.

Mr. Lamanna said don't misrepresent things like that, synthetic turf is not grass, he knows you (Ms. Dangelo) corrected yourself but please be careful.

Ms. Dangelo said it is synthetic turf.

Mr. Lamanna said thank you for correcting it. He said this is not going to get resolved tonight but since people did come we will give them the opportunity to be heard on this issue and that will be part of the record and they won't have to come back and say it again so he will start with the Zoom people so if there is anybody on Zoom who wishes to speak with respect to this application, raise your hand and we will recognize you and then we will swear you in and then you can have your say and that will be part of the record on this case and you won't have to come back again to put that back in the record, you are certainly welcome to come back but you don't have come back, your testimony will be part of the record.

Mr. David Cathcart who was present in person and was previously sworn in testified that he is an adjoining property owner in Knolls Way and he does not say this lightly but it is his belief the applicant is misleading you tonight, he did not say that lightly. He said he prepared a memorandum that he would like entered into the record if he could setting forth the fact that this applicant has not followed the judgment entry or zoning, he thinks he gave six or seven examples of that and he hereby under oath swear that all of the facts in the memo are true and accurate to the best of his knowledge. He said let's take an easy example, the lighting, those lights aren't on a timer, they are on sometimes all night, many times until two or three in the morning. He said that simply isn't the case and there are a number of lights all on and they shine directly into our bedroom. He said the noise and thank you for addressing that in part, the problem is even if it is raining out and the people are inside the music is amplified and it comes right through the detention basin into Knolls Way right by our property so because of that that is the very reason that had the judgment entry in the zoning which provides for number one a mound going across all the way, the mound doesn't go across all the way he thinks maybe because there is a retention basin but they need to continue that mound on the south side. He said the zoning code talks about fences, there are fences that could be put up that would lessen the noise, there is a way that this could be done if the applicant is willing to step up to the plate and do it.

Mr. Lamanna said he wants to clarify one thing with you, when you say judgment entry are you talking about the judgment entry for the Knolls condominiums or.

Mr. Cathcart said it was an entry between Knolls and they call it a cluster development on the one hand and the industrial park on the other hand, this is he believes 1997, it is attached to the packet.

Mr. Lamanna said there are two judgment entries that he is aware of, a judgment entry that goes back for the industrial park itself and then there was another judgment entry when they wanted to build the condos.

Ms. Endres said they are all on the same one she believes, the condos and the.

Mr. Lamanna asked if they rolled it into the existing one.

Ms. Endres said she thinks it is all one.

Mr. Lamanna said he is not that familiar with mechanically how that was done.

Ms. Endres said the document she has references undeveloped land and the condos in the same judgment entry.

Mr. Lewis said it seems to be rolled into one.

Mr. Cathcart said he doesn't want to take much more of your time although it is an extremely important issue to him and his wife. He said thank you for asking about the master plan, he thinks what needs to happen is that master plan has to come out and we have to do a global noise abatement thing, we can't be coming back here month after month with what we are going to be doing and he thinks if we all sit here in good will we can come up with a noise abatement plan but it has got to include a mound or a fence or something and he would be happy to work with them and he knows Mr. Mark Consolo who is the president of our Knolls Way Association is also very involved and he said he would be happy to work with us on it. He said thank you again for what you are doing here.

Mr. Bruce Corson who was present in person and was previously sworn in testified that he is the Vice President of the Chagrin Knolls Board and he is here as a resident as well. He said they live half way up the association and right in the firing line of all of the music and sounds and noises and lights. He said there would be many more police reports but we know the police, they've got other things to do and we just can't call them every single Friday and Saturday and Sunday night. He said he happened to come back from, he forgot where he was, it was in August, it says on the video 11:54 at night and this is from the end of his driveway. He played a video from his phone for the board from the Sapphire Creek Winery and said if that wasn't outside.

Mr. Lamanna asked Mr. Corson where he took that video.

Mr. Corson said it was at the end of his driveway at 16850 Knolls Way which is as he said, half way up. He said it is a noisy place and he knows Ms. Dangelo came and listened one time and stood at the end of the driveway near the Cathcarts about 5:00 one time and said, oh it is not noisy, you can't here anything. He said thank you very much.

Mr. Mark Consolo was present via Zoom and testified by saying thank you for allowing us to speak tonight and thanks the board for addressing the noise situation and he lives at 16940 Knolls Way and as a side note he is the President of the Homeowners' Association. He said we have experienced quite a bit of noise and we know that Bainbridge Township does not have a noise ordinance and he respects that and we do have a nuisance ordinance that says that it will not allow for noise, vibration that is disturbance and he believes it even speaks to lights and smoke, there is no issue with smoke but lights, noise and vibration has certainly been an issue and when we have addressed this to the police they couldn't do anything about it, they said no and when we asked them if a citation was being issued at the time, such 11:54 at night as Mr. Corson had just mentioned, they said no, there is no noise ordinance and we are not going to issue a nuisance citation but he really does appreciate you speaking to and addressing the situation. He said there are times when windows on his home vibrate late into the evening with this noise. He said he can tell you the names of every person in the bridal party and he also has to hear laughter and vulgarity going on. He said it has been discerning, he left three messages for Ms. Dangelo and they have all been not returned.

Ms. Dangelo said she actually received a message from Mr. Consolo, she returns all of them, Mr. Cathcart just called her two weeks ago and asked for a meeting for the very first time and she set it up as soon as she could, she never received a message from you (Mr. Consolo) and she is sorry.

Mr. Consolo said check your voice mail box. He said he has a couple of questions of the zoning board that is seated with us tonight this building or pavilion, it sits about 98% in a setback area, is that correct.

Mr. Tommy Chesnes testified that he can't speak to the percentage but the majority is in the setback, that is correct.

Mr. Consolo asked does it take a variance to build something in a setback area.

Mr. Lamanna said yes it does that is why they are here.

Mr. Consolo said he thought it was possibly because it was built without permits but he just wanted to understand that. He said he believes there were trees that were planted recently along the north end of the property and yes, right where that arrow is, and when was the judgment put into place for those trees that have been planted.

Ms. Dangelo said Ohio Valley Group on behalf of Dangelo Ltd. planted the evergreens on top of the mound approximately 12 years ago and were replaced by the previous Zoning Inspector Mr. Frank McIntyre and recently Ms. Endres asked her to plant evergreens that were planted about a month ago.

Mr. Consolo asked Ms. Endres if her request for those is due to the judgment from back in the nineties.

Ms. Endres said that is correct, she asked that the trees be planted per the exhibit from the judgment entry, per Exhibit II and they complied, the trees are planted.

Mr. Consolo said but they failed to comply for many years when that judgment was in place, right.

Ms. Dangelo said she would argue against that vehemently because they planted the trees when they started building that development on the top of the mound where they exist now at the express direction of Frank McIntyre, the previous zoning inspector. She said that was an indication of compliance with the consent decree order, that is where he wanted the trees.

Ms. Endres said the consent decree order had a provision for the landscape mound, she is not sure that that was constructed back in the late nineties or 2000 and at some point after that additional trees were planted on top of the mound, there is Exhibit II of the judgment that in addition to the mound requires sublots 9 – 12, she would just like to remind everyone that at one point the land now occupied by Sapphire Creek Winery was originally supposed to be subdivided into 12 industrial sublots, the current property owners purchased the property only to keep it as one large land unit so in effect those sublots don't exist. She said if the sublots were to be divided her expectation is that each property owner of each of those sublots on the northern border would be responsible for planting the additional trees to provide the additional buffering per the judgment entry.

Mr. Consolo said he obviously is opposed to any structure that would house or bring more people in the area and he thinks the amount of people and noise that has been coming from there is more than enough now and as far as the existing pavilion he thinks they have shown disregard for the setback, they have shown disregard for the building permit and he thinks they have shown disregard as a neighbor and he would oppose it and thanked the board for letting him speak.

Mr. Lewis asked if there are any more Zoom comments or in person present comments.

Mr. Corson referred to the site plan and said this area is where the trees that were talked about are in the mound. He said this big gap tooth right there is where there is a retention basin and this is where Mr. Cathcart's home is and Mr. Consolo is up here, I am up here and this is where that video was taken from, from that driveway. He said even with that mound there the noise comes up but it really comes up through here and particularly for those people.

Mr. Lamanna asked if the applicant has anything further to say in response to the comments that were made by the neighboring property owners. He said he will also note that one of the speakers submitted a document and if you would like a copy please come and you can retain one from the zoning secretary.

Ms. Dangelo said she has a copy of that and she is happy to briefly go over the comments made on that document.

Mr. Lamanna said okay if you are prepared to do that.

Ms. Dangelo said she is, thank you. She said the landscape mound was in place when Dangelo, Ltd. purchased the property, the only thing that we did was plant it with evergreens twice. She said this says that the landscape buffer doesn't go all the way to the east side but in fact it does, she checked that out herself today just to confirm it. She said on the west side it does stop next to the detention basin because there is no way to put a mound through a detention basin and the detention basin is required by the department of Geauga Department of Water Resources. She said they planted additional evergreens, provided additional buffering which was an expensive cost for us so we are trying to be a good neighbor and that she thinks addresses section 1 of the document submitted by Mr. Cathcart. She said in terms of section 2 of his document regarding the zoning regulations, Section 530.11B in the second paragraph in the 1968 zoning code relates only to sanitary landfills so she is not sure of the applicability here. She said Section 530.26 regarding the fence, she believes it is superseded by the landscape mound that is in place by the consent decree order that specifically references the 1968 code. She said the last thing she wants to add is that under the consent decree order all Chagrin Knolls residents are supposed to receive notice of potential development of land owned by Dangelo, Ltd. so they should be on notice if that land would not have been a passive use and she is not sure if that has ever been given to any of the occupants, she is not sure.

Mr. Lamanna asked Ms. Dangelo when she purchased this property did you assume the obligations of Knowles with respect to that consent decree.

Ms. Dangelo said she understands that the consent decree runs with the land.

Mr. Lamanna said consent decrees run with the land but the obligation for mounds and other things are obligations that are assumed by the appellant in that case.

Ms. Dangelo said they did comply with it, we planted the mound per the consent decree order.

Mr. Lamanna asked if the purchase agreement required you to assume those obligations, owner but the appellant in this case

Ms. Dangelo said she is aware and it has been a long time since she looked at the purchase agreement but she does think the consent decree order runs with the land irrespective of whether it is in the purchase agreement.

Mr. Lamanna said that is an interesting question because it doesn't say the owner of the land it says the appellant by name, it refers to the appellant by name not the property owner. He said it is an interesting question in terms of the drafting of it, he hasn't studied it closely enough.

Ms. Dangelo said she would like to know if the Knolls residents do receive notice of potential development when they move in there, they are required to do that or have that given to them but she is not sure by who under the consent decree order and she just doesn't know if that is being done and she is curious about that.

Mr. Lamanna said this isn't the forum to pole people on issues like that.

Ms. Dangelo said she just wondered when they bought if they know there is a potential for this property to be developed.

Mr. Lamanna said for the people who live in the condominiums one of the things is the property they live on was a subject to this judgment entry to allow these condos to be built to what was then an M-1 area and as part of that agreement there was established certain buffering requirements to supposedly insulate the condo owners but when you bought your condo you should have realized you are actually living in an M-1 District and that right next to you was an industrial development and in fact where Sapphire Creek is there could have been 12 or 13 separate businesses put in there if they so desire. He said you've got a little bit of a problem, he hates to say this, and this is what happens, this board denied it and the township trustees at the time agreed to it but this is what happens, you now have a residential area that may have some undesirable characteristics because it is located right next to an M-1 area and certain steps were taken to try to ameliorate that and buffer it and that is a difficulty for the future that we may not be able to remedy because that is what somebody decided many, many years ago so that is an issue that makes it difficult if people are complaining about what is normally a permitted operation in an M-1 area and if it is not being conducted in some fashion and prohibited by zoning or it is unreasonable it is very difficult for this board to deal with some of those issues but likewise you don't have to bend over backwards to accommodate something that may not specifically be permitted if it is causing a problem, it makes some of these requests for a variance much more difficult if it is going to cause a problem in a residential area so there are a lot of complicated issues that were created here that make the case a little bit different from the average run of the mill situation.

Ms. Dangelo said the only thing that she would like to add is that this hearing is regarding the variance on the pavilion and the pavilion is only used as a rain back-up for wedding ceremonies at Sapphire and this year during COVID they did place restaurant tables under there and usually it is very quiet, we don't put music under there, the pavilion itself contributes no noise.

Mr. Lamanna said part of the problem is you say it is no noise as it is being used now but we have to deal with the issues of how it might be used in the future if we were to allow it to stay there.

Ms. Dangelo said they have no intention of changing the use of that pavilion, it doesn't lend itself to anything other than rain back-up for ceremonies, it is open sided and open to the elements except for the roof so it really doesn't lend itself to anything else.

Mr. Lamanna said when the weather is nice it can lend itself to a lot of different things but we have to look at the overall situation of what is going on there and as to how this pavilion might fit into that and be used in a similar way and again what we have to consider more carefully is since this building is over into a setback area as to when that affects line of sites to the residential condo area, how that fits with the existing buffering and whether that buffering would block things coming from that area and without getting into a whole lot more detail here it is one thing we have to look at to see whether or not if that was considered adequately from the original judgment entry and whether they were assuming the development would be within certain defined areas.

Ms. Dangelo said the mound is almost at the exact end of the property.

Mr. Lamanna asked if anybody else has anything else to say other than the applicant because the applicant is going to have a chance to come back again but if anybody else has something to say that hasn't already said it otherwise we are going to close the discussion on this matter and move this consideration to our next meeting. He said the first thing that needs to get resolved is the issue on the building permit.

Mr. Brent Barr said he does have one other question, in the notes where it has a plan approved for the uncovered patio, the patio now has a cover over it correct. He asked if that has been permitted, we are not talking about the pavilion he is talking about the patio.

Ms. Dangelo said there is no cover over the patio.

Mr. Chesnes asked if he is talking about what is attached to the building.

Mr. Barr said yes.

Ms. Dangelo said that was already on the building plan.

Mr. Barr said he was reading this as a plan approved for an uncovered patio so was the pavilion a patio before it was a pavilion or are you talking about the stone structure, the hardscape in front of the pavilion.

Ms. Dangelo said the hardscape in front of the pavilion.

Mr. Barr said thank you for that clarification.

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

Motion BZA 2020-35 – 17965 Park Circle Drive – Sapphire Creek Winery

Mr. Lamanna moved to continue this application to the next regularly scheduled meeting to be held December 17, 2020. The applicant has some matters that may need to be resolved with the building department before the board can go forward with the further processing of this application.

Mr. Lewis seconded the motion.

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

Mr. Gutoskey returned to the meeting.

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

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

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

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

Mr. Ian Friedman, BZA Alternate stated he wanted to separate himself for the record and will withdraw from any consideration, he made that clear when he was first appointed and he wanted to make it clear that he has not been involved in any interest involving Wembley because he is a resident at 16405 Majestic Oaks Drive in the Woods of Wembley but he is present here tonight with his wife Jamie Starkey and he will not be involved in any consideration from the board, only as a resident and member of the homeowners' association so he wanted to make that clear and any comment that he has will not be as an alternate, only as a resident.

Mr. David Barr, applicant was present via Zoom.

Mr. Lamanna swore in Mr. David Barr and he let the record reflect that Mr. Barr was duly sworn.

Mr. Lamanna stated that we are here to review the status of this conditional use zoning certificate and try to resolve the list of open items. He said he is going to let Mr. Lewis talk who has been kind enough to put together a list of items.

Mr. Lewis stated that before we get into some of the specifics of some of the requirements in our minutes from October 17, 2019 he just kind of wanted to start by reviewing, Mr. Markley has it up on the screen, this is a front elevation view of what the applicant submitted as the design by the architect. He said as you are looking at that you can notice that there are two dormers that were to bump out and approximately three feet off the ground across the entire front there was an architectural feature to break up the tall vertical walls so we will circle back around to that. He said the elevation plan does depict the panel transitions and it does depict the bump-outs so Mr. Markley if we can go to the building manufacturer Building #1 and he thinks we can start maybe on Page 2. He said the building manufacturer is Corle in Pennsylvania and we have the actual manufacturing shop drawings for this building so what he is going to start with is the view that you see right now, it is an overhead view, and you would be looking at what exists on top of the foundation which are the anchor bolts, these would be supporting the vertical members that would eventually tie into the roof system. He said what he is looking to point out on there is you will note there is the absence of bump-outs in that plan there and there is no mechanical or physical features that shows something would be there and nor would they anchor to it. He referred to Page 6 and said right there which you are looking at is the overhead view of the roof and what you are looking at there is the roof sheeting screw down plan and what is interesting about that is that once again you will notice that the bump-outs, you can see the dormers on the bottom, they look like two triangles however they are flush with the front wall and the shop drawings is to what the building was manufactured do not show the bump-outs on the dormer and therefore they do not again match the architectural plans that were submitted to the BZA and approved.

Mr. Lewis continued by referring to Page 9 and said now what you are looking at is the dormer sheeting plan and what is interesting to note on this is that if you look at the dimension on the far right which would be the peak of it moving left towards the front face, that is the same dimension as depicted on the overall building plan and once again does not represent the bump-out so now if we could go please to Page 14. He said that is a side section showing you the steel supporting the building and once again showing you the vertical columns that are tied into the anchor bolts and then of course into the roof, truss and framing section. He said once again there you will note that on what would be the front side of it there should be an indication of structural steel showing the bump-outs on the two dormers. He referred to Page 17 and said here again looking at the shop drawings we are looking again at the front elevation, the bump-outs are missing and there is also no depiction of panel transition at the 3' mark across the front of the building. He said he would like to note that having been to the site and photographed it and he is not the only board member that was out there, where the bump-outs are or supposed to be the mason did lay footers and there is concrete block there, one of them is pretty much at grade level, the other one is exposed so what it tells him is that whoever laid the foundation may have been following the architectural plans that were submitted at the township for approval and of course at this particular point they don't line up with the shop drawings or the as-builts or as Corle built this building. He said he would like to move to the color chart and the interesting thing about the color chart here is that and he knows as we get into the minutes and conditions we will talk about this a little bit more but the point of this is two-fold. He said number one it is to show you that the color as was interpreted and understood by the BZA which was black is a color that in fact is available, it has not been discontinued and the deviation from that was done by somebody, another selection was made. He said also on here, there is language in there and what that is going to talk about is that there is a 30 year sidewall warranty and it appears a 40 year warranty to say the paint won't peel so there is a point to that too. He said the building is under warranty and so is the paint so now and he doesn't know that he sent this, the care and maintenance guide, so with this whole document which was provided to him by Corle the building manufacturer talks is the entire process of everything from cleaning to touchup so if you want to change the color in its entirety. He said there is a catch-22 to that, and he believes at this point the applicant may be proposing painting the 3' delineation, the panel transition section across the remaining front of it and he thinks the applicant seems to be proposing that and is okay with that which means you are okay with painting the building and part of it as a possible proposal, unfortunately it will void your warranty on the building so if you choose to paint the sidewalls partially, anything beyond touchup, and are knowledgeable and accepting that you would concede the warranty on your building you could certainly follow through if you can paint the sidewall you can paint the roof, same impact. He said he also validated the loss of warranty by talking directly with Corle, the building manufacturer, their customer service is represented as Mr. Stanley Smith and he spoke to him on June 22nd this year and he does have some email exchanges with him on the care and maintenance and on the color choice. He said now we get into the fun stuff, now looking at the BZA minutes at our last session together, the minutes go back to October 17, 2019 so we are 13 months ago, over a year ago.

Mr. Lewis continued by referring to the minutes, pages 29 and 30 and said he is looking at the motion section which was in that packet of minutes for that whole section, pages 29 and 30. He said there was some criteria that the board expressed to the applicant as we were pursuing a conclusion of this project which covered everything from landscaping and plantings to building architectural features and so forth. He said the first one on here it says quite clearly "The required roof color as previously approved is black." and we all know that is not as how it was as-built. He said we still need to circle back around to that and what he wants to do first is just outline the points that were remaining issues. He said it looked like a pretty good attempt was made to take care of the landscaping along the north side of the building and on the east side of the building, here and there a tree has passed along and failed to survive, Mr. Barr has done a pretty good job of trying to keep up with those and replace them the best he could in a fairly timely fashion. He said some of them that are in the woods are green on one side and they appear dead on the other but our zoning inspector has been on the site and he knows at least two board members were on the site and we have been busy counting trees to make sure we are as close as we can possibly get of putting trees in a place that they are going to survive. He said there does seem to be a few, two or three missing trees still on the entrance drive on the east side between the north side buffer and the building and it appears that maybe some of these trees didn't go in because there was a change to the site plan and the change to the site plan as originally submitted is that there is a fairly wide gravel access drive that comes off the entrance turn-about, crosses the entire front of the building and wraps around on the east side, that of course would require the applicant to submit an updated site plan so that we know exactly what it is, where it is, we can manage the width of it so it doesn't continue to grow and we can keep track and calculate lot coverage. He said point #3 in the minutes and motion was that "A 3' high decorative mason wall the entire front face of the building" was being required and that was in lieu of the fact that the steel made by the building manufacturer was not manufactured to the original architectural renderings so there was no depiction in the face of it for the panel transition. He said Mr. Barr and the applicant had put on faux walls on the two dormers and the decision conversation was it would be acceptable to continue those across the entire north face of it and be consistent all the way across. He said all conditions, and this is item #6, were required to be completed by May of 2020 and the updated landscape plan because it would go along with the site plan was due within 90 days of our October meeting so it is really interesting that on option #3 on item #3 which was the mason wall across the front it clearly states that in our motion and conditions as well that the applicant was given the option to submit an alternative plan addressing this requirement, to date, 13 months later, no alternative plan has been submitted, it has been over one year and that was wide open whether it was done with architectural features or creating a 3' or 4' greenspace buffer in front of the building and planting shrubs, whatever it was going to be we gave the applicant the opportunity to present an alternative for consideration so a month ago the BZA secretary sent or maybe it was our zoning inspector.

Mr. Lewis continued by saying the township sent the applicant a conditions completion demand letter outlining all of this criteria including that if there was going to be a conversation about changing the roof color that we would need in advance documentation from a mechanical or thermal engineer or an expert and that they would need to be available to testify in person, Zoom, or on the floor here to be quizzed by the board. He said what he finds interesting about this is that here we are again, a year later, we had the same continuing unsatisfied conditions, we have given the applicant options and opportunity in a very timely and clearly stated timeline to present alternatives and we have no action so here we are on the eve of, please renew the conditional use permit and maybe there are some other, let's talk about these other things all over again. He said well, its been a year and we are still at square one so he is going to turn this back over to the chair.

Mr. Lamanna said we need to hear the applicant's response to these various issues and see if we can try to come to some resolution.

Mr. David Barr testified by saying let's talk about the roof first. He said what was said earlier was a betrayal of his efforts very much and in terms of the roof there was not "no action" there was considerable action, he first submitted an opinion from Payne & Payne and it came back to him that you would not accept his opinion so he next submitted an opinion from a Mr. Thom Dornbrook and said that they didn't want his opinion so he submitted an opinion from a Mr. Jarrod Turner and he believes he is on with us right now and he doesn't understand at all when you say there has been no action taken he has submitted multiple opinions and if they are not accepting Mr. Turner's opinion that is news to him, he has sent his credentials and everything else.

Mr. Lamanna said he thinks you (Mr. Barr) have to understand you just can't send us a letter from somebody, they have to come and be present to testify before the board so the board has the opportunity to ask them questions as to how they reach their conclusion, that is all we have been saying. He said in the one case he thinks the person you proposed was not appropriately an expert in this area, Mr. Payne, he doesn't think that he was a qualified expert to talk on these matters plus with respect to anybody, somebody has to come and testify before the board so they can be questioned as to how they reach their conclusion, that is all we have said.

Mr. David Barr said Mr. Jarrod Turner is here via Zoom.

Mr. Lamanna said the board is happy to listen to him, he is here ready now, let's have him make his statement and one thing that has always troubled the board is we have never really received a satisfactory explanation as to how we ended up here today, whether it was a mistake, whether it was intentional, what happened, whether it just fell through the cracks.

Mr. David Barr said he thinks he had explained it but let him reiterate it to refresh everyone's memory. He said when this project started he hired a company called Capstone Construction and they failed frankly, he had very reliable sources and he failed, he abandoned the project and he even shared with Mr. Friedman that he could double check the docket if he wants to follow the case of New Wembley LLC versus Capstone Construction, we have a multiple action against them. He said he hired a builder and he let us down so that is when we hired Mr. Turner who is on the call here so that is what happened, Capstone Construction failed and if you want to confirm that you can look at the Cuyahoga County docket and he believes there is also something on the Geauga County docket, we are not the only one. He said Capstone Construction has been a very well considered construction company at the time he hired them, they were also hired by a nursing home to build a ten million dollar project in Broadview Heights, they failed on that one too.

Mr. Lamanna said that is all well and good but your position basically is that you hired a builder, he went under, somebody else came in and somewhere along the line this fell through the cracks, nobody was paying attention, somebody made mistakes.

Mr. David Barr said he thinks Mr. Turner did a good job for us.

Mr. Lamanna said somebody at some point in time made a decision about this is what the paint color is going to be.

Mr. Jarrod Turner said he was sorry to interrupt but it seems to him that the paint color was probably determined well over two years ago.

Mr. Lamanna asked by the original contractor.

Mr. Turner said by the original contractor and/or he is assuming that you guys have building permit drawings.

Mr. Lamanna swore in Mr. Jarrod Turner and he let the record reflect that Mr. Turner was duly sworn.

Mr. Lamanna asked Mr. Turner, after he took over, did he do anything as far as selecting the paint color or was that already something that as far as he knew had been completed with the building supplier.

Mr. Turner testified that by the time he got involved with the process the roof was actually 75% complete and already installed so the determination of color and all of that was at least a year before he even became involved with the project and we are coming up on Thanksgiving so his involvement started roughly a year ago.

Mr. David Barr said two years ago.

Mr. Lewis said well somebody signed off on the drawings of the building, somebody signed off on the sidewall colors and somebody signed off on the roof, he seriously doubts it was the original general contractor because he in fact was not the customer, Wembley is the customer. He said you go buy a new car, the sales rep doesn't make the color choice for you, you make the pick so one of these days we will in fact track down those signed off sheets and we are going to find out who signed off on the colors and the design change on the building that differed from the architectural plans that were submitted and we approved. He said you Mr. Turner, are here as he understands as an expert witness on the paint and its thermal impact on the building, maybe we could define you to that conversation please.

Mr. Turner stated that he is here to answer whatever questions you guys might have pertaining to the specifics about a darker or black colored roof compared to the standard galvanized roof that we are so accustomed to. He said he is here on behalf of Mr. David Barr and is more privy to everything going on between you guys at the zoning department and the building department and to help you guys along and help Mr. Barr so we can move forward.

Mr. Lamanna said he will let you (Mr. Turner) go ahead and give us a summary of what your opinion is with respect to the roof color.

Mr. Turner said essentially anything with a darker roof color you are going to have a lot more chalking and fading and just thermal issues with darker colors than lighter colors. He said Corle building shop drawings, those had to be approved by the building department, correct.

Ms. Endres said the Geauga County Building Department would have reviewed the plans.

Mr. Lamanna said they would have reviewed the plans but they wouldn't be looking for color requirements.

Mr. Turner said that is right, obviously they are more concerned with the factors of safety, loading and all of the engineering aspects of the building that would be typical. He said the issue of color, he is just trying to understand this is all obviously maybe a year or two years before he was involved in the project but the drawings that were approved through the zoning board, did that depict a black roof somewhere along the line that he is missing, he is trying to understand where it is coming from.

Mr. Lamanna said the initial problem came because we wanted a black roof because the idea was we wanted a roof that blended in with the existing roof color of the building that is there, the shingled building, the main building where you go in the entrance and somewhere along the line the color got changed and he does want to ask Mr. Barr a question about that, but at this point what we are looking at is he has come in and basically said well whatever happened, he doesn't think it is really feasible to change the roof color and there are certain detrimental things about the roof color, and you had mentioned the chalking, the other one was heat loading and maybe you could elaborate on that so that is why you are here to tell us that black is really a bad choice for a color and these are the reasons in his professional opinion why it is really a bad choice for a color.

Mr. Turner said he has a report in front of him, but especially with the black roof you've got thermal issues, there is thermal expansion and contraction with the amount of movement in that roof and any sort of darker color compared to a lighter color is going to exacerbate and multiply into a sort of thermal expansion and contraction issue as well as just being an HVAC issue and a comfort issue on the inside of the building. He said you have people with tennis balls and running around that it is going to be bringing a whole lot more heat into the situation and that is black is not really a good choice and in his 20 plus years of experience in the building industry he put precisely zero black metal roofs on but obviously it is challenging because the project has had so many issues over the past three to maybe four years since the initial permit process with previous contractors and everything else he feels like the roof color issue is a small hurdle compared to a lot of the other issues that have been at hand with the overall project.

Mr. Lamanna asked Mr. Turner if he has a specific number or approximate number that he could place upon how much increased heat loading there is and obviously the issue is during the summer, it is not during the winter, do you have any idea.

Mr. Turner said it is to a tune of 30 to 40 degrees temperature difference, he doesn't have the paperwork in front of him but he can provide the board with that information, he would have to double check but he believes there is a 30 degree temperature difference between a silver roof to a black roof.

Mr. Lamanna said if it goes from a light color roof to a dark color roof that would be the difference in temperature inside the building.

Mr. Turner said yes, that would be a tune of about 30 degrees on an 80 to 90 degree summer sunny day.

Mr. Lamanna said it would have to be removed by air conditioning or something.

Mr. Turner said correct and it also causes condensation inside the roof panel between the panel and the vapor barrier on the inside of the building in the building system so when the metal goes up there is 8" of insulation, you have to have an insulation barrier and the roof panel goes on top so where you are creating all of that heat that is going to create more condensation issues between the panel and the vapor barrier on the inside of the roof system.

Mr. DeWater said you said that you have had 20 plus years in the construction business and asked if he would ever order a steel building package without the owner or the owner's rep signing off on the building colors or the manufacturer steel shop drawings.

Mr. Turner said absolutely not, we have a proposal with bullets all the way down, right down to the final color choices of everything and all of that is approved by the owner and typically where a question came up earlier the full shop drawings obviously with engineering loads, snow loads, seismic earthquake loads, everything is put into the building package and all of that is approved through the building department and any sort of color hang ups or anything like that are typically caught at that point if there is any sort of change from the original design.

Mr. DeWater said would the owner or the owner's rep sign off on those colors prior to the package being ordered.

Mr. Turner said yes, prior to the building being ordered for us, in the past year so typically those colors have to be determined eight weeks before the building hits the ground obviously.

Mr. DeWater said he has a question about the thermal heating. He said many buildings in shopping centers have multiple color roofs and when they calculate thermal they also put the insulation and vapor barrier, they size that according to the roof color, now they could have done that when they were choosing the roof color for this package too couldn't they.

Mr. Turner said potentially to be honest with you there are a lot of times when building loads and the codes are all being determined, the color is sort of an after-thought where that is kind of like a last thing that has to get determined before the panels are actually produced at the manufacturing facility so he can't really determine because he hasn't been involved in it at all on this particular project, he doesn't know when that decision would have been made.

Mr. Lewis said he has a question for Mr. Turner. He said he is looking at two pieces of correspondence from you, the first one he is looking at is your email to our secretary, Linda Zimmerman on March 10th and you said changing the roof to black or similar dark colors adds 60 degrees to the roof on a hot day, 60 degrees approximately, you put a squiggle in front of it. He said then he is looking at your letter which is the one that Mr. Barr was referring to earlier to depict his efforts which came in on November 3rd about two weeks ago.

Mr. Lewis continued by saying this one says a black roof would be as much as 20 degrees hotter than gray on a summer day. He said he realizes you are an expert and he is confused, on your letterhead he has got your statements to the board of zoning appeals suggesting that it would be 20 degrees and in your email it is as much as 60 degrees, which is it.

Mr. Turner said that is fair, honestly he is not sure where he got the 60 number from or if that was a typo on his part or is it something along those lines, but to be honest with you to the best of his knowledge it is between somewhere between 20 to 30 degrees between a silver roof or a silver cool white roof which we have had some conversations before about this project.

Mr. Lewis asked Mr. Turner if he studied thermal engineering.

Mr. Turner said he actually has a degree in mechanical engineering from the University of Toledo but to be honest the thermal engineering and coloration of roofs is not really his direct line of expertise, he is more involved on the structural side for T.B.T. Construction he takes care of the design and building of the buildings when we get the orders together for our customers.

Mr. Lamanna said we will go back to Mr. Barr, he asked Mr. Barr a question directly and understanding you (Mr. Barr) are under oath he would like to know from you did you ever sign off on the color for this building and approve the color that was actually produced, did you do that.

Mr. Barr said he doesn't know all he can tell you is, when he first hired Capstone he trusted him to do the work, he was charged with building a building that shouldn't have been built, he wasn't looking over his shoulder to make sure that he was ordering all of the right things, if he said to me here is what I am ordering he would have said sure go ahead and order it. He said he wasn't double checking his work and he did not know how incompetent and how it was handled so if he ever did ask and he is not saying he didn't but if he ever said to him at any point here is what he was doing he would probably would have authorized it and would have said okay, go ahead.

Mr. Lamanna asked Mr. Barr if he ever had a discussion with him where the topic of the discussion was changing the paint color of the roof.

Mr. Barr said no, he didn't change anything with any of it.

Mr. Lamanna asked Mr. Barr if he ever came to him and said he wants to change the color of the roof.

Mr. Barr said no, there was nothing that was supposed to be different than what we were supposed to be building.

Mr. Lamanna said and you have no recollection of anybody coming to you saying the roof is supposed to be black and that is really a bad color we should change it to a lighter color, nobody ever had that discussion with you.

Mr. Barr said no.

Mr. Turner said and also he doesn't have the architectural drawings in front of him but he doesn't recall any of the drawings requiring a black roof unless that was something that was in some preliminary drawing or something that you guys have seen but from his perspective when he received the architectural drawings and this was all well after the fact after the building was most of the way complete, that the coloration of the roof was even an issue.

Mr. DeWater asked Mr. Barr a question, you are telling the board that you hired a construction company to construct a very large metal building for you, you gave them ultimate rein and control with no oversight as an owner or through an owner's rep to make sure that you were going to get the product you hired them for which would also have controlled your costs, cost over-runs and make sure you were getting the product that you had actually hired them for, you are saying you gave a building company full rein to do this with no owner's oversight.

Mr. Barr said yes, that is what he did.

Mr. Lewis said he thinks it is time to subpoena the shop drawings and the color sign off sheets from the building manufacturer and once and for all find out who signed off on this stuff which would be the illumination of the banding, the no bump-out dormers so it was not built as the architectural plans were and exactly who signed off on the color selections for the building. He said you don't order a brand new car from GM without picking out the color and somebody signed off on that on the order form and he wants to know who signed off on it. He told Mr. Barr that he has been kicking the can down the road a year on this so once and for all he thinks it is time to find out exactly what the answer is one way or another.

Mr. Lamanna asked if there are any other interested parties who would like to comment on this particular issue at this time.

Ms. Bridey Matheney who was previously sworn in testified that she represents the Woods of Wembley Homeowners Association and she said her interest here is very similar and aligned with the township's. She said they wanted to assure that the applicant complies with all of the conditions of the conditional use permit in accordance with Bainbridge Township zoning and all of the conditions that have been imposed by this board. She said the whole point is that the conditions imposed are going to affect the general health, safety and welfare of the residents of the township.

Ms. Matheney continued by saying as you know there are two applications actually before this board, she doesn't know if they consolidated them, we are talking right now about the roof color, that is one of the conditions of the renewal but there is also an application to modify that condition to change the color. She said we know when the applicant submitted its renewal application it was apparent that it was not in full compliance with the conditional use permit and this board obviously, as you mentioned had graciously allowed the applicant plenty of time to come into compliance, originally it was six months and due to COVID it is actually well over a year to come into compliance. She said none of the conditions that have been placed by the BZA on the applicant's conditional use permit are at all unreasonable. She said it appears from some of the notes that were in the packet that she did receive from the zoning inspector that there is some progress in terms of some of the conditions, for instance the applicant enclosed the dumpster, the applicant striped the parking lot, the applicant has insured that the lighting on the paddle courts comply with zoning requirements and if she understands it the applicant has insured that the activities at the club without memberships have been eliminated. She said however there are still four conditions that the HOA believes are still not in compliance, first of course is the color of the roof which we just talked about. She said the whole point of having the condition for this roof to be black is probably already stated but it also complies with the general conditions of Section 117.13 of the Bainbridge Township Zoning Resolution which basically states that any conditional use permit that the BZA considers whether the use is designed, constructed, operated and maintained so it has to be harmonious and appropriate and appearance with the existing character of the area and she knows that was already brought up today by one of the board members or more than that, here the black roof on the newer building is obviously harmonious and appropriate in appearance to the existing clubhouse. She said the current color obviously is not in harmony with that and actually severs really a coherent look on the property. She said the current color also causes a reflective glare to the neighboring property owners which actually violates one of your general conditions for a conditional use permit which is that the use will not involve materials that will be detrimental to any person by reason of excessive glare. She said requiring a black roof meets the general conditions of the township zoning resolution as well as the expressed conditions of the board and although the property owner is seeking a modification of the color due to what we just heard mostly that the claims increase the temperature that a black roof color will cause the fact remains that the board approved and required the roof color to be black. She said the applicant knew prior to construction of the newer building that the roof was to be the color of black and there are actually roofs on other buildings in the area that actually are black. She said the roof is capable of being painted black although she didn't know, Mr. Lewis said that it might void the warranty. She said the black roof again will be highly appropriate to the black roof of the clubhouse and the current color obviously, because she mentioned before causes excessive glare so based on this the HOA will respectfully request that the board either deny the applicant's request to modify the roof color and require the applicant to paint it black or to tear it off and construct a new black roof on the building or consider allowing the applicant to modify the roof color with a beautiful alternative color that again is darker than what is there now that would still be harmonious and appropriate of the existing buildings such as a gray, a darker gray that is one of the other issues.

Ms. Matheney continued by saying there is one of the issues that is still not in compliance that the HOA feels, one is the trim on the building and as you mentioned the 3' façade, the trim that is still missing on the front of the building, the board required the applicant as one of the conditions to install that trim to avert the industrial warehouse of the building. She said that is not a harmonious and appropriate look to the other buildings that are existing in the area. She said as you know the applicant seems to be asking if they can paint the building with respect to this 3' façade or the trim and as this board has asked and she believes again as Mr. Lewis mentioned that the trim requirement was to be around the entire building other than the back of the building, maybe that was the 3' façade, she apologizes but and this board also then suggested that the applicant submit a potential landscape plan to break up the industrial warehouse look and that again has not been as you noted. She said the HOA respectfully requests that this board require the applicant to install the trim on the front of the building including the stone façade around the entire building other than the back of the building and that the applicant submit a potential landscape plan to break up the industrial warehouse look which again is not in harmony and appropriate in the area. She said the third issue is the gravel driveway, as mentioned by Mr. Lewis, the maximum lot coverage is an issue, at one point, she believes, the applicant or the previous owner of the property did receive a variance to 40.04% lot coverage but she doesn't know if that was actually then decided to be removed at some point in a later hearing, maybe in 2016 she is not sure, is it 40% lot coverage or is it 40.04%. She said in any event this gravel driveway was never presented to the BZA, never submitted before you and it was never part of a site plan either so without proof or measurement as to lot coverage the HOA respectfully requests that this applicant plans to remove the gravel driveway. She said in addition although she thinks it has been told that this has been used as an access driveway she believes, according to the HOA, it is believed to actually be used as overflow parking so the question is, does it meet the parking requirements for the condition required for conditional use permits, will the applicant be required to stripe the gravel driveway for the parking so we would ask that the HOA consider requiring the applicant to remove the gravel driveway, again she believes it exceeds the maximum lot coverage and we believe it is being used for parking and finally the trees that were mentioned.

Mr. Lamanna asked when you say you believe is there somebody who has actually witnessed this being used.

Ms. Matheney said absolutely and she is here to testify.

Mr. Lamanna said he wanted to be clear about that point.

Ms. Matheney said the trees that have been planted with dead limbs or loose needles actually face the wooded lot but they also actually face many of the back sides of the Woods of Wembley property owner's houses so the trees again are a very important part of the screening and buffering and part of a landscape plan that was approved by this board and it was also in accordance with one of the specific conditions of the Bainbridge Township Zoning Resolution which is to require the use to be adequately landscaped and act as a buffer or be harmonious with surrounding uses which most of the surrounding uses are residents so again, the HOA is pleased to learn that the zoning inspector has discovered in her investigation that the trees are being nurtured and watered and the HOA respectfully requests that this board continue to monitor the life of those trees and/or require the applicant to replace the trees should they die as a condition of the conditional use permit.

Mr. Lamanna asked when you talk about glare from the roof what do you mean by that.

Ms. Matheney said there is going to someone here to testify about that, it is a neighboring property owner, there are a couple of them and there is a glare actually from the silver roof.

Mr. Lamanna said glare meaning sunlight reflecting off of it.

Ms. Matheney said no she thinks it is actually much more intense than that but again there are people here to testify, she was just giving a review.

Mr. Gutoskey said he had a comment relative to the lot coverage, we have looked at that prior and originally included in the lot coverage were two courts in front of that building and since those aren't being constructed even with the gravel drive it is below 40%, we discussed that at previous meetings.

Ms. Matheney said okay.

Ms. Endres said the site plan in the packet indicates the lot coverage.

Mr. Gutoskey said we have a site plan in our packet that shows the lot coverage under 40%.

Ms. Matheney said so the gravel driveway then would fall underneath the 40% maximum lot coverage.

Mr. Gutoskey said yes.

Ms. Matheney said okay.

Mr. Joe Laehu of 8285 Woodberry Boulevard, who was previously sworn in, testified that his property is the property immediately to the west of that facility. He said he is here today in a combination of things, one as a homeowner there but he also works for Sherwin Williams in the protective coating side of the business so we put paint on metal, it is what his job is, he is the Senior Vice President of Sales responsible for that in North America. He said the specific technology that he is referring to here, that technology is designed to do exactly what it is and there is a reason there is a color palette. He said if there was such a major difference as a surface temperature of the metal and then any temperature that is affected inside the building, he thinks we need to make sure we get the exact science and we can provide additional clarification to you guys on that because there is specific data when you are a metal surface and when you are 30' below the top of that roof and what is that actual transition of that with insulation and vapor barriers and other technology that has that implication. He said if you go around you will often see metal dark colored roofs, it is an aesthetic decision and yes there is a slight temperature but as you can see and he will get the exact science, he doesn't know that himself specifically on 60 to 20 but he does know for example the Ohio State University is developing a brand new tennis center with a metal roof and it is black so in a similar circumstance use other people are making decisions to put different color roofs on there and he knows T.N.T and respect him and he is saying that he has never installed a black roof but in the business there are people installing black roofs every single day, it is a color decision and there are mitigation plans that go along to use our technology to mitigate temperatures inside. He said along that same line what he does use specifically in his line of work is repaint surfaces that need to have a different color, we have multiple technology platforms, for example he has a product sheet for Bond Flex, it happens to be our particular coating but it is an option that you can provide a two coat system that would go over the top of that roof, that would provide a 10 year warranty just using a basic water-based acrylic system like this. He said they also offer 4 polymer technology similar to Kynar technology, Kynar is a coil coated so that technology is applied at a factory, they actually press and do the paint on the steel and then they form that into these metal sheets and then that puts inscription by T.N.T. on the jobsite. He said that covers the selection process, it is a very specific decision and when you go through the contracting process he would find it hard to believe that the owner of a building would not be heavily involved in the color choices of that. He said he can't speak to what his decision was but in all the instances that he has been around a decision by a contractor and owner, color is the number one choice and he guarantees the Ohio State facility, you go to the Viking Stadium, you go to the Browns Stadium, the owners of those billion dollar facilities are making decisions on colors for those facilities. He said he would find it hard to believe that there is somebody not involved in the ownership of that is involved in the color choices of that building, it would be mind boggling in his opinion, he doesn't have the facts but just based on his history.

Mr. Laehu continued by saying there are alternative technologies, he has had contractors who have looked at this and he has estimates on what it would cost in various technology platforms to be able to paint that to an alternative color and you can custom color and make whatever color you want so again homeowner and also speaking on behalf of Sherwin Williams and he can provide a set of experts and if we have another meeting next month he can have them lined up here with scientific facts that this is what they do for a living is color and paint, so any questions he will answer those as well.

Mr. Lamanna said just a quick question, what do you think it would cost to paint the roof.

Mr. Laehu said if it is a 10 year warranty with an acrylic coat with two coats fully applied plus to clean it, you don't have to blast off the surface, you put the two coats on there, it is roughly \$3.50 a square foot. He said if he estimated on there it is anywhere from 60,000 sq. ft. to 80,000 sq. ft. so you are looking at \$200,000 to \$300,000 depending on what that would be. He said if you go up to a four year warranty to a similar Kynar it would be a much more expensive solution but you can get the full warranty that is why those decisions are made up front with a lot of people involved, you don't just flippedly let somebody make those kinds of decisions because of the ramifications associated to have it corrected afterwards.

Mr. Corcoran said he couldn't hear on the Zoom call, was there a dollar figure put on that.

Mr. Lamanna said yes he said it is about \$3.50 per square foot.

Mr. Laehu said \$3.50 per square foot including labor, safety, everything on the site looking at the estimated pitch and putting two coats of that system which they would then provide a 10 year warranty on that coat.

Mr. Lamanna said it is about 80,000 sq. ft.

Ms. Shannon Holodinski of 8360 Woodberry Boulevard was present via Zoom

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

Ms. Holodinski testified that we have been down this road before and she is not going to beat a dead horse, we spoke about this a year ago. She said they park their cars in front of her house, and we are well aware it looks like a shining box, that is not what anybody signed up for. She said that is pretty much all she has to say about it.

Mr. Laehu said from their perspective as a homeowner in the neighborhood if he does repaint it he would be willing to make him a deal to help reduce some of the cost of the materials and that is part of working with our neighbor to try to get a solution. He said he controls probably about 30% of that cost in materials so we would be willing to work with him to mitigate some of that cost as well.

Mr. Lamanna said what we are looking at is whether or not anybody has looked at creating what this thing would look like with a black roof, obviously with technology today it is pretty easy to, he is sure if you ask any architect he would show you here is what this looks like with a black roof or silver roof.

Mr. Laehu said we have an app that is called Color Snap and he can download it, I can download it, you take a picture and if you push the button you can change it to whatever color, you will see that picture replicated with that change of color, you can do it with your house, you can do it on a building and you can do it on a water tank, that is what we do for a living to allow municipalities to see what a water tank would look like.

Mr. Lamanna said he figured there was something out there that would do that, he just thinks that would be a kind of useful thing to do here and let people look at it and see exactly what it is going to look like because the worst thing in the world is if somebody goes out there and changes it and you look at it and say hmm maybe that wasn't such a good idea but at least this way when you have the technology now we can actually get a very good idea of what it is going to look like.

Mr. Laehu said we can also, in partners, if we move down this path we can go there and do temperature studies to see what would be the difference on different color roofs and actually do some of that testing with a spray panel, set it on the roof and be able to measure the difference in temperature of a brown roof, a gray roof, a black roof and see different implications to come up with a solution and that is what a partnership would look like to try to come up with a solution.

Ms. Linda Nolan of 8405 Woodberry Boulevard was present in person and was previously sworn in.

Ms. Nolan testified by making the following statement:

For the last six years, since 2014, we homeowners have patiently followed protocol. We attended meetings where we expressed our concerns about having a large commercial structure in the middle of our residential neighborhood. We submitted photos and information about the other tennis facilities in the area. But unlike other clubs, this was in the middle of a residential neighborhood and incidentally, a residential neighborhood of 68 homeowners who each pay more in property taxes than the Wembley Club has been paying until this moment.

We asked whether the tennis building, or a portion of it, could be located behind the original clubhouse, as is the case with other clubs. We asked whether the building could be situated further back on the 10 acre property. We asked whether the construction materials could be more in keeping with those used for the original clubhouse.

But instead it was decided that we would be getting a prefab steel warehouse-type building with a steel roof that stands out in plain view. Generous variances were given to the applicant, including height of the building, the 40 ft. side border encroachment, etc.

As a concession to appease the homeowners, it was moved that: The siding color would match the siding of the existing clubhouse and the roof color would match the roof of the existing clubhouse. The front of the building would be designed to be more aesthetic than just having a flat façade, the bump-outs. Among other things, there would be two sections offset to break up the look of the front.

But that didn't happen. No roof color that matched the clubhouse roof. No offsets or bump-outs on the face of the building.

The applicant was told at the last hearing, which was 13 months ago, that the roof color was wrong but that he could file a petition to keep it as is. And about the building that didn't look like the original plan the applicant was asked last year to submit a Plan B, a "proposal for review that would make the building look less like an industrial building."

There has been no proposal in the 13 months.

The homeowners put their faith in a system and thought there would be oversight and review of the work-in-progress. And as a member of this BZA told us last year, it failed us.

Even when we homeowners saw that a white roof was being installed in place of a dark roof, we brought it to the attention of the zoning department, only to be told by an official that the matter was "subjective". This in spite of the fact that the color selection was clearly set forth in the motions.

We have to wonder about the inconsistencies of the rules applying to different property owners. At the BZA meeting in July of this year, this Board decided that a homeowner on Sunset Drive had to tear out a non-compliant section of her driveway, saying that, (and I'm quoting from the minutes), "you did something that we wouldn't approve in the first place, so why should an applicant get an advantage by building it and then coming in and asking us to approve it after the fact."

So, why is this situation any different?

It's sickening for us to look out our windows and see the bright glare of the massive white roof that stands four stories high. And disappointing to drive by and see the front of the building that doesn't look like the original renderings.

We homeowners assumed that the system would work while the applicant knew how to work the system. He knew it was easier to ask for forgiveness than ask permission.

We hear that the applicant is seeking investors to finance a second building, in the rear, behind the original clubhouse, exactly where he said that he couldn't put up this tennis building because of financial or other limitations.

It's all so disappointing. The only take-away we have from all of this is the knowledge that our next house will not be in a community where there is no assurance of what could happen next door.

Thank you.

Mr. Ian Friedman and Ms. Jamie Starkey of 16405 Majestic Oaks Drive were present via Zoom.

Mr. Lamanna swore in Mr. Ian Friedman and he let the record reflect that Mr. Friedman was duly sworn.

Mr. Ian Friedman testified that he is glad that he is following Ms. Nolan because she is exactly right and what he is going to respectfully ask is that there has to be some finality here for a number of reasons but he would like if he has permission from the board to ask Mr. Turner one question that he thinks follows Mr. Lewis' questions as to the deviation from 20 to 60 degrees for which he attributes that to a potential grammatical error. He asked Mr. Turner by all accounts you are a respected mechanical engineer but the point was brought up as to your training in thermal engineering and his question to you when you were rendering your opinion as to the degree difference between the black roof and the lighter color roof you had made reference to condensation, temperature variations and an increased HVAC usage and his question is were you speaking in generalities or at any time forming your opinion, did you go to the Wembley Club and conduct actual thermal testing to give specific results that relates solely to your opinion at the Wembley Club.

Mr. Turner said no, he did not do any specific testing at that facility he is just speaking to generalities and overall experience in dealing with the metal building industry now. He said he would say if had been involved in the project in the very early phases obviously the coloring of the roof would have been signed off on and had he had any knowledge that there was this much of an issue with the zoning department regarding a dark roof he probably would have petitioned for a lighter color, a flat white, a non-glare type roof. He said from a personal experience, he is not sure how it is glare, it is not like with a galvanized roof like a mirror surface that is going to have a large reflection off of it so he is kind of questioning of how severe of an issue that is, obviously you guys and homeowners are in the area and drive by there every day. He said typically a flat color roof, something non-reflective and a light color would be the best way to go for a facility like that.

Mr. Friedman said he appreciates that and obviously you heard our neighbor from Sherwin Williams talking about the issue, there is nothing he said that you would dispute including the fact that black roofs are used in other structures.

Mr. Turner said he knows there are black roofs out there especially on the residential side, you see them around here and there but typically on smaller open structures, nothing, at least from his experience he hasn't seen structures or larger metal buildings such as what the Wembley Club is.

Mr. Friedman said thank you to Mr. Turner. He said what he would say to the board is that Mr. Barr is an intelligent man and we are not dealing with someone who doesn't understand the process. He said all of us in Wembley, as a member his first meeting when he came and did not intend to say anything until he heard what he believes is an utter lack of credibility and claims being made at that initial meeting. He said since then he doesn't find it fair to any of the folks who are on this call now and in person physically, those who are on Zoom, those who are contributing to the legal fees to deal with this, here we stand at 10:30 at night perhaps going much later knowing that the process of having to come to many more meetings because Mr. Barr conveniently says he doesn't know if he signed the paperwork. He said now he knew perfectly well what the claim was because it was sent to him what needed to be done, everyone here knew what the question was, did you authorize this and for him to still sit here in November of 2020 and say "I don't know" is completely unacceptable and disingenuous and disrespectful to all of us in the neighborhood when we are dealing with this time and time again, as Ms. Nolan said, six years we have been dealing with this so again he thinks it is a call for absolute finality. He said if he claims that he didn't know and let's give him the benefit of the doubt then that is the subject of his claim in Cuyahoga County so why should members of this neighborhood be penalized because even if we give him the benefit of the doubt, as an educated man who is skilled in this area who should know better didn't bother to look at the paperwork and all this time still hasn't but he can recoup his damages that way, we should not be penalized and cause to drag this out over and over, everyone is going to be exhausted tomorrow and then again when are we going to do this, he keeps getting a break as Ms. Linda Nolan said. He said he does want to go back to one point that does go to his credibility and all of his claims when he says he is not open to non-members and he agreed to that and that is inaccurate. He said he forwarded to Ms. Endres an email because in the past in an effort to raise money outside of the members only activities of the club that he opened up to non-members also, that did not stop and blatantly disregarding what we had all agreed upon and a warning from this board and on September 21st just two months ago, at 2:18 P.M. we have another Yoga class at the Wembley Club and it is back, it is bigger than the last time, you guys loved it so much, let's do it again. He said the event is free for members, you should bring a friend and it is \$25.00 for non-members so we are not closed to non-members here and any of us who live on these streets know perfectly well that there is traffic coming through and it is another issue but for him to say that no, it is just members only activities that is not accurate and he just thinks there has been and added, he sees Mr. Barr waiving for a response.

Mr. David Barr said you are flat out 100% wrong and he will remind you of a conversation that was had at the last meeting, where Mr. Lamanna and he hopes that he remembers and he can tell you that you are wrong he authorized the club, it, as a marketing activity just like any club does that would limit the club to 95% member participation and he has never said it was 100%, you are putting words in my mouth, false words and Mr. Lamanna can tell you that he authorized non-member participation so everything you just said is a misrepresentation of the truth, it is flat out false and your memory obviously isn't very good from what was said at the last meeting.

Mr. Friedman said to Mr. Barr that he would be very careful in challenging him on misrepresentations, he is being very kind right now, so be careful. He said what he is doing now is saying you have had plenty of time to get this done and if you think that you are being respectful to this community then there are some serious departure in judgment between you and rest of us here. He said until he sees what your numbers are, no he doesn't side with you at all because nothing that you have said to date has held true to any of your representations as to when this is going to be done so his question Mr. Barr is to you if you want to get personal about it when are you going to hold your word and get this done, when are you going to stop putting the people of this neighborhood through this. He said you keep getting break after break and like Ms. Linda Nolan said no one else would be getting this, we have seen action for correction of much lesser things, you are far too smart to keep doing this and say that you don't know so it is either a lack of skill and intelligence or it is a lack of honor and integrity so be careful again because we can go there and he thinks it is not productive and all he is asking of the board is to bring finality to this once and for all because we pay for the quiet enjoyment of this neighborhood and David Barr is doing everything by omission and deception to prevent that and what he is asking for is to bring this to finality, enough of the warning, you don't need it, he is not child and he has made a decision a long time ago, he is a firm believer that actions speak louder than words and he will leave it at that because it is what it is. Thank you.

Mr. David Barr said he would like to respond and he wanted to make one more point that Mr. Friedman said that is flat out wrong he is skilled in this area, he is not skilled as a construction guy, he thinks Mr. Turner can attest to that, he doesn't know anything about construction, he has learned a tiny bit over the last five years but he is certainly not skilled in construction and he hired two companies that he trusted to do the work and he implied that somehow he was skilled in this area, he thinks those were his words.

Mr. Gutoskey asked Mr. Turner if the roof on this building is painted or is it just galvanized metal.

Mr. Turner said the roof is galvanized metal so it is the standard finish on 90% of the metal roofs that are out there, it is just a galvanized coating, it is not painted.

Mr. Gutoskey said so if it is not painted there would be no warranty, correct.

Mr. Turner said he cannot speak to that, he knows from his manufacturer there they frown upon coatings on roofs because of the coating issues, a lot of times a coating will get moisture build up when water or snow or ice or anything gets underneath the coating it actually prematurely causes the steel on the roof to fail but obviously we have a gentleman from Sherwin Williams here that they can provide a product or something that might work and there would be financial implications to fixing things that are on site. He said to be completely honest he is pretty sure that a lot of decisions from the aesthetics standpoint and everything else on the project from the very start probably had budget reasoning behind it as far as final coloring, bump-outs, all of the façade treatment around the perimeter of the building.

Mr. Gutoskey asked Mr. Turner, if the footer is already there for the bump-outs how easy would it be to construct a two foot bump-out to break up the front of the building.

Mr. Turner said to be completely honest with you the lack of quality workmanship from everything he has seen on the project since he became involved in it he can't really speak to that because the foundation that was there, he has no idea what is underneath that, he remembers on the left bump-out had some sort of a foundation built there prior to us arriving on site but the metal building was never designed for that so essentially the building was designed to have a structure line across the entire front of that building but there is no reason why we couldn't do an alternate panel covering or a paint color covering or something to try and break it up.

Mr. Gutoskey said if there is a footer there can be a faux wall built on that.

Mr. Turner said he has no idea what is there, he doesn't know what is underneath there he does know that the entire perimeter of that foundation of the building was constructed so poorly that if he was there for two weeks throwing in concrete and doing work after the fact and readjusting things because the initial original general contractor just did a horrible job, honestly it is one of the worst projects he has seen in a long time as far as the quality of workmanship.

Mr. Gutoskey said so you could build a faux wall in front of that building.

Mr. Turner said he supposes you could put in a foundation and put a wall there or you could put a full wall.

Mr. Gutoskey said if the footer is already there you could put a wall to break it up.

Mr. Turner said if it was him he would try to stick with something that would be on the existing structure line and attached to the facility that would not necessarily require an additional foundation.

Mr. Gutoskey said so you could attach something to the existing building.

Mr. Turner said a faux panel or attach something to add to the front base of that, there are always options, it is just a matter of spending money to do those things.

Mr. Gutoskey said so the existing building could be added to.

Mr. Turner said right, if you wanted to change the color, they could laminate over a portion of the wall with a different color panel.

Mr. Lewis said so just to be clear everybody, an interesting revelation popped up in the last 10 or 15 minutes. He said it has to do with the roof color, as we were looking at color charts and we were looking at approvals and plans that said to match clubhouse, just so everybody gets it his roof has no color, it has never been painted, it is nothing more than galvanized steel so it is just metal, silvery metal, gray looking metal with some kind of a coating on it, it is galvanized. He said as we kicked this down the road the last year, year and one-half, two years, we just found out in the last 10 or 15 minutes, this is not a painted roof, interesting.

Mr. Turner said the galvanized color roof is typically the longest lasting roof, typically Kynar roofs and other painted coatings that last 20 to 25 years, a galvanized roof are typically 10 to 15 years longer lasting than the painted coated roof systems.

Mr. Gutoskey said he has one other question, he has seen the homes in this subdivision, correct.

Mr. Turner said there are plenty of very beautiful homes in the area.

Mr. Gutoskey said he just wanted to make sure.

Ms. Katy Donahue of 16440 Crown Pointe was present via Zoom.

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

Ms. Katy Donahue testified that she is on the culdesac and her back property backs up to the new building. She said she thinks everyone is doing a good job of stating things on behalf of the neighborhood but there are two things she wanted to add is that the color of the roof and the way the building looks was a huge topic for discussion at prior meetings and the color of the roof and the side of the building went on for more than three meetings and a year ago, it was in April before that last meeting she sent an email to Ms. Endres that was submitted that she went through all of the minutes and put down everywhere where the roof was discussed and Mr. Barr's architect came out and said it will be a dark roof with gray siding to match the clubhouse and at another meeting they said nothing has changed, what we have presented is exactly what it is going to be.

Ms. Donahue continued by saying the one thing that she found interesting that she just wanted to point out that when it came time to choose the color of the roof Mr. Barr actually told some of the neighbors that they could come and look at the roof colors so she came and gave her opinion, her husband gave his opinion and others gave their opinion, she does believe there are other neighbors who did as well so he was not completely hands off, he had color pallets in his hands, he did have a say in the color. She said Ms. Matheney brought up about the cars parked on the gravel drive, she has seen cars there on multiple occasions, she took a picture of one today, when she has been walking the last couple of months there have been cars parked there, it is not even over-flow, they are just parked there so they are using that side as a parking lot.

Mr. Laehu said on the comment, he thinks if you research galvanized roofs, that is the surface preparation, you've got aluminum, that is galvanized steel, galvanize doesn't color anything, galvanized is a surface preparation so what that is is a Kynar resin that is coated and all that is is the way the processing is, it is done in a factory and steel comes in, you galvanize the steel and you then paint it, that is a coating, the way it is impregnated into the coating so it has long term adhesion so that is how you get 40 year roof systems because it is imbedded into the steel at that factory so you would have to pressure wash or you would have to blast it with a blaster to get the surface prepared to be coated and that is how you get long term adhesion. He said the standard of why they do that is because it allows you to get a permeability into the steel on that coating to allow you to have 30 year roof systems and metal coatings, that is by design so he would suggest that we research that to make sure you guys understand that when you say it is a galvanized roof that is just a preparation because when you choose a color you don't galvanize to a color that is a pretreated steel done in a factory.

Mr. Gutoskey said that is why when we were looking at the color charts he said he didn't see that color on there and then when Mr. Turner said it was galvanized he said okay, yes, it makes sense.

Mr. Laehu said it would be prepared that way, that is a decision that is made.

Mr. Turner said it is not actually galvanized coating it is actually typically it is an aluminized zinc coating, galvanized is a generic term. He said if you want he can kind of do some research and get specifics on that coating system and what that is. He said it is applied at the factory before the panels are even formed.

Mr. Lewis asked what color is the roof.

Mr. Laehu said it looks white.

Mr. Turner said he didn't hear the question.

Mr. Lamanna said the question is what color is the roof, we seem to have some disagreement.

Mr. Turner said it is obviously a galvanized color, sort of a raw, grayish metal color.

Mr. Lamanna said we have two issues, we have the roof color and the decorative features. He asked Mr. Barr what we can do about the features on the front of the building, do you have some kind of plan.

Mr. David Barr stated that he thought they were in compliance when they added dormers, they might be looking into a more decorative front so that is something that he was frankly hoping that was not getting to be a concern for the board or for the neighborhood. He said they don't have unlimited funds, they are doing okay considering 2020, we are doing better than most but they certainly don't have unlimited funds or huge sums of dollars to redo roofs and decorative things so if you ask him for a plan he doesn't know how they are going to tackle this financially, we are doing alright, we are doing okay but we are not rolling in the dough right now so he doesn't have a plan for how to tackle it.

Mr. Lamanna said the roof is a whole separate question and he has some thoughts on that but first at this point there are some inexpensive things that can be done to dress up that side of the building and we would like to see the proposal, this is what you are going to do and this is what it will look like when we are done. He said we are not talking about major expenditures of dollars on this thing, we are talking about if there are some cosmetic things that can be done and have it in front of us a concrete plan that says what you are going to do this year and here is a drawing that shows what it is going to look like when you are done and then people can look at it and they can say that looks pretty good or not, that is very in the scheme of things pretty small potatoes. He said the roof color he understands is a whole different issue and to be totally frank here, any decision that we make has got to be supportable based on the record and based upon what happens if it gets appealed and we can't make a decision that you might say oh yeah we said this, we said that, we are into a very gray area here in a lot of ways just so people understand as to how far we can go on regulating certain architectural matters. He said you also have to look at it from the practicality, if this gets before a judge up at the common pleas court and they are going to look at it in a certain way and they are going to look at the property owner and what the property owner has done and what the property owner has been asked to do and what impact that is going to have and then they will weigh that in their decision and we have to kind of look at that in making a decision too.

Mr. Lamanna continued by saying you can say oh yeah we said this but if something happened along the way and then come back and impose a massive cost on somebody you are going to have to have a very good reason, if someone has to remove \$1,000 worth of asphalt it is not quite the same as asking somebody to spend \$300,000 to paint the roof on this building, that is a practical consideration that has to be considered. He said if we are going to do something like that we have to make sure we fully explored what the options are and what that entails and what the consequences are and now we don't know if we fully understand how the roof is actually finished so that is something and obviously he won't be painting the roof in the next three months anyway so we have some time to explore these things and make sure when we do make a decision that it is completely supportable. He said the more scrutiny our decision might get on appeal the more careful we have to be to make sure that we have every fact we possibly can have lined up, explained, considered and appropriately dealt with so like he said first you (Mr. Barr) need to come back to us next month with a plan to deal with these architectural features, we are not asking for some fantastic, elaborate expensive thing, he thinks you can figure out with the architect or contractor there are some things that can be done for a reasonable cost that will obtain the desired effect. He said with respect to the roof color he thinks we have got to get from the manufacturer what exactly is the roof coating on there, is it paint or is it something else, what they say about painting it, they were talking about if the roof was painted so we have got a lot of different stories and we have a great expert on hand here who knows an awful lot about this but he thinks you have to look at exactly what this is and exactly what it means and he also thinks that you need to look into painting and consulting with the gentleman here tonight on doing the actual visual pictures where you can look at here is what the building looks like with this color and here is what the building will look like with this color and here is what the building looks like now then we have something that people can look at and say okay, does this make a difference. He said we can look at it and certainly puts us in a better position to say okay, this is either in harmony or not in harmony or this is actually going to be more in harmony with the neighborhood. He said he thinks the tool we didn't realize was available to us but now it is and he thinks it will give it some value and indication as to what the implications of a roof color change would be on those clear underlying issues with respect to impact and harmony with the existing character so if you can make some arrangements to obtain that type of information so that we can look at that at our next meeting and he thinks what we would like you to do is get that done at least a week before the meeting so we have some time to look at it before the actual meeting and we can also distribute to the counsel for the homeowners so that they also have a chance to look at this and be prepared to comment on it so we can give everybody a fair chance to consider what you come up with and what their thoughts on it are.

Mr. David Barr asked the board if they would like him to go out and get photos of a roof that is dark.

Mr. Lamanna said this gentleman said that there are people where you can take a photograph and they can take it and render it to show this is what it looks like with this color and this is what it looks like in this color.

Mr. David Barr said he can get you pictures but it is beyond affordability.

Mr. Lamanna said it is a fact, it is relevant to the decision, you haven't really made an affordability argument. He said the board would be happy to look at a specific affordability argument as well.

Mr. David Barr said he guesses he can make that argument pretty simply stated, those kinds of numbers, there is an affordability argument here, we just don't have the capability to do that.

Mr. Lamanna said that still doesn't change that we want to see the other information.

Mr. David Barr said he can get the board the pictures.

Mr. Lamanna said he would suggest that you get a number so you can say this is the cost and this is what it would mean for us. He said you can say it is not affordable, you need some financial stuff to back that up not just that you can't afford it, give us the evidence. He said if we do think of anything else in the next day or two we will let you know by record.

Mr. Corcoran said he should get more than one estimate.

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

Motion BZA 2019-2 and 2020-6 – 8345 Woodberry Boulevard (New Wembley LLC)

Mr. Lamanna moved to continue these applications to the next regularly scheduled meeting to be held December 17, 2020.

Mr. Gutoskey seconded the motion.

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

Since there was no further testimony, the public hearing was closed at 11:15 P.M.

Respectfully submitted,

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

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

Date: _____

AUDIO RECORDING ON FILE

Bainbridge Township, Ohio
Board of Zoning Appeals
November 19, 2020

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 11:15 P.M. by Mr. Michael Lamanna, Chairman. Members present via Zoom were Mr. Brent Barr, Alternate; Mr. Michael Corcoran; Mr. Ted DeWater; Mr. Ian Friedman, Alternate; Mr. Joseph Gutoskey and Mr. Todd Lewis. Ms. Karen Endres, Zoning Inspector was present in person. Mr. Jeffrey Markley, Bainbridge Township Trustee was present in person to monitor and host the Zoom meeting.

MINUTES

Mr. Lamanna moved to adopt the meeting minutes of October 15, 2020 as written.

Mr. DeWater seconded the motion.

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

APPLICATIONS FOR NEXT MONTH

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

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

Application 2020-36 by Terry Cowoski for property at 8815 East Pilgrim Drive

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

Application 2020-37 by 7273 Miller Properties LLC/Handy Rents at 7812 E. Washington Street

The applicant is requesting a substitution of a non-conforming use to permit a rental business in a residential district and variances relevant to lot consolidations. The property is located in a R-3A District.

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

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

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

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

The Bainbridge Township Board of Zoning Appeals set a public hearing on the above applications for December 17, 2020 at 7:00 P.M. at the Bainbridge Township Community Hall, 17826 Chillicothe Road, Bainbridge Township, Ohio and unanimously resolved to request the Bainbridge Township Board of Trustees to issue a purchase order for legal advertising.

Since there was no further business, the meeting was adjourned at 11:21 P.M.

Respectfully submitted,

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

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

Date: December 17, 2020