

Bainbridge Township, Ohio  
Board of Zoning Appeals  
December 15, 2016

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

Mr. Lamanna welcomed everyone to the regular meeting of the Bainbridge Township Board of Zoning Appeals and swore in all persons who intended to testify. He explained the public hearing process and noted that the applications will be taken out of order.

Application 2016-42 by Stein Mart for property at 7705 Market Place Drive

The applicant is requesting area variance(s) for the purpose of installing a wall sign. The property is located in the MUP District.

Ms. Amy Noble of Ellet Sign and Mr. Evan Rosenblatt of PEBB Enterprises were present to represent this application.

Ms. Noble testified that she is from Ellet Sign, a local sign installer representing Stein Mart.

Mr. Evan Rosenblatt testified that he is with PEBB Enterprises and they own the property.

Mr. Lewis asked if there is a representative from Stein Mart here or planning to be.

Mr. Rosenblatt said they were not able to be here.

Ms. Noble said she will be representing them.

Mr. Lamanna asked them to show the board what sign they are talking about.

Ms. Noble said the primary identification wall sign for the end building, south building and there is one primary identification wall that they are requesting with 6' high channel letters and 166.6 sq. ft.

Mr. Lamanna said this is on the building facing out to the parking lot.

Ms. Noble said correct, facing the parking lot.

Mr. Lamanna asked Ms. Endres to tell the board how she calculated the sign.

Ms. Karen Endres, Zoning Inspector testified that she always asks the sign companies to perform the calculations, there are supposed to be ten horizontal and vertical lines to define the sign area and this is what they provided to her for the purposes of this application.

Ms. Noble said she has a lot of information.

Ms. Endres said using that measurement she would like to believe that they took out that area between the S and the M, there is some blank wall area there.

Ms. Noble said correct.

Ms. Endres said she and Ms. Noble discussed that and her understanding is that they used the lines to come up with that.

Ms. Noble said yes they did. She said the signs are designed by a national sign company that worked with Stein Mart on those calculations.

Mr. Lamanna said there is 166.6 sq. ft. He asked how big the Circuit City sign was.

Ms. Endres said the Circuit City sign would have been bigger.

Mr. Noble said basically when Stein Mart goes into a retail location they typically ask for a 7' set of channel letters but for this particular location there is 33,000 sq. ft. of retail space that they are going to occupy on this end-cap building and there is also an opportunity for a sign elevation wall sign but at this time they are not asking for it, they want to concentrate solely on the frontage and showed the board a photo that was taken yesterday. She said the sign band area is where they have centered the sign and based on the calculations that they were originally given was to go by the sign code and if you pull up those numbers it has 173' of frontage so using your sign code we had thought we were allowed 193 sq. ft. of area but using the ten sided box method Stein Mart was willing to go down to a custom 6' set which is lower than their standard but we still feel it meets other retail establishments in the market place, it encompasses the area of the sign band well and this particular area is 21' x 44' in that entire fascia area so we have centered the sign and tried to make it look as clear and concise as needed. She said there are no logos, it is not a stacked format.

Mr. Lamanna said it is very well proportioned for the space.

Ms. Noble said compared to other signs in that south building area which has Gordmans, Kirklands and Party City currently, Party City has approximately, working with the landlord, 18,000 sq. ft. of area and they have a sign that is 100 sq. ft., Kirklands only has 7,500 sq. ft. of retail space and they have a sign that is 86.9 sq. ft., Gordmans has 50,000 sq. ft. of retail space and their sign is 348 sq. ft. so it has taken up the lion's share of the available square footage left over. She said what they are asking for is two variance requests, one that is for 76.753 sq. ft. of area and 8' higher on the building.

Mr. Lamanna said for all of the buildings here and because of the height of the buildings basically the board looks at this from the standpoint of where it fits architecturally, the height limit is designed to prevent people from putting signs above the roof so that is not really an issue on a building of this size and added this is right where it should be, it is not at the upper top of the building and it is not out of balance.

Ms. Noble said basically they have a number situation that they are asking the board's help with. She said the building does open in March and they are hoping to get the proper identification to make this a lasting and successful business.

Mr. Lamanna asked how big the frontage is on the remaining space.

Mr. Rosenblatt said there is only about 5,000 sq. ft. of vacant space left.

Mr. Lewis asked what the frontage is.

Mr. Rosenblatt said Kirklands took a majority of it and the existing Kirklands including that space is 100' and Kirklands took two-thirds of it so he imagines it is 30' or less, not a very big space.

Mr. Gutoskey said adding in this sign they are about 12% over.

Mr. Lewis said here is where he is at and it doesn't necessarily pertain to Stein Mart who we would love to have in our community. He said this overall building no matter how many compartments it is divided into is entitled to 625 sq. ft. of signage and right now they are at 535 sq. ft. so you have 90 to go and we have another tenant to consider. He said when the Gordmans sign was in front of us we had mentioned that they were allocating a very substantial amount of the proportionate share to one tenant and they would end up short at the tail end. He said we had the talk and everybody was aware of it so the dilemma we have got is that for them to accommodate one tenant it shorted it severely at the back end. He said realistically there is not enough for you with your sign size nor is there anything for any future tenant and we are already over and we have an unknown that is entitled something down the road and we have Stein Mart that we want to welcome to our community but the building owner pre-agreed with the use of square footage and proportionate share already for a previous tenant so we are being asked now to modify a consideration based on the landlord's previous choices.

Mr. Lewis continued by saying from his eyes while the board looks at Stein Mart he is thinking if the board wants to consider any relief he thinks there ought to be a capped number that is going to take in your tenant. He said you are the landlord and if you have 150 you decide how to allocate it and he thought we had this talk already with Gordmans. He said the sign is wonderful, there is no question, it is proportionate for where it sits, it is not overwhelming, there are no issues with height it is just you are asking for more than what is available.

Mr. Rosenblatt said he apologizes, there has been some turnover with the company and he wasn't here at that time but he believes from the minutes his colleague who also is not here today, he is actually the Director of Construction, it is not normally his job but the Director of Development actually could not make it but he is the one that asked him to fill in for him but what he heard from him and the minutes of that meeting when the Gordmans was decided, yes he does know that you had that discussion but again proportionate it looked good for the building at the time, it kind of worked so that is why it was given at that time and he certainly understands the situation that they are in because of that and he appreciates the board's consideration for this one.

Mr. Lewis said the board took care of that when we did Gordmans but we said you have 90 left and two units and he realizes that you (Mr. Rosenblatt) was not the representative.

Mr. Gutoskey said with the remaining 5,000 sq. ft., what kind of square footage would you be looking at for a sign.

Mr. Rosenblatt said they have had a little bit of interest and a couple of showings but it really just depends on who that tenant ends up being, he can't speak for the future tenant because we don't know who would be filling in when we agreed to the Gordmans sign.

Mr. Gutoskey said the board probably needs to sort that out tonight so it is set and done and they won't have to come back.

Mr. Lamanna said this is the one problem with doing this on a multiple basis, the first people that come in, we tell them there will not be anything left and now they are coming back in and saying they are hurting.

Mr. Gutoskey said because of the heights of the buildings versus what you would see up on Washington Street.

Mr. Lamanna said that is why the board has been flexible here.

Mr. Gutoskey said because of the heights of the buildings if you try to keep it within what is allowed it is not going to look proportional.

Mr. Lamanna said another 77 sq. ft. of variance is probably not inconsistent but what do we have left for the next 5,000 sq. ft. He said now maybe you have another 20, 30, 40 sq. ft. left for the last guy and we don't want him to come in and say they want a 150 sq. ft. sign. He said when somebody comes in there as a tenant you are going to have to tell them there is 30 sq. ft. of signage left here. He said this is the landlord's problem and he is the one who has worked himself into a corner. He said he doesn't think the board has any issue with this sign and frankly another 76 sq. ft. along here is probably fairly consistent with what the board has done in the whole area but that maybe leaves another 20 – 25 sq. ft. left for that last space or you will be getting something that is significantly different from all of the other signage in the area.

Ms. Noble said just playing devil's advocate, looking back at the history that Ms. Endres provided it looks like this space in particular had a high turnover, it was Circuit City and then furniture and then a dollar store and although Gordmans sign is pretty big it did its job as far as drawing interest and making that a landing ground for some new and great stores, Party City and Kirklands.

Mr. Rosenblatt said they are national tenants and wanted to be in the area and we are set back from the road.

Mr. Lewis said if you want to give the landlord 100 and if you want to give 75 of it to Stein Mart you have got 25 in the bank and you've got another space to fill then we don't need to visit this again. He said he knows you (applicant) are looking at things on square footage but we look at the front, the face, it could be a super deep bowling alley type property but if you have 100' of frontage that is what we are looking at for the sign.

Mr. Murphy asked how much frontage is the left over space.

Mr. Rosenblatt said it looks like Kirklands took up two-thirds so he would say it is about 33 ft.

Mr. Murphy said he is a big fan of 32 sq. ft., 4 x 8.

Ms. Endres said there is a another thing the board might want to factor in there is a plan to put the last building extension on, she doesn't have an application in front of her for that but there is a plan to add on.

Mr. Lamanna asked which way.

Mr. Lewis asked heading back towards Dick's in the corner.

Mr. Rosenblatt said correct and that will add about 10,000 sq. ft. more total square footage.

Mr. Lewis said when that gets built you will get some more and said he would rather deal with what is in front of the board.

Mr. Lamanna asked if they extend this building and it adjoins in with the other one does that then become one gigantic building.

Ms. Endres said she will probably continue to treat it as two separate buildings because she believes that PEBB owns it from the new tenant next to Party City up to Circuit City and McGill owns, at least right now, from the last tenant over to the TNT Tanning.

Mr. Rosenblatt said they wouldn't exactly connect.

Ms. Endres said they will touch.

Mr. Rosenblatt said the property line will be a grass area that would not touch.

Ms. Endres said she heard a couple of different versions.

Mr. Rosenblatt said he doesn't believe it goes all the way.

Ms. Endres said she has no plans for that.

Mr. Rosenblatt said they don't have a tenant lined up for it yet.

Mr. Lamanna said going forward with this the board would like an understanding that when the building is extended that they are going to be treated as separate buildings. He said whatever the final structure ends up with for purposes of signage, it is going to be two buildings and that will make everybody's life easier from an administrative standpoint especially if we have two different controlling parties. He said if the board gives another 100 sq. ft. of variance the board will do it with the understanding that if the building is extended they will continue to have a 100 sq. ft. variance over whatever is finally permitted based on the frontage of the building so that hopefully the board will not have to revisit this issue again. He said you have a basket full of fruit, dole out the fruit wisely. He said the board is giving you the tools so use them wisely.

Mr. Rosenblatt said understood.

Mr. Lamanna said the whole thing is going to be driven on whatever the business is, the shape of the sign and the relevant proportion is going to be totally driven by whatever their name is. He said if it is a two letter name they are going to want to have a block, if it is a ten letter name it is going to be a strip so the 100 is based on what we have done elsewhere and this is at the upper end of what we have done elsewhere so you are already getting some extra consideration

Mr. Rosenblatt said they certainly are and he appreciates that.

Mr. Lamanna said the board will give you 100 and you will have to decide how you are going to use it.

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

Motion BZA 2016-42 – 7705 Market Place Drive – Stein Mart

Mr. Lamanna moved to grant the applicant the following:

1. A variance on the signage allowed for this building strip of 100 sq. ft. from the existing 625 sq. ft. for a total of 725 sq. ft.
2. The board will also note that this building area has some room for further extension and if that extension is built the total signage permitted will be increased so the additional permitted signage will be calculated and then the 100 sq. ft. variance will be added to that for the total signage of any building extension when added on.

Based on the following findings of fact:

1. The additional signage is based upon the size of the buildings.
2. Some additional signage is reasonable and this is consistent with the additional signage the board has allowed otherwise in this area so it will not adversely affect other tenants and again allow it to be consistent with the other signage in the area.
3. In addition to the applicant's request with respect to the specific sign on Stein Mart the sign height will be allowed at a maximum height of 30'. This is reasonable because there is an existing building structure designed for the sign that extends substantially above the 30'.
4. The sign is appropriately placed within that area so it would not create any adverse effects with respect to either the character or the signs in the neighborhood or create any structures that would be above the roofline.

Mr. Lewis seconded the motion.

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

Application 2016-40 by Ivan Nassif for property at 7170 Chagrin Road - Continuance

The applicant is requesting a substitution of a non-conforming use for the purpose of a chiropractic and acupuncture wellness clinic. The property is located in a R-3A District.

Dr. Ivan Nassif, applicant and Ms. Janis Evans, property owner were present to represent this application.

Ms. Janis Evans testified that she is the property owner and the corporation is The Herald Building.

Mr. Lamanna asked Ms. Evans if she understands what the board's issue is.

Ms. Evans said she doesn't really and she doesn't know how many remember when there was a railroad trestle there and there wasn't a need for a driveway, we shared the driveway on the side of the building and then Geauga County in 2002 deeded us the property and because of the railroad trestle they had taken down they reworked the roadway there and at that time the Geauga County Engineer, she thinks George Phillips indicated that they didn't want to put in another driveway and it was Geauga County's responsibility to do so but that driveway had been grandfathered for both the residence and the office building. She said she was unaware that there was any necessity to have a second driveway and there were concerns about safety issues there because you have the Eagles driveway, the Boardwalk driveway, the Herald Building driveway, you have South Street, Cedar Street, Arch Street and the roller rink that opens right up onto S. Main which becomes Chagrin Road so it is a very congested area and to enlarge that driveway.

Mr. Lamanna said the issue the board has is you have got a residential property that is using a common driveway with a commercial property.

Ms. Evans said it has been that way from day one.

Mr. Lamanna said yes but that is not permitted and the idea is as time goes on.

Ms. Evans asked why it wouldn't be grandfathered.

Mr. Lamanna said things are not automatically grandfathered forever, when you make changes then you have to come into conformance.

Ms. Evans referred to the Geauga County Engineer.

Mr. Lamanna said the Geauga County Engineer is empowered to make those decisions but he has no authority to speak for Bainbridge and for the zoning in Bainbridge.



Ms. Evans said there is an easement across the property and a spring that is there that she inherited with the land so it is not just her property there are two other pieces there that have easements. She said if you drive by the property, there is a spring in the front of it that is marked there and it is owned by one of the buildings across Chagrin Road in one of the office buildings there and Geauga County owns a certain portion of the property as well.

Mr. Lamanna said you mean the frontage.

Ms. Evans said yes.

Mr. Lamanna said there is a road right-of-way.

Ms. Evans said she thinks it is a safety issue because you have so many driveways there.

Mr. Gutoskey asked if there is an easement over the driveway for you to use the driveway.

Ms. Evans said no, she has asked the gentleman for one but his lawyer doesn't want him to sign one but we have never had any difficulties.

Mr. Gutoskey said so when the county realigned that they put in the one driveway but they didn't allow multiple accesses for the parcel.

Ms. Evans said that is correct.

Mr. Lewis said so that driveway is on the residential property's land.

Ms. Evans said as well as hers.

Mr. Lewis asked if there is a survey on that property.

Mr. Gutoskey said no.

Mr. Lamanna said that is one of the things the board requested.

Dr. Nassif said they will do the survey but survey companies are hard to get ahold of but he finally got an estimate last week but he thought bringing Ms. Evans and having a history of that driveway would be helpful why it was done that way.

Mr. Lamanna said one of the issues is effectively what is happening is the adjacent residential property is being used for commercial purposes, if you had an easement and you don't have an easement, you are using the property for a commercial purpose, another residential property, it is not even your residential property so you wouldn't really have a claim of prior use because it is not your property.

Ms. Evans said but she had access to the building prior to Geauga County deeding her the property which she is paying taxes on.

Mr. Lewis asked if there were two driveways before they widened the road.

Ms. Evans said no, you never had to have a driveway, you could pull right up in front of the building.

Mr. Lamanna said at the time before they redid the road they actually had an access.

Ms. Evans said correct.

Mr. Lamanna said at the time they should have put a driveway in for your property.

Ms. Evans said she knows they approached the Illuminating Company and they said they would have to relocate the pole there and they didn't want to relocate the pole and Geauga County didn't want to put in a driveway.

Mr. Lewis said you can't change a road and then block access to somebody's property that already had access. He said the dilemma of it is, almost all of this driveway resides on a residential property and that property owner is not here and that property owner has not granted an easement so on that basis you have no right to use it because they own the property whether it is paved or a lawn.

Mr. Lamanna said you really have no legal access to your property unless you sue the property owner.

Ms. Evans said Geauga County is the one that is responsible.

Mr. Lamanna said then you have to go back and talk to the county. He said he can tell you what the problem is and unfortunately he sees this all of the time, the county engineer is in there doing a road project and he has got one thing on his mind, how do I do this road project as cheaply as possible, he is not worried about whether the people end up in compliance with the local zoning or not, that is their responsibility.

Dr. Nassif asked if they have to get zoning permission from the township to do the project.

Mr. Lamanna said no, they can do what they want with the road.

Dr. Nassif said they gave them that land the .21 acres but at the same time they put that driveway in there.

Ms. Evans said they put that driveway in.

Mr. Lamanna said they extended the existing driveway to the new road.

Ms. Evans said one-half of that existing driveway was hers.

Dr. Nassif said but there is essentially no existing driveway so didn't it have to be approved by Bainbridge to put in a driveway.

Mr. Murphy said the county permits the driveways.

Ms. Evans asked if there is a solution.

Mr. Lewis said yes, put your own driveway in or go get your easement from your residential neighbor but even then you have got a commercial use on a residential property and he doesn't know if it creates a conflict here.

Mr. Lamanna said yes it does.

Mr. Lewis said the only true solution is your own driveway.

Mr. Lamanna said the other problem is the other property owner really has to come in and petition to allow that because it is his property.

Ms. Evans said not if she puts a driveway in on her property.

Mr. Lamanna said if you put the driveway on your property that would be fine.

Ms. Evans said there is already a driveway on his property and if he would allow her to use the first part of his driveway there shouldn't be any problem then right.

Mr. Lamanna said for him to allow you to use the driveway for a commercial purpose he is going to have to come in here before the board and get approval for that because there is no allowance for mixing commercial and residential like this using mutual driveways for both.

Ms. Evans said she understands.

Mr. DeWater said he will have to rework part of his driveway too.

Mr. Lamanna said one of the problems is that we don't exactly know where the lot lines are.

Ms. Evans said there is a creek there and it is very narrow there and what he owns is probably only ten feet.

Mr. Lamanna said maybe once you have the survey done he may become more willing to negotiate on things if he suddenly finds out he has to cross your property to actually use his access.

Ms. Evans asked if there are no concerns about the safety issues.

Mr. Lamanna asked of another driveway.

Ms. Evans said yes.

Mr. Lamanna said he is not sure another driveway is going to make any safety issues because one of them is a residential driveway where you have one or two cars coming in and out. He said there is not a business back there with 100 cars coming in and out of it every day.

Mr. Lewis said his activity is pretty low with the amount of cars in and out and you are not having hours on evenings and weekends.

Mr. Lamanna said he doesn't think the real issue here is safety he thinks the real issue is the county road department didn't want to spend the money to put another driveway in, that is what the issue is and he doesn't know what they assumed about the existing situation but we have residential and commercial, there is no written easement, the adjacent property owner won't give you an easement, you are effectively using the residential area to get access to the back building and it looks like the way it is set up there that the vehicle traffic is going around onto the residential area to access the back part of it. He said none of that is really quite kosher and the board's point is we are just trying to get things into as great as conformance as can be reasonably obtained. He said we want to separate it and we don't want to have property being residential and commercial.

Ms. Evans said it has never been residential.

Mr. Lamanna said he was not talking about her property, he is talking about the property owner in the back and there is not a provision for having joint driveways between commercial and residential premises for a lot of reasons.

Ms. Evans asked if that is a new rule for Bainbridge or has it always been that way.

Mr. Lamanna said it has always been that way, it has never been permitted in the zoning, and there have never been common driveways. He said there is a provision that allows adjacent commercial premises to have a single driveway and share a driveway and it is a safety reason because there are two commercial traffic areas being combined into one that sometimes works better than having each guy have a separate spot but in this case it is not quite the same.

Mr. Murphy said but this is a residential property and acts under a non-conforming use.

Mr. Lamanna said yes but it is a commercial use, not a residential use.

Mr. DeWater asked whose property the driveway apron is on.

Ms. Endres said that is why a survey would be a value so we know exactly who owns what parts of the driveway.

Dr. Nassif said it looks like we drive on his property to get in and he is on our property to get out.

Mr. Lewis said he could shift part of his driveway to be on his property.

Dr. Nassif said if the line zig-zags across, what happens with that then.

Mr. Lamanna said truly what we would like is two separate driveways.

Dr. Nassif said Geauga County did this and now the property owner has to foot the bill to fix it which is not a good thing.

Mr. Lamanna said he can't say Bainbridge allowed it.

Dr. Nassif said Bainbridge allowed it because no one told them that they can't do that or ask what is going on here and that should have been the township's job.

Mr. DeWater said no because it is a county road.

Dr. Nassif said the property that she got from the county and the county put a driveway on that property and that is your domain, that is what the BZA does here, decide what happens with that kind of property, would Bainbridge allow that.

Mr. Lewis said the property owner owned the property then and watched this happen, the property owner had every opportunity to address this.

Ms. Evans said she did not own that property then.

Mr. Lewis said he is saying the property owner at the time.

Ms. Evans said she purchased that property afterwards.

Mr. Lewis said the property owner at the time the road was changed.

Mr. Lamanna asked Ms. Evans if she got title insurance when she bought this property because she should call her title insurance company and tell them you have a claim potentially because you have no access, the point of access is over somebody else's property.

Ms. Endres said it looks like the apron is in the road right-of-way.

Mr. Lewis said if the residential property owner says you are no longer granted complimentary access for the use of the driveway or whatever portion is on their property, you are landlocked.

Mr. Gutoskey said there is no curb cut.

Mr. Lewis said if that property owner sells that home at some point down the road there could be a continuation of the same issue so he still thinks the work around is you need your own driveway, be self-reliant and if your neighbor's driveway, part of it is on your land and you have your site survey you can decide to tear that section of it up or relocate the driveway and that way there is 100% separation.

Mr. Lamanna said right now you have no legal access to your property, to your building. He said the only way you can get a vehicle to your building is to go on somebody else's property for which you have no easement, legal right to do.

Ms. Evans said it was her understanding that from day one that half of that driveway was hers.

Mr. Lewis said a survey would point that out.

Ms. Evans said she understands there was one done many years ago but she doesn't know where that is, her husband was ill at the time they purchased it so she had someone else taking care of it.

Mr. Lamanna said it has got to be resolved before the board goes ahead because we need to know what the situation is and we have to start with a survey so we know what we are dealing with.

Ms. Evans asked if it is legitimate for us to find a resolution to this.

Mr. Lamanna said there is a resolution; the worst situation is you would have to put a driveway in.

Ms. Evans said she understands that.

Mr. Lamanna said if the property was 1,000 feet back from the road and now you have to put 1,000 feet of driveway in that would be a different story here. He said ideally we would like to get the other neighboring land owner in here as well.

Mr. Murphy said he would think the county would have a survey of this little section right here and there has to be something that shows where everything is.

Ms. Evans said Venture is the one who owns the spring.

Mr. Murphy asked why would Geauga County keep a section of that unless there is a fire hydrant or sign.

Ms. Evans said no there isn't.

Mr. Gutoskey said you may be able to go up to the county engineer's office and pull out the drawings from when they did this to help you decipher what is going on.

Mr. Murphy said he would call the title company, you have got a real problem there.

Mr. Lamanna said maybe they can help straighten some of this out.

Mr. Murphy said we don't know why they kept 20' of Geauga County property there.

Ms. Evans said precisely, she doesn't know either.

Mr. Murphy asked about the Venture property.

Ms. Evans said that is the person that owns the spring and it must have been under the trestle.

Mr. Lewis asked if they will have to cross over Venture's property with the driveway.

Ms. Evans said yes and it comes from across the street from Chagrin Road.

Mr. Lamanna said that might be an easement for a spring.

Ms. Evans said it probably was under the trestle because there was a right-of-way there like a gas line.

The board viewed the ReaLink aerial.

Ms. Endres said usually the legal descriptions go to the centerline.

Mr. Gutoskey suggested talking to the title company and county engineer.

Ms. Evans said it is owned by someone in one of the buildings.

Mr. Lamanna said it looks like they were left with no frontage.

Ms. Endres said the road right-of-way is on the Venture property.

Mr. Lamanna said they may have acquired that with the dedication of the road.

Ms. Evans said so her understanding is there is a way to resolve this but it is going to take a little bit of time.

Mr. Lamanna said he thinks it will take a little bit of time and unfortunately this thing right now looks like it is kind of a mess and the only way we are going to untangle it is we are going to have to go back in history a little bit to figure out exactly what happened back when they were doing all of this gerrymandering of the property and maybe in the course of that there is some existing survey that shows all of that.

Mr. Gutoskey said he knows the county has a right-of-way map when they realigned that.

Mr. Lamanna said that may resolve it and you may not have to have another survey done, that may be good enough but he would contact the title company and tell them that this issue has come up, would you look into it please. He said we may have to go back and work with the county to untangle this mess but we want to get a situation where everybody is in compliance otherwise if you go to sell this property you could have a real problem with four to six months of work trying to straighten all of this out. He said part of the board's goal is to get all of these things straightened out so there are no issues of who has what rights to do what and nobody is using somebody else's property etc. so we are doing some of this for the protection of the property owner as well as for zoning issues as well, we don't want you to have problems down the line. He said when we get done at the end of the day we want to make sure you have a property that when you go to sell it, no one can say the property is not conforming. He said the board wants the property to be conforming with the zoning codes so that if somebody's title company is looking into whether or not they are going to insure the title they are not going to say that it doesn't comply with zoning so that is to your benefit as well as to our job of making sure there is compliance with zoning. He said at this point the board needs to postpone this until further investigation can be done. He said we need to figure out what actually is going on here and what actually has happened in the past and figure out how we make sure we have everybody's property in compliance. He said this is a difficult situation and very unusual.



Ms. Evans said she is trying to sell the property and has a gentleman who would like to buy it but it has been difficult.

Mr. Lamanna said the board would certainly like to help you get this thing squared away.

Ms. Evans asked if there is a way they can move forward without it being squared away if they do their due diligence to see if they can resolve it with Geauga County.

Mr. Lamanna said if the board can figure out what the solution is then the board can probably move forward and deal with the particular application with the understanding that here is the plan and here is how it is going to be implemented moving forward.

Ms. Evans said so you are not going to put a driveway in.

Mr. Lamanna said once the board understands what the situation is then we can agree on what needs to be done, then we can act on it with the conditions and we will have the schedule laid out.

Ms. Evans said she appreciates that but it might not be as easy as putting in another driveway.

Mr. Lamanna said no it may not so we will have to see what it is we have to do.

Ms. Evans said she is suggesting talking to the safety forces because it is a very busy area.

Mr. Lamanna said the difference is with the residential driveway, there is no traffic coming in and out of there.

Ms. Evans said no but the properties around it are.

Mr. Lamanna said there is one commercial driveway there.

Ms. Evans said actually there are two, you have several actually, you have four.

Mr. Lamanna told Ms. Evans to definitely look at her title company and you may have some coverage that will help you out in defraying some of the expenses.

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

Motion BZA 2016-40 – 7170 Chagrin Road

Mr. Gutoskey moved to table this application to the next regularly scheduled meeting to be held January 19, 2017.

Mr. Lewis seconded the motion.

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

The board recessed the public hearing at 8:20 P.M. and reconvened it at 8:22 P.M.

Application 2016-26 by Federated Church by Sarah Northcraft Spann, Senior Director of Operations for property at 16349 Chillicothe Road (Family Life Center) - Continuance

The applicant is requesting a renewal and modification of a previously granted conditional use permit for the purpose of a church community center with short term lease for temporary use as a public school for the Chagrin Falls Exempted Village School District. The property is located in a R-5A District.

Mr. Robert Hunt, Superintendent of Chagrin Schools and Mr. Christian Williams, Legal Counsel for the District were present to represent this application.

Mr. Williams submitted the lease agreement to the board.

Mr. Lamanna asked if the church looked into the question of the real property tax situation on this property whether it would be exempted or not exempted.

Mr. Williams testified that he has not talked to the auditor but his firm represents public school districts and they have clients who lease space and when they lease that space they file an application in order to get a tax exemption.

The board reviewed the lease agreement.

Mr. Lamanna said they have agreed to remove the modular buildings.

Mr. Lewis said he is back to the checklist of all of the things that were requested like the application is by the Federated Church but you are the potential tenant.

Mr. Williams said correct.

Mr. Lewis said let's maybe walk through that checklist.

Mr. Williams said he was here November 17<sup>th</sup>, the last hearing on the application for this property and during that presentation he raised the issue of whether the property is a permitted use and whether the school should be filing an application for a permitted use to the zoning inspector and at that time the board had indicated that it would consider whether the board of education's use of the property was a permitted use and granted him the opportunity to file a brief with the board and he has done that and assumes the board had a chance to review that. He said he is happy to answer any questions or if he would like to present on that and he would be happy to go through the brief if the board would like.

Mr. Lamanna said he went through the brief and he doesn't think anybody has any disagreement that the school district can lease the property, it has full authority to do that. He said there was one reference in the brief under B. on page 3 there is a citation on section 105.01 (f) where it is talking about an owner and when it talks about joint owner or tenant in common and you have isolated out the word tenant as if it meant tenant in the landlord in tenant sense when it is absolutely clear to him that the usage there is tenant in common which has a totally different legal meaning and it means nothing to do with tenancy in the concept of landlord and tenant it is a type of ownership, it is an undivided ownership interest in the property, they are no different than just multiple people holding a joint fee title to it so it really doesn't have any application.

Mr. Williams said he thinks the board would agree that a tenant has the ability to file for a zoning certificate, tenant's property.

Mr. Lamanna said as a matter of course we never allow tenants to file, the only way a tenant can file for any kind of variance or conditional use or anything else is if they are acting as the agent, either the property owner has to come or they have to secure basically a statement of agency from the property owner.

Mr. Williams said we do have the property owner here tonight as well.

Mr. Lamanna said right but he doesn't think that is really good authority and he still has some issues with the fact that we have an already existing conditional use there and the property owner is trying to switch it to something else and that somehow loops out of being a conditional use and the property owner is going to come back and take over and we don't even know what they might take over when they come back when the lease is over and they reoccupy the premises, the premises is actually going to be somewhat different potentially from what is there, there will be some modifications made to the premises. He said in the lease they have to restore the modular area and there is also a provision that anything else that is left behind is theirs so if something else is built there it would become theirs so now we are going back and forth with a tenancy situation so he is not sure that that takes it out of the fact that this is an existing conditional use and it can now suddenly switch over and become a permitted use temporarily and then go back to a conditional use, he doesn't really see an authority for that. He said there is one case that is cited there that he has not had a chance to look at.

Mr. Williams said BP Oil.

Mr. Lamanna said he needs to look at the case and see exactly what it says and what authority it cites in the case so he can't speak to how that case may impact this. He said he sees certain distinctions looking at the brief description there, it is not obvious to him that it is directly dispositive without actually looking at it and it certainly is not all force with this situation. He said it may have something that is persuasive but without actually looking at the details of the case he really couldn't address that at this point in time.

Mr. Williams said he is happy to discuss the case with the board.

Mr. Lamanna said he can't discuss the case until he reads the case.

Mr. Williams said that is why they provided the brief on December 1<sup>st</sup> to provide this board the opportunity to review those items. He said he thinks it is clear from their perspective at least that the board of education's contemplated use is a permitted use under your zoning regulations. He said under that lease it states that we would have from the term of lease we would occupy exclusively the property and using it as a public school the Chagrin Falls Exempted Public School District operates public schools.

Mr. Lamanna said he thinks it is down to that narrow issue and he can't sit here today and say he is willing to decide one way or another on that, he thinks the board needs to review it further.

Mr. Williams asked should the board ask the Federated Church to file a permitted use application to the zoning inspector to move the process along. He said his understanding from the last meeting that the purpose of this meeting would be to help determine that issue and it sounds, from what he is hearing, that issue will not be determined tonight.

Mr. Lamanna said not tonight but he thinks the board has already said that we have taken that issue into this application that that issue is before us and this application and we don't need to go through filing another application and having the zoning inspector turn it down and then you will have to come to this board under error of the zoning inspector and we are just pushing a lot of paper around when we agreed that that is part of this hearing so if you were to appeal from it you could appeal that issue as well and say you think it is a permitted use so we have made that part of the official application and the official record so he thinks we have covered that issue.

Mr. Williams said the question his client is asking then is when the board anticipates ruling on that question, if not tonight.

Mr. Lamanna said maybe by the next meeting the board will be in a position to say one way or another and he also raises the possibility that after the board looks it over we may say we can only rule on this if we have these additional facts, it is possible that there are factual points that may be relevant to making that decision. He said he doesn't want to foreclose that possibility at this point but he would leave open the possibility that there may be something that is not yet on the record that we would need on the record to be able to come to a final conclusion on that.

Mr. Hunt testified by saying with all due respect you asked us at the last meeting to file this brief and he thought pretty clear on the record that this evening you were going to respond so what changed from there and what additional information does this board need, and he knows they have a checklist of things that have now been provided.

Mr. Lewis said that will go back to December 1<sup>st</sup> as well.

Mr. Hunt said these are two separate issues. He said they have tried to be responsive and tried to meet the timelines and now we are extending again so what will happen between now and January that didn't occur between December 1<sup>st</sup> and tonight.

Mr. DeWater asked if they have a timeline on when they are going to provide any of the information that the board requested of you in a letter dated December 1<sup>st</sup>.

Mr. Williams said with all due respect the information requested by the board in a letter of December 1<sup>st</sup> goes toward the conditional use and it is their position that it is a permitted use. He said the law is clear that it is a permitted use, the board is not authorized to put additional conditions upon us for that permitted use so it would seem to them that this is a permitted use and to have a ruling upon that prior to getting into the conditions, some of which will take months for them to be able to comply with such as the traffic study issue.

Mr. Lamanna said we have this lease agreement that we will read in conjunction with this.

Ms. Ann Lentz of the Federated Church testified that the church voted to lease their property to the school district though the terms of the lease had not been done to this date and the entire congregation did not have access to the terms of the lease.

Mr. Lamanna said the board is not prepared to make a ruling on that tonight.

Mr. Hunt asked if the board would commit to ruling on this in January.

Mr. Lamanna said yes, we should by January, be able to deal with it. He said if in the meantime there is something the board thinks is factually relevant we will try to get that to you before the meeting.

Mr. Lewis asked if the school will not be providing the board's requests or the church won't because it is really about your (Federated Church) property, not your tenant such as the traffic study, the information on the wells, the aquifers.

Mr. Hunt said there is no way we can provide that before January.

Mr. Lewis asked if they know what they are asking of the board, we had an agreement on what you were going to provide to the board.

Mr. Hunt said with all due respect, you provided a list of things, a list of items, he doesn't know how much of an agreement we had but we are moving forward with some of the items. He said he doesn't feel it relevant tonight to go through those items.

Mr. Lewis said because you don't have them.

Mr. Hunt said there is no way they could have them between November and December. He said we are asking the board to rule on the brief, that is our request.

Mr. Murphy said but in front of us right now is a request for the church to renew their conditional use as a church, right now that is the only thing in front of him.

Mr. Williams said at the last meeting we asked if we should file a zoning application for a permitted use and we were informed by this board that we did not need to do that and you considered that as part of it.

Mr. Lamanna said there is no point in going through a bunch of additional paperwork. He asked if they have looked into the traffic study at all.

Mr. Hunt said yes, they started the conversations.

Mr. Lewis asked with a local vendor or ODOT.

Mr. Hunt said both.

Mr. Lamanna asked what kind of lead time they are looking at.

Mr. Hunt said it really depends on who you ask, ODOT is moving forward with the counts which is a part of it.

Mr. Lamanna asked but once the counts are available does the vendor have any idea how long it would take.

Mr. Hunt said he does not have an exact date.

Mr. DeWater said if the board was to move on this in January and you can provide the information in January like you are indicating would you be willing to put in writing that you are going to commit and sign that agreement to completing that.

Mr. Williams said sign which agreement to include what.

Mr. DeWater said the traffic study, the water well study, all of those items.

Mr. Williams said so you are saying if the board was to deny the permitted use.

Mr. DeWater said he didn't say deny, he said if we were going to move on it in January but you can't complete these items we requested by January would you agree to it in a written document that would bind you to completing that.

Mr. Williams said with all due respect he doesn't believe the board has the authority to put conditions upon a permitted use like that and regarding the traffic study as he understands it, ODOT is going to require it of us regardless of what this board would like of us so we are having to do that if we are going to get to use the property.

Mr. Lamanna said anyway, it is not really a choice.

Mr. Williams said yes.

Mr. Gutoskey said it would behoove you to do the water well analysis too.

Mr. Hunt said we agree that these are things we have to do for our own due diligence before we put kids and students there, absolutely.

Mr. DeWater asked if anyone read the Chagrin Valley Times today because there was a county report about water wells not being sustainable in the county, all of the wells are below level, they listed out towns and everything.

Mr. Gutoskey asked if there has been any discussion with South Russell being the primary responder.

Mr. Hunt said they have had conversations with the Mayor and he has talked to both of his safety forces and he has also reached out to your Village Council to have those conversations.

Mr. Lamanna said we will reschedule this again for January.

Mr. Williams said if you do have any questions, please forward them to me and we will be happy to respond to them.

Mr. Lamanna said the board will do everything we can to keep the process moving and try to make sure you have some time to respond to whatever requests we might have.

Mr. Williams said they are looking at potentially, over the summer, trying to make this a usable space for school beginning late August 2017.

Mr. Murphy asked if there still is a Chagrin Falls vote that in fact this is going to happen.

Mr. Williams said yes.

Mr. Murphy asked when that is.

Mr. Williams said May.

Mr. Murphy said you have to be way ahead of that curve no matter what.

Mr. Williams said the people who will vote on the levy know what is happening.

Mr. Lewis asked how you will do that if ODOT says you will have to make modifications to State Route 306, lanes, lights, school zones and you need one-half million dollars and you have got to pay for that, how do you go to a vote if you don't have an ODOT study with findings to set a budget to take to your voters.

Mr. Hunt said if those requirements were laid to that extent, it wouldn't be a viable option for us.

Mr. Lewis said he thinks the ODOT findings are going to have a significant impact on your budget in passing or what you are going to take to your voters because you have got some incurred expenses and then who restores it in two years when you are gone, the school zone goes away, what happens with the State of Ohio and restoration to its original condition, is that the church's or the school.

Mr. Lamanna said they would just take the lights out, hopefully they would but it could take a while sometimes.



Mr. Scott King of 16465 Majestic Oaks testified that he lives in the Woods of Wembley neighborhood. He said he is not sure he understands the whole permitted use or the conditional use but let us assume for a minute that it is a permitted use. He asked if the landowners adjacent to this have no recourse for any nuisance that is created by either the water situation or traffic situation.

Mr. Lamanna said in theory regarding a potential nuisance claim if you can rise to the standard of proof one would need to make it actionable is always a question, traffic is a little bit tough because it is a public highway so that would be a rather interesting legal proposition. He said in theory if somebody is operating a property and creates a nuisance, he is not sure that increased traffic on public streets could ever be a legal nuisance, legally cognizable as a nuisance, he thinks that would be a hard stretch to convince a court. He said if the residents are interested the brief they have filed would certainly qualify as a public record so if any other interested parties want to look at that, if they want to comment on it or if they want to submit their own brief they are free to do so.

Mr. King said just to be clear, in our neighborhood we have people that are for it and people against it but he thinks everybody is concerned about two things, water and the traffic because remember, this school is on the eastern side of Rt. 306 and a lot of the traffic is going to come from the western side of Rt. 306 and we could be a cut-through.

Mr. Lamanna said the board understands that.

Mr. Murphy said the school made a comment last time that they would do everything they possibly can to help with that in terms of right turns, exits and to discourage and perhaps prohibit parent drop offs and pickups etc. and he thinks they certainly made it clear that they would try to be a good neighbor and you have got a tough haul getting out of Wembley going onto Rt. 306, we were there this afternoon, and just anytime of the day you do so everybody understands that.

Mr. King said if the driveway was directly across from our neighborhood and there was a light there, that would certainly help.

Mr. Lewis said see what ODOT says on that because when ODOT looks at it they are going to look at Wembley, they are going to look at your access point, they are going to look at two main areas only a couple of hundred feet apart and part of ODOT's role is to make sure public safety is there on these roads so he thinks everybody is conscience of it, you have a neighborhood and you would like to maintain that decorum of safety in it, you have got more access on Rt. 306 by more people so let's let ODOT do their job.

Ms. Endres stated that as a zoning inspector she has the right to request documentation also as per Chapter 109 of the zoning resolution. She said even if it is beyond the board's jurisdiction she does have the authority to request supplemental documentation as necessary.

Mr. Lewis said this request, early in the month, was all from our zoning inspector, it wasn't from the board.

Ms. Endres said they came from her but those were compiled based on the meeting and based on conversations.

Mr. Lamanna said you have the authority to ask for these things as well independent of the board.

Mr. Williams said or additional information being necessary to the final approval thereof.

Ms. Endres said for just a little piece of information a lot of times it gets lost in the mix. She said she doesn't have an application in front of her to act on, there has been no application for construction and when the time comes when she actually gets an application from the school she has the authority to ask for supplemental documentation as she sees necessary for processing that application.

Mr. Williams said this board has told us that we don't need to file a separate application and asked Ms. Endres if she disagrees with that.

Ms. Endres said at some point you are going to be asking to construct a building and she has nothing in front of her for the buildings and this is something she thinks we talked about all along that you are going to make an application for the actual construction permit. She said typically there are three permits with a new business use, typically there is a use permit for the actual use of the property, residential not so much, but if you are changing the use of the property there is the actual commercial use permit for the property, there is the construction permit and then typically a sign permit and she doesn't know if the school is going to want to put a sign there or not but that is the normal progression of things, there are three permits. She said what she thinks we are talking about here, in front of the board, is the actual use of the property, we are not talking about the construction, we are not talking about signs and she wanted to make a point that it is possible that she might be asking for some of this documentation that the board is also asking for.

Mr. Williams said they understand that but he thought she said there would be a right to request this information as a condition of the board ruling on their requested permitted use.

Mr. Lamanna said even if we were to say this is a permitted use at that point in time then you would have to go through the process for a permitted use and you would be subject to requests for information as part of that process by the zoning inspector.

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

Motion BZA 2016-26 – 16349 Chillicothe Road (Federated Church Family Life Center)

Mr. Lamanna moved to continue this application to the next regularly scheduled meeting to be held January 19, 2017.

Mr. Gutoskey seconded the motion.

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

Since there was no further testimony, the public hearing was closed at 8:57 P.M.

Respectfully submitted,

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

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

Date: January 19, 2017

AUDIO RECORDING ON FILE

Bainbridge Township, Ohio  
Board of Zoning Appeals  
December 15, 2016

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 8:57 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Ted DeWater; Mr. Joseph Gutoskey; Mr. Todd Lewis and Mr. Mark Murphy. Ms. Karen Endres, Zoning Inspector and Ms. Bridey Matheney, Assistant Geauga County Prosecutor were present.

Executive Session

Mr. Lamanna moved to go into executive session for the purposes of discussing legal matters with legal counsel.

Mr. Gutoskey seconded the motion.

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

The board recessed its regular meeting at 8:57 P.M. in order to go into executive session.

The board returned from executive session after discussing legal matters with legal counsel and reconvened its regular meeting at 9:30 P.M.

Minutes

Mr. Lamanna moved to adopt the minutes of the November 17, 2016 meeting as written.

Mr. Murphy seconded the motion.

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

Applications for Next Month

Application 2016-26 by Federated Church by Sarah Northcraft Spann, Senior Director of Operations for property at 16349 Chillicothe Road (Family Life Center) - Continuance

The applicant is requesting a renewal and modification of a previously granted conditional use permit for the purpose of a church community center with short term lease for temporary use as a public school for the Chagrin Falls Exempted Village School District. The property is located in a R-5A District.

Application 2016-40 by Ivan Nassif for property at 7170 Chagrin Road - Continuance

The applicant is requesting a substitution of a non-conforming use for the purpose of a chiropractic and acupuncture wellness clinic. The property is located in a R-3A District.

Application 2016-41 by Terry Markoff for property at 9514 Taylor May Road

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

Application 2017-1 by Joseph N. Gambino for property at 7395 Chagrin Road

The applicant is requesting a substitution of a non-conforming use for the purpose of landscape operations: construction, maintenance, installation. The property is located in a R-3A.

The Bainbridge Township Board of Zoning Appeals set a public hearing on the above applications for January 19, 2017 at 7:00 P.M. at the Bainbridge Township Community Hall, 17826 Chillicothe Road, Bainbridge Township, Ohio and unanimously resolved to request the Bainbridge Township Board of Trustees to issue a purchase order for legal advertising.

Since there was no further business, the meeting was adjourned at 9:40 P.M.

Respectfully submitted,

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

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

Date: January 19, 2017