

Bainbridge Township, Ohio
Board of Zoning Appeals
February 18, 2016

Pursuant to notice by publication and ordinary mail, the public hearing was called to order at 7:06 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Ted DeWater; Mr. Joseph Gutoskey; Mr. Todd Lewis and Mr. Jason Maglietta, Alternate. Mr. Mark Murphy 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.

Application 2014-10 by Ed Lennon for property at 19025 Brewster Road

The applicant is requesting that the screening condition placed on the previously granted variance be dismissed and the improvements made to the landscaping be approved as satisfactory. The property is located in a R-3A District.

Mr. and Mrs. Ed Lennon were present to represent this application.

Mr. Lennon testified that per the board they had done several landscaping things putting in four or five shrubs, some landscaping timbers, some shrubbery, grass, evergreen trees and every time they go out there the neighbor kind of thinks we are getting carried away and he thinks last month the neighbor, Mr. Fred Wendel, came before the board and said he was quite pleased with the way it looks as is and they are requesting that it be accepted as it is today.

Mrs. Lennon testified that she worked hard on that.

Mr. Lewis said one of the pre-requisites on this variance was the addition of another window, with two windows on the one side and asked if there are any current photos of it and did that happen.

Mr. Lennon said there is one window on the one side and one on the front. He said they put one window in and then put up the Pines so you wouldn't see the window much anyway.

Mrs. Lennon said the house next door is elevated about two feet high and they get the run-off water from the house next door and we didn't want to plant anymore trees until we get that taken care of and as he said the neighbor is totally pleased with the way it looks. She said she put in mulch and there are willow bushes and arborvitae, Hosta plants and flowers and flowers in the window box on their side and they are pleased with the way it looks.

Mr. Lennon said he thinks the intent of the board last year was that we build something pleasing to the neighbor.

Mrs. Lennon said he has his shed and wood pile blocking the view.

The board discussed modifying the condition placed on the variance.

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

Motion BZA 2014-10 – 19025 Brewster Road

Mr. Lamanna made a motion to modify the conditions applied under the original decision in this case (BZA 2014-10) to reflect the construction with respect to windows and the landscaping both as reflected in the photos taken by the Zoning Inspector, dated September 25, 2015 that were included in the application package. The photos will be added to the permanent file for that purpose.

Mr. Lewis seconded the motion.

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

Application 2015-32 by Kevin Duffy for property at 7033 Pine Street - Continuance

The applicant is requesting a use variance for the purpose of maintaining a multi-family dwelling. The property is located in a R-3A District.

Mr. Lamanna made a motion to dismiss this application without prejudice as the applicant has notified the board that he is going down another route and is going to try to make the property conforming.

Mr. DeWater seconded the motion.

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

Application 2016-1 by Church of the Holy Angels for property at 18325 Chillicothe Road

The applicant is requesting a modification of a conditional use permit for the purpose of constructing a 5,000 sq. ft. storage building to replace the old barn that was destroyed. The property is located in a R-3A District.

Mr. Mike Maroun and Mr. Mike Shumaker were present to represent this application.

Mr. Maroun testified that the last time we left off the board had some recommendations which he hopes are addressed in the plans. He said there are about four things and one is modifying the roof to a 3/12 pitch and the board wanted the building turned facing 90° to run east to west and add some faux windows, cupolas and landscaping etc. so basically they did all of that in the plans but of course with those modifications comes a pretty severe price tag at probably another \$20,000 to \$25,000 so what his request today is of the board is while they did two sets of plans, one the way the board preferred and one the way they would prefer. He said the first one was the way the board preferred to have it with the building going east to west with the entrance around the back so you have to go around the building and the building would sit perpendicular to Route 306 and understanding the reason that the board had was to limit the exposure of the building so it didn't look so much like a commercial storage building which is truly understandable. He said once they did that however, that creates all kinds of additional costs from not only the landscaping but your topographical entrances and all of that other stuff because now you are creating more driveway not to mention a security risk so what he asked their architect to do is let's do a better job of giving the board a better design, parallel to Route 306 exactly the way the original building was set which helps us out tremendously on costs and he thinks overall it is a better look because now we have three cupolas that we added, we added four windows and obviously the 3/12 pitch so that is the building he would like to propose to basically modify it from their previous discussion so that is basically what he is asking for to just change the building back to parallel with Route 306 and add in the architectural features that the board requested and it simplifies things from their end and it obviously saves the church a whole lot of cash.

Mr. Lewis said he thought the topos on this is that whole area was relatively flat including in back of it, there was almost no grade, it was minimal.

Mr. Gutoskey said there was a storage area behind that building.

Mr. Maroun referred to the aerial view and said the building on the right is what the existing building was so you can see it is parallel to Route 306.

Mr. Gutoskey said it was only 50' that was facing Route 306.

Mr. Lewis asked how long the building is.

Mr. Maroun said 100' and the width is 50'.

Mr. Lewis said the current orientation is about the same amount facing Route 306 as the one previous was.

Mr. Gutoskey said he is looking at drawing C-11 and you can see the building turned. He said this building is substantially larger.

Mr. Maroun said keep in mind also that coming down Route 306 going 50 mph, the board members didn't even know the house was there and came down and from our standpoint we think it looks better.

Mr. Gutoskey said the Victorian house is gone now.

Mr. Maroun said that is correct.

Mr. Lamanna asked if there is a plot plan with the contours on it.

Mr. Maroun said no.

Mr. Gutoskey asked if he has a cost estimate as far as what the additional work would be.

Mr. Mike Shumaker testified that it goes from zero to 3' and they would have to go out there and take some shots to see what they need to do.

Mr. Maroun said the building will sit exactly the way it is.

Mr. Gutoskey said the problem is it is two times longer.

Mr. Lamanna asked if the back of the building, closest to Taylor May is going to be pretty much in the same spot.

Mr. Maroun said it could be moved more toward the driveway, we could adjust the building, it doesn't have to be exactly where it was.

Mr. Gutoskey asked if they could turn it to the short side of Route 306 instead of having the door in the back, it could be on the side so the existing drive could be used.

Mr. Shumaker said if they put the overhead on the short side it would be different loads in the building design, moving it to the side as opposed to the end, on the end you don't have much bearing and on the side there is a little bit more bearing so they would probably have to change the design of the building.

Mr. Gutoskey said that would solve the security concern by having it on the side.

Mr. Lamanna asked if the board could view the aerial photo again.

Mr. Gutoskey said it looks like you have an ingress/egress door on the side.

Mr. Maroun said the big concern last time was what it was going to look like from Route 306 or even Taylor May.

Mr. Lewis said he thinks the biggest concern last time was that we are going from a 50' face to a 100' face on Route 306 regardless of cupolas, windows and doors, it is a very significant expanse, hence the 90° rotation on it was requested and as far as security goes however you have this oriented you still have a door or an overhead door or something that is not visible in line of sight from Route 306. He said regarding security, he does not think it has much weight, the building is not going to be well lit anyway because it is residential, a little bit of down-lights, that is it and if you are worried about security, hang cameras.

Mr. Maroun said he can address the security issue because if you rotate the building 90° and pull the driveway and pull a car there you will never see it but if you pull a car right up off of Route 306, the way it is currently designed, you would see the car.

Mr. Lewis said or they will pull on the lawn behind it anyway because there are no trees, it is a flat spot so if you want to hide your car it is pretty easy.

Mr. Maroun said there is a loading dock area there behind the building which would prohibit that.

Mr. Gutoskey said if you put some bollards with a barricade or chain on the driveway it is going keep people from driving back there that are just curious.

Mr. Maroun said yes theoretically but what we are talking about is adding more driveway which is a significant cost because you have put gravel and a base down. He said they referenced the building on Taylor May and Snyder at the last meeting regarding the architectural features.

Mr. Lewis asked if that was a big metal building.

Mr. Maroun replied yes and it looks pretty nice and that is what they aim to replicate here by keeping it parallel to Route 306 to eliminate that industrial look.

Mr. Gutoskey asked about the color of the building.

Mr. Shumaker said it is ash gray with a charcoal gray trim.

Mr. Lewis said the first provision was with the original orientation with 50' towards Chillicothe Road, the board had asked for six Pine trees at 6' tall in front of it so if we are considering rotating it then we have double the length so do we have double the Pine trees.

Mr. Lamanna said that has to be adjusted accordingly.

Mr. Maglietta asked what is in front of that barn right now.

Mr. Maroun said trees.

Mr. Lamanna said it is quite away back from the street.

Mr. Lewis said you don't exactly have a home right next to it.

Mr. Maroun said the church owns that whole corner to Route 306 and it is heavily wooded back there. He said they were worried about the distance from Taylor May to the barn that is 100' long but there is actually much more distance between the barn and Taylor May.

Mr. Gutoskey asked if there is anyone else here that wants to talk about this for or against.

Mr. DeWater said there is still a man-door to the east so if security is a concern why do you want to put a man-door on the back of the building that could be pried open.

The board discussed the security of the building.

Mr. Gutoskey said when the grading is done it is going to generate some topsoil and asked if that can be used to do some mounding on the west side of the building so the Pine trees can be placed on the mounding to give the Pine trees a little more height initially.

Mr. Shumaker said they can do that, a couple of feet, something like that.

Mr. Lamanna said to naturalize it a little bit.

Mr. Maglietta asked how tall the building is.

Mr. Shumaker said it is 15' to the eaves.

Mr. Lewis said he thinks this is a remedy that works.

Mr. Gutoskey said he thinks it will work with the mounding.

Mr. Lewis said a little will be saved on excavating and driveway and the board will ask that it be put into mounding and some trees.

Mr. Maroun said that is reasonable, trees are a lot easier than stone and asphalt.

Mr. Lewis said when you get a little bit of mounding and some trees, unless you are really looking to see this now you will only see a little bit of side and your roof pitch is low.

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

Motion - BZA 2016-1 – Holy Angels Church – 18325 Chillicothe Road

Mr. Lamanna made a motion to modify a previously granted conditional use permit with respect to the construction of a storage building.

1. The board will remove the conditions on placing the building perpendicular to Route 306 and allow it to be parallel to Route 306, relocated as shown on the revised site plan the applicant has submitted.
2. Additionally the applicant has modified the building to add faux windows, cupolas and positioning of doors.
3. The board will modify the conditions to reflect the visual appearance of the building as shown in Revised A3.1 that was also submitted with the application.
4. The board notes that the applicant has also modified the roof pitch to 3/12 as the board requested.
5. Finally the requirement for six 6' pine trees increased to twelve based on the fact that there will be 100' of building length rather than 50'.
6. The applicant will also construct a 2' – 3' mound to plant those trees on the side that is facing Route 306.

Mr. Gutoskey seconded the motion.

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

Application 2016-2 by S. P. Greenville Land LLC (Phillip Siegal) for property at 7150 Pine Street

The applicant is requesting a modification of an existing variance (removal of restrictions for signage and outdoor seating and service). The property is located in a R-3A District.

Mr. Phillip Siegal was present to represent this application.

Mr. Lamanna swore in Mr. Siegal.

Mr. Siegal testified that he is the managing member of S. P. Greenville.

Mr. Lamanna said this is going back to the board's previous decision in 2007 where the board allowed a smoking deck with several conditions.

Mr. Siegel replied yes and said all he is really requesting is that the zoning reflect the existing conditions so when the patio was initially requested, which had to do with the smoking ban, it was kind of a knee-jerk reaction because it had a severe effect on the business so he was going to pretty much agree to anything that was requested of him to make sure this goes through because when the smoking ban was enacted his business dropped off 40% so he was trying to do whatever he could to make sure the business continued as it has been continuing for 60 – 70 years there or how long it has been there and the reason why he has come to question this modification is because when he initially agreed to the restriction on seating and that is actually the main issue, right now there is currently no service out there, there are some seats that go around the outside wall of the patio. He said he thinks the concern for seating at the meeting in 2007 had to do with noise from people out there and added there have been seats out there for almost six years, people brought their own seats and he got tired of them using their own seats and bringing seats from inside the bar outside he just put some seats out there for them. He said he thinks in practice it has proven that that restriction is nothing other than harming the business and it is harming the customers because they would prefer to sit than stand and that is the main reason for why he is requesting that it be removed. He said also if he does decide to sell the property at some time and somebody wants to open up a food service out there with this restriction remaining on the variance it will encumber the property and any sale for improvements of the property if somebody wants to put in food service with a nicer restaurant when during the daytime they could maybe fit four tables out there if they decided to do so, so this is more so looking into the future than present and that is one of the reasons he requested the removal of that restriction. He said with the signage request, that was simply that he put a sign on the door saying please keep door closed and in reality, once that was done, it has a heavy-duty commercial closure on the door, there is no door stop to prop it open, the door is closed anyway and by requesting that rule, it is pointless.

Mr. Lamanna stated that he doesn't think the "door closed part" is pointless.

Mr. Siegal said it is the sign that says "please keep door closed" and it is just a simple sign, he put it up there and people use the door, it falls off, he puts it back up and it is a high traffic area and he thinks that keeping the door closed is served by having a heavy-duty commercial door closure as much as having a sign there saying "keep the door closed" that people won't see anyway. He said there is a reason why it was brought up as an issue (sign) and with the patio, when it was constructed, the Eagles are across the street and they have a wooden slat patio that allows sound to go through so when he built his patio it is built with concrete block so it does not allow sound to pass through so he built it with respect to the neighborhood to try to keep sound at a minimum.

Mr. Lamanna said it does look very substantial, he must say.

Mr. Lewis said the Eagles shut down their outdoor music at 11:00 at night because it is in a residential neighborhood and he believes that when this went in, the spirit in which this went in was to allow your patrons to have a place to smoke without standing out in the middle of the parking lot.

Mr. Siegal replied yes.

Mr. Lewis said it heeded your business and also restricted their wandering and their debris and other activities from the residential neighborhood. He said the point of the sign on the door, because you have live music that goes to close to 2:00 AM, the point of keeping the door closed, with or without an automatic closer, was to advise your patrons that the door stays closed because you are in a residential neighborhood and your bands play very, very late. He said his curiosity is that if you had an issue with outdoor seating and we handled this in 2007 and at some point until the township showed up earlier this year, you took it upon yourself to make some decisions that were contrary to what the variances were. He asked why you (Mr. Siegal) were not back in here five years ago.

Mr. Siegal said maybe lack of sophistication.

Mr. Lewis said he is not buying that, you (Mr. Siegal) are a business owner, you recognized that smoking was deterring your business enough that you needed another place to allow your folks to not leave your establishment temporarily, because this was meant to temporarily go outside, have your cigarette, keep the noise down, not to try suppress the indoor band noise leaking out into the neighborhood hence 8' tall walls, it was never meant to be a food service nor a bar service area, basically it was an outdoor smoking chamber to give your business some relief and help you retain your customers. He said quite frankly, as it stands today, he doesn't see that anything has substantially changed, same bands, same smokers, same conditions, you still want to retain and give them an area and you are in a residential neighborhood which also means that people around you and their residences need to be insulated just from the nature of your business, not that it is bad, but you are in a residential neighborhood. He said he is not buying the argument on the sign, he is not real happy about seating out there and he really wondered if it was such a big issue why you (Mr. Siegal) didn't show up a good number of years ago. He asked Ms. Endres if there are any violations other than those that exist on this property today.

Ms. Karen Endres, Zoning Inspector testified that we have talked about some fencing that is in the river and Mr. Siegal said he is going to remove that, there are beer bottles and things in the parking lot that need to be cleaned up other than that none of the signage conditions are being met right now from a zoning perspective.

Mr. Lamanna asked if there have been any complaints about the operation of the Greenville from the neighbors.

Ms. Endres said she included an email complaint and the people who made that complaint are here tonight. She advises people that when they call she can't give testimony on their behalf at the meeting, it would be hearsay evidence and they need to come and speak for themselves.

Chief Jon Bokovitz of the Bainbridge Township Police Department was sworn in by Mr. Lamanna and testified that they have had some problems with public urination but it is mostly in the parking lot area, they have not had as much noise issues there as they have had across the street but they have had some and a couple of fights.

Mr. Lamanna asked if there are any issues with that outdoor space itself in terms of its use and the number of people that it can reasonably accommodate.

Chief Bokovitz said he does not know of any occasion where it has been a problem with the patio or smoking area because there are walls around it.

Ms. Endres said she did invite Chief Bokovitz here because some of the questions and complaints were more police oriented than zoning oriented and she didn't think it was a bad idea to have both of us here in anticipation of questions coming up that she couldn't answer and would be better answered by Chief Bokovitz.

Mr. Craig George of 7135 Cedar Street testified that they share a property line in the back of the parking lot of the Greenville. He said have reached out to Mr. Siegel because to address some of their issues which were noise and they found out that there are some zoning restrictions and he asks that you don't allow that door to be open and yes the Eagles is loud but they shut down at 11:00 P.M. which is about the time the Greenville normally starts and it goes until 1:00 or 2:00 in the morning which the Greenville is an establishment and has been around for decades, the issue is on Tuesday nights when your windows are rattling and it is 1:00 in the morning because the doors aren't closed or whatever the case may be and obviously if he was playing music that loud in his home and his neighbor called he would probably have to turn it down. He said one of the questions he had for the board was the requirement for fencing around parking lots, he knows that a lot of townships and cities require actual fencing and the reason that he brings that point up is his wife and two young daughters have witnessed the public urination in the back of the parking lot, the stream that runs through there is kind of on their property and basically separates the parking lot from their backyard and the other issue they have regarding the fencing was he has people in his yard, there was an incident and he has the article from July 9th over the summer where there was an armed robbery that the Chagrin Falls Police Chief cited that started at the Greenville and ended in between his and his neighbor's property, that was the purse that was left and in December he walked out his front door to get something out of his vehicle and there was an intoxicated man who was leaving his girlfriend from the bar that was coming through his yard and he asked the Chagrin Falls Police and they said they couldn't press charges because they didn't have trespassing signs on their front porch and they have since been posted. He said he knows there are other concerned neighbors here and he actually went around and got a petition signed so you can understand that there are other concerned neighbors and stories of people coming into their property, cars leaving out of the back of the parking lot and pulling up other's driveways and pulling out onto the road, he thinks there is going to be noise and people there, everyone understands that but it needs to stay there and not encroach onto our property.

Mr. George continued by saying the fence on the back of ours would also be a safety concern for the patrons because, and he has pictures from the back of his property, and he is surprised no one has made their way into the river because there is nothing to keep them from falling, there is actually a pallet over a telephone pole that breaches the culvert back there so his request is, is there anything we can do from a fencing standpoint, and please don't reverse the zoning, the noise is very loud, obviously that would make it worse. He asked if there are any restrictions on noise during the week, Friday and Saturday night he can understand, Tuesday night is a little more sacred to him.

Mr. Lamanna said unfortunately townships are in a very weak position as far as controlling noise, they can't regulate noise but you are not allowed to be a nuisance either but that is a civilly enforced aspect unless it gets to a pretty severe level and there are also actions that can be taken with respect to liquor licenses if you become a nuisance where the State regulating authority there can revoke or discipline establishments if they violate certain standards in terms of the way they conduct a business and how it affects the neighborhood and there is also civilly real property nuisance, even if it is a permitted use you still are not allowed to be what is considered a legal nuisance to the neighboring properties.

Mr. George said from a nuisance concern his number one concern is he has two little girls and a wife and a house and he has people coming onto his property and he is concerned that one of them will come into his home or vehicle.

Mr. Lamanna said even though this represents a non-conforming use obviously anytime somebody wants to change it and it represents a variance one of the primary considerations is whether or not a variance should be granted is the impact on the neighboring properties so the property owner has some ability if the property owner wants to do something different to try to mitigate any adverse effect that that change might have or if it is going to make an existing situation worse that the board won't allow it or require that those kinds of things are taken care of. He said the board is interested in knowing how it is affecting you and what is happening because that is the kind of information the board needs to make its decision.

Mr. Bob Smith of 7085 Cedar Street testified that the main thing is the two little girls and for them to be a witness of some of this and have strangers who are intoxicated and we thought the fence was a reasonable request just to keep them from entering their property and once again it is the little girls.

Ms. Molly Belden of 7180 Chagrin Road testified that she lives across the street and her issue is at 2:30 AM there is a congregation in the parking lot, it wakes her up every weekend, they are loud and she is not on Cedar Street, she is back in the woods up on a hill and she has had friends come to her house to listen to the bands for free so it has been loud and usually there are one or two persons who are very intoxicated and do a lot of yelling at 2:30 AM when they all come out.

Mr. Lamanna said you are not supposed to be serving obviously intoxicate patrons.

Mr. Siegel said all of his employees are certified.

Mr. Lamanna said and likewise the parking lot is not a space for people to be congregating and doing things, it is a space for people to park their cars and come and leave and it is your (Mr. Siegel) obligation to not allow a parking lot to be used as a congregation for them.

Mr. Siegel said he understands that and we do what we can to move people along, we call the police once or twice and just ask them to have a car drive through the lot if there are any issues.

Mr. Lamanna said it is not a proper use of the property and we don't want the Zoning Inspector to come and start citing you for improper use of the parking lot because there is a big commotion going on at 2:30 in the morning and it is waking up all of the neighbors. He asked Ms. Endres about the watercourse and if it is a riparian.

Ms. Endres said it is a riparian area that goes through the property so a fence would need a variance for the riparian setbacks. He said she and Mr. Siegel met with Ms. Christina Znidarsic and she had several recommendations regarding stream stabilization measures and she said fencing would not be inappropriate there but designed so if flooding occurred it could still wash through but it would need a variance for setbacks from a riparian.

Mr. Lewis said he was reading the report from the Chagrin Valley Watershed Partners to Mr. Siegel and there is an excerpt in here that states Mr. Siegel stated "the parking lot surface immediately adjacent to the streambank is not an area where patrons park" so Chagrin River Watershed Partners went on to make a recommendation to remove as much as that section of parking lot as possible to provide a more workable area for plantings, grading and stabilization which was to do two things, create a barrier which helps keep the people on your lot but per the Chagrin Watershed people to help the bank from further eroding helping to stabilize it so it looked like if nobody was parking there and you said they weren't, you could regain some of that space which would take you further away from the water allowing you to reinforce the bank, do some plantings and it certainly creates an area at that point that you would have room to put up a fence so there are some options but he doesn't know how far we are going to get into those this evening. He added that the Watershed Partners gave a plant list as well.

Mr. Gutoskey said to go with what Mr. Lewis said too, with some of things they are using there to stabilize the bank, pallets etc. during a flood those things end up downstream and affecting other property owners because they plug up culverts etc.

Mr. Siegel said he understands.

Mr. George said cars park right up to that embankment and showed the board a picture from behind his house with a car parked in the spot that is in question right now and this was taken on a Sunday morning and this vehicle was obviously left here overnight.

Mr. Lewis said it appears that there are some issues with that stream and there is a need to reinforce the bank, there is a need to create a buffer zone between the reinforced bank and the parking lot because of the erosion that is happening and it may mean giving up some parking spots.

Mr. Lamanna referred to the photo and asked what the wood looking item is.

Mr. Siegel said once the erosion started, it is actually something that didn't get bad until just recently and when he noticed it this is something he was moving forward on regardless of everything that was going on so he didn't know the extent of what the requirements would be for the repairs, he was going to have a landscaper come by and dump some boulders there but after talking to Chagrin Watershed Partners, now he needs a permit from them so while he would like to fix it immediately he can't.

Mr. Gutoskey said if you come back from the bank and are out of the ordinary high water of the stream you can do whatever you want but when you start down in the stream is when you have an issue with the Army Corps but if you work outside of it you don't have to deal with the Army Corps.

Mr. Siegel said the problem is the stream is actually running on both sides, there is a protrusion coming out from the other side of the creek, there are concrete blocks from the yard behind him and they go out in the creek and that may be what is bringing the water into his parking lot and the concrete blocks may be part of the reason that is causing the erosion so when he talked to Chagrin Watershed Partners they actually said that both sides of the creek should be mitigated not just one side.

Mr. Lamanna said once you start fooling around with a creek bed there is a lot of unintended consequences that happen and even downstream things can happen.

Mr. Siegel said generally that location is where he puts all of the snow when he plows, normally it is for parking but every once in a while since there are no lines in the parking lot people will park there, he does not have a sign that says do not park here but the normal flow of parking, it is not an easy place to park, the parking lot naturally narrows there a little bit. He said there is head-on parking in the corner so if somebody parks there they can't do the head-on parking in the corner so it is not an encouraged parking space but people do park occasionally wherever they want.

Mr. Gutoskey said if parking stripes were added to the parking lot it would help that situation.

Mr. Siegel said he intends to do work where it is eroding, it just turned out to be a much more complicated issue than he expected.

Mr. Lamanna said it is a complicated issue once you start working on a stream bed.

Mr. Siegel said even with regards to the fence, he never disagreed with the fence, what he had told Mrs. George when she wanted to put the fence up he agreed to it, he said it would have to be at her cost but he would maintain it because he knew that there was going to be erosion there so he really didn't want to do that at the time unless she agreed to off-set some of his maintenance costs if she agreed to install it.

Mr. Lewis said so she pays for the fence on your property to keep your patrons from going on her property.

Mr. Siegel said she could have put it on hers.

Mr. Gutoskey said but she is not causing the nuisance and he doesn't think she should have to pay for a fence.

Mr. George said we offered to pay for half and we got a quote.

Mr. Lewis said he doesn't think you need to gate your property to defend it.

Mr. Lamanna said the operation of this should not be damaging to the riparian area.

Mr. Siegel said that was his main concern and he knew in the future it was going to be a major headache putting a fence alongside that streambed so that is why he is against having a fence there because once the fence is installed he has to maintain it where it is eroding and if the fence falls over then he is in trouble for having a fence that has fallen over on the property and that is one of the reasons at the time he was concerned about having a fence there. He looked at it and said where are you going to put the fence, the creek runs between the properties so that is one of his main concerns.

Mr. Gutoskey asked what can you (Mr. Siegel) do to keep the use of your property from creating a nuisance to your neighbor.

Mr. Siegel said this may go contrary to what a lot of people believe that he tries to run a business and for the nature of his business he has to be as respectful of his neighbors as he can. He said he tries to keep the noise at a minimum, he has people who work security at the door who keep an eye on things and they do the best they can to keep things as quiet as they can and it is the nature of what the Greenville is and what it has been, even that house that they own was actually purchased from the Greenville at the same time that he bought the Greenville so when the Georges bought the house they actually bought it from the Greenville because that was part of the same property and the employees for the Greenville lived in that house at the time.

Mr. Gutoskey said he doesn't think they are sharing any profits of the Greenville.

Mr. Siegel said he is not against putting the fence in, he is against maintaining the fence and that is what makes him nervous with the erosion in that area.

Mr. Maglietta asked about the fence that is there now and who owns that.

Mr. Siegel said it is probably older than he is.

Mr. Maglietta asked why that is not being maintained.

Mr. Siegel said he had talked to Ms. Endres and he was going to take the fence out because it is causing a problem with the creek, it sits up straight but it has sunken into the dirt and he doesn't know when it was put in or how long it has been there or how far underground that chain link goes, it is just one of those things that he is sure the fence is older than he is.

Mr. Gutoskey said there are professionals out there who can help you solve these problems.

Ms. Endres said she thinks the privacy fence is owned by the house on the corner and the chain link fence we are talking about that is falling into the river. She said it was mentioned that you have security at the door and was wondering if they are off-duty police officers.

Mr. Siegel replied no.

Mr. George said he understands that running this sort of business and having a family you can't necessarily be there at 3:00 AM every night but he thinks that maybe there is not quite enough attention being placed here because when they first sought out to find out who the owner was and found out it was Mr. Siegel and going through a couple of bartenders he was told that he spends about four hours there on Wednesday and Friday from every employee he talked to so he doesn't know if anyone really knows what goes on there other than the neighbors in the middle of the night because we see it from our backyard.

Mr. Lamanna asked Mr. Siegel how much time he actually spends there.

Mr. Siegel said it varies, he actually used to spend a lot more time there but he has kids and he spends more time with his kids now, when he bought the place they were 2 and 3 years old obviously as he gets older he is more interested in selling it now than retaining ownership because his interest has changed from being a bar owner to being a father so it is just one of those things.

Mr. Lewis said there is an existing fence, we have an eroding bank that needs attention, it seems to him whether Chagrin River Watershed Partners or the county or even your group could make a recommendation on replacing the fence, put it ten feet from the edge of the stream because there is room on the property, it is not like the building is up to the water and there is no room, a new fence could be installed far enough away to allow work, the restoration, on the stream and any clean-up on solid ground and far enough away and as you have seen, the stream as an outdoor facility would not be a temptation.

Mr. Siegel said cars will be backing into the fence.

Mr. Lewis said whether it is 8' or 6' or 15' it would be in compliance with the Watershed Partners, riparians, repair work there is going to need to have something done and it appears because to get far enough away from that water edge you are going to have to make a concession and you already stated that you weren't using all of that parking lot, sometimes the patrons may choose to but your observation was it was not exactly a high use area, not a bad place to give up a little bit of something.

Mr. Siegel said he does not disagree but he is concerned about maintaining the fence in that location.

Mr. Gutoskey said if the parking lot is striped you are going to find out that you can probably get more officially parked cars in there too versus just willy-nilly with no markings.

Mr. Siegel said as far as screening in that location, the Watershed Partners actually recommended that he plant Dogwoods there so they didn't actually recommend a fence they wanted him to plant some Dogwoods.

Mr. Lewis said he understands however he is also looking at patrons travelling to adjacent properties and a Dogwood is not a fence and it is still a concerning issue.

Mr. Gutoskey said you could do a combination guardrail/fence if you are concerned about the fence because it keeps people from going into the stream and keeps people from damaging the fence and if the parking lot is striped you may find you have more parking available than what you get in there.

Ms. Endres said she has some concerns about safety too because there is really no barrier between the parking lot and the stream, she doesn't know what kind of liability issue it would be but she sees it as a safety issue.

Mr. Lamanna said then the fire department has to come down and deal with the situation and somebody's fuel tank gets ripped open and then gasoline and oil gets spilled into the stream and then there would be a major incident on our hands from a relatively minor occurrence.

Ms. Endres said that is a hole where the pallet is and once that pallet is removed somebody could actually step into the hole.

Mr. Lamanna said this is a tricky area and even though you have been operating this for umpteen years you still can't operate it in a way to continue to adversely affect the riparian. He said you don't get grandfathered in against future damage. He said the parking lot is eroding and from the looks of some of it, some of it is actually being undermined and the bank needs to be stabilized and once that is done then you won't have to worry about the fence falling into the river because you have stabilized the bank and the ground there and then you can put a fence in. He said one would have to follow the other, more work has to be done before a fence can be put in and he doesn't see any other way that we are going to control the problem of people wandering off the property and doing things that they shouldn't be doing.

Mr. Siegel asked where does the fence start and where does it end and is the whole property going to be required to be fenced in.

Mr. Maglietta said you have a fence that is up already and that is right before the culvert pipe and afterwards that is all wide open to the patrons that are back there. He referred to the photo and asked what is behind the white truck.

Mr. Brian Rundle of 7120 Pine Street testified that that is his property.

Mr. Maglietta asked Mr. Rundle if there is a fence along his property.

Mr. Rundle replied no.

Mr. Lamanna said there isn't much of a demarcation line there and asked Mr. Rundle if he has any problem with cars and people coming around.

Mr. Rundle said what has been said tonight is true and there are no secrets that this happens.

Mr. Maglietta said he gets everyone's point but the biggest problem today, especially in this society, it is all liability in life and you don't want to take that chance, you want to go that extra step and safeguard yourself because down the road it will be the best thing for everybody and he doesn't know how it gets worked out but he thinks having a fence along there so cars don't go into that creek and guys aren't walking across into his (Mr. George) backyard and not going onto his property, it is just a number of things and he thinks a fence is a necessary evil because of the establishment that it is.

Mr. Mort McClennan of 17259 Chillicothe Road testified that he has no skin in this game but it is just an observation, how about taking some of that dirt from Holy Angels and make a mound, it will be a sound barrier and it will stabilize the bank and will eliminate the need for a fence.

Mr. Lamanna said unfortunately they don't have enough room there to do that.

Mr. Siegel said and also you are dealing with the Army Corps of Engineers once again.

Mr. Lamanna said when you get things near the riparian there are all sorts of rules.

Mr. Siegel said right now they are back to the issue on whether it is an outlet maintenance or streambank erosion so it is a really tricky question because it is erosion right at the outlet of the pipe so that is what he is kind of waiting for and working with the Watershed Partners, he has an application, he is going to send it into the Army Corps of Engineers and they are going to come out and give him an assessment on whether or not it is a maintenance issue and hopefully what they will allow him to do is if it is a maintenance issue they may allow him to put rip-rap, rocks which is what he originally wanted to do but he found he couldn't without permission from the Army Corps of Engineers.

Mr. Lewis asked how this is going to be tracked to make sure there is progress on the streambank, fencing because there are two elements going on here, one is your smoking lounge and the other one is what is going on at the back of your parking lot with these two adjacent properties and he thinks the board can easily come to a conclusion on what their choices would be on the smoking lounge area and service out there. He said this, because there is the Army Corps and applications, the Chagrin River Watershed Partners and it seems apparent that until that decision is made and what the remedy is and the remedy is executed you can't put up a fence so he is hoping that we are not all back here in six months and absolutely nothing has happened for whatever reason, fail to apply, fail to perform, fail to get a quote, any number of things. He said he would like to know where this stands in 90 days and he would like to know that before the warm season gets here and before the summer business picks up and there is more activity and there is more people enjoying the night air.

Mr. Maglietta said he agrees.

Mr. Siegel said the fence wasn't one of his violations for zoning and if he works with the fence and doesn't know what the requirements are for the style, if it has to be a privacy fence or whether it is just simply chain link, would he be able to if he agreed to the fence if he would be able to get outside seating at the bar.

Mr. Lamanna asked Mr. Siegel what exactly he is looking for in a way of seating, we did not get very specific.

Mr. Siegel said right now he doesn't have much seating, there is a built-in rail so there is a place for people to put their drinks and all he has is some high-top stools that pull down that go around the patio and right now he has no plans on having service out there, what he would like to do is let it be the way it is, it would be one less issue and when people are sitting down they are a little bit more calm out there, there is less people walking around, if everyone is standing they would bump into each other and by everybody sitting down it is a much calm quieter place out there.

Mr. Lewis said so you have a drink rail and stools around it but not picnic tables.

Mr. Siegel said no, there are no picnic tables out there now.

Mr. Lamanna asked Mr. Siegel if he is thinking about putting some tables in.

Mr. Siegel said he would like to put a picnic table out there, actually if anything, it would be beneficial and it might be less people out there.

Mr. Lewis said one of the points of that was to make it a very temporary pit stop for people to be out there, not to camp out there.

Mr. Siegel said in reality it hasn't been that way, people whether they are sitting or standing, they will be out there for as long as they want to be out there, whether there is seating or not. He said the main reason he would like the restriction of the seating removed is that people will bring their camping chairs like they used to do and put them on the patio, they will bring their chairs with them with a pack of cigarettes and sit down in the patio with their camping chair. He said is he not going to go out there and tell them they can't sit out there.

Mr. Lamanna said in some ways it may be more practical to have fixed seating so you won't have people with camping chairs etc., a certain amount of seating ultimately has the effect of limiting the occupancy of that and given the size of that how many people can realistically be in there from an evacuation standpoint.

Mr. Siegel said he put a fire door out there with a push-bar.

Ms. Molly Beldon said she is not opposed to outdoor seating but can there be a way to enforce it to end at 11:00 P.M. and then people can't be out there or sweep the parking lot every so often so people can't be out there extremely plowed or wandering off. She added that she is not opposed to having food out there but having it done at a certain time.

Mr. Lewis said part of putting 8' walls on that was to corral people when they felt they needed to go outside for a minute to smoke and not congregate in the middle of the parking lot.

Mr. Lamanna said if that is closed off then they will come out the front door to smoke and it will defeat the purpose.

Ms. Beldon said she is talking about food.

Mr. Lewis said he does have a problem with bartering seating in one area that has been in violation for five or six years with maybe someday putting up a restrictive fence to corral the back of the property. He said the board is going to want to see it and will set some timetables.

Mr. Lamanna said obviously in terms of actual work nothing is going to happen for a couple of months and to actually get a plan together and get it approved is probably going to take longer than that anyway and he will get to the point that he will know what path he is going down.

Mr. Smith said he understands erosion and it was mentioned to have the fence put 8' – 10' or 6' or 7' from the bank, and asked if the erosion is so drastic that if you are 7' or 8' away that the bank is going to erode that far or could the Corps of Engineers say you can put a fence over there because he is looking at this erosion thing as a bureaucratic, red-tape.

Mr. Gutoskey said as long as you stay outside of the ordinary high water, the Corps jurisdiction goes away so the only thing he would be really asking for is looking to stabilize the bank and put rip-rap by the culvert.

Mr. Lamanna said he has erosion coming up underneath his parking lot.

Mr. Siegel said he doesn't know if there were changes upstream that caused more flooding but this is something that just appeared in the last two years.

Mr. Lamanna said you might as well deal with it all at once.

Mr. Siegel said he agrees and what he would like to do is if he was able to put, and he doesn't know what the setback rules are for a fence in Bainbridge, but if he could put the fence as close to the streambank as allowable that would also be a good thing and it would keep people from leaving the property.

Mr. Lamanna said there are some rules on the setback.

Mr. Siegel said his biggest concern is every time somebody backs into the fence which is the main reason he was against getting the fence in the first place was the combination of the erosion and people running into it and then he has a constant maintenance issue that every time somebody backs into the fence it is going to happen weekly where somebody may back into a fence that is right on the parking lot.

Mr. Lewis said that is the cost of doing business.

Mr. Lamanna said concrete bollards work real well.

Mr. Lewis said it may strengthen the lot and give people some direction because it is sort of a free-for-all.

Mr. Gutoskey said a combination guardrail/fence because a fence isn't going to stop anybody from driving into the stream but the guardrail is going to and it is also going to protect the fence.

Mr. Siegel said a vinyl fence wouldn't stop anybody but a chain link fence, if they back into it at least there is some give, but a vinyl privacy fence, if they back into it.

Mr. Tim Roach of Blackstone testified that he knows how to repair it and has a solution.

Mr. Lamanna said he is here for another application.

Mr. Roach stated that it can be extended out by another section and it would give more room to extend a new retaining wall which they do with big boulders, they try to keep everything natural so three 500 pound boulders, you could cut out 3' to 4' of the asphalt parking lot so there would be room for a row of arborvitaes and you could do a fence behind that just to keep people from walking there and it would reduce the noise and then place boulders on the back side of the parking lot so you wouldn't have to maintain a fence.

Mr. Lamanna suggested tabling this for three months and stay the way it is for the moment.

Mr. Siegel asked if that includes the seats.

Mr. Lamanna said we will let the status quo hold for now barring some problem.

Mr. DeWater said he has to come up to compliance with the signs since the 2007 decision.

Mr. Lewis said we need the door sign, spray paint it on if you have to.

Mr. Siegel said that is actually a good idea and asked what parking lot signs is the board referring to.

Ms. Endres said she wasn't here for the first meeting but the minutes referenced signs regulating traffic on the roads.

Mr. Siegel said he can give an update on that, what that was, one of the neighbors was concerned with people parking in front of his driveway which really is not his responsibility because it is on Mogul Street which is around the corner and just as a way of being a good neighbor he offered to buy him signs that said "please do not block the driveway" and to the best of his knowledge those signs are still up there.

Mr. Lamanna said isn't that a request that should have made to the road department, it is a public right-of-way so if anybody is putting up signs, the township should be putting up signs, he doesn't know what their policy is on that but they seem to be putting up all kinds of signs all over the place lately. He said in May, he would like Mr. Siegel to pursue with the Corps of Engineers and the Chagrin Watershed and what needs to be done as far as being able to stabilize that bank area.

Mr. Siegel said that is what he is going to do.

Mr. Lamanna said as those plans develop, and he thinks three months is enough time to give a very good indication of what route you are going to need to go down or be able to practically go down, then come back and report on where you are and address the issues that have been raised such as the location and type of fence, what kind would make sense and those issues can then be addressed in light of a better base of knowledge than we have now based on what might be permitted or feasible and then at that point in time the board will address dealing permanently with the outdoor area. He said then the board will have a much better idea of all is going on and what is likely to work and not work and rather than go back and forth let's see what develops and it is on the applicant to move this forward so the board expects in May you are going to come and be able to tell the board as much as you can and we will proceed diligently in figuring out what we will allow or not allow you to do and on what schedule so in three months we can have an intelligent decision over what is the best course of action to deal with all of these issues.

Mr. Siegel said that makes sense.

Mr. Gutoskey said we are looking at a fence on the north and west side and he thinks the applicant needs to come back with a striping plan for the parking lot and that will help with the parking problems.

Mr. Siegel said there will be some questions, for instance, if he decides to get a permit for the fence what the township will allow as far as setbacks and where the actual property line is by the creek.

Mr. Lamanna said that is one of the reasons we don't want to do anything tonight because if the fence happens to be in the riparian and a variance is needed on the riparian setback we can deal with the riparian setback, let's try to see if we can get it all wrapped into one nice package and address all of the issues at one time so that is part of why he thinks it is best to do a little planning and find out what looks like will work and what won't work.

Mr. Siegel said he will work towards getting that done and he will talk to a fence company and he prefers chain link fence because of less maintenance.

Mr. Lewis said that would be fine.

Mr. George said the whole thing about the chain link is it doesn't fix the public urination problem.

Mr. Lewis said right now this property owner is trying to solve the problem by maintaining the change on his property.

Mr. George said he is just asking.

Mr. Lewis said if you feel that it is not adequate you have the option to do things on your property as well.

Mr. Lamanna said maybe it would make sense to put in the chain link fence and the neighbor could pay for the plastic slats that slide in there or a section by their property, rather than hypothesize we will get a real plan and then we can start working on fine tuning this.

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

Motion BZA – 2016-2 – 7150 Pine Street (Greenville Land LLC)

Mr. Lamanna made a motion to table this application to the next regularly scheduled meeting in May 2016 during which the time the applicant will pursue with the Army Corps of Engineers and other regulatory parties the issues with stabilizing the bank along the back of the property along the stream and also will look at fencing the area between the adjacent properties in light of what is permitted or allowable for that and other related issues that have been discussed during the course of this meeting tonight. The applicant is also going to return the sign to the door and in the interim the applicant will be maintaining the limited seating he is currently using in the outdoor area until such time of the May meeting and the board can review whether it is appropriate to modify the variance and otherwise deal with the restrictions on this property.

Mr. DeWater seconded the motion.

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

Application 2016-3 by Patricia Setlock for property at 8740 Tanglewood Trail

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

Application 2016-4 by Patricia Setlock for property at 8740 Tanglewood Trail

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

The board was in agreement to hear applications 2016-3 and 2016-4 together.

Ms. Patricia Setlock and Mr. Hank Kassigkeit were present to represent these applications.

Mr. Kassigkeit testified that they bought the house about a year ago and fixed it up because they actually live ten houses away from this house in Tanglewood already and he and his wife bought the house because they are expecting very shortly that her mom will be moving up from S. Carolina because her dad is in very failing health right now so they needed some place to expand to accommodate an 86 year old lady. He said they need some extra room and he lost the bet because he wanted to put up a big pole barn up on the extra acre up on top and she said it would be an eyesore for Tanglewood if he starts building pole barns and put chickens up there and he can understand why, they are not part of Tanglewood but they have the sewer and water privileges of Tanglewood but they are not part of the Tanglewood Lake Association, they have 2-1/2 acres there and it is a beautiful arrangement because they have city water and sewer.

Mr. Lamanna said so the lake association provides water to that property so they technically are members of the association for water purposes but they don't have to follow the deed restrictions.

Mr. Kassigkeit said in lieu of a pole barn they decided a little two-car garage would be adequate and a little more storage to handle the grass equipment etc. so that is why they designed that little bump out with a two-car garage on the one side.

Mr. Gutoskey asked if they have a two-car garage now.

Mr. Kassigkeit replied yes.

Mr. Lewis said since they are officially not in Tanglewood they are not held by Tanglewood Association ARBs etc.

Mr. Lamanna replied no, not that part of it. He asked if the driveway is going to be paved.

Mr. Kassigkeit said right now it is in compressed stone because they ran out of time due to the weather and the cement mills all close down but it actually worked out better because they can pour the footers and garage floors in the storage area all at the same time.

Mr. Lamanna asked if the storage is going to be attached to the building.

Mr. Kassigkeit replied yes.

Mr. Lewis said the setback requirement is 90' but yet the house as built is 60' off the back.

The board discussed the shape of the lot.

Mr. Lewis asked Ms. Endres what is behind this lot.

Mr. Kassigkeit said it belongs to Mr. McClennan and Tanglewood Golf Course and he thinks his closest neighbor is about an acre but we can't see Mr. McClennan's house it is so far back.

Mr. Mort McClennan said they gave a corner of the lot to Tanglewood for a dollar that was never paid to them.

Mr. Lewis said there is nothing around there and neither one of these structures is particularly large no are they tall.

Mr. Maglietta asked Mr. McClennan if he had any concerns or issues.

Mr. McClennan said he would like his dollar.

Mr. Lewis said there are no other outbuildings on the property.

Mr. Gutoskey said there are no lot coverage problems, just setbacks and building area.

Mr. Lamanna asked about the 300 sq. ft. limitation on the structure and if it was because it is a non-conforming lot.

Ms. Endres replied yes.

Since there was no further testimony, these applications were concluded.

Motion BZA 2016-4 – 8740 Tanglewood Trail (Storage Addition)

Mr. Lamanna made a motion to grant the applicant the following variance for the purposes of constructing a 22' x 22' storage addition which will be attached to the existing house.

1. A variance from the minimum required rear yard setback of 90' to 38'.

Based on the following findings of fact:

1. A practical difficulty exists because this was a pre-existing long narrow lot and the existing house was built with a setback from the road right-of-way.
2. Because of the lot depth, it did not leave very much additional distance to the rear yard line.
3. Additionally there is nothing anywhere near, nor will there be anything near the rear lot line of this property, so there will be no adverse effect on any of the adjacent property owners nor will it be inconsistent with the character of the neighborhood.

Mr. Lewis seconded the motion.

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

Motion BZA 2016-3 – 8740 Tanglewood Trail (Detached Garage)

Mr. Lamanna made a motion to grant the applicant the following variances for the purposes of constructing a detached garage (22' x 30') to be located at the back of the driveway to the existing dwelling.

1. A variance from the minimum required rear yard setback of 90' (prior zoning of 50') to 30'.
2. A variance on the maximum height of 15' to 16'.
3. A variance on the maximum building size of 300 sq. ft. to 660 sq. ft.

Based on the following findings of fact:

1. A practical difficulty exists because the narrowness of this lot and the location of the existing house and driveway and the most natural place for this additional garage is such that there would not be 50' left on the lot.
2. There is no adverse effect on the adjacent property owners.
3. With respect to the 1' variance on the height, it is insubstantial and would not have any adverse effect or undermine the purpose in which the height restriction was created especially because this is an unoccupied building.
4. This is a two acre lot and although it is below the three acre requirement allowing this out-building to be 660 sq. ft. is not unreasonable and would not be inconsistent with the character of the neighborhood.

Mr. Lewis seconded the motion.

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

Application 2016-5 by Tim Roach for property at 7045 N. Aurora Road

The applicant is requesting a substitution of a non-conforming use for the purpose of mulch, plant, nursery and outdoor furniture sales. The property is located in the MUP District.

Mr. Tim Roach, Jr. and Mr. Tim Roach, Sr. were present to represent this application.

Mr. Roach, Jr. testified that the plan is to add bulk mulch in the back, just three kinds, he doubts they will do red mulch, but black mulch, brown mulch and we may put some larger boulders back there, homeowners can't just go to mulch places and get them so they will carry some boulders. He said there will be no gravel there because he does not want that to be an issue with people pulling out with gravel in the road, all annual plants all locally grown. He said everything comes from all local places and that is basically it but they might have an Amish furniture builder and have a bunch of furniture out there but they haven't decided on the outdoor furniture. He said the mulch is the most important thing for them there and obviously the plants and he doesn't think there is an issue with the plants. He said the place is pretty rundown and they don't own the property, he has offered to buy the property but the owner won't sell it so they are not going to have the property in their ownership for a while so there is not a whole lot they can do as far as updating it so the idea is to kind of make it look rustic and referred to Chagrin Pet, it is kind of that style so that is the idea. He said inside they will make it look all rustic looking with old wagon wheels and all different kinds of stuff like that so it will at least look presentable to the area and not like a rundown place. He said as far as who they will retail to, the idea is not to retail to landscaping companies, we don't want a ton of trucks in and out of there, the idea is basically to more residents, they will probably sell to some landscapers but he thinks their prices will be a little bit higher for them so he doesn't think they will want to come there, they will probably go to the distributors themselves but the idea is to sell the bulk mulch there and it will be a business for the residents more than to send it off to the landscapers. He said Kurtz Brothers came in there and they have approached us to take over and they are a big outfit, they are going to come in there with a lot and that is not what we are about, to me it is more about the services we provide than the actual supplier, we will pick up lawn maintenance accounts, residential, we get to pick up commercial lawn maintenance accounts by just being there, we get to pick up mulch installations, plant installations, all the services that our company provides anyway so that is main idea with it.

Mr. Lewis said you are more into services not the materials.

Mr. Roach, Jr. said yes that is the idea to sell the material at a good enough price, they are going to want the services as well so we might sell outdoor lighting there and also install the outdoor lighting.

Mr. Lamanna asked if those are other little buildings there.

Mr. Roach, Jr. said those in the back are already moved because they were on the property line. He said those are the concrete blocks to hold the mulch.

Mr. Lamanna asked if there is a storage shed up in the front.

Mr. Roach, Jr. said that is all gone, he took everything down on the property. He said the previous owners made a bad name for themselves, he went in there and took everything down.

Mr. Lamanna asked if they are down to a single structure.

Mr. Roach, Jr. they are down to that but the only thing they added was, there were already posts for a greenhouse that was there, all they did was add the plastic to it so they just did that to protect the firewood they have there so he doesn't mind taking all of that down but he has to figure out where to put it. He added that they do need a greenhouse there.

Mr. Roach, Sr. said they do need a greenhouse.

Mr. Lamanna asked where the road right-of-way actually is.

Ms. Karen Endres, Zoning Inspector testified that without a survey it is hard to tell.

Mr. Gutoskey referred to the aerial photo and said it is probably here where the concrete aprons are because when they want to come down and widen the road they would have put a concrete apron up to the right-of-way line so this is probably pretty much the right-of-way line here.

Mr. Roach, Jr. said the whole area in front of the building, we want to just make parking, just specifically parking and so there is no product or anything in the front.

Mr. Gutoskey referred to the front and asked if it is a landscape bed.

Mr. Roach, Jr. said he wants to rip it out of there and just make the whole front parking so it is all pointed toward the building.

Mr. Gutoskey referred to the aerial and said this is in the road right-of-way there.

Mr. Roach, Jr. said it is a mulch bed and the mailbox is actually right there.

Mr. Gutoskey asked what is in the area right there.

Mr. Roach, Jr. said it is just mulch, there were some plants but we pulled it all out of there.

Mr. Gutoskey asked Mr. Roach, Jr. if he knows he can't put pavement in there.

Mr. Roach, Jr. said that is fine, he will put asphalt grindings there.

Mr. Gutoskey said he doesn't think you can because you need to keep a defined ingress/egress.

Mr. Roach, Jr. said it is a difficult place to work with and he will keep it there, it is not a problem.

Mr. Gutoskey said you could put in some nice landscaping.

Mr. Lamanna said the board would like some landscaping there.

Mr. Roach, Jr. said he can put flowers there and rotate them and his plan with the place is after they park and come in the back it just wants it to be a crazy wonderland type of place, you walk in and there is path the kind goes through the whole place in the back and there are water features and he wants it laid out.

Mr. Lamanna said the board would like a streetscape with two well defined egress points and it would make the most sense to have an in and an out but if you want to do both that is fine and in between we have been trying to get landscaping between the parking areas and the road right-of-way so that when you are driving down the road all you see is road and parking lot and nothing in between. He said the board has worked on E. Washington Street for about 20 years trying slowly but surely and we made some progress, we are getting everybody to landscape that area between the road and the parking lot.

Mr. Lewis said think about the winter when your flowers are gone and you've got that 2' – 6' buffer or more and he thinks they start salting Aurora Road in August, you are going to have to deal with that with shrubs or trees.

Mr. Roach, Jr. said the issue with them is parking, there is really nowhere to park where you can have 10 to 12 vehicles that is why the idea of taking out the center piece and then they can just pull straight in but they will come up with a different plan.

Mr. Lamanna said we don't want people coming in right off of Route 43 and go into a parking space.

Mr. Gutoskey said like we told the other guys to mark some spots and typically a parking space is 9' x 20'.

Mr. Roach, Jr. said there are some mock areas there but it is been really difficult but he will figure it out.

Mr. Gutoskey said you might want to have head-in spaces toward the building and a driveway so they can just drive around.

Mr. Roach, Jr. said they will figure something out, that has been the biggest challenge to figure out the parking but people don't drive that fast around the place because there is a light there in front of Home Depot and added that he doesn't mind keeping the island out front.

Mr. Gutoskey said this is a better spot for you.

Mr. Lewis said this is a wonderful place for you guys.

Mr. Roach, Jr. said he knows.

Mr. Roach, Sr. said he lived on Millbrook Drive before they put the freeway through and he lived in Solon so he has met so many people he knows and we are getting all of those people too.

Mr. Roach, Jr. said they get all of the Solon people and everybody going to Home Depot and people coming from everywhere going to Aurora Farms, it is incredible.

Mr. Roach, Sr. said and Sunday is church day.

Mr. Roach, Jr. said we have a lot of people stopping and we haven't even opened.

Mr. Lewis said we should talk about outdoor sales of merchandise because there was a conversation about furniture sales being outdoors.

Mr. Gutoskey said they could have the furniture inside.

Mr. Roach, Jr. said these are Adirondack chairs and picnic tables, all outdoor furniture.

Mr. Gutoskey said but you run into the problem with sales outdoors.

Mr. Roach, Jr. said the bulk mulch is one thing, the plants are one thing but if you don't want the furniture there, he won't put it there.

Mr. Lewis said outdoor sales of products.

Mr. Roach, Jr. said to him the money is in the mulch and the plants, that is all he really cares about.

Mr. Roach, Sr. said the Amish build it in Middlefield so he would bring one out and sell it and go get another one and sell it, the swings and the chairs.

Mr. Maglietta said they can't have outdoor sales that are non-agricultural.

Mr. Roach, Jr. said he wants 3 or 4 picnic tables, this is beautiful furniture, it is all Cedar furniture.

Mr. Gutoskey said what the board is getting at is most of the furniture has to be stored inside, you may have one or two outside.

Mr. Roach, Jr. said they don't have room inside.

Mr. Lewis said before you load your parking lot or front porch up with a whole bunch of this stuff and get yourself into hot water we are suggesting that we have some tight restrictions, check with Ms. Endres and figure out what you want to do.

Mr. Lamanna said if you want to have a few around for order taking purposes so people can see them it would be okay.

Mr. Roach, Sr. said Mantua Grain had one in each corner and when we sold one we brought another one in and they sat in them and the one side of the building is all grass and that is where he wants to put them.

Mr. Maglietta said you are in the business of landscaping and you could have a nice display of your swings and your chairs.

Mr. Roach, Jr. said to him it was about increasing inventory quickly and that is why they wanted to bring it on as consignment.

Mr. Maglietta said we don't want stacks of chairs outside.

Mr. Roach, Jr. said he understands and he will make it work. He said a future endeavor is, and they haven't decided yet, but this place is equipped with a drive-thru so he doesn't know if it has anything to do with zoning or not but they would have birdseed, fertilizer, grass seed, that is the idea but they will see how it goes and also having straw in the back but to be able to load people up, they wouldn't have to get out of the vehicle and maybe have bagged salt there too, it is really just a convenience.

Mr. Roach, Sr. said there was a carwash inside.

Mr. Roach, Jr. said the place needs so much work .

Mr. Lewis said that is just a cashier window and if you were going to put up a canopy then you would get into lot coverage.

Mr. Roach, Jr. said he does need a canopy to keep the topsoil from getting wet.

Mr. Roach, Sr. said they go on top of those concrete ingots.

Mr. Roach, Jr. said he was always told that the concrete ingots don't count as a structure but they do count as lot coverage.

Ms. Endres said they would be considered lot coverage.

Mr. Gutoskey said they would be considered lot coverage whether they are covered or not.

Mr. Roach, Jr. said he would put it behind the building so it is not seen.

Mr. Lamanna asked if the back side has residential lots that are in Solon.

Mr. Roach, Jr. said they are rentals.

Mr. Lamanna asked if Verizon owns that lot back there.

Mr. Roach, Jr. said they have been plowing the driveway for them and they have a pretty good size tower back there but they go back there about once a month.

Mr. Lewis said we talked about the landscaping, the buffer zone at the street and one or two entrances access/egress type of thing, either way, we talked about giving them one covered tarp for one of their storage bays.

Ms. Endres stated that any ground signs will probably need a variance and she doesn't know if the board would want to talk about that tonight.

Mr. Gutoskey said it is going to be hard to have a ground sign.

Mr. Lewis said he would put a sign on the front face of the building.

Mr. Roach, Jr. said that is where the mulch bed is.

Ms. Endres explained the road right-of-way.

Mr. Gutoskey said it looks like it would be in the road right-of-way, any sign would require a variance because you can't put the sign in the right-of-way.

Ms. Endres said the sign is supposed to be 15' off of the road right-of-way.

Mr. Gutoskey said unless you put it to the left side of the lot.

Mr. Roach, Jr. said the signs have always been in the mulch bed. He said it doesn't matter to him because they are going to be busy no matter what.

Mr. Lamanna said the board can't give you a variance to put it in the right-of-way.

Mr. Roach, Jr. said he didn't really care, if the board wants the sign on the building, he will put it there.

Mr. Lewis asked what the front face of the building looks like.

Mr. Roach, Jr. said there is a huge window, there is a door and then there is some siding right there, it is like a small little house. He said he will put the sign on the building.

Mr. Gutoskey said because of the configuration of the lot it is going to be hard to put in a ground sign.

Mr. Maglietta said it could be put on the face of the building where the pitch is and then have some lights on it.

Mr. Roach, Jr. said the pitch is forward.

Mr. Lewis asked Ms. Endres how much signage (square footage) they are entitled on the front face of the building.

Ms. Endres said it is a small building and the calculations use the face of the building and the main entrance does appear to be on Aurora Road.

Mr. Roach, Sr. asked if that is a road that goes back to the tower.

Ms. Endres said that is the tower's private driveway, it belongs to the cell company.

Mr. Roach, Sr. asked if they lease that property because Bainbridge Police go back there sometimes because people pull back there.

Mr. Lewis said it is theirs to defend.

Mr. Roach, Jr. said at his last location he did really well so he wanted to keep it going.

Ms. Endres said to bear in mind that there is a 50% lot provision so once the board has worked out all of the conditions, storage bins and ingress/egress she is going to need a site plan detailing all of that and demonstrating the lot coverage under the 50%.

Mr. Roach, Jr. said it is 40% but Kurtz Brothers were approved at 50%.

Ms. Endres replied right, it was approved at 50% so this application gets 50%. She said she will need a more concrete site plan from Mr. Roach.

Mr. Roach, Jr. said they are still trying to figure out how they are going to set it up.

Mr. Lamanna asked what the ruling is on these plastic greenhouses.

Ms. Endres said if they are actually growing the plants from seed in those greenhouses they fall under agriculture but if they are bringing in plants from other sites then they need to get a permit and it has to go through the building department to be sure the buildings are safe for public use.

Mr. Roach, Jr. said so if we grow a couple of plants then we don't have to.

Mr. Lamanna said he thinks you have to grow a majority of plants.

Mr. Roach, Jr. said he doesn't mind having to put up a permanent structure but it would be nice not to have to do it right away.

Mr. Lamanna said it comes to building and safety issues. He said the agricultural thing is stretched a little bit, he doesn't really think the agricultural rule exemption was intended to apply to a lot that is sitting in the midst of a rather large commercial shopping area to allow people to come and put buildings up that don't really satisfy what the building code requires.

Mr. Roach, Jr. said Heinens brings in those temporary tents and they are really strong and sturdy but for us, we want to put up a permanent greenhouse but this place has taken a lot of money and a lot to get this going and do it right so if anything he would like to put up a temporary greenhouse for a short period of time.

Mr. Lamanna said we are kind of stretching to the breaking point here.

Mr. Lewis said he would like to see the lot coverage site plan and see how this thing works out with what the main structure is, the driveway, the greenspace between the parking lot and the street, some of your other features, how you are routing traffic. He said get your core business started here and let's see how this lot is really going to develop and how it is going to evolve. He said if you have the room then you can denote a proposed location with sizes and then we will deal with that whether it is going to be a temporary or permanent structure and whatever the rules are.

Mr. Roach, Jr. said it is going to evolve and he would much rather take the building down completely and build toward the back but he doesn't have that option. He said they are going to start this week but have to figure out where to put the parking. He said the mulch sales are only three months, it is not all year.

Mr. Lamanna said the board is going to address the application but basically the applicant is going to have to come back with a detailed site plan showing it is in compliance with all of the conditions that we have established and still showing that the lot coverage will meet the 50% so you can submit that to Ms. Endres and if she is satisfied that is it but we will leave the application open and leave it on the agenda again for the next meeting so that if something comes up in the interim we don't have to start all over again.

Mr. Roach, Jr. said as far as lot coverage, Ms. Endres said that mulch beds don't count.

Mr. Lamanna said landscaping areas don't count as lot coverage.

Mr. Gutoskey said your storage bins with product in them, buildings, paved parking areas, sidewalks etc. count toward lot coverage.

Mr. Roach, Jr. asked if he puts in mulch beds and flower beds does that count as greenspace.

Mr. Lewis replied yes.

Mr. Lamanna said you can do stuff that shows what your work can be and it is not going to count, any areas that you landscape to show off your work will not count.

Ms. Endres said the bulk storage counts as lot coverage.

Mr. Lamanna asked about the setbacks.

Ms. Endres said he is not changing the building location at all, the parking is dicey. She said it looks like as years have gone by the parking encroaches on the neighbor's property so that needs to be fixed and she is not sure how you do that without a survey.

Mr. Gutoskey said the owner may have a drawing showing where the buildings are.

Ms. Endres said the building is the same but since they are defining parking, they can get all of that into compliance.

Mr. Roach, Jr. said they had upwards of 15 to 20 cars at the last place.

Mr. Lamanna said the asphalt will have to be pulled back too, so there is a demarcation line at the property so there will be no hard surface beyond one foot from your property line so we know where the property ends so we are not using adjacent or road right-of-way for parking purposes.

Ms. Endres said ODOT will come out and mark the right-of-way.

Mr. Roach, Jr. said there is a giant street light that they charge us \$25.00 a month for and it is not even on our property.

Mr. Lamanna said they will put the light up but they are going to put it up on the nearest pole that they can get to.

Mr. Roach, Jr. said they put up a separate pole.

Mr. Lamanna said if you want a light, First Energy will contract with you and put the light in and take care of it, it will come on at dusk and go off in the morning, and there is probably a minimum period of time.

Mr. Lewis said it is up to the property owner.

Mr. Roach, Jr. said the property owner wants him to pay for everything.

Mr. Roach, Sr. asked who they have to contact about an arrow there to turn left, they do it anyway.

Mr. Gutoskey said it probably isn't wide enough to be a turn lane.

Mr. Roach, Jr. said he will contact ODOT.

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

Motion BZA 2016-5 – 7045 Aurora Road

Mr. Lamanna made a motion to grant the applicant a substitution of a non-conforming use for the purposes of operating a landscape supply store with outside storage. Included in this will be the outside storage of bulk mulch and topsoil for sale and one of those bins may be covered.

Based on the following findings of fact:

1. This property has previously been used for all kinds of retail businesses.
2. It has been used and is set up for use for bulk landscape products and this is a more limited use in terms of the kinds of bulk landscape products that will be sold.
3. Previously a variance was granted for 50% lot coverage and that will continue.
4. Ultimately the applicant must submit to the zoning inspector for the zoning inspector's approval a plot plan showing all of the proposed lot coverage and improvements proposed on the property, one so the zoning inspector can determine the 50% requirement is not exceeded and secondly to assure that the other conditions that are applied to this property will be satisfied.
5. These conditions will be applied to the substitution of the non-conforming use to assure that said substitution is consistent and in fact is not a greater burden than the prior uses and to assure that there is not either an adverse effect upon the neighboring property owners, an inconsistency with the use of the area in general or create an undue burden upon the township in providing public services.

Motion BZA 2016-5 – 7045 Aurora Road - Continued

6. With respect to the outside sale of equipment and merchandise, it is going to be limited to nursery and live plants and the like and the bulk materials that were previously talked about.
7. The few incidental items will not be considered that are there for display purposes and do not constitute a significant stock of items, meaning a handful will be permitted.
8. There will not be any other temporary buildings erected on the property without obtaining further approval from the board of zoning appeals and obtaining a variance for that.
9. With respect to the setbacks affecting the existing main building and accoutrements the board will allow all of the existing setbacks to remain in place as it is a pre-existing building and given its location on the lot there really is not any other option for a practical difficulty standard to do anything otherwise.
10. With respect to the parking areas and the roadways all existing parking areas will be allowed a 1' setback from the property line and the applicant will cut back those parking areas to that setback requirement where they extend beyond it or onto the adjacent property.
11. With respect to the front the applicant will restrict it down to two areas of egress and ingress, not more than 24' wide each and in between the area and the road right-of-way will be a landscaped area.
12. The applicant must submit a plan to the zoning inspector before the next meeting so that it can be finalized at the next meeting.
13. The board will also hold this application open for the next meeting and continue it for a limited purpose that if something arises in this review of the plan that was not anticipated here tonight the board can address that issue at the next meeting and finalize the decision.

Mr. Gutoskey seconded the motion.

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

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

Respectfully submitted,

Ted DeWater
Joseph Gutoskey
Michael Lamanna, Chairman
Todd Lewis, Vice Chairman
Jason Maglietta, Alternate

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

Date: March 17, 2016

AUDIO RECORDING ON FILE

Bainbridge Township, Ohio
Board of Zoning Appeals
February 18, 2016

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

Minutes

Mr. Lamanna made a motion to adopt the minutes of the January 21, 2016 meeting as written.

Mr. Gutoskey seconded the motion.

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

Applications for Next Month

Application 2016-5 by Tim Roach for property at 7045 N. Aurora Road - Continuance

The applicant is requesting a substitution of a non-conforming use for the purpose of mulch, plant, nursery and outdoor furniture sales. The property is located in the MUP District.

Application 2016-6 by 422 Company LTD/Golf Dome Ltd. for property at 8200 Washington Street

The applicant is requesting a review and renewal of an existing conditional use permit for a movie theater, indoor golf driving range, outdoor miniature golf course, soccer training fields and expansion of use of the baseball fields. The property is located in a CB District.

Application 2016-7 by David and Johanna Penzenik for property at 16853 Chillicothe Road

The applicants are requesting an expansion of a non-conforming use for the purpose of constructing a residential storage building. The property is located in PO and CB Districts.

Since there was no further business, the meeting was adjourned at 10:28 P.M.

Respectfully submitted,

Ted DeWater
Joseph Gutoskey
Michael Lamanna, Chairman
Todd Lewis, Vice Chairman
Jason Maglietta, Alternate

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

Date: March 17, 2016