

Bainbridge Township, Ohio  
Board of Zoning Appeals  
December 19, 2013

Pursuant to notice by publication and certified mail, the public hearing was called to order at 7:25 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Joseph Gutoskey, Mr. Todd Lewis, Mr. Jason Maglietta, Alternate and Mr. Mark Murphy. Mr. Mark Olivier was absent. Ms. Karen Endres, Zoning Inspector was present.

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

Application 2013-29 by Henry J. Prijatel for property at 18063 Harvest Drive -  
Continuance

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

Mr. and Mrs. Prijatel were present to represent this application.

Mr. Henry Prijatel testified that they are having a continuance.

Mr. Lamanna said in the meantime the board has had a chance to look at the prior record from before and he also did a little research on the issue of res judicata because of the previous application and in his view the court decisions are pretty clear that if the matter has come before the board before and the issue has been decided that it cannot be re-litigated in a subsequent hearing unless there is a substantial change in circumstances.

Mr. Prijatel said what they refer to as circumstances that have changed significantly and the application for the RV garage which is significantly different from the boat garage.

Mr. Lamanna said it is still a garage and it is actually even a bigger garage.

Mr. Prijatel said that is true.

Mr. Lamanna said it was denied because of the size of the variance and it is an even bigger variance and when he says it changes circumstances, when you change circumstances it usually has to do with changed circumstances of the property.

Mr. Prijatel said we can go there too. He said the property has significantly changed by the introduction of the riparian setback and the flow of water that goes through his property. He said the water flows through down on the left-hand side.

Mr. Lamanna asked if this is new from the time of the prior application in 1996.

Mr. Prijatel said you saw me producing it so it is new. He said from the last application in 1996 the riparian setbacks did not exist in Geauga County or Bainbridge Township, they were introduced in 2000.

Mr. Lamanna said the legal concept of riparian setbacks was introduced, the riparian ways existed prior to that unless somebody redirected the drainage.

Mr. Gutoskey said in other words unless the stream that cuts through your property was there back in 1996.

Mr. Prijatel said it wasn't there, the only thing that was required by the people that put the house up was to put a ditch back at his septic, that is where it ended so if he didn't do anything with it from there his whole backyard would be flooded and he still runs that risk right now, the whole backyard could flood if that ditch fills up. He said if you go back to when the house was originally built and what the county basically said the construction people had to do, the ditch only had to go back as far as probably where the end of that gravel part is over here (he referred to the GIS aerial view). He said when they built the house the septic is right here and this is where they put the ditch that is far as they said they had to take the ditch. He said the remains of that ditch was dug by him and continues to the whatever it flows down in order to get back to where it is supposed to go so the county or whoever is responsible for monitoring whatever happens to his house when it was built back in 1986 and then the legal riparian setback is where it is at because this is what has been established but it wasn't established by the county or mother nature, it was done by the owner of that property. He showed on the aerial view the dry areas but said it is even worse now since the county came in and renovated their culvert ditches because they didn't follow the guidelines of the Geauga County Soil and Water District by putting the silt guards up, they put them up after the silt filtered into the back so now there will be even a more flood situation back there but supposedly it is his responsibility to take care of the water flow, anybody can screw it up but he has to take care of it.

Mr. Lamanna asked if the water flows from front to back.

Mr. Prijatel said from the front to the back and it comes out of the ditch.

Mr. Lamanna asked if the water originates from the two properties.

Mr. Prijatel said no the water comes down the street from the ditches and it also comes from the area across the street from Haskins Road which is not on the riparian map, they missed it. He referred to the GIS aerial view and said back over here there is a natural spring and it feeds down right through here and explained where the water flows.

Mr. Lamanna asked if there is a culvert under the road.

Mr. Prijatel said yes and showed the location of the GIS aerial view.

Mr. Lamanna asked if it proceeds to drain down and across his (Mr. Prijatel's) property.

Mr. Prijatel explained where the natural creek bed is and between the gas line easement covering it up it is going right down here (he referred to the GIS aerial view). He said that whole area back in here will all flood and since they did repairs to the culverts it is even worse, the grass and small plants will wash away but once again it is his responsibility, not the township's and not the county's so he can't build in that area back there so he thinks it is a significantly different circumstance plus he would have to build a roadbed which would have to run parallel to that ditch in order to get his recreational vehicle back in that damp area.

Mr. Maglietta asked if his shed gets flooded.

Mr. Prijatel said his shed is built up on 12" – 14" of gravel.

Mr. Maglietta said it looks like it is right in the area he was talking about.

Mr. Prijatel said he knew going in that he would have to build it up.

Mr. Murphy asked if he is talking about the 210 sq. ft. accessory building and if that is what the shed is.

Mr. Prijatel said the shed is 14' x 18'.

Mr. Murphy said he is just looking at the other things on their documentation. He said you are asking for a variance from the side yard setback and we still haven't settled the issue of the legality of even talking about it again but you have a swimming pool, a deck that never got permitted or have any kind of zoning permits, you have a 210 sq. ft. accessory building that is part of the lot coverage. He asked Ms. Endres if all of those things are part of the lot coverage that we are looking at and added that the maximum lot coverage for Bainbridge is 10% and the proposed is 7% and asked if it includes the swimming pool and the deck and the 210 sq. ft. accessory building.

Ms. Endres, Zoning Inspector testified by saying yes, there is not a lot coverage problem.

Mr. Prijatel said he hopes he doesn't have a lot coverage problem.

Ms. Endres said the 14' x 24', that was the attached garage that was in question from the previous appeal.

Mr. Murphy asked about the poured concrete.

Ms. Endres said it has already been calculated in the lot coverage.

Mr. Prijatel said initially he used Access Geauga for the dimensions off the property lines and he sent Ms. Endres an addendum to that basically saying the original application to the township for the building permit for the house is what the dimension we should be using so it is now actually 37' so all he is looking for is 14' off of the property line.

Mr. Murphy said you were requesting 33' for the variance.

Mr. Prijatel said he understands but he was under the impression that he could use Access Geauga as opposed to paying \$1,000 to have a line survey done but he found the original document for the property and that gives him the house location and where the house is relative to the property line.

Mr. Lamanna asked if he had a location survey or an as built survey.

Mr. Prijatel said that was what was submitted to the township in 1986.

Ms. Endres said that was the site plan with the original application.

Mr. Prijatel said so if it was accepted back in 1986 it should be okay now.

Mr. Lamanna asked if that document is a survey or is it a plan.

Ms. Endres said it is a site plan.

Mr. Lamanna said a site plan doesn't mean anything because he doesn't know whether the builder who built the house said where he was going to build and very often they don't build it where they say they are going to build it and you find out later that it was supposed to be 25' off the line and it is 20' off the line.

Mr. Prijatel said our county engineers and our township engineers should verify that at the time of construction and if there is a problem at that point then they should have brought that to light if it is in the wrong location.

Mr. Lamanna said he doesn't know how they do that regarding the inspections.

Mr. Prijatel said they do inspect because when he had his addition put on the county inspector was down here checking on things all of the time.

Mr. Lamanna said but he doesn't check to make sure that your house is properly set back from the line because otherwise he would have to call a surveyor in and have it surveyed to find out whether it was properly off the line. He said it is the obligation of the homeowner to build it in the right spot and it is the obligation of the county to make sure it is built correctly. He said you can't rely on plans, it has got to be a survey and a lot of times you have surveys when you buy a house, there is a location survey and basically they will go out and look at where the house is and give back a document that states the four corners of your house and this is how far your house is from the property line so if you have something like that then that is something you could rely on.

Mr. Prijatel said he suspects that it is going to be relatively close and the other argument that he needs a correct answer on is the precedent that that is represented within the development of the other eight properties that were allowed variances, some with and without permits.

Mr. Lamanna said technically speaking there are no precedents.

Mr. Prijatel said there are eight houses in the development that were granted variances.

Mr. Lamanna said every application is decided on its own merits and the fact that somebody's application was granted to do something does not give anybody else the right to come in and say because you have granted his application you have to grant my application.

Mr. Prijatel said it seems like it would be setting some sort of acceptance criteria for the township by allowing that.

Mr. Lamanna said it depends upon their circumstances, they may have a practical difficulty because of the nature of their property that doesn't exist on somebody else's property and there may be a big ravine and they had to position their house in a certain place and the ground may fall off at such a rate that the only place that they could build is in a certain location.

Mr. Prijatel said he understands that but for the practicality of looking at the eight examples he gave the board for development he doesn't see any drastic situations with the properties, they are basically flat and they are not even close to a riparian setback and there is one structure there that is 12' off the property line that was built without a permit and a variance was granted after the fact and that takes away from the character of what you are trying to maintain in the township.

Mr. Lamanna asked if this will encroach into the riparian setback.

Ms. Endres said it won't be in the riparian setback.

Mr. Prijatel said they built it where they wanted it and came in later.

Ms. Endres stated that 33' is right about where the pad is now.

Mr. Lamanna asked about the edge of the riparian.

Ms. Endres said the edge of the riparian is where the blue area is.

Mr. Prijatel said that area right where the blue line is, it is sloped, the fall is probably about 2' from the base of the ditch to where that riparian is but that water at that point is not going to reach the house. He said it is narrower in the back where the water rises past the ditch so that is why the water doesn't come into his house.

Mr. Lamanna asked Mr. Prijatel if he understands that the existence of a riparian in this location makes your argument for encroaching on that side yard setback worse, that is a negative to your request the existence of that riparian. He said you are saying you want a variance and by granting this variance what we are doing is we are moving a structure even closer to a riparian setback.

Mr. Prijatel said there is a way to argue that by taking it to the Geauga Soil & Water and you can actually argue with them as to where the centerline of the ditch is and where it is defined 25' off the centerline. He said he can actually call the county and have them reevaluate where they plotted it. He said the riparian setback is probably as accurate as the lines that are on this map.

Mr. Gutoskey said they used the contour lines that show the centerline of the ditch and this is in a 25' riparian, 25' on either side of the centerline of the ditch so that is how it was put on the aerials.

Mr. Prijatel said according to Geauga County you can go to them and argue where that centerline actually is.

Mr. Gutoskey said a surveyor can locate it too.

Mr. Prijatel said you actually have to go to Geauga Soil & Water.

Mr. Gutoskey said he locates them all of the time.

Mr. Prijatel said he is saying that is what it says in the literature, you have to apply to Geauga County to do the location of the ditch. He said he doesn't see how the riparian is going to affect the addition. He said you are basically saying there is no precedence and everything is equal and each case is on its own merit individually.

Mr. Lamanna replied right.

Mr. Prijatel said even though the variances that were granted within the development are basically on flat land and they are on 1-1/2 acre properties as opposed to three acre properties, that barn is 12' from the property line and is on a 1-1/2 acre parcel not a three acre parcel.

Mr. Lamanna said you have to understand that the fact that somebody only has a 1-1/2 acre parcel that is a positive consideration to getting a variance because of the size of the parcel. He said it means they have fewer options to find another location to put it.

Mr. Prijatel said his option was to put it where he wants it and get the variance later because that is what happened in that scenario.

Mr. Lamanna said there is a problem when people build things and they don't get variances because it leaves the board in a very difficult position because otherwise we would have to tell somebody to tear it down and the trouble with those is then you have the difficulty of it has to be enforced and is the court actually going to enforce that because they don't want to tear it down and they don't want to have to force somebody to tear a building down and he doesn't know what the merits of the case were, what the circumstances were and whether they realized they had to do it or what the understanding was without seeing what the record was. He said there is a difference if somebody came in and the board felt they willfully just ignored it when they had built it, they built what they wanted and now we will just come in and ask for permission so if that is clear from the record, they are going to get denied because the board is not going to sanction a potential violation of the ordinance.

Mr. Prijatel said it got approved.

Mr. Lamanna said he doesn't know, without looking at the record, what the circumstances were as to why that was approved.

Mr. Prijatel said he thought that was the whole intention of why the precedent was set, people wanting variances in order to make their home more of what they want it to be and he thought the investigation would be done in the last thirty days so that we can talk about that but basically what we are saying is that precedent in the neighborhood doesn't apply.

Mr. Lamanna said the board will look at it but it does not create a basis on which to grant a variance to the next person who comes along. He said the only thing it really goes to is the question of one of the eight of ten factors that we consider and that is the character of the neighborhood, obviously if you get enough similar structures around that is no longer an issue as to how it is going to affect the character of the neighborhood.

Mr. Prijatel said let's get back to talking about his property. He asked what is the major attachment to the variance, is it the res judicata because he asked for it before.

Mr. Lamanna said yes that is legally a problem for the board. He said the rule is if it has been decided before the board doesn't decide it again and that is what he is struggling with to decide whether or not there is something different here that is significantly enough different or changed circumstances that the board can go ahead and even hear the application.

Mr. Prijatel said the significant difference is that the function of the garage is not a garage for a boat which is what he was looking for originally, he was looking for just a standard additional garage, which his neighbor put up down the street by the way. He said he is looking to put a structure to protect his recreational vehicle and he believes it is significantly different because he can't put it in the back yard because of the potential of floods and he would have to level the backyard and cut all of the trees down which is not something he moved out to the township for, he would rather maintain the trees in the back as opposed to cutting them down to put a garage in the back plus he would have to put a roadbed in in order to get his recreational vehicle back there and at \$22,000 he thinks that is significant. He said plus if he did, with cutting down the least amount of trees, he would have to put the roadbed right inside the riparian setback and that would look stupid.

Mr. Maglietta asked what the other difference is.

Mr. Prijatel said it is for his recreational vehicle.

Mr. Maglietta said a boat is a recreational vehicle too.

Mr. Prijatel said he doesn't have a boat.

Mr. Maglietta said but back in 1996 that is what it was for.

Mr. Prijatel said in 1996 when he asked for the first variance he thinks the thought of the board was that he could build the structure somewhere else on the property that wouldn't impede on the variance but since they legally identified the riparian setbacks in 2004 the Ohio Drain law or statute said you have to maintain the waterway on your own property and if he built a garage for a boat he could have built a garage back further but he would have to clear out trees and have the water side of the property so he stayed away from that anyway plus he didn't want to cut down the trees because he likes nature.

Mrs. Gail Prijatel said you can't drive an RV in their backyard.

Mr. Maglietta said he understands that.

Mr. Prijatel said if you go over to Snyder Road somebody leveled their backyard and he thinks it is disgusting, they cut all of the trees for the heck of it.



Ms. Endres said she knows that there have been water changes since 1996. She asked Mr. Prijatel if his backyard is more wet or less wet than when he filed his application in 1996.

Mr. Prijatel said it is more wet, he has to maintain it and referred to the gas company easement and it is an ongoing battle to keep the ditch flowing. He referred to the septic area on the GIS aerial view and said it stays relatively clear and you can see where all of the brown areas where the grass doesn't grow very well.

The board discussed the application.

Mr. Lamanna said when he looks at the minutes from the hearing it pretty much appeared that probably the main reason that this was turned down is that the board felt it could have been located in the backyard somewhere because it was going to be used for a boat and lawn equipment. He said he can see where now given the base of that it is not that straight forward, most of the other cases when you look at these things, people are sort of litigating the same type of issue. He said here he sees some differences but there is also a principal that says if you could have litigated it the previous time, he should have litigated it the previous time but now if somebody says they just thought of another reason why they could have done this and they want to come back and bring the second reason up and in those cases it is pretty clear that no you can't find an alternate basis to support what you were trying to do before that existed at the time. He said in this case the fact that it was going to be used for a substantially different purpose it makes a difference here. He said in other cases it wouldn't make a difference but the problem is now you are going to change the purpose of this structure and probably 99 times out of 100 it wouldn't make a difference or 9 times out of 10 that really doesn't make a difference it is not really a changed circumstance because of the fact they use the structure for one thing versus another, it doesn't really change anything. He said if he would have said they decided they wanted to put this extension on, we don't want it to store a boat in it, we are going to use it as a workshop, the answer would be that is really not different but he does see sympathy with the RV because it introduces factors that, as he looks at it, kind of a change from the prior decision because the prior decision, looking at the record, is based on there is not really a practical difficulty here because what was trying to be accomplished could be accomplished by putting a shed in the backyard somewhere, a detached barn etc. He said but now he thinks we are dealing with somewhat of a different creature so he thinks he is willing to consider going forward if the rest of the board agrees that the fact that an RV being 38' long and extremely heavy brings into play different factors that really weren't part of the original application.

Mr. Maglietta asked in between the slab and the riparian, what kind of fall is there.

Mr. Prijatel said about 5'.

Mrs. Prijatel said the fall is nice, smooth.

Mr. Maglietta said he is concerned by if there is a big drop off there.

Mr. Prijatel said it angles down.

Mrs. Prijatel said no because she cuts the grass there.

Mr. Lewis asked Mr. Prijatel if he built the shed.

Mr. Prijatel said he built it.

Mr. Lewis asked what the problem was getting a permit on that.

Mrs. Prijatel said they will do that and added that they didn't know they had to do it. She said the neighbors put them up.

Mr. Prijatel said everybody else in the neighborhood basically did their own without a permit, the only instruction he was given at the time was that the shed had to be inside the 50' property line.

Mr. Lewis asked if a contractor put it together for them.

Mrs. Prijatel said Heartland Barns did, they built it on the property.

Mr. Lewis said so neither the contractor nor the property owner got a permit. He asked if they built the swimming pool or if it was there when they bought the property.

Mr. Prijatel said they built the swimming pool.

Mr. Lewis asked if there was a permit for that.

Mr. Prijatel said once again everybody else put one in without a permit.

Mr. Lewis asked if it is the same thing with the deck, so you have three structures that went in with no permits.

Mrs. Prijatel said they have lived there for 30 years and did not know.

Mr. Prijatel said that happened years ago basically.

Mr. Lamanna said the misunderstanding people had was at one time he thinks the building department did not require building permits for sheds smaller than a certain size.

Mr. Prijatel said that is what it was.

Mr. Lamanna said maybe 10' x 12' so people didn't realize that there was nothing in the zoning law that was comparable to that, you still had to get a zoning certificate to put that in. He said then what happens is people say they didn't have to get a permit for their structure so the next guy comes along and when he put in his bigger structure, he says he doesn't have to get a permit for his either and probably should have gotten a permit from the building department also.

Mr. Prijatel said at least it is not on the property line.

Mr. Gutoskey said they are not over the setback.

Mr. Lamanna asked the board members if the board should go forward or not go forward with this.

Mr. Lewis said it is still real similar to what the prior board ruled on, the people before us and he is not comfortable offering a variance when he has no idea what the size of the variance would be because he does not have a survey, he has got an antique site plan and he has nothing that is current or accurate and it is going to require for consideration a defined number and added that the board talked about this at the last meeting. He said maybe his expectation was more from the applicant tonight giving solid documentation to even consider moving it forward. He said he thinks he stated before from his point of view it doesn't make any difference to him what gets stored in it as long as it is not a business which is not a permitted use of what activity could be in the building so whether there is more driveway or less driveway, they are not high consideration points for him and he is probably being redundant, most of this is in the minutes from what he stated last time other than the addition that he was looking for some solid documentation and he does not have that in front of him tonight.

Mr. Gutoskey said he does not have a problem and he thinks it is a big difference trying to park a large motorhome behind the house versus trying to put a boat back there so he doesn't have a problem considering it, just some kind of documentation on where the house actually is so we know what the setback will be.

Mr. Maglietta said he thinks the board needs more information, he likes the fact that information was received on the neighbors, he is trying to go by the law right now, trying to do the right thing but what the board has is just hearsay numbers.

Mr. Prijatel asked if what the board is saying is that the site plan that was submitted originally doesn't count.

Mr. Maglietta said they are hearsay numbers, and added that sometimes buildings are moved during construction. He said the board should have the right numbers so it can make the proper decision.

Mrs. Prijatel asked what kind of numbers they need.

Mr. Gutoskey said they need to have a surveyor come out and locate where the side of the existing house is relative to the property line.

Mr. Prijatel said they can have that done for a modest fee.

Mrs. Prijatel said it will cost \$500 to have that done.

Mr. Prijatel said he understands about the surveyor's fee and the hearsay about the original survey plot.

Mr. Lamanna said if we were to grant this variance, the board would require you to get a survey before you put it in.

Mr. Prijatel said he wouldn't have a problem with that but the fact that we could spend another \$500 and get turned down again, he doesn't want to waste the \$500.00.

Mr. Murphy said but if your house is only 7' from the property line right now or 33' or 37' or 52'.

Mr. Prijatel said it is 33' and somebody told him he could use Access Geauga.

Mr. Murphy said you keep saying that but it doesn't mean anything.

Mr. Lamanna said here is our problem, we have got this plus or minus some feet and in some circumstances it wouldn't make that big of a difference but unfortunately in this circumstance it makes a big difference as to whether it is one or the other so the problem is the board can't sit here and make a decision on this not knowing what the actual number is.

Mr. Prijatel said he doesn't have a problem with that.

Mr. Lamanna said the only way the board can make a decision is if you (Mr. Prijatel) come back in and say this is where the house is and this is where it is going to end up.

Mrs. Prijatel asked and then the board will grant the variance.

Mr. Lamanna said he can't say the board will grant the variance, we have to see the number and look at it but there is no way the board has enough information to make a decision and we know where that house is because it matters here. He said in a lot of cases it doesn't matter because 3' or 4' is irrelevant but in this case 3' or 4' is very relevant to the factors the board has to consider in making a decision.

Mrs. Prijatel asked what kind of survey the board needs.

Mr. Lamanna said all they need is a location survey.

Mr. Gutoskey said to get the location of the two corners of the house and how far away they are from the property line.

Mr. Murphy said he thinks the board agrees that res judicata does not apply, that it is different enough that we will allow it to proceed.

Mr. Lamanna said the board will proceed with it on the merits of the case, next month.

Mrs. Prijatel said we will get a land survey.

Mr. Lamanna said that is right so the board will know exactly where the house is, just on that side.

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

#### Motion BZA 2913-29 – 18063 Harvest Drive

Mr. Lamanna made a motion to table this application to the next regularly scheduled meeting to be held January 16, 2014 so that the applicant can get some pertinent information on the location of the property and at that time the board will hear the application on its merits.

Mr. Lewis seconded the motion.

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

#### Application 2013-33 by Scott & Jessica Munn for property at 8301 Valley Drive

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

Mr. Steve Ciciretto, Architect for the applicants and Mr. and Mrs. Munn were present to represent this application.

Mr. Ciciretto testified that he is the architect representing the Munns and that Mr. and Mrs. Munn are here if there are any questions during the process. He said this lot is a pre-existing non-conforming lot of record on the corner of Valley and Park Drives, the southwest corner and it is existing. He referred to the site plan and said this is the house, the porch has got to be removed and the shaded area represents the area of new construction so they will take down the existing garage, remove the drive and on the corner will potentially create a patio to the southeast side so this becomes a master bedroom and the drive will be relocated down into this area.

Mr. Ciciretto continued by saying the watershed that comes down across the property and Berry's house is about 50' from the driveway so it is about the same distance and from the drive is it is another 24'. He said he is not sure exactly about the variances already granted, the house was built probably in the late eighties so the new zoning did take effect and he had a feeling that when Lake Lucerne originally did the architectural review on this they considered this the front because Lake Lucerne then required a 50' front yard and 20' on a corner lot and 10' off a side or rear yard but the way it has been interpreted because of the Valley Drive address the setback in the new code is 75' and the lot is 75' so without a variance it would be unbuildable. He said they have been to the Lake Lucerne Architectural Review Board and showed the board a sketch of what the house will look like from Valley when they are done, they are relocating the front door from where the garage was and then this is the front of the garage from Valley that would be facing the Leon's house and added that the neighbors will have less run-off.

The board discussed the application.

Mr. Ciciretto explained to the neighbors how the water will run-off the property. He said there is some concern about drainage and referred to the GIS aerial. He said their house is here and what is happening is water in general in Lake Lucerne runs north to south but apparently there are some issues on the northern properties here. He said all of the houses kind of come down and that is one of the reasons why this drive drops the water into the current drive and that is why it is suggested that they come down the drive and turn to the east with a side entrance just to avoid the water issues but he was just trying to reassure them that we would pick up all of the hard surface drainage and take that over to the park which is the lower part of the drainage system in Lake Lucerne and run it out to the lake down here.

Mr. Lamanna asked where they are collecting to now.

Mr. Ciciretto said it is his understanding that it will go out through the drains.

Mr. Lamanna asked if they are tied in now.

Mr. Ciciretto said yes they are tied in. He said the issue here is that any drainage that is coming off the house now wants to naturally go this way and we will pick up the hard surface and pipe it so it will actually block all of this water that is coming down here and pick it up.

Mr. Lamanna said so the old driveway is going to go away.

Mr. Ciciretto said the old driveway will be gone, that will become a landscaped area.

Mr. Lamanna said so the real issue is going to the other driveway, what is coming down the other driveway.

Mr. Ciciretto said correct but it is 50' away so there is a green buffer here which is the same distance from the front of the Berry house to the street and that goes to the drive and the garage is in this area here. (He referred to the GIS aerial view).

Mr. Lewis asked what will be picked up at the down side of the driveway before you make the turn into the driveway.

Mr. Ciciretto said they will actually raise the drive up here so that they will be able to pick up the water that comes down the drive and then take it right through this 10' setback.

Mr. Tobin Berry of 8291 Valley Drive asked if there is a picture of the west side and added that in Lake Lucerne run-off is important.

Mr. Lewis said you have two ex-Lake Lucerne residents on the board.

Mr. Ciciretto showed the elevations of the existing house and this is where the addition starts so this is the back yard so from your standpoint you will see just a normal grading situation here so that will go away and we will re-grade that over there.

Mr. Berry said the driveway is flat.

Mr. Ciciretto said the drive is here so the grade on this is going to be pretty level on the backside and you can see there is a 2' retaining wall so they are going to actually raise it so the water can run down from there. He referred to the elevations of the house.

Mr. Berry asked where it will go.

Mr. Ciciretto explained that right now the water kind of comes down and runs here but we are going to raise that and pick up some water on the hard surface and take that out through a pipe system. He said they will actually be picking up water that normally runs in the neighbor's yard and your yard (Berry's) and still maintain enough green space that the house won't feel like it is right on top of you. He said this part right here is about the same depth as where the screen porch is right now so they are tearing the screen porch down and then they are going to start over. He said it is a one-story addition and they are planning on re-siding the house and it won't be blue anymore.

Mr. Berry asked if they are going to put a basement under what is now the porch.

Mr. Ciciretto replied yes.

Mr. Berry said so you will have to excavate.

Mr. Murphy asked about the door on the right side.

Mr. Ciciretto showed the side elevation and said this is the door they will be removing and this is the grade right now so they won't be cutting the grade lower than what it is. He explained where the location of the new driveway will be. He said this is the screen porch so the issue is really about setbacks and we wanted to address the run-off issue because we knew the neighbors had a concern about it but the variance is really regarding that the house would be unbuildable, in fact all of the houses in Lake Lucerne are because the whole development are pre-existing non-conforming lots so anytime you add onto a house technically you need to do this.

Mrs. Patricia Berry asked what happens if they do have a lot of water coming from their house.

Mr. Ciciretto said it does go through a building permit process also besides the process of zoning and the board of appeals and it is a matter of record so you would have recourse.

Mrs. Berry testified that the street there goes up and then it comes down and that is why they get all the water.

Mr. Ciciretto said he thinks what is going to happen is that this house is going to obstruct the flow of water, particularly to the Shaffers, and not so much to the Berrys because it is still so far away from your house, it doesn't seem it because it is closer than it is now but relative to what is happening in Lake Lucerne you can see the Shaffer footprint and the footprint of the new one and as you look at the aerial survey it shows relative sizes of the houses so the Shaffer house is very consistent, the Leon house is consistent and their lot coverage issues are less but it is sort of typical in Lake Lucerne, they allow 40% lot coverage traditionally and we are at just about 20% with the building if you don't add the drive and hard surface and that is how it was in the old zoning. He said there are two issues because the lot coverage is an issue.

Mr. Berry testified that you have got your drive out here and asked if they are going to build this thing up past the driveway.

Mr. Ciciretto said no, there will be a retaining wall.

Mr. Berry said so there will be no build-up of the land.

Mr. Ciciretto said correct.

Mr. Berry explained the water flow in the area.

Mr. Ciciretto explained that the new addition is lower than the existing house and said the addition is about the size of the screen porch and there will be a yard basin.



Mr. Berry asked on the drive if they are going to have it drain out the center or will a pipe capture the water and said as long as they keep the ditches clear on the north side of Valley it will handle it.

Mr. Ciciretto said water will be running away from your (Mr. Berry) house technically.

Mr. Lamanna asked how tall the retaining wall is.

Mr. Ciciretto said about 2'.

Mr. Lamanna asked if it is going to be above the pavement surface.

Mr. Ciciretto said they made it curb height, above.

Mr. Lamanna said it will also interrupt the flow of water there too.

Mr. Ciciretto said yes it will, they are picking up all of the hard surface water so it will not be running off onto their property.

Mr. Berry said as long as they don't throw more water towards us.

Mr. Lamanna said you are 50' away.

Mr. Ciciretto said there are no closer encroachments to any of the property lines except to the west than currently exists.

Mr. Lamanna asked how far that would be to the west.

Mr. Ciciretto said it would be 50' from the drive and 75' from the garage.

Mr. Lamanna said it is really a non-issue.

Mr. Ciciretto said he thinks there is enough separation that provides for drainage.

Mr. Lamanna said the house is addressed on Valley Drive.

Mr. Ciciretto said currently the front door is on Park Drive but it has a Valley address so now it is more correct.

Mr. Lewis said but the Park setback is substantially greater than your Valley address so it is on a corner lot so what line are you declaring your front.

Mr. Lamanna said it was what was declared at the time the house was built.

Mr. Murphy said the front door happens to face Park but the front of the house is really Valley and the driveway comes off of Valley.

The board discussed the corner lot situation.

Mr. Ciciretto said the Leon house across the street has a Valley address.

Mr. Lewis asked if Ms. Endres has a copy of the Lake Lucerne ARB approval.

Mr. Ciciretto submitted a copy to Ms. Endres and added that it complies with the Lake Lucerne ARB. He said when they run down the justification points it seems like they comply with all of the intent of those points, in other words, it is unreasonable to apply restrictions to this that are stricter than the neighboring properties as long as the proposed addition responds to the requirements directed by the Lake Lucerne deed restrictions. He said in this way this property may obtain a reasonable return then compared to the other properties in Lake Lucerne. He said whether the variance is substantial, no they don't believe it is a substantial variance since all of the setback lines are maintained and the lot coverage is still under what is deemed reasonable in Lake Lucerne, the 40% that the deed restrictions allow. Whether the essential character of the neighborhood would be substantially altered, no.

Mr. Lamanna asked if that little quarter of a circle there (he referred to the site plan), is functional or ornamental, is it a paved area.

Mr. Ciciretto said it is future paved, maybe a deck or maybe paver stones but the idea is, this is now the master bedroom and living space so the living room with door access to this corner is different than how the house functions right now so the intent is as part of the future design it would be nice to have some kind of landscaped deck.

Mr. Lamanna asked if that is being counted as lot coverage or not lot coverage at this point.

Mr. Ciciretto said he thinks as part of the lot coverage that we were talking about at 30%.

Ms. Endres said the 30% we are talking about includes that even though that is not part of the future project.

Mr. Lamanna said that is his question and you are pushing out the lot coverage by adding on another piece.

Mr. Ciciretto said part of the issue is function though just as we have been discussing all night, the grading here runs down towards the house so in a long term what they have intended to do is to create a retaining wall here that would keep any water from this area from running directly into the house, it would come back around the house and follow these contours.

Mr. Lamanna said that is fine but there is a difference between putting a retaining wall and building it up and then put an impermeable surface on top that now is another source for run-off and lot coverage that wasn't there before and you are already pushing 30% especially if it is not going to be developed now anyway, his inclination would be to say no they are not going to approve it now, come back later and the board will decide whether we want to let your lot coverage go up even higher.

Mr. Ciciretto said that is the issue, we don't want to come in now and say we are approaching 30% lot coverage in an area that is permitted historically to have 40% lot coverage and then come in and say we only have 28.5% lot coverage, we are adding another percent.

Mr. Lamanna said you would have to come in and get approval for that and in this point in time he just doesn't see why and it is like everything else, we want to build what we want to build but enough is enough especially if it is not actually going to be done now so his inclination is even if you were going to do it, maybe excise that from the plan and if you are not going to do it now the board should not approve it now.

Mr. Gutoskey said the alternative is to make the sidewalk coming up to the front a little smaller.

Mr. Ciciretto said they were trying not to create this L-shaped path but if we reduce that a little bit.

Mr. Gutoskey asked if the 30% includes that.

Mr. Ciciretto said right and could we put some beds in to shrink it a little bit, you could. He said it is not like it is a 10 years down the road project it is just because of the construction process, it may be something the owner may take on himself instead of being part of the construction plan.

Mr. Lamanna said yes the applicant will have to come back and address it then.

Mr. Ciciretto said so you would rather us present this as a future project.

Mr. Lamanna said and not part of the current plan.

Mr. Ciciretto said we can prove that the drainage system is in properly and that may be your biggest concern.

Mr. Lamanna said yes when it is all done and working. He asked if anyone had any more questions.

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

Motion BZA 2013-33 – 8301 Valley Drive

Mr. Lamanna made a motion to grant the following variances for the purpose of constructing an addition to a residence.

1. The addition will be constructed according to the plans submitted by the applicant with one change on the east side, the semi-quarter circle area behind the retaining wall that seems paved will not be part of the plan.
2. The following variances treating this as a front yard being on Valley Drive.
  - A. The front yard would be 21'-7".
  - B. The rear yard will be 10'-7".
3. The other Park Drive side variance is 53' on the setback.
4. The lot coverage to approximately 30% less whatever the calculated amount of that half circle is. (lot coverage to be finally determined by the zoning inspector and entered into the record). The exact lot coverage which will be the value that is used going forward will be as precisely determined from the site plan by the zoning inspector.

With the following condition:

1. The applicant has agreed and as a further condition of this variance which is necessary to prevent it from becoming an unreasonable burden on the adjacent properties that all of the roof drains and all of the hard-surface areas and the driveway will have water collected and piped out to the drainage ditches on Park Drive so as to not have any of that water from the structure or the driveway regularly running off onto the adjacent properties.

Based on the following findings of fact:

1. A practical difficulty exists because it is a pre-existing lot of record.
2. It is located on a corner.
3. It would be impossible to place a house on this lot within the normal limits.
4. It is also generally satisfying what the prior zoning limits were in this area.
5. The extension of the premises is towards the largest part of the lot so it will not adversely affect any of the neighboring properties.
6. The closest neighbors will not be any closer to it.
7. It is also consistent with the development in this area and the remodeling and expansions of houses in Lake Lucerne.
8. The improvements and enhanced water collection should improve drainage issues in this area.

Mr. Lewis seconded the motion.

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

Application 2013-34 by Wembley Properties, LLC for property at 8345 Woodberry Boulevard

The applicant is requesting a conditional use permit for the purpose of a change of ownership for a recreational club (The Wembley Club). The property is located in a R-3A District.

Mr. David Barr was present to represent this application.

Mr. Barr testified by saying he is in the process through his LLC called Wembley Properties, of buying the Wembley Club and it is going to change from its current ownership of Paddle Partners over to his LLC just shortly. He said originally he thought when this application was to be here this evening he would have predicted that they would be ready to close by now and that the official change of ownership would be happening almost simultaneously with the meeting but it has been slower than anticipated so his prediction wasn't so good. He said they haven't closed yet, it hasn't transferred title and he would anticipate with the holidays, it is a little unpredictable in the next week or two, that he thinks two weeks is a safe prediction of when that happens so he wanted to make it clear that the change of ownership hasn't happened yet. He said his understanding was that the attorney representing the current owners, Mr. Dale Markowitz, was supposed to be here but he called today and gave him (Mr. Barr) permission or the okay for him to be here and make this process happen.

Mr. Lamanna asked Mr. Barr if he is involved with both, so there are two different entities because there is going to be an operating entity and an ownership entity as it is now.

Mr. Barr said correct, yes exactly and he is involved with both of those two.

Mr. Lamanna said you are actually representing both of those two limited liability companies.

Mr. Barr said exactly.

Mr. Lamanna said and one of them is going to acquire the actual property and the other will actually be the operating.

Mr. Barr said that is correct.

Mr. Lewis asked if the board is to consider transferring a conditional use to a new owner who doesn't officially own it.

Mr. Lamanna replied no.

Mr. Lewis said or does it make sense to table this to January until the legal transaction is a journal entry.

Mr. Lamanna said since this was already scheduled the board can go ahead and act on it with a condition that it will not take effect until it actually closes. He asked who actually owns the conditional use permit.

Mr. Barr said it is a good question because the current ownership of the real estate is Paddle Partners Limited and that is owned by two or three fellows, Mark Dugan and Phil Artz so there was a period of two years where Paddle Partners was actually leasing the operations to a fellow but that lease expired on October 1<sup>st</sup> so it has reverted back to Paddle Partners at this point. He said the last time it was Rob and Wendy Janosic.

Mr. Lewis asked who the board actually assigned the conditional use permit to, what business entity.

Mr. Barr said it would have been called Prestige.

Mr. Lewis asked what the scoop is with Prestige.

Mr. Barr said Prestige Tennis was and is probably still owned by Rob and Wendy Janosic, they moved here from New York in order to take over the operations to the Wembley Club which they did for two years and their time and lease expired October 1<sup>st</sup> so they have moved back out of town.

Mr. Lewis asked if Prestige is a defunct business unit at this point.

Mr. Barr said he doesn't think that it is defunct.

Mr. Lamanna asked who is operating the club at this point.

Mr. Barr said Prestige is not operating the club but he believes it is still in business, there may still be some receivables.

Mr. Lamanna asked who is operating the club.

Mr. Barr said Paddle Partners.

Mr. Lamanna said so they took back over the operation.

Mr. Barr said correct and that is who Mr. Markowitz is representing.

Mr. Lamanna said technically they should have come in and gotten it transferred back to them.

Mr. Gutoskey asked how recently that operation changed.

Mr. Barr said October 1<sup>st</sup>.

Mr. Lewis said it is going to go from Prestige, it is going to skip going back to Paddle Partners with the intent going to the next business unit which should be consummated with their transaction fairly soon.

Mr. Barr said yes.

Mr. Lewis said rather than two-stepping this through Paddle Partners it makes sense to go directly to the new entity.

Mr. Barr said however what the board wants to do it is up to the board. He said he will submit to the board's wisdom.

Mr. Gutoskey said it looks like in 2011 the permit was issued for a period of five years to Prestige.

Mr. Lewis said technically Prestige still owns it whether they are running it or not.

Mr. Lamanna said yes.

Mr. Lewis said they still have a business arrangement with Wembley or any of its holdings or partners or LLCs or whatever, Prestige still has the conditional use.

Ms. Karen Endres, Zoning Inspector testified that the conditional use goes to the applicant and he would actually own the conditional use. She explained that the landlord is not operating the conditional use, it doesn't go with the property, it goes with the operator.

Mr. Barr said he thinks that Wembley Properties LLC is going to be the owner of the real estate and the new Wembley LLC is going to be the operations.

Ms. Endres said the permit could be given to Mr. Barr.

Mr. Lamanna said he would rather give it to the entity. He asked if there are any open issues here.

Ms. Endres said she has not heard any complaints about Wembley.

Mr. Lamanna said the board will continue this and added that Mr. Barr might want to research this with the zoning inspector just to make sure he is aware of all of the applicable conditions but the board will continue the existing state of affairs that go back to BZA 2011-30 which modified the original one in BZA 88-14. He suggested that Mr. Barr get those two decisions so he can see exactly what he has.

Mr. Barr replied okay and asked how he can get those decisions.

Ms. Endres stated that she can email them to Mr. Barr.

Mr. Lamanna said he wanted to make sure Mr. Barr fully understands what restrictions there are so that we don't have a problem with the facility regarding violations of the previous conditions.

Ms. Joyce Smith of 8354 W. Craig Drive asked if he asking to put indoor tennis courts in.

Mr. Barr said not now, maybe at some point, but that is not why he is here, he is here for the conditional use permit.

Ms. Endres said she believes it was discussed at one point that there might be modifications on how the facility is being used and she wants Mr. Barr to understand that when that time comes he will have to come back in front of the board for a modification of the conditional use.

Mr. Barr replied sure.

Mr. Lamanna said this doesn't allow any changes, basically they are allowed to continue the operation as it has been run for the last two years. He said there were a few changes from what was done in 1988.

Mr. Barr said they had a fitness wing around 12 years ago.

Mr. Lamanna said there are a couple of small changes made but basically if they want to make modifications or add new buildings or have changes they will have to come back for a modification to it.

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



Motion BZA 2013-34 – 8345 Woodberry Boulevard

Mr. Lamanna made a motion to grant to the new Wembley LLC a conditional use permit as the new owner for the purposes of operating a tennis and recreation facility.

Based on the following findings of fact:

1. This is going to be a continuation of the existing conditional use originally granted in application 88-14 and subsequently amended thereafter including specifically the transfer and modifications made in 2011-30.
2. The board notes that the applicant is responsible for determining all of the conditions that apply including any intermediate decisions applicable to this property.
3. At this time there are no open issues with the property and that is the basis for granting this extension and the board will grant this permit for a period of five years.

Mr. Lewis seconded the motion.

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

Application 2013-35 by Eric Smith (C-4 Holdings) for property at 16625 Wren Road

The applicant is requesting variances for the purpose of expanding a warehouse. The property is located in a CB District.

Mr. Scot Paulitsch, Construction Manager and Mr. Frank Obhof of Burton Scott Contractors and Ms. Lynn Egensperger, Architect of Smolen Engineering were present to represent this application.

Mr. Lamanna asked if there is authorization from the owner.

Mr. Paulitsch testified that they have power of attorney.

Ms. Egensperger testified that C4 Polymer is an existing building on Wren Drive. She showed an aerial of the area and said it looks like two buildings but it is connected in the middle and they are at their current location and wish to do an addition. She said C4 Polymer just does warehousing, they get in large quantities of a plastic material, a polymer, repackage it and send it out again to different customers and they just would like to expand onto the south side of the lot.

Mr. Lamanna said they handle raw materials basically, pellets or something like that.

Ms. Egensperger said yes, pellets.

Mr. Lamanna said he assumes what they are handling is not explosive.

Mr. Paulitsch said that is correct.

Ms. Egensperger said the current building is 25,000 sq. ft. and they want to add on 29,000 sq. ft. maintaining the setbacks on the rear, the south side and keeping the current one on the north side so part of the variance request here is for the front. She said it is a 70' front setback which is approximately where the building has been located with where the building expansion will be is a gravel parking lot, it is not striped or anything and they also have a truck dock on that currently so the trucks come in on all of this gravel and with the expansion they will move that and have just parking up front and have the loading dock off the road. She said they do not have the building elevations because they did not want to go that far into the expense of the full building design until they got through the zoning and putting parking in that front setback. She said as the board can see from the aerial they do have some condos on the north side and that is zoned residential and their current zoning is Convenience Business and that is one of the things with the use variance also, there is no retail sales whatsoever, it is all warehousing currently and that is what it will continue to be.

Ms. Joyce Smith of 8354 W. Craig Drive asked if they are going to put a building where the gravel is now.

Ms. Egensperger replied correct.

Ms. Smith asked if it will create more hard surface.

Ms. Egensperger replied yes.

Ms. Smith testified that her concern is she is directly behind this building and she has been there since 1976 and she has had water problems, she lives right behind this building and she can walk right through the woods to it.

Ms. Egensperger referred to the aerial view and said in this area here there is supposed to be a 60' setback and that area could be detention and this area here could be detention. She said they want to leave as much of the trees as possible for a buffer around everybody.

Ms. Smith said there were two ponds back there which were supposed to be maintained and have since filled in. She said the water that comes through there and onto her property, she lost the use of her backyard from it and she is not going to sit by and add more water. She said they have never been maintained, they were supposed to be maintained, they were there from when the condos were built to help with the drainage issue there.

Ms. Egensperger said she doesn't know the sequence of ownership here.

Ms. Smith said it was Brewster and Stroud and Andrews Moving.

Ms. Egensperger said part of this they can get into the drainage and that would be part of the requirements.

Mr. Lewis said it was built in the late sixties.

Ms. Egensperger said it could be investigated and made right.

Ms. Smith said she wants to be sure they are because she has been here since 1976, they built Lake in the Woods, drained it under Rt. 306 that brought water back to them, then they brought Wembley, then they brought the Trees and then Mr. Stark somehow got a permit to build behind him and change the contour of the land and brought water back to her and they made him put in a swale but it has not been maintained, it is filled in. She said that she has gone to Columbus because she has had it and she just wants to be darn sure that she is not getting any more water. She said that she has cut down trees, she has put in French drains and she doesn't know what else to do and she has gone to the township time and time again. She said she would like it to not drain on her property.

Mr. Gutoskey said we have to go through a few things first to get to that point.

Mr. Lamanna asked if the warehousing is pre-existing.

Ms. Karen Endres, Zoning Inspector testified that her research shows that she doesn't have a permit on file for the original building, it may have pre-dated zoning and it is used for storage and warehousing. She said at some point it was used for retail sales and before that it was a warehouse and it was a permitted use because it was zoned industrial at one point and now it is zoned commercial, the furniture store went in which is a use consistent with convenience business.

Ms. Smith said it was used for storage.

Ms. Endres said then C4 went in and went back to a warehousing use and the zoning period that once was a permitted used supersedes a non-conforming use.

Mr. Lamanna said it is no longer a non-conforming use.

Ms. Endres said this is why a use variance is included in there.

Mr. Lamanna asked who was in there first.

Ms. Endres said first it was storage and warehousing and added that these old permits are very vague.

Mr. Lamanna said there was a moving company, Andrews Moving at least in 1985 it was.

Ms. Smith said and before that it was Brewster and Stroud, they stored their furniture there.

Mr. Lamanna said but it was a warehouse and no retail sales, it was in Chagrin Falls.

Ms. Endres asked if there were retail sales there at all.

Ms. Smith said no.

Mr. Lamanna said no, he thinks originally it was used as a warehouse, then the moving company took it over and he thinks they were using it basically as a warehouse. He said he doesn't think they had retail sales they were using it as a warehouse he is pretty sure.

Ms. Endres said again there is not enough information on the old permits.

Mr. Lamanna said the furniture store was in Chagrin Falls, they were not doing retail sales there, people maybe came there to pick furniture up but they wouldn't go there to look at the furniture. He said he thinks the non-conforming use has continued so it should be an expansion of a non-conforming use.

The board reviewed the application.

Mr. Lewis said it is zoned CB now.

Mr. Murphy asked Ms. Endres to bring up the contours on Access Geauga and said it is a large area of flat wet woods to begin with and promising to retain water on that site after you are done retaining it, it is going to end up in their back yard again doesn't help anything at all. He asked if there is any storm drainage on E. Washington Street and said it is only 100 yards from the ridge and down towards McFarland Creek to the left of this image but where does all of that water go.

Mr. Gutoskey said there is a ditch that comes next to the industrial park where there is a culvert where John G. Johnson is, to the left of their property there is like a ditch that comes and goes underneath E. Washington Street. He said when they widened E. Washington they did add some storm sewers to pick up the road drainage and you can kind of see that swale that cuts through the W. Craig lots and on a diagonal across the street there just to the east of the culdesac there. He referred to the GIS aerial and explained the location of the swale.

Mr. Murphy asked Ms. Smith where her house is.

Ms. Smith said she is the very last house at the end of the culdesac on the north side.

The board reviewed the elevations and the setbacks per the zoning resolution.

Ms. Sherry Smith of 8354 W. Craig Drive testified that although you have the swale or drainage here, she referred to the GIS aerial, there is nothing here, this is all under water, there is nothing, the trees are dying because of the water so if they build and take their water, back here, it is already under water.

Mr. Maglietta asked where the ponds are.

Ms. Sherry Smith said the ponds are in the back right here (she referred to the GIS aerial).

Mr. Gutoskey said so they are on the condo property.

Mr. Maglietta said those are the ones that got filled in.

Ms. Sherry Smith said they also have all the water coming in from this gentleman (she referred to the GIS aerial) and it is all running this way and all of this area is muck and swamp.

Ms. Joyce Smith said it is a mosquito haven.

Mr. Lewis said this property is actually two lots down from you.

Ms. Sherry Smith said it is right through the woods.

Mr. Lewis said you have another one in between that is wet.

Ms. Joyce Smith said the back belongs to Wembley, they own the property and rent it out.

Mr. Lewis said the ponds are with the condominiums.

Mr. Lamanna said it is not part of Wembley.

Mr. Lewis said the folks who own that particular property, he is sure there would be a requirement for them to control the water run-off on their property that they generate.

Ms. Joyce Smith said that Wembley owns that.

Mr. Lewis said he is talking about the property with the warehouse on it.

Ms. Joyce Smith said that Wembley, the tennis club, owns that house now that used to be Mr. Stark's and they rent it.

Mr. Lamanna said it happens to have the same owner but it is really of no significance because the tennis club itself is a separate piece of property. He said it has nothing to do with the tennis club.

Mr. Murphy said with the parking lot the way it is, it is considered impervious surface anyway and what they are planning to do would be to collect roof water over a bigger structure than what is there now and if we could get them to guarantee that it is not going to go east or north than somehow you make sure that water doesn't end up going towards that swamp that you share with the W. Craig residents. He said he would think you would be in better shape than what you are now because right now that gravel parking lot, when it rains and it has 2" of water it is going towards W. Craig and sitting in your yard and if we are talking about some sort of storm drains.

Ms. Egensperger said if new drainage is required, define it.

Mr. Murphy said just good drainage and good neighbor policy. He said there is a ditch on Wren Road of some sort that should head to E. Washington Street if he recalls.

Mr. Frank Obhof of Burton Scot referred to the contour lines on the GIS aerial and testified that even though it maintains a high contour line it is very shallow and referred to the ditch line.

Ms. Joyce Smith asked if the ditch line could be made deeper.

Mr. Murphy said there are no real storm sewers on E. Washington Street.

The board discussed the drainage in that area.

Mr. Obhof said any work that is done on that property is going to improve the situation back there because it will be redefined.

Ms. Sherry Smith said we just can't have it anymore coming through the woods.

Ms. Endres said a retaining pond may be called for.

The board discussed parking for the facility.

Mr. Lamanna asked Ms. Endres what her view of what the setback requirement is.

Ms. Endres said what it is saying is there can't be any parking lot within 70' and there can't be any buildings within 100' of a residential district on the side and the rear says 60' and up to 110'.

Mr. Lamanna said as written it is 110' but he doesn't know why it should be any different than the side yard is, why would you want the rear 60' and the side 100' and if anything you would want the rear more than the side just because the tendency is more rear lots are going to abut than side lots.

The board reviewed the application regarding the use variance.

Mr. Lamanna said here is our issue, the existing use is a permitted non-conforming use however this is an expansion and expansions of non-conforming uses are not permitted without a variance and basically that variance would be the same variance you would need as if somebody had a vacant lot here and came in and said they want to put in a different use. He said the difficulty is the standards to get a use variance are very, very stringent and basically in effect the standard comes down to they cannot economically use this property unless you give them a variance for another use so you would have to say with all of the uses permitted in a CB district there is no way that they can economically use this property for the purpose they want to use it for so it is a very high standard. He said you are talking typically people coming in and saying this property is unusual, usually it is residential property, it is located on the corner of Rt. 306 and E. Washington Street and nobody would ever buy this property for a house so let me use it for something else. He said there are some other situations where there are some areas that used to be commercial and they are no longer commercial or if you have a situation where you might have four commercial buildings in a row with somebody who is in between, they could say you can't use this as a residential property because no one would ever buy it as a residential property so we get to keep using it for some non-conforming use. He said here he doesn't really see any basis to do that and unfortunately he doesn't think anybody has really looked at that issue and he doubts anyone has come here today to present evidence to support the basis for granting a use variance. He said he understands the confusion here and the other problem is people don't understand when somebody said a use variance what that means in terms of a legal standpoint to be able to support the board granting that kind of variance. He said certainly the board would like to figure out a way to try to accommodate the business but our hands are a little bit tied here and it would probably almost be easier to go to the zoning commission and ask them to add warehousing as a permitted use in a CB District. He said he thinks that variance would be a use variance so the board would have to say you can't feasibly use this property and in a CB district that is pretty hard to say.

Mr. Lamanna continued by saying you would have to have a situation where the existing building was such a special purpose building, if you have an existing building that was built for such a specific purpose that you couldn't convert it easily to something else or it is no longer feasible to operate this business because the economy and scale of this business is such that it has to be twice as big or it can't survive and the existing building would be worthless for any other use that is permitted here, then that is the kind of case you would have to have to make the argument that economically the only feasible use for this is to allow an expansion, you get down to really unusual circumstances like that and in this case he is not quite sure how one could support a use variance on this property so the other option is to go to the zoning commission in the township and request that they modify the permitted uses in a CB District to allow warehousing.

Ms. Egensperger asked if the existing use in this building can stay.

Mr. Lamanna said yes, there is no problem with the pre-existing non-conforming use so it is fine, it is perfectly permitted and legal it is just that it cannot be expanded. He said if somebody came in and said they need to add another truck door or something like that or pavement to accomplish it, or if somebody is making minor modifications to enable the use to continue in its normal course that is one thing but they are talking about more than doubling the size of the operation. He said he thinks that it would be easier to get a change to the permitted uses in the zoning than it is going to be to support the granting of the use variance here. He said use variances in a CB District are really hard to get, it is almost impossible because so many uses are permitted of such high value that it is probably the highest value of uses there are.

Ms. Egensperger said maybe not at this location.

Mr. Lamanna said maybe not at that location but compared to warehousing.

Ms. Egensperger said for someone to demo this and redo it.

Mr. Lamanna said yes somebody could come in and get property people and economists to come and say it would cost this much to do this and this and the problem is if you have to move out because you need more space somebody else could come in and use it for the same thing that it is being used for now so it would still get a reasonable economic return because it could still be used for that purpose. He said it is very hard to find circumstances where you can present the evidence that would be necessary to support the board granting that kind of variance. He said in ten years the board might grant one or two if that, he is not even sure the board granted that many but that is what you are talking about the difficulty of getting that sort of thing. He said he would suggest looking at seeing if the zoning commission might entertain permitting making that a permitted use.

Ms. Egensperger said once it is a permitted use then we would see this board again.



Mr. Lamanna said yes you would have to see the board for the area issues but he thinks it is a far easier path and that is also a path that the board has to consider the same kind of strict legal structure format, the zoning commission considers it from a legislative format. He said the board of zoning appeals cannot consider the fact if it benefits the township to keep the business here, it is really not a consideration this board can make, that is a consideration they can make so that is one very, very big difference.

Ms. Egensperger asked if Mr. Lamanna can comment at all on the front setback.

Mr. Lamanna said he would say because of the adjacent residential district and this is a little side street so it is not really on the main street where that is more of an issue than the property across the street with a similar type of situation that would not be adversely affected.

Ms. Egensperger said it might be a little neater than over there.

Mr. Lamanna said he can see given the water issues to have that on the front anyway because it gets the water over there rather than that way because you want to try to move it to the west.

Ms. Egensperger asked if there is any further clarification on the rear setback.

Mr. Lamanna said he doesn't know so he has to look at that a little bit more. He said typically when people have expanded structures and there has been an issue with the setback, the board has been a little more lenient if there is already an existing line and there is not really anybody back there.

The board looked at the lot next door.

Mr. Lamanna asked if there is a lot there.

Ms. Endres said there is a lot right.

Mr. Lamanna asked if it has a house on it.

Ms. Endres said there is a commercial building in the front.

Mr. Lamanna asked if it is a lot that was divided in half, there actually isn't a lot line there.

Ms. Endres said the lot was divided into two different zoning districts.

Mr. Murphy said it is Auburn Pipe and there is a building to their left.

Mr. Lamanna said that is a divided lot so it is not going to be built on back there. He said the board can table this application so that the applicant can go to the zoning commission and noted that the applicant has to notify the zoning department in enough time to be placed on a Board of Zoning Appeals agenda.

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

Motion BZA 2013-35 – 16625 Wren Road

Mr. Lamanna made a motion to table this application until the applicant has given the board notice to go ahead with it while the applicant investigates possibilities of seeking a zoning change.

Mr. Lewis seconded the motion.

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

Application 2013-36 by Kurtz Bros. Inc./John Ziss for property at 7045 Aurora Road

The applicant is requesting area variance(s) for the purpose of establishing a landscape supply store with outdoor bulk material sales. The property is located in a CR District.

Mr. Jason Shaffer and Mr. John Ziss of Kurtz Brothers were present to represent this application.

Mr. Shaffer testified that Ms. Endres helped them out a lot. He said it is right next door to Home Depot and BW3 and basically what was there was a landscape supply store, they sell mulch, they sell topsoil and Christmas trees across the street.

Mr. Maglietta said you have that big swamp next to you.

Mr. Shaffer said they really just want to take the site as it has been used and continue using it for the same thing just under the Kurtz Brothers name.

Mr. Lamanna asked if they are on Broadway and 480.

Mr. John Ziss testified that they are off of 480 and have other retail locations throughout northeast Ohio and they do a lot of the storm water stuff out here. He said it is pretty much like Mr. Shaffer said they are trying to take over a business that was in there, it will be a Kurtz Brothers business and we will do it our way. He said one issue was brought up about moving a bin and that would be no problem whatsoever.

Mr. Shaffer said other than that they don't want to expand the building, they don't want to add anymore asphalt, they just want to take over the site and use the existing infrastructure as is and put Kurtz Brothers logo and style to the property.

Mr. Ziss said they probably won't sell Christmas trees.

Mr. Shaffer said they had the building at 20' but it is actually 30'.

Ms. Karen Endres, Zoning Inspector testified that Access Geauga lines are not surveyor accurate. She said Access Geauga is not a reliable survey.

Mr. Lewis said if we are considering this as a substitution of a non-conforming use would it be declared as a more or less intense use than what is presently permitted for. He asked if this is retail sales.

Mr. Shaffer said yes.

Ms. Endres said there have been landscaping services too and what Kurtz Brothers is proposing is not a landscape business, it is going to be retail sales. She explained that what happened on this property is there is no paper trail.

Mr. Lewis said it is April, it is Saturday morning and you have fifteen landscapers pulling in and 30 local homeowners and six guys with small dump trucks, tell me how this property operates that day on Aurora Road and what you will do with 20 or 30 vehicles and trucks and a couple of loaders.

Mr. Ziss said he wishes but that doesn't happen all that much that they get that much truck traffic and retail traffic all mixed together. He said the way the site is laid out it almost forms a U or you can operate with their trucks and the way they come in now is usually this side road right here, he referred to a site plan. He said the current property owner has told them that they use this for vendors and not for retail traffic at all and added that they have plenty of parking for retail traffic.

Mr. Murphy asked if that is a public road.

Mr. Ziss said no this was for Verizon so before we go through with this we will seek their permission but all we need is 20'. He referred to a site plan and said this space is being taken up by a pretty big outdoor shed and it looks like they had plants and trees out there, they wouldn't use that because they don't sell shrubbery at all. He said he thinks they will have much more room than they really would need.

Mr. Maglietta asked where the storage bins will be.

Mr. Ziss said the storage bins are actually going to be where they currently are right now.

Mr. Maglietta said so they are in the back corner of the property.

Mr. Ziss said they are not bringing in bins they are looking at the site as is except the one bin was a concern.

Mr. Lewis asked if those bins are currently being used as wholesale to the trade as opposed to retail cash and carry, is that what the current permit use was allowing for.

Ms. Endres said there is no paper trail regarding bins and added there was an issue with no outside storage.

Mr. Lamanna said tell that to Home Depot, the whole side of the parking lot is full of stuff and there is not much excuse for that because it is all packaged and you sort of have a different situation with bulk materials.

Mr. Shaffer said that is where the bins are currently and the issue is that is just one that is within that 20' boundary to the property line.

Mr. Lewis said they are already there behind the building, it is not fronting Aurora Road, there is no manufacturing, it is a clean-type product.

Mr. Lamanna said and it is also not going to generate a huge amount of traffic like a Taco Bell would.

Mr. Maglietta asked if they own the building now or if they are planning to take it over.

Mr. Shaffer said yes, their intent is to lease it from the current property owner so they didn't want to set up a contract for lease until they knew this would be allowed. He said they would still own it, we will just lease it.

Mr. Gutoskey asked what is their typical operation, would it be contractors coming in and picking up material or would you be doing deliveries from here, how would you see it functioning.

Mr. Ziss said they do small deliveries from storage with none of the big trucks, only the smaller ones, the larger ones come from Valley View.

Mr. Maglietta said you do more of the small residential.

Mr. Gutoskey said one-ton dump type.

Mr. Ziss said exactly.

Mr. Gutoskey asked how many yards of material.

Mr. Ziss said the bins are small so you would put maybe two truck loads in a bin, they are small and nothing like some of the other sites.

Mr. Gutoskey asked what else besides topsoil do they sell.

Mr. Ziss said topsoil, mulches and specialty compost that they do.

Mr. Gutoskey asked about gravel.

Mr. Ziss said they do make recycled aggregate. He said it is very gray because landscaping supplies are allowed.

Mr. Lamanna asked if this conditional use permit came before the board in 2006.

Mr. Lewis said it was the carwash.

Ms. Endres said it came in because carwashes are considered service stations.

Mr. Lewis said the real question is only the outside sales of merchandise.

Mr. Shaffer said yes if they didn't have outside bins, they would be okay.

Mr. Lewis said does that mean that Home Depot will come in and officially request the same.

The board discussed Home Depot and Walmart.

Ms. Endres said there is a provision that nursery stock is allowed to be stored outside.

Mr. Lamanna said Home Depot piles up all of the bags of material out there.

Ms. Endres said the Marketplace Development has a different standard in trying to determine if there are violations on those properties and she will be looking into it.

Mr. Lamanna said he would consider this as a retail operation not a wholesale operation, they are not selling to people who are taking this out and reselling it, they are selling to individuals. He said it would seem to him that as long as garden supplies are permitted, this would fall into that. He said it is not what they operate in Valley View, that is a different story but here the question is the outside sales of equipment and merchandise and as long as it is bulk material and as long as it is kept in bins.

Mr. Lewis said there is no downside impact to what they are proposing.

Ms. Endres said she didn't think the board would be opposed to it.

Mr. Maglietta asked if they are going to have a bunch of stuff out on the tree line.

Mr. Shaffer replied no.

Ms. Endres said over the years it appears that the lot coverage ramped up and the best she could do is come up with 54%, she doesn't know if that is right or not. She explained how she calculated the lot coverage.

Mr. Shaffer explained the grass and gravel areas.

Mr. Lamanna said the board would like to hold it at 50% because it has historically been that and it is a small lot and the two shopping centers are at 44% etc. so he thinks this is consistent.

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

Motion BZA 2013-36 – 7045 Aurora Road

Mr. Lamanna made a motion to grant the following:

1. The applicant is putting in a landscape supply store and based on the description of the business that has been presented that it fits within lawn and garden supplies because of the nature of this that it is being sold at a retail use.
2. With respect to bulk materials the board will grant a variance for the purposes of outside storage of those bulk materials so they may be able to store them in bins for the number and type that currently exist on the property.
3. A variance for the lot coverage from 40% to 50% for a variance of 10%.

Based on the following findings of fact:

1. The reason for granting this variance is because the nature is bulk materials and there is no real feasible way to store them.
2. The property has been used now for that purpose so it will not create an adverse effect to the neighboring properties to continue that use but that would be the only type of merchandise stored outside.
3. With respect to the lot coverage it appears that the existing lot coverage is somewhat 50%, maybe slightly in excess, but given the other lot coverage in the area and the fact that this is a small lot and has historically had 50% lot coverage.

Mr. Lewis seconded the motion.

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

Since there was no further testimony, the public hearing was closed at 10:23 P.M.

Respectfully submitted,

Joseph Gutoskey  
Michael Lamanna, Chairman  
Todd Lewis, Vice Chairman  
Jason Maglietta  
Mark Murphy

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

Date: January 16, 2014

AUDIO RECORDING ON FILE

BZA PH 12/19/2013

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Bainbridge Township, Ohio  
Board of Zoning Appeals  
December 19, 2013

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 10:23 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Joseph Gutoskey, Mr. Todd Lewis, Mr. Jason Maglietta, Alternate and Mr. Mark Murphy. Mr. Mark Olivier was absent. Ms. Karen Endres, Zoning Inspector was present.

Minutes

Mr. Lamanna made a motion to adopt the minutes of the November 21, 2013 meeting as written with the small correction on page 15.

Mr. Lewis seconded the motion.

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

Applications for January 16, 2014

Application 2013-29 by Henry J. Prijatel for property at 18063 Harvest Drive -  
Continuance

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

Application 2014-1 by Pattie Group Inc. for Peter Yang and Margie Roznovak for  
property at 8489 Lakeshore Drive

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

Application 2014-2 by Dale Flynn (Farrow Group) for Margret Biggs for property at  
16709 Elyria Street

The applicant is requesting area variance(s) for the purpose of constructing a new single family dwelling. 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 January 16, 2014 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 10:55 P.M.

Respectfully submitted,

Joseph Gutoskey  
Michael Lamanna, Chairman  
Todd Lewis, Vice Chairman  
Jason Maglietta  
Mark Murphy

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

Date: January 16, 2014