

Bainbridge Township, Ohio  
Board of Zoning Appeals  
February 18, 2021

Pursuant to notice by publication and ordinary mail, the public hearing was called to order at 7:04 P.M. by Mr. Michael Lamanna, Chairman. Members present in person were Mr. Brent Barr, Alternate; Mr. Michael Corcoran; Mr. Ted DeWater; Mr. Joseph Gutoskey and Mr. Todd Lewis. Mr. Ian Friedman, Alternate was present via Zoom. Ms. Karen Endres, Zoning Inspector and Mr. Steven Averill, Assistant Zoning Inspector were present in person. Mr. Jeffrey Markley, Bainbridge Township Trustee was present in person to monitor and host the Zoom meeting.

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

Mr. Lamanna welcomed everyone to the regular meeting of the Bainbridge Township Board of Zoning Appeals, explained the public hearing process and stated that individuals will be sworn in when the application is started.

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

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

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

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

Mr. Lamanna noted that these applications relate to review and renewal of an existing conditional use permit and including a request to modify a previous requirement as part of that conditional use with respect to the construction of some expansions on that property and this is an application that has multiple hearings up to this point, there is already a substantial record in place previously on these matters and the board hopes to complete the taking of evidence tonight and come to a decision on these matters. He said with that he will ask the applicant to come forward and respond to the questions that have been previously raised and give the board any additional information that he may think is pertinent.

Mr. David Barr of New Wembley LLC was present in person to represent these applications.

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

Mr. Barr asked about the questions.

Mr. Lamanna said he believes you (Mr. Barr) were sent a letter with some questions.

Mr. Barr testified that he didn't get a letter and asked if he got a letter. He said he doesn't think the letter was sent.

Mr. Lewis told Mr. Lamanna that he can refer to the letter from October.

Mr. Lamanna told Mr. Barr if he doesn't have anything the board members can ask any questions that they want to ask about this matter.

Mr. Barr said if the board would like him to say a word he can speak his thoughts but he doesn't know if the board wants that or not.

Mr. Lamanna said the board wants to address all of these open issues that we have been trying to get to for the last many months.

Mr. Barr said okay. He said he sent in as requested at the last meeting a couple of different options for how we are going to handle that first 3' from the ground up, he sent in when he was asked to provide a picture of what it would look like which we complied with quickly of a different color for the 3' off the ground and we did that as a painting option and then later he thinks they submitted another option which was sort of paneling for lack of a better choice, that was submitted some time ago as well so he hopes that that will suffice to comply with the board's wishes.

Mr. Lewis said good evening Mr. Barr. He said a lot of this stuff was already covered in our previous meetings and these were questions that were asked that we were still waiting for answers on so there was not really a great deal of necessity to generate another letter to reiterate the questions we were already waiting for answers on and then of course we do have the formal notice to you of the compliance issues that went back to October 21, 2020 which lists the three or four core areas of concern that we did not receive compliance on yet so he is going to run down the big ten even though we have talked about them and he will make a comment after that and of course you (Mr. Barr) will have time to speak to all of these. Number one, the completion of the 3' high decorative mason wall the entire length of the front face of the building. Number two, providing a rendering or a plan depicting the north side panel transition with specific material and color. He said he realizes that Mr. Barr did present some items via an email with some color panel samplings and some renderings were produced that showed some colors on those. He said then we start getting into some of the really tough issues which was repainting the roof to black, match clubhouse color as depicted on the plans that were submitted and approved by the BZA.

Mr. Lewis continued by saying we are going to pull those up here shortly so that everybody can see exactly what was submitted and what we approved with the renderings that were submitted by you (Mr. Barr) and produced by your architectural firm. He said with regards to landscaping there were some missing evergreen trees, those seem to have gotten omitted when you added a gravel service access road across the entire front face of the building connecting to your turn-around that was paved which took out an area that were planned for evergreens. He said also on the original plan and we will show that again to everybody, on the front façade of the building there were two bump-out areas with dormers coming out from the building approximately 1-1/2'. He said those footer foundation blocks are in the ground so the foundation was laid for those, those were omitted and we had asked that those be built out whether you are using the metal or once again produce something for us, bring it to us, get the approval and go ahead and build it out, we have nothing on that. He said the next point was to provide detailed drawings also depicting the materials and color of the bump-outs whether you were going to frame them, use concrete panel board and paint it, stucco or whatever and we've got nothing. He said there seems to be an accessory structure that was built on the eastside of the new building, a storage structure, a shed, that is not on the site plan, that was not approved, that was an unauthorized, unapproved addition, we have no knowledge of it, we do have the photos of it, it exists there. He said we did request an updated site plan depicting the gravel service driveway that goes through the turn-around access through the front, crossed the front of the building with dimensions and lot coverage updates. He said this was a substantial change to your site plan, we have nothing on that other than some renderings locating it but we are still looking for lot coverage and other things that we need to calculate, not provided. He said we also asked for samples of the metal roof and the side as-built, the material with the color on it and we have already covered the shed that wasn't permitted. He said these were all asked for, we have had countless meetings on this, you were provided these requests and they are in our minutes so they are available to you and it did not seem necessary to have to resubmit them again, it was redundant. He said we also noted that with regards to the roof and the roof color the expert witness testimony of your expert witness that was presented actually had contradictions in his two documents on thermal and characteristics, he said that specifically he had no thermal engineering experience or expertise, we asked for studies from an engineering firm or certified in that field, an expert witness, we have nothing. He said also the expert witness you provided is your current contractor finishing up the building which did not deem them as a disinterested or a third party with a standalone opinion, this gentleman is connected to you financially as he is a contractor of yours so we were looking for a neutral disinterested party so we have nothing on this stuff, what we've got is we've got some color renderings of a 3' accent across the front of the building and after 15 months of kicking this around that is all we have. He asked Mr. Markley if it would be possible for him to bring up the renderings. He said there are several slides and this is from the meeting and this is what was presented to the township and its residents by the applicant. He said they are applicant provided renderings from their architectural firm so on here as we scroll through them you can see that the front of the building is not just a flat wall with some windows it has features to it.

Mr. Lewis continued by asking Mr. Markley to scroll through them. He said this is kind of an overhead view, the brown buildings on the right are the two new ones that were added. He said there is a pretty good slide to look at right there because it clearly shows the accent wall across the front face, it shows the bump-outs with the dormers and if you look specifically right here, metal roof, color to match clubhouse, the clubhouse color is black, that was also noted in the motion and the minutes and it was agreed upon. He said at the same time he would also note that it received consensus from the Wembley HOA which were the affected adjacent property owners. He asked Mr. Markley to go to the next slide. He said these are just to give everybody a clue of some lot coverage related things, the area in front of the buildings showing tennis courts was deleted from the site plan and not going to happen. He said he thinks that kind of clears that one up and asked Mr. Markley to go to the next slide. He said you see the façade that was presented to the township and to the residents, architectural features, different depths, different characteristics to take it away from being a flat faced metal building in a residential area. He said once again he will reinforce the fact that the architectural design and decisions were presented to the township by the applicant and everybody concurred that they were acceptable as presented. He said so far what we've got is we have nothing done with the roof, we have nothing done with the architectural features on the face of the building and we still have missing landscaping and it has been close to 15 months now and we have little or no information from the applicant. He asked Mr. Markley to go to one of the other files. He said he has one that is called a timeline and asked if that one can be opened. He said for whoever is new on this, this is a general timeline of this application which at a glance give you an idea when the original application was submitted and you can go back there on January 15, 2015 that the renderings of the buildings that we had just shown you, that is when they were presented and that is when they were approved by the township, he can also say there was a lot of affected adjacent property owners present and there was concurrence on what was being approved. He said in the time thereafter there was a meeting with a local resident on the Wembley property to discuss the color and some samples and colors were also shared, a full set of architectural prints which you need to build a building or any structure were produced and provided to the township. He said we also were able to receive the Corle building drawings which is the people that actually manufactured the steel building and at that point we noticed that there were omissions and discrepancies on what we approved. He said the bump-outs, the features on the 3' wall across the bottom of it and there seem to have been a roof metal color change so now we had approved building permits on the building, engineered drawings on the building that did not match what we had all agreed to.

Mr. Barr asked Mr. Lewis to repeat that because he is in litigation with the builder.

Mr. Lewis asked Mr. Capstone, yes we are aware.

Mr. Barr asked Mr. Lewis to repeat whatever errors he made, did he submit the bump-outs different than they should have been.

Mr. Lewis said Corle was the building manufacturer and he thinks you (Mr. Barr) also helped assist in getting those prints for us as well, it is a full set of engineered drawings, picture Corle, they are a steel fabricator so they are going to build the building and a whole bunch of the pieces parts to go with it, structural siding, all of that stuff. He said before any steel fabricating plant, no different than building your car at General Motors, there is a full set of prints and that is what it is manufactured to. He said the features on the front of the building were completely changed, it appeared now as a completely flat faced building and this is what was done by the building manufacturer so short of subpoenaing them in here we will never really know who signed off on that approval and even if it was Capstone they were an agent of you, it would still unfortunately puts it back in the applicant's lap and the fact that the foundation was put in by Capstone, the foundation and footers were put in properly according to the renderings of what we approved architecturally which were the bump-outs and those concrete blocks are there to this day. He said as you are facing the building the bump-out on the right, the blocks are flush at ground level, the bump-out on the left as you are facing the building, they actually protrude above ground level so getting back to what we had previously addressed in our other meetings that it was up to you the applicant to submit a remedy to that where we wanted that feature so it doesn't necessarily have to be with the building manufacturer but whatever building materials the feature is missing and the architectural features on the front of this building were a very, very substantial part and weighed very heavily with the approval of this project with the township and also with concurrence with the Wembley residents. He said Corle actually created the building plans and drawings on February 15, 2016 then September 30, 2016 they were revised.

Mr. Barr asked what was that.

Mr. Lewis told Mr. Barr that the board will give him a copy of this, it is all public record, it is for everybody.

Mr. Barr asked September 30<sup>th</sup>.

Mr. Lewis said yes, of 2016, revised manufacturer drawings with changes and those were once again created by Corle Building Systems so somebody gave them authority and the drawings got changed again and once again not matching what the BZA and the township had approved.

Mr. Barr asked what changes were made there, September 30<sup>th</sup>.

Mr. Lewis said yes, the whole front face of the building. He said on October 2<sup>nd</sup>, a couple of days later, those were visions on the manufacturing of the building plan, exactly what the manufacturer was going to build your building to be were signed off and approved by the general contractor Capstone Construction Company who at that time represented you (Mr. Barr) and subsequently we are aware that the relationship has taken a different course so final approval with the BZA on October 17, 2019 with the conditions with the required completion deadline, well a lot of that didn't happen and then on October 21, 2020 the Board of Zoning Appeals and township did issue the letter to you talking about these core areas and that was sent by regular mail and email and that discussed all of these compliance issues and that was back sir in October of 2020 so that is four or five months ago so that is where we are at. He asked Mr. Markley to bring up the third document. He said when he began the conversation and was asked to recite some of the points the board had been reviewing, all this is a list that we created kind of as our own checklist, we've talked about this stuff, it is all in the record, we have been repeating ourselves for a year, we set this up and produced this as a tool to keep track of what we were looking for, there are no additions or surprises to this other than the mysterious storage shed that showed up on the eastside of the building so that is how far we have gotten until today, it kind of gives you an indication of what was agreed upon, what the expectations were, what the timeline was, providing the applicant a very generous extended period of time to present solid bona fide facts as they were here petitioning relief or changes to the standards that we had all previously agreed to so short of expressing an opinion that is just kind of where the facts lie now. He asked if anyone else on the board wanted to comment.

Mr. Barr said he thinks that some of the facts are missing in the presentation. He said first the board asked us to do a fair amount of work and a lot of it has been done that was missing in the presentation. He said they were asked to put architectural features, initially he was very much under the impression that the architectural features were required inside the dormers, those were added so this does not recognize some of the work we have done and he thinks that needs to be pointed out. He said number two they were told to put some sort of rafter things inside the dormers, stacking, he doesn't know exactly what you would call it, that was done. He said there was also a little circular architectural feature that they were told to put inside the dormers up high and that was done so to kind of make a presentation that we have done nothing or haven't been paying attention or making an effort to remedy these things he thinks is really quite unfair. He said now at the last meeting we did talk about the 3' from the ground outside the dormers in the other area and we have complied completely with the request to provide pictures of what that would look like, we have provided a couple of different options so he is hoping that one of those options is going to be acceptable to the board and that we can figure that one out and he has certainly done everything he can to make that happen. He said let's go down the list. He said they were under the impression that the 3' needed to be inside the dormers, that was done later, it came to his attention at the last meeting the board wanted it on all the way across, okay so you can put a check mark next to number one and number two.

Mr. Barr continued by saying he is going to get back to number three about the roof, he is going to maybe save that for last but let's go down number four he thinks was the trees, they replaced, they put in trees last year, they put in all the trees that they were supposed to put in, if you go through you can see how many trees were supposed to be planted, circled, it wasn't just him who looked at this there were other people who looked at this and he thinks agreed that they had complied with the number of trees that were supposed to be there, they added trees in fact he thinks you guys would remember that, maybe the last meeting or the meeting before, but we brought in Breezewood and they put in trees.

Mr. Lamanna said he wanted to address this with the Zoning Inspector.

Mr. Lamanna swore in Ms. Karen Endres, Zoning Inspector and he let the record reflect that Ms. Endres was duly sworn.

Mr. Lamanna asked where we are on the trees.

Ms. Karen Endres, Zoning Inspector testified that if she recalls the biggest problem was the height of the trees, there were trees that were installed that there was a discussion on whether or not they were tall enough and the trees and the required landscaping but by her count she thought there was enough trees planted.

Mr. Lamanna said so at this point we think we are okay on the trees.

Ms. Endres said unless the board wants the trees to be higher.

Mr. Barr said he would like to add to that that David Kay who owns Breezewood, he came to a meeting and he thinks pointed out that these are not full grown when they are planted, he hired Breezewood to put the tree in, they put the tree in, he understands that it is not at the ideal height that we want it to be in but there is nothing different that he could have done, he didn't tell them to put a tree in that is too short, they planted the tree so again, okay if you don't like the height of a particular tree, he understands that but don't portray me as being somehow deficient in attending to it, he hired the company to put the tree in, he paid for them to put the tree in, it is in, maybe it is not tall enough. He said on the bump-outs, you are correct that a bump-out didn't happen, he wants to share with the board for whatever it is worth that the history that he has been through here, some of it you probably know, he hired Capstone Construction to build this project and they failed miserably. He said as grumpy as you are about it and as grumpy as the neighbors are about it it has hurt no one one-hundredth as much as it has hurt him and the club that they failed in a lot of ways, he could name you 100 ways they failed it and we have had to go and pick up the pieces and spend extra money to take out extra financing, he has an extra loan that he never should have had that is expensive and they went back in and corrected what they thought was all of their mistakes, obviously one of the mistakes probably alluded to the contractor who finished up the project so we didn't do the bump-outs.

Mr. Barr continued by saying it was not through anyone's intent, not his intent or my intent, he hired T.B.T. Construction to finish up the project, they were told to finish the project and he thinks they got us to where we are today, we are missing a 1-1/2' bump-out in the front so that is true they are missing the 1-1/2' bump-out, he is hopeful that that is something that the board might look past because we are not unlimited in our ability to just keep spending money and more money to finish this project so he doesn't think that 1-1/2' bump-out on a project this size should be a major sticking point but he will leave that to the board, he doesn't think he has another choice. He said the shed on the east side, if there is a shed they can remove it, he doesn't go to the east side of the building.

Mr. Gutoskey said he thinks it is on the south side.

Mr. Lewis said he thinks it is the east side facing Rt. 306 but maybe it is facing south.

Ms. Endres said she thinks it is on the south side.

Mr. Lewis said you go around the corner of the front of the building.

Mr. Barr said if you want us to remove the shed that is fine, he didn't know that it would be discussed at the last meeting, if it fails his memory then he apologizes.

Mr. Lamanna said it was mentioned.

Mr. Barr said so get rid of the shed on the east side. He said on the lot coverage he thinks we talked about that and we can go through the last meeting, you have an update on that lot coverage and they are in compliance, he thinks that was discussed at the last meeting and he thinks you found that we are well within our lot coverage.

Mr. Gutoskey said he thinks it was okay because they didn't put the front tennis court in.

Mr. Lewis said yes he thinks we just needed it on a site plan.

Mr. Lamanna asked Ms. Endres if we actually got a site a plan that shows the lot coverage.

Ms. Endres said we have a site plan but it was not professionally engineered but she does have a rendering that has been shared with the board.

Mr. Lamanna asked Ms. Endres if she is satisfied with that rendering.

Ms. Endres said she is satisfied, she doesn't think she is close to being over lot coverage.



Mr. Lamanna said if it is sufficient for your (Ms. Endres) purposes he thinks we can go forward on that basis.

Mr. Barr said you want a sample of the metal roofing, he doesn't have a sample and asked if that is still an issue, does he need to get a sample of the metal roof.

Mr. Lewis said we were looking for a sample of the as-built because it seems to be different than what was approved so we didn't know if you had some cut-off scraps laying around from the builder or if everything got dumpstered out when you cleaned up the project when it is done.

Mr. Barr said they didn't keep a sample.

Mr. Lewis said you were going to circle around to the roof color so we will cover all of that then.

Mr. Barr said let's talk about the roof color. He asked for the rendering to be put back up. He said he knows we have a difference of opinion about the roof color and he does think it shows a rendering that doesn't have a black roof and we have gone back and forth about this and he knows that you are pointing to the language and something that says that that is black, it is his opinion that that is not a rendering of a black roof. He said you've got that page and you've got other pages that show not a black roof. He said the roof was ordered in the early stages of this by the general contractor that we no longer employ, he chose the roof color and he knows that some people find it hard to believe that he chose the roof color but he chose the roof color, I didn't choose the roof color.

Mr. Lamanna said from what he has seen from Corle is that there was not really a choosing of the roof color, Corle offers two different options, they offer painted roofs where you can select from a pallet of different painted roofs made of one kind of material and then they offer a which they tout as a more budget oriented version which is basically an unfinished material, unfinished from a standpoint of it is the material that as it comes from the manufacturer, it is a multi-layer material so it has a built-in rust proofing coating that is put on it and they fabricate it that way so really that is not a color choice it is the natural material, fabricated material the way it comes from the steel mill to the fabricator so you are getting just a natural color of that material, it is not really a color choice as such, that is a whole different program of here is a pallet of colors and we can get anything from white to black and all kinds of colors in between. He said to him it seems like somebody was going the cheapest route when they specified this and what we got is we got something that really didn't have a color, it is a natural metal color, it was not a color from the standpoint of somebody selecting a color or you would be saying you guys said it was black I picked gray, that would be one discussion and in this case we ended up picking a natural metallic color and frankly that was one of the concerns that people had over this whole building back in the earliest days of the hearings on it.

Mr. Lamanna continued by saying they did not want something that looked like a big metal tin can sitting there. He said that was a concern because it is not going to fit in a residential area and that is why we had all of these extended discussions over roof color and look and why we wanted it to be similar to the existing building so it didn't look like a metal building and we end up with basically a natural metal color here. He said where that cup slipped he doesn't know but it certainly slipped and now we are sitting here today and we are looking at this and saying somewhere along the line somebody made a decision that was not in conformity with what was approved for the color of this roof and now we've got to deal with it and how we are going to meet this compliance issue and you've asked us to modify that.

Mr. Barr said correct.

Mr. Lamanna said this is what we have to look at, it is not what we wanted, it is exactly what we didn't want and he realizes that you are not going to worry about every little detail of how this building is put together and things like that but this is a pretty significant item, it is probably one of the most significant items outside of the basic size of it like he said, he is sure you don't care about every size of the width of the roof panels and the ridges and all of these other things you don't need to be but when it comes down to something as significant as the roof color especially when it was such a big deal in the approval process you should have been probably a little bit more on top of that, this is not some obscure aspect of the building, it is not like the sidewalls were supposed to be 17' high and they are 18-1/2' high, he would say okay, he wouldn't expect that you would perhaps notice that but this is just a pretty big deal to the board.

Mr. Barr asked if you could back up the first rendering because that rendering is in his office, that is the rendering he looks at everyday and still today, that picture is in his office, when he walks in his office that is what he sees so when the roof went up that looked like that he had no idea that anything was wrong, that remains in his office today.

Mr. Lamanna said the only thing he can say is when he looks at the way the original clubhouse area is depicted on this they are pretty much depicted the same. He said if he looks at that he would say those two are the same but then in reality they are not the same, the rendering says they are the same but what was built.

Mr. Barr said his point is this, what you are saying is he should have noticed that his builder was in error and that it was supposed to be a different color, that is what he looked at and it just didn't strike him that anything wrong was going on. He said he would also add that due to the failure of the builder that roof from the time that it started going up to the time it was finished was close to a year, we had one steel erector start it then they went to jail literally and then it took us a while to find another steel erector to finish it, that is when Mr. Jarrod Turner came in and he finished it, that whole process was almost a year. He said during that entire year not one word was said to us about hey your color is wrong, if someone would have said something during that time we would be able to address it, instead everyone let the roof be built like that and waited until it was done and then complained.

Mr. Lamanna said the problem is he doesn't know where they were or if they had the stuff on site in boxes or whether anybody would have even noticed until it was actually up what was going on and for all people knew is maybe it was going to be painted once it was up there we don't know exactly how the process was going to be done so it is unfortunate during that period that nobody noticed it but again nobody is out to the site inspecting the construction on it on a continuing basis looking for those aspects. He said he understands you had some problems with the contractor, that is unfortunate but now we have to deal with the issue as to what we have here and how we can rectify it. He asked if we have some slides of what he has proposed.

Mr. Gutoskey said he proposed what he saw in the packet.

Mr. Lewis asked with the accent wall across the front with several different colors.

Mr. Lamanna said yes. He said he just wants everyone to see. He said we need to come to some decision on what we are going to do with these bump-outs and masonry wall.

Mr. Lewis said frame it, stucco it. He said the stone brick looking façade, could he just continue that all the way but either way we still have to deal with the bump-outs because right now it is a flat-faced building.

Mr. Lamanna asked Mr. Barr, we are looking at something, this image here, what we are thinking is, is it possible to continue what is there and just put that same lower looking stone level on those other two panels.

Mr. Barr asked how much are we dealing with all of these other issues.

Mr. Lamanna said what we are looking at, if we do that, add the stone on there that would be it.

Mr. Barr said nothing else.

Mr. Lamanna said nothing else on that front wall.

Mr. Barr asked if that includes not the roof too.

Mr. Lamanna said no, it does not include the roof.

Mr. Lewis said we don't get to barter off on the roof.

Mr. Barr asked not the bump-outs.

Mr. Lamanna said not the bump-outs. He said in looking at that and given the fact that they do run in different directions on the siding so with the same fake stone across the bottom of all of those sections.

Mr. Barr asked what else.

Mr. Lamanna said he will run through it.

Mr. Barr said okay.

Mr. Lamanna said basically we are set on the trees, you are going to remove the shed so that gets rid of that issue, we are going to accept what you have given us already with respect to the site plan and we are okay on the lot coverage. He said this would satisfy the bump-outs and the other, those two aspects so that would leave the only item that is left open by his estimation is the roof color.

Mr. Barr said that is the big one.

Mr. Lamanna said he knows and we will move on to the roof color after that but is trying to see if we can get rid of all of the other issues and get this thing down to the roof color.

Mr. Barr said that is the big one.

Mr. Lamanna said right.

Mr. Barr said he will say if the roof is not an issue and that is all we are looking at.

Mr. Lamanna said we are not going to barter this off with respect to the roof, this is a whole other issue, what we are saying is we will satisfy all of the issues of how this front should have looked by putting that same artificial brick down there so that leaves us now, he thinks we've got all of the other issues knocked off, you just have to make sure that is removed and we will give you a date to get it removed by is to deal with this color. He said at this point in time he would like to give any other interested parties or representatives of the homeowners' association the opportunity to comment on this.

Ms. Bridey Matheney of Thrasher, Dinsmore and Dolan was present to represent the Woods of Wembley Homeowners' Association.

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

Ms. Matheney testified that she represents the Woods of Wembley Homeowners' Association and she will focus on the roof color. She said the board in November asked the applicant to come back with professional renderings, mockups, there was a resident in the Wembley Subdivision who offered his employer services to actually help out with that. She said there were some renderings that were submitted and there were also quotes given for the roof and she doesn't know if it was just painting but there was one quote for perhaps \$200,000 up to \$235,000. She said at the November meeting, you remember and she thinks many of you do, recall that the applicant claimed that it was a financial incapability, impossible to actually shell out that kind of money if you will for this color roof. She said she thinks it will be greatly appreciated to know or actually great for the board to know because it was actually really good news for the HOA that in the January issue of Club Business International which she thinks is a fitness trade magazine, Wembley Club was actually the featured cover story called Great Comeback and it deals with fitness clubs who are actually private in the pandemic and she wants to provide a few quotes because again she doesn't think there is any real evidence that this is a financial impossibility or an incapability. She said for instance the applicant is quoted as 2020 "being a really good year". The club has "grown a lot". The applicant stated that since the applicant's ownership of the club which she understands was about six years ago members have actually quadrupled, quadrupled from 124 members to 496 members. She said in addition Wembley Club as you recall actually closed sometime in March with the COVID and reopened in May and during those two months 60% of the applicants voluntarily continued to pay their membership dues. She said in addition there are now since May, since the reopening, 70 new memberships and that is all quoted in this article which she can provide the board a copy of and there is a link and everything. She said the point here is is that yes she understands that there are some issues with respect to the builder and there are concerns with respect to what happened but this is no one else's issue other than the applicant. She said the applicant was given a condition, the condition was imposed by this board, it should be enforced by this board, this board should deny any modification of the roof color and perhaps even if there is going to be a modification, just a darker color, something that is dark but not necessarily what is there now, again there is no color to a natural metal state and also that maybe the township consider not renewing the conditional use permit and instead pursuing an enforcement action for failing to actually comply with conditions of the conditional use permit and that is actually the request. She said the other request is quite frankly from the HOA board, the board asks that you take action tonight and not continue this to another meeting and push the date even further. She said the applicant has had ample time to comply, none of the conditions are actually novel or unreasonable, at least the stuff since 2014 have been in place for a long time and that is kind of where the HOA board stands on and again, we appreciate all of your time and we hope that you make a decision tonight, thank you.

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

Ms. Linda Nolan of 8405 Woodberry Boulevard testified that a friend of her daughter's was over visiting a couple of months ago on the patio and pointed to next door and said when is that going to be done. She said good question and even it is obvious to an innocent bystander that something is not right with the building. She said she hopes the BZA holds the applicant to the obligation that he originally agreed to, it is quite clear looking back at the six years of minutes and motions that it was to be a roof that matched the clubhouse roof. She said the applicant is pointing to a picture, a drawing that he has in his office but yet the rendering that was submitted to the board clearly shows that the color of the roof is to match the color of the clubhouse roof and it has been hammered out for years. She said the time to ask for a variance from the originally agreed upon roof color was before construction, it would have been a simple case, he could have come in and said for thermal reasons or whatever we would like to not have a very dark roof and she thinks the homeowners would have easily compromised on a gray roof such as the one on the Chagrin Valley Athletic Club, it would have been fine. She said the color of the roof doesn't even match the siding which is one of the applicant's previous arguments because it is an unpainted white looking roof, the siding of the original clubhouse is gray but instead the applicant made a unilateral change without engaging anyone whether it was the homeowners or the board, and just simply made that decision to go with a different color and you are right that it is a major aspect of the building, it is very visible, it is very distressing to see a 37,000 sq. ft. building with what looks like a white roof. She said the applicant has been trying to secure financing for additional construction, another building, if he is allowed based on a financial hardship to not meet the agreed upon obligation then there should be a moratorium on any future construction and interestingly looking at the drawings that the applicant provided with a light colored roof there is also foundation plantings along the front of the building which aren't there now so if we are hanging our hat on a picture in the office that has a light color roof then we need to follow suit with all of the other things on that building, foundation plantings across the front of the building would have really helped the look of the building but she doesn't know if the applicant had in mind plans for a future parking lot which would make putting money into plantings not very desirable from his standpoint. She said that is all she wanted to say about the roof color, it is clear that it should have been a painted roof for budget reasons they probably decided that the unpainted roof, the one Corle package that was less expensive was going to be the one decided on but it is not right. She said he should have come in for a variance four years ago and she thinks there could have been a good compromise made, thank you.

Mr. Lamanna said he wanted to check to see if anybody was on Zoom that wanted to speak first.

Mr. Barr thanked the board for the opportunity to respond. He said he just wanted to straighten the record when Ms. Nolan was speaking that a decision, he thinks she said, to go with a different color of the roof, there was not a on his part any decision and they talked about it before, he hired a builder to build the project, he wasn't looking over every purchase and every item that he was negotiating and bringing forth so he absolutely should not make any decision or fear from something that should have been built, why would he do that, it is a ridiculous idea for him to want to do something different than what was required, that is just not how he does things. He said the idea that he is anxious to build another building, believe him after this, he is not anxious to build another building so that is just another false claim that is being put out there, there is no substance to it whatsoever. He said he would even go on record right now saying that the moratorium on new construction is agreed, he has no intent to build another building, he does not want to build another building, he never wants to go through this again the rest of his life, okay. He said all of that stuff you can just toss aside as silliness and he thinks that was all he wanted to respond to the last speaker.

Mr. Lamanna asked if any of the board members have any questions they want to ask.

Mr. DeWater said we worked on this application with you for several months at the beginning of construction and you did go back and forth with us on stuff we were working on to make sure that the plan fit the neighborhood, you definitely wanted it to fit in and for the residents of that area to be proud of too. He said we all want your club to be successful, he thinks he goes on record as he actually defended you on the project when it came up for discussion because many people did not want a metal building and he thinks he defended you saying metal buildings aren't what they were back in the seventies and eighties but for us to entertain modifications is very tough to do when you yourself played an integral part in coming up with what this project was. He said he for one would rather see the building as agreed upon with the completion of the bump-outs and everything, he will work with the board to do what is best for the neighborhood but for you to ask for relief is just beyond him, it really is and for you to say that your carpenter, construction company holds sole responsibility because you weren't following the project or managing the project you do hold sole responsibility for the project failure because at the beginning and he has said it time after time you should have hired a construction representative if this was not your forte. He said it doesn't call on the carpenter or construction company to do what is right, they are going to cut corners to make the most profit for themselves but somebody did authorize the changes in the building and he is going to sit back and he is going to say that it was the owner of the project, not the construction company and it just amazes him that you would ask for this relief and he doesn't feel it is right for people that own houses in that development to have to accept a project that is not built as what was approved. He said he doesn't agree with it and he knows your feelings and you feel that it is cost prohibited but that is not the township's problem that was your problem to make sure the project was completed as designed from the beginning.

Mr. DeWater continued by saying he totally agrees that this has to have a final decision tonight, it cannot drag on any longer and he would think that we would make a motion that you have so many months to complete it and if you don't complete it in those months then the Zoning Inspector take whatever action necessary, even if that involves the courts, that is all he has to say.

Mr. Barr said he just remembered that there were two speakers prior to him and he didn't address the first one and he doesn't know if that has a factor for people thinking that we have the capability that we don't have but once again, we don't have the capability to spend \$200,000 on a roof color and the roof color also, he would point out, that has been discouraged by every roofing expert he has talked to. He said he submitted three different opinions, he knows that the board didn't find at least two of them to be valid or important, he thought that the third one was accepted until he came here tonight and it sounds like maybe the board doesn't very much think of the engineer's opinion that he submitted from T.B.T. but the fact of the matter is that everyone he talked to has said that a black roof would be problematic for the building, it would lead to future leaks and problems and excess heat inside the building which would be unsafe for the participants who are exercising and playing tennis below it so he thinks that changing the roof color to black here is beyond our capability and it is also just a bad idea generally, it is bad for the integrity of the building, it is bad for the people who would be playing in extra heat in potentially unsafe conditions. He said he was going to ask the board to make the right decision which is to allow the roof to remain as it is for all of those reasons.

Mr. Gutoskey said he would like our Zoning Inspector to go over the conditional use on this, if she could explain where that stands now.

Ms. Endres stated that in November of 2020 a zoning amendment became effective that changed the status of tennis clubs that were conditional uses in a residential district, they are no longer conditional uses in a residential district, they are conditional uses in the CB District which means it makes the Wembley Club as it stands right now a nonconforming use so in her opinion the renewal of the CUP becomes moot. She said the language drafted in that amendment is that tennis clubs are no longer conditional uses but the conditions under which they were approved do carry on.

Mr. Gutoskey said yes, that is what he was looking for. He asked Ms. Endres how that affects the ability to change the site in anyway, adding buildings or anything.

Ms. Endres said any future development of the property would be an expansion of a nonconforming use and it would need Board of Zoning Appeals approval, not as a conditional use but as an expansion of a nonconforming use.

Mr. Lamanna asked if there is anyone else on the board that wants to ask.



Mr. Lewis said a clarification please on the gravel service driveway that the intent and the use of that is as a service driveway, it is not meant to be or to be used for overflow parking.

Mr. Barr said yes, after the last meeting or maybe it was the one before when it was pointed out to him that a couple of people were parking there, there were really only two people ever parking there, one was a member who is gone now, they are not a member anymore so, that particular member parked in the front circle and we would tell them don't park in the circle, their boys are in a tennis program in Oklahoma so they are not around anymore, that is not an issue and the other person who parked there was a really nice guy who never intended to harm anybody, it was just a silly thing for him to do, he told him not to and he hasn't since.

Mr. Lamanna closed the public hearing for these applications.

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

Motion BZA 2019-2 - 8345 Woodberry Boulevard – New Wembley LLC

Mr. Lamanna noted that this application was for the request for a review and renewal of an existing conditional use permit.

Mr. Lamanna moved to dismiss this application as now being moot in light of the change to the current zoning ordinance.

1. This is no longer a permitted conditional use in this district.
2. The board does note however that there is a savings clause in this change in the application such that the existing conditions applicable to the property will continue in effect notwithstanding that this is no longer a permitted conditional use.

Mr. Lewis seconded the motion.

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

Motion BZA 2020-6 - 8345 Woodberry Boulevard – New Wembley LLC

Mr. Lamanna stated that the applicant has requested a modification of a previously established condition with respect to the original construction of this building dealing with the roof color. The original approval required a roof that was of a color consistent with that of the existing roof of the clubhouse which was a black color. The applicant has requested that the roof be allowed to remain, the existing as-built color or lack of color being that the roof was built as a not painted roof but just the natural color of the aluminized steel from which the roof was fabricated.

Mr. Lamanna moved to deny the applicant's request for a change of this requirement.

Based on the following findings of fact:

1. This denial is based on the fact that this was a clearly approved condition.
2. The reason it was substantially discussed as an important matter in the approval of the original building there was great concern given to the fact that this property is located within a residential district of substantial homes of a certain style and that a large metal building that looked like a metal building would be inconsistent with the character of the neighborhood and could adversely affect the neighboring properties if it had such a look.
3. This was a hotly contested matter with hearings before the board and this requirement was a subject of discussions and meetings between the applicant and the homeowners' association.
4. These considerations resulted in this condition being required as part of the construction of the building.
5. The board finds that none of those conditions or situations have changed and that leaving the roof in its current color would be inconsistent with the character of the neighborhood and would adversely impact the adjacent properties.
6. The board finds the applicant has presented no evidence to the contrary with respect to that matter.
7. The board also finds that the applicant has presented some evidence or attempted to present evidence with respect to the adverse impact of changing the roof color to something either exactly like or close to the existing roof that was required but the board finds that his expert testimony was lacking in terms of the content of the testimony and the qualifications of the experts and/or their ability to appear and responsibly or adequately answer questions posed to it by the board so the board finds that there was no demonstrated technical reason why the roof color can't be changed nor has the applicant demonstrated that given the basis on which this condition was established that the cost of presently painting the roof would be so substantial as to be an undue hardship upon the applicant and overwhelm the other considerations with respect to the adjacent property owners.

Mr. Gutoskey seconded the motion.

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

Mr. Lamanna thanked everyone for their patience and long suffering of going through the necessary hearings on this matter.

Mr. Lewis asked if there should be a completion date deadline, maybe suggesting that date at which point it would be turned over to zoning and other remedies for enforcement.

Mr. Lamanna said no, Mr. Barr is past the completion date, he is out of compliance.

Mr. Lewis asked do we want to give him a deadline to do this so we are not looking at it for two years.

Mr. Lamanna said no, he can do what he needs to do to correct the non-compliance and if he can satisfy the township that he is taking steps to do that then maybe they will defer or maybe they will just move forward with an enforcement action if he can negotiate that date in an enforcement action.

Mr. Gutoskey recused himself from the next two applications for Sapphire Creek at 16965 Park Circle Drive.

Mr. Brent Barr, Alternate sat in for Mr. Gutoskey.

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

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

Application 2021-4 by Dangelo, Ltd. for property at 16965 Park Circle Drive -  
Continuance

The applicant is requesting area variance(s) for the purpose of constructing a restaurant/event center. The property is located in a LIR District.

Mr. Bruce Rinker, Attorney for the applicant was present to represent these applications.

Mr. Lamanna swore in Mr. Bruce Rinker and he let the record reflect that Mr. Rinker was duly sworn.

Mr. Rinker testified he is with the law firm of Mansour Gavin and he has been engaged by Ms. Kathleen Dangelo to assist her and hopefully the board as well on addressing these four area variances that are identified as two separate matters. He said if the board would indulge us, preliminarily, Ms. Dangelo would like to show the board a video that he doesn't think was presented before. He said you have seen some renderings but thought that this would be helpful to set context and then he would like to specifically address the area variance issues.

Mr. Lewis said you may note that in a previous meeting we said that we were not necessarily going to separate these two even though they were on the same property and that we need to act and resolve the first problem with the pavilion before we would consider entertaining the application for the distillery.

Mr. Rinker said fair enough and the question is if you want to address that point now.

Mr. Lewis said if we could please.

Mr. Rinker said with that being said he would still ask a little bit of indulgence, he believes that you have been provided a letter from a couple of days ago February 17, 2021, he is going to provide additional copies, hard copies, he has six of them here and he submitted them to the board.

Mr. Lewis asked if it was the February 17<sup>th</sup> letter.

Mr. Rinker said correct and he thinks the starting point is that this was by mistake, it was unintentional, he would like to have Ms. Dangelo speak to it in more detail but the fact of the matter is it is what it is and so the letter has pointed out in this very first item to the pavilion, Ms. Dangelo is prepared to deconstruct the pavilion if need be. He said what we are asking you to recognize though, where it is located now, it impacts the least of the structures on the property in terms of some issues that we know will be expressed again tonight by residents in that area nearby. He said the fact of the matter is she is prepared to deconstruct it, disassemble it, all she is asking that if the board requires that she needs that decision tonight in order to be able to meet the construction schedule that she has for the overall project, she would be able to reconstruct it, as the letter indicates it is a little over 1,300 sq. ft. in a location that would be fully compliant with the zoning resolution as the setbacks and location on the property itself. He said her suggestion though is we leave it where it is located, it would be preferable in the long-run, she has already initiated discussions with the property to the south which happens to be owned by the Village of Chagrin Falls. He said it is a pretty large parcel, many of you may be familiar with it, it is vacant, it is wooded.

Mr. Rinker continued by saying what she has proposed informally but it is going to take a while so in terms of the long view that is not a decision that can be made right away but her effort here would be either some form of ground lease in effect to acquire the strip, he thinks it is 28' that she is encroaching into that setback area, either a ground lease if that would be satisfactory to the township or to acquire a strip but given the fact that it is owned by a municipality that has certain constraints as to how it can dispose of property and he believes that Mr. Markowitz he knows is here tonight virtually would be able to weigh in on that if that is something the board wants to address but that is a very preliminary issue, we are not saying it can be done we are just saying that the intention would be to reconcile that setback problem in that fashion so the two options as they are set forth in the letter are really just that, it is either disassemble so it can be reconstructed on site where it would be co-compliant or this alternative approach. He said it is discretionary with the board, we understand that area variances under Ohio law started about 35 years ago not far from here in Middlefield where you look to practical difficulties on the site. He said there is no explanation other than a mistake by having placed it where it is, he thinks the intuitive perception is that it wouldn't be impacting anyone and frankly erroneously looking at where the boundary line lies but if the board is inclined to give relief as to his particular issue after the fact, this is the proverbial asking for forgiveness as opposed to permission, always an awkward moment. He said we think that in the long run that could be resolved to everyone's satisfaction in terms of impact, it doesn't affect governmental services, there are no safety issues, we don't believe that it is an adverse impact to the adjacent property. He said again, city officials and village officials in Chagrin Falls can say otherwise, we don't know the answer to that so that is how we left that particular issue and Ms. Dangelo may want to add a little bit more insight to this, we just want you to be aware that she is prepared to comply with the requirements of the zoning resolution if need be, we are just asking to consider that this is not as problematic as it might otherwise be.

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

Ms. Kathleen Dangelo testified that she resides at 17084 Sunset Drive in Bainbridge Township and the only thing she wanted to add is that she has contractors to perform either option and she can get it started, weather permitting, within the next couple of weeks.

Mr. Lewis said he has a question for your (Ms. Dangelo) attorney please. He asked Mr. Rinker if he is in possession of a copy of the consent judgment agreement, dated September 8, 1997.

Mr. Rinker replied yes.

Mr. Lewis said and of course that was a set of conditions between the township and the developer which would carry to individual parcel owners as the developer sold off. He said he is going to be circling back around to that document, he just wanted to confirm that you had it.

Mr. Rinker replied yes and he thinks the only question is is there an issue as to the use or are you simply talking about the setback issues.

Mr. Lamanna said he thinks there is an issue about the compliance with the general provisions of the zoning district with respect to what is permitted and how it is permitted as described in Section 530. He said unfortunately that issue comes into this, it is not purely an issue of location, it is also an issue of how it is being used as well.

Mr. Rinker asked what is the issue.

Mr. Lamanna said he believes that is an open pavilion, right.

Mr. Rinker said yes.

Mr. Lamanna said if you look at the language in 530 it requires all of the activities in that district to be conducted within an enclosed space.

Mr. Rinker asked if we are talking in the pre-existing 1968 C District in 530.

Mr. Lamanna said right, the preexisting industrial district.

Mr. Rinker said he understands the language in Section 530 references the fact all permitted uses have to be enclosed and he would also suggest that there is a fundamental contradiction within the zoning provision in that 1968 resolution when you can have amusement parks, outdoor movie theaters and skating rinks.

Mr. Lewis said regardless, this is the agreement that exists for that whole tract of land between the developer and the township regardless of how the parcels are subdivided and this is what we have to go with and he is not quite sure that this board has the authority to modify a consent agreement.

Mr. Rinker said he thinks the presumption the board is making would be modifying, he did not understand that the Zoning Inspector had made a ruling on whether or not the open pavilion was or was not compliant. He said he would respectfully ask that there be a determination by the Zoning Inspector first and then if we had to appeal that or otherwise address it but he thinks its presumption that we are not prepared to do it tonight, their understanding is this is an area variance not a use variance. He said a racetrack is another permitted use.

Mr. Lamanna said if you don't want to address this issue tonight we can just kick it.

Mr. Rinker said they want to address the setback issue.

Mr. Lamanna said we are not going to address the setback issue on a structure that is being used in a way we don't believe is permitted by the zoning.

Mr. Rinker said he understands what you are saying but his opinion would be that the determination be made by the Zoning Inspector.

Mr. Lamanna said okay, we can refer back to the Zoning Inspector.

Mr. Rinker said that was not the determination.

Mr. Lamanna said he thinks this issue has been raised in the other applications before us, the same issue is part of the application is before us on the other new construction.

Mr. Rinker said again the other new construction, the notice that we received for tonight the board is specifically addressing in two different matters accumulative for area variances, not use variances, not conditional uses, not the use itself, the presumption is that the township has already determined that the uses are permitted. He said now he is hearing that the board is indicating it doesn't believe that they are permitted but he doesn't think it is the board's decision he thinks that is the determination that has to be made by your zoning officer.

Mr. Lamanna said technically that is correct but we will just send his back to the zoning inspector for reconsideration.

Mr. Rinker said but you are here to deal with area variances and he has a client who, she's got programming, he thinks as the letter points out if ever there is a hardship it is the fact that she has a business that she needs to maintain, she wants to expand it, she is prepared to invest over five million dollars in these facilities for uses that have been understood until this very moment as permitted uses in the township and that is going a long way, that was not raised at the last meeting to his knowledge and he has not seen the minutes so he can stand corrected but the notices specifically talk about area variances, we are not talking about the use we are talking about site geometry and we are prepared to talk about the parking issues that are the three other area variances and if the pavilion is something that the board determined needs to be removed because it was improperly constructed without the appropriate approvals or permits, we understand that and Ms. Dangelo is prepared to take it down, that is altogether a different issue from what he is hearing tonight for the first time.

Mr. Lamanna said the one problem he has is he doesn't think the board could consider this area variance without looking at the use to which the building is going to be put.

Mr. Rinker said with all due respect the board's jurisdiction is to make determinations on the appeals presented to it and appeals have to deal with area variances.

Mr. Lamanna said right but in looking at the area variance one of the things we are going to look at is what is going on there and whether that is allowable. He said if somebody says they are going to use this pavilion for X we are going to say well no this is not permitted in this district, if you are doing something that is not permitted in the district then we can say that the impact is greater and also assuming we even granted the area variance then tomorrow you could be issued a notice of violation.

Mr. Rinker asked why.

Mr. Lamanna said because you are violating the terms of the zoning ordinance.

Mr. Rinker asked what section.

Mr. Lewis said 530.11.

Mr. Lamanna said right, you could contest that.

Mr. Rinker said okay again, gentlemen, the concern that he has is that the board is imputing facts and interpretation of the zoning resolution and he thinks that you're presupposing these impact issues and one thing we did on Monday night and we had Mr. Markowitz, Mr. Corson and he thinks Mr. Consolo and the understanding he heard from Mr. Markowitz is they were asking for a little more time for him to be able to get together with the various residents of Chagrin Knolls, he knows there are some other residents who got weighed in as well but basically to explain the sound testing that was conducted in good faith on Monday night and it is our position that apart from the fact that there is no set performance standards in the zoning resolution of the township, the sound levels which were to mimic or to basically represent real conditions were not problematic, we all had different sound devices out, Ms. Dangelo had one as well, we tested in two locations and the range was somewhere between 45 and 55 and he has been checking the conversations tonight for comparable sound levels. He said they can't deny the fact that there are residents who have heard sounds and don't like those sounds but with all due respect this was something that was approved in 2016 and that is a permitted use and Ms. Dangelo has a vested right in that business operation as we stand here tonight which she is proposing similarly if anything it is less impactful from the public's perception but it is as equally permitted a use and for the board to tell us that the board now is interpreting and we understand human nature, we understand the intuition, we understand your experience, believe him, he is not disregarding it but it is wrong for the board to take these area variances and turn them around and say that the uses themselves are either conditional uses or that these are use variances, the board does not have that authority, that is not fair, it certainly isn't the law.

Mr. Lewis said well sir, you are telling me that the judgment entry is no longer valid.

Mr. Rinker said no he is not saying that.



Mr. Lewis said or you are picking components and you are attacking certain elements that are no longer valid because it clearly states that the M-1 code of 530.11 is baked into this and it will be complied with.

Mr. Rinker said along with racetracks, outdoor movie theaters and amusement parks.

Mr. Lewis said if you want to get the judgment entry changed, you are in front of the wrong board.

Mr. Rinker said he does not wish to have the judgment entry changed.

Mr. Lewis said you want elements of it that were baked in as anchor criteria disregarded.

Mr. Rinker said again, all he can repeat is that the board lawfully issued notices for four area variances, the board is now interpreting however reasonably and we understand everything that you are indicating as far as this prior consent order goes but the board doesn't initiate that determination, if there is a legal determination it either comes through whoever the legal officer is, again his understanding is that your Zoning Inspector and a certificate was issued for zoning in 2016 but he is hearing tonight is the board is prepared to take that away and he doesn't think that is at all lawful.

Mr. Lewis asked him if he is talking about a zoning certificate to build a pavilion.

Mr. Rinker said no he is talking if he misunderstood he stands corrected and he apologizes, it wasn't just the pavilion but he heard a few minutes ago it was the overall operation of what was being proposed for the Still.

Mr. Lewis said we are not even on the Still yet. He said what we have is a pavilion and under M-1 criteria it is not an enclosed building and we have it going into an area of setback that is not authorized and they are both direct conflicts the judgment entry which boils down to the two issues that are truly in front of us so even if you are going to move it under M-1 530.11 it needs to be a completely enclosed structure and we don't have a site on that, where it stands right now it is neither enclosed and it is in direct conflict with the setbacks that are required for that whole development.

Mr. Rinker said if he may could he please talk to Ms. Dangelo on this particular issue. He said the only reason he brought up the other was that it was indicated to us that somehow he didn't think it was just the pavilion so if he misunderstood he apologizes. Mr. Rinker had a discussion with his client.

Mr. Lewis said he thinks he saw Mr. Dave English on the Zoom and he doesn't know if he is still there, as the developer that this consent agreement was made with he really wanted to try to invite him in that way we can also take his submission and get it entered.

Mr. Rinker said he has a question for Ms. Endres, regardless of the fact that we know that this pavilion wasn't built properly, we are not disputing it but the question is is the pavilion itself permitted or not permitted. He said we need a ruling on that to know because as he has indicated Ms. Dangelo is prepared to take down the pavilion so that it is not in violation of the zoning resolution but her intention is to rebuild and what he is hearing tonight is that the board has determined that this is in violation of the consent judgment.

Ms. Endres said she considered the pavilion to be an accessory use or ancillary use to the restaurant.

Mr. Rinker said thank you. He said he as been advised to tell the board that Ms. Dangelo agreed to tear down, to take down the pavilion.

Mr. Lamanna said he would render this moot then if she is willing to take down the pavilion.

Mr. Rinker said again it was unintentional and she wants to correct it.

Mr. Lewis said before we get into the distillery he has a couple of related questions, please. He asked if there are any other decks or platforms built on the property beyond what was on the original site plan.

Ms. Dangelo said she thinks everything is on the site plan but she hasn't seen it in a while.

Mr. Lewis asked about the deck to the west and how about the observation deck.

Ms. Dangelo said she hasn't seen the site plan but she believes they are all on there.

Mr. Lewis said no they weren't.

Ms. Dangelo said the master plan.

Mr. Lewis said no, he doesn't think so. He asked if she got building permits for those because they are being used by the public so they would need building permits for viability of structural, soundness and safety, railings and everything else having to do with that.

Ms. Dangelo said she does believe the building department looked at the railings but she would have to check with them.

Mr. Lewis asked wouldn't those be on file with the township or the county.

Ms. Dangelo said again, she does not know.

Mr. Lewis said okay, he will take that as a no answer.

Ms. Dangelo said she doesn't know.

Mr. Lewis said we need to find out please. He said also tell him about the igloos, are those permitted in our zoning code.

Ms. Dangelo said she believes that they are accessory buildings according to the 1968 code, they are temporary in nature and they were necessitated by COVID.

Mr. Lewis said he understands the reason why, his first question is with our zoning code are they permitted and that is probably a yes or no question.

Ms. Endres said those structures are not addressed in the 1968 resolution.

Mr. Lewis said okay, do people do whatever they want to do. He asked if they have been inspected for fire and safety.

Ms. Dangelo said yes she talked to the fire marshal, yes before they were ordered she spoke to Mr. Bill Lovell and he approved them.

Mr. Lewis asked how they are heated.

Ms. Dangelo said with a portable heater which he was aware of.

Mr. Brent Barr asked if it is electric heat.

Ms. Dangelo said yes and it has a master power shut-off.

Mr. Lewis said so since completion they have not been inspected for safety.

Ms. Dangelo said she doesn't know if Mr. Lovell has been there or not.

Mr. Barr asked if they came with electrical lights or if the lights had to be installed.

Ms. Dangelo said they installed low voltage Edison lights.

Mr. Corcoran asked how many igloos were constructed.

Ms. Dangelo said two and they will come down at the end of March.

Mr. Barr said he hasn't seen the igloos and asked if they have more than one entrance, or is there one way in and one way out.

Ms. Dangelo said one entrance, they are fairly small.

Mr. Barr asked if they are made out of plastic.

Ms. Dangelo said they are made out of metal to form the bigger structure and then there is like a Visqueen over it and then there is some insulated material.

Mr. Barr said his concern is if there is only one entrance if there was to be an electrical fire of some kind whether or not they would be able to get out and without seeing them he doesn't know, is that Visqueen something that you could easily cut to get out.

Ms. Dangelo said it is a regular door, they would just have to push open the door.

Mr. Barr said but if there is a fire at the door and the door has been blocked.

Ms. Dangelo said the heater is not by the door, it is in the back so she doesn't know if that could happen.

Mr. Barr asked if the electrical comes in by the door or in the back.

Ms. Dangelo said it comes in the back. She said Mr. Lovell looked at the specs before they were built.

Mr. Barr said but the electrical that you would have added for lighting you said you added after you got them so that wouldn't have been in the specs that you would have gotten before.

Ms. Dangelo said she told them that they would be lit but the specs she gave them were specifically what the manufacturer provided.

Mr. DeWater said Mr. Lovell will be there tomorrow.

Mr. Lewis said there seems to be and we will find out, numerous things being built without permits and that is concerning so that is why he is asking you (Ms. Dangelo) for the building permits on all of your decks, not necessarily the ones attached to it but the other ones that have gone up.

Ms. Dangelo said yes she knows that.

Mr. Lewis said thank you.

Ms. Dangelo said you are welcome.

Mr. Lamanna said with respect to this first application let's just put that aside for the moment, your offer would make it moot but just in fairness to the applicant let's just let the discussion play out on the other aspects of it because you may want to come back and look at it.

Mr. Rinker said they understand, something was constructed that shouldn't have been.

Mr. Lamanna said right and then we can look at it and how it might fit into the total picture and when some of these other issues on the noise and things like that get resolved, maybe there is a place for this pavilion or a way it can be used that will fit into the whole scheme so he thinks it is making more sense, let's just set that aside for the moment and go forward and look at these other larger issues.

Mr. Rinker said with that understanding again for clarification they are not dealing with the three parking area variances, correct.

Mr. Lewis asked if they had a video presentation they wanted to show.

Mr. Rinker said yes.

Mr. Lewis asked if they wanted to begin with that.

Mr. Rinker replied he would love to do that.

Ms. Dangelo said it is their intention to bring a world class facility to Bainbridge Township, she thinks that anybody at Sapphire Creek Winery would agree and she gets people from all over the state, all over the country that come and enjoy it and the addition of the Still would really bring the entire 14-1/2 acres into a beautiful, well landscaped, well built facility.

Mr. Tommy Chesnes, Architect was present in person to represent this application.

Mr. Lamanna swore in Mr. Tommy Chesnes and he let the record reflect that Mr. Chesnes was duly sworn.

Mr. Chesnes testified that they prepared a digital fly-through, it shows kind of the working feel of the second phase of the project, it is one building that encompasses a restaurant space as well as an event space. He explained the video that you will show you the approach coming down Park Circle Drive. He said the left is where you would head to the winery but the new project, the Still, would be headed straight going down Park Circle Drive and the video will show you the inside and the outside of the building and the property and it will speak for itself.

Mr. Barr said he has a map currently, he sees when you come in and turn left and it would take you around, you are coming straight down and there are current buildings there so are these buildings going to be removed.

Mr. Chesnes said no.

Ms. Dangelo said the office building will stay there.

Mr. Barr said okay, the office building when Sapphire Creek goes to the left the one that wraps around that first building is that the office building.

Ms. Dangelo said you would go straight down the road.

Mr. Chesnes said this would be a new drive on this property.

Mr. Lewis asked where this is located, is this in Bainbridge Township.

Mr. Chesnes said not yet.

Mr. Lewis said it is not in Chagrin Falls. He said because there is no audio maybe we can ask questions as we go and what is the external materials of this, what are these outside walls, is this lumber.

Mr. Chesnes said it is a wood look fiber cement material, it has a wood texture, it is a flat material but it has the image of wood printed on it and it is vertical board.

Mr. Barr said kind of like a Hardie board.

Mr. Chesnes said it looks more realistic than Hardie board because it has a wood grain printed on it whereas Hardie board is more of a solid painted look.

Mr. Barr asked if that is a metal roof on that.

Mr. Chesnes said yes.

Mr. Barr asked if that is a black or dark gray roof.

Mr. Chesnes said whatever color we need it to be. He referred to the video and said this is in the restaurant portion located at the front of the building and then a seated dining area. He said the design is whiskey based so there is dark wood to represent the idea of a charred whiskey barrel, the ceilings would be a natural wood look for a fresh barrel, this is the pre-function room and these two spaces are considered to be used by the same group of people, if there is a wedding, there might be an event in that pre-function room, cocktail hour would then open up into the main room.

Mr. Lewis asked if there is a section of this that is a private bottle club or a private members only because he thinks he saw something in one of the promotional materials, maybe it was in the basement.

Ms. Dangelo said their vision plan includes the restaurant side and the basement is contemplated to be a private members only club yes.

Mr. Barr asked if that is with a pool table as well.

Ms. Dangelo said she didn't know.

Mr. Barr said he saw a billiards table.

Ms. Dangelo said it may be, it will be an area for members to come in and enjoy dinner and cocktails.

Mr. Barr said it looks like it is in the basement.

Mr. Lewis said that is not open to the general public then, the membership.

Ms. Dangelo said it would be members only. She said those renderings of the basement were the very early stages but since then it is changed so it will not have a pool table.

Mr. Barr said that is fine, and for the record he has nothing against pool tables.

Mr. Lewis said so the landscaping company is going to go away that is occupied on that land.

Ms. Dangelo said correct.

Mr. Barr asked if there is going to be outdoor seating.

Ms. Dangelo said they are planning for some outdoor seating, seating that would be attached to the restaurant, it is an intentionally smaller restaurant than the winery is.

Mr. Barr said and then the sliding doors can open, are they like the big sliding doors where they can completely open.

Ms. Dangelo said right, those sliding doors will remain shut when there is not an event going on there and then during an event the doors will remain shut as well just to maintain the sound/noise inside the building.

Mr. Barr asked when would they be open.

Ms. Dangelo said if somebody had, they would be open to the pre-event things.

Mr. Chesnes asked which doors he is referring to.

Mr. Barr said he remembers seeing along the outside sliding doors.

Mr. Chesnes said on the exterior they would be going from the restaurant outside.

Mr. Barr said he just feared if you run into down the road a possibility of having those sliding doors open for a July wedding because it is hot and then there is music inside that then transfers outside and now we are approximately 200' to 300' closer to the residents than we are from the winery, he thinks that he can see in the future that putting your staff in a bad spot as the guests are wanting the door open because it is hot and your staff not being able to open those doors because of the noise and then there being a bit of a situation.

Ms. Dangelo said we actually have not gotten into that level of detail on the construction drawings because we are waiting to get approval on the building first, that is obviously something we would consider.

Mr. Lewis asked if their capacity number that you show as 710, does that include the private club element in the basement, that is the total building's capacity.

Ms. Dangelo said yes it does.

Mr. Lewis asked was that determined that it is in compliance with the fire department's code and just occupancy.



Mr. Chesnes said that number was calculated using the Ohio Building Code Occupancy calculations.

Mr. Lewis said good, thank you.

Ms. Dangelo said that number is astronomically high.

Mr. Lewis said if you are building a building that has the capacity of 710 people, that is what we need to base parking on. He said if you want less parking and you don't feel that you are going to need that much capacity he would suggest you build a smaller building.

Mr. Chesnes said the building code, the occupancy numbers are for restaurants considered loose tables and chairs and he believes it is one occupant per 15 sq. ft. but the way that this building will be used, theoretically it could be and that is the point of the building code, you design your doorways and exits so that the mass people can exit but the truth is her business model has never had 700 people in the building, with the furniture alone you wouldn't be able to get that many in there but for safety with occupancy it is designed for that.

Mr. Lewis asked if part of this occupancy including this outdoor seating of these patios, is that baked into that 710.

Mr. Chesnes said the occupancy is every occupiable space so that is the patios, the decks, the lobby, it is everything.

Mr. Lewis said just information gathering, thank you.

Mr. Chesnes said there will be a small mezzanine in the event space for bridal party use and it has all been calculated.

Mr. Lewis said so the winery's capacity is 510 and the Still's gross capacity is 710 so the grand total of both of them at max capacity is 1,220. He said so using your (Mr. Chesnes) ratio on your parking calculation you are using a 4:1 ratio for parking spaces and coming up with the total.

Mr. Chesnes said they were using the method laid out in the zoning.

Mr. Lewis said what was submitted to us here shows that the ratio was calculated using a 4:1 ratio. He said it was a parking breakdown and it was submitted to us with the Sapphire Creek correspondence, there was a narrative on the parking. He asked Mr. Chesnes if he wanted to present that before we discuss it.

Mr. Rinker said yes, his understanding is the chart was assembled to demonstrate how actual usage could be compared to the 1968 code and he believes Ms. Endres also compared as part of the staff report calculations as reflected here in 363, her calculations under this current code of 4:1 ratio of using that max occupancy number, we think that that is erring on the side of conservative but not representing this as a parking expert, he is just trying to show that based on the experience from data collected over the last few years of the actual usage is something that goes into this whole discussion as where it says experienced based, again using that 4:1 ratio and experience again Ms. Dangelo can speak to it there has never been a problem with parking. He said up till now what she has been able to do is use the spaces directly in front of the winery itself and has been able to use as spill-over parking from the landscaping space right now, if ever that has been needed. He said what she is proposing to do and he has got copies of three in reference to the letter three leases that she has negotiated which currently add up to 70 additional reciprocal spaces and essentially take advantage of existing parking in the area of his understanding would be used for valet parking and she is also negotiating a fourth lease. He said he just gave you copies of leases that she has been scrambling to try to get this parking issue addressed in a reasonable fashion. He said one of the leases is for 30 spaces, another one is for 15 and 25 and they all look the same, they are basically the same format but if you look closely you will see one lease shows 15 spaces and another shows 25, a third is 30 and the fourth one that she is presently negotiating would be another 35.

Mr. Lewis asked what the grand total is on that.

Mr. Rinker said the grand total would be 313 with these leases and again this is 243 on-site parking and that he believes Ms. Endres has confirmed would be provided between the two sites. He said add those 70 and you get 313, if you were to get another 35 you would be at 348. He said that doesn't meet the number of the 1968 code, he would suggest that over the decades just about every municipality has revisited its parking code ratios pretty steadily and the general trend has clearly been reduced are the hardscape surface parking either through the best management practices or for a variety of reasons, aesthetics. He said what this proposal seeks to do is to demonstrate that with the current zoning resolution numbers to use these two sites together with this off-site reciprocal parking would be able to virtually meet the current code and with this fourth lease we would actually exceed the current code parking ratio requirements. He said they believe those are reliable and we think that they reflect a conservative number and the merit of doing this is that you are taking advantage of existing parking facilities that based on the hours of the day one that is leasing them out is going to need them so what you get is you are taking advantage of what is existing area that has been built. He said these are private agreements, we understand that and one of the other considerations we are looking at is the Chagrin Falls property would be the ability to construct extra parking there but our suggestion is that, is that something that everyone really wants, we need more hard surface parking and take advantage of what is existing within the area so at the end of the day what we are requesting the board to look at is these parking proposals.

Mr. Rinker continued by saying again they are three separate variance requests, one is the bumper guards, they are probably more of a nuisance than not but they are part of the code so it would be a technical requirement, we would submit that not having them is preferable for most users but if it is a requirement, it is a requirement, it just seems to be an unnecessary one when one considers all of the practical considerations would be over-kill. He said the spacing size, your code, your zoning resolution requires a minimum of 200 sq. ft., that would technically be a 10' x 20' rectangle and currently on the winery site he thinks they are 9' x 18' and that is what is proposed for these as well. He said they don't believe that those are substantial, they are functional and again when one looks at gross parking counts that are achievable and again a lot of that is going to be valet parking as well, what we are asking the board is to recognize that the practical considerations and when one looks at the practical difficulty factors there is no particular order, there are seven in general but you look to are they substantial, do they have some health and safety issue, an effect on the delivery of services, governmental services, is there a feasible way to deal with it, she is trying to obviate the high ratio count that the 68 code calls for in this statute and we think the effort and this is a certain investment of the business in providing sufficient parking in an effort to obviate the need for the variances so we would submit that they are not substantial given these adjustment here today. He said they know that sound and other issues are what the residents want to talk about and touch upon that now but then he guesses he would ask if the board wants to take those into consideration. He said number one they did what they thought was a good real life representation having a DJ inside the building with the doors open that would send out the sound at max levels and he would like Mr. Markowitz and the other two gentlemen who were along with him from Knolls, they can speak to their own observations and we have indicated that we are prepared, we have not been able to get an agreement presented to us from Mr. Markowitz because candidly he needs the opportunity to vet these issues with a larger group of the neighborhood. He said we are cautiously optimistic that certain performance standards of given the results of the testing we did this past Monday could be met even though the township does not have those standards Ms. Dangelo is prepared to make a reasonable commitment to maintaining those kind of noise levels. He said he also alluded to the fact the construction of the Still that you see on the screen on discussions she has had with her contractor there is going to be extra dirt, additional dirt available for mounding and as long as there are no restraints that would adversely impact the basin that is there to collect the water, but that is the low point between the properties between Chagrin Knolls and theses properties. He said currently she spent around \$40,000 the past year on trees in an attempt to meet the concerns. He said this mounding certainly would provide a certain sound absorption and then she has an investment of about \$40,000 more so an \$80,000 commitment to landscaping improvements that would go to mitigate the concerns that have been expressed by the adjacent residents so we are asking for you to recognize what she is trying to do is in good faith, these are tangible, measurable, they are definitely improvements and in the situation where we are dealing with this consent order and certain standards that over the years have changed involving parking we think that this is a very reasonable request so with that he will step aside and if you have reflections we will try to get to them.

Mr. DeWater said your video rendering shows in your parking lot that you have curbs around, you have curbed islands with plantings, that is going to happen in your plan with your landscape plan, right, it is not just in the rendering, it is going to happen.

Ms. Dangelo said yes, their goal like she said earlier she wants to have it softened with islands.

Mr. DeWater said okay, we just want to make sure it is in our record that you guys are proposing these curbs with the planting beds and trees and islands.

Ms. Dangelo said right, it is not their intention to make it look like a giant parking lot we want the aesthetics to be beautiful all over including the parking lot.

Mr. DeWater said as long as you are using the curbs the stop blocks aren't required.

Ms. Dangelo said thank you.

Mr. Lewis said this is the grand hall where they would be having the wedding receptions there are sliding doors that open on the patio to let all of the music and noise out.

Mr. Barr asked Mr. Chesnes, you said a mezzanine for the bridal party, would that be on the north side of the building.

Mr. Chesnes said it is on the other end, they can pop in the elevator and go to the mezzanine.

Mr. Barr said you said the other end of the building.

Mr. Chesnes said actually no, it is right next to the stone element, that is an elevator that is going up to the mezzanine. He said it is a small stage, it is mainly for the bridal party to have a place to retreat to, there is a place there to get ready, makeup.

Mr. Barr asked if it is inside or out.

Mr. Chesnes said it is inside, under roof.

Mr. Barr said he thought there was an outside mezzanine.

Mr. Lewis said if Mr. English is still on he would like him to speak to his letter.

Mr. Barr asked how big of a wedding can you have at Sapphire Creek right now, what is the capacity on weddings.

Ms. Dangelo said according to the state order up to 300 people.

Mr. Barr said the pre-COVID numbers.

Ms. Dangelo said their weddings come out at around 250 and even then they have only had a handful if that many and she thinks at best under 200 and 150 at best.

Mr. Barr asked you have done 250.

Ms. Dangelo said on occasion.

Mr. Barr asked how big are the weddings will you be able to receive at the Still.

Ms. Dangelo said that is intentionally designed to be much smaller, under 80 people.

Mr. Lewis said let's talk about tents. He asked if they have the intention of using temporary tents or seasonal tents for any of your events on your premises.

Ms. Dangelo said no, they do not like to use tents, they had one wedding that put up their own tent but we don't have tents, they thought about it in the beginning but we don't do it.

Mr. Lewis said tents also have an impact on your overall capacity which then hooks into parking spaces.

Ms. Dangelo said that is not what we are going for.

Mr. Lamanna asked if anyone else has any questions. He said we will open this up and let other interested parties speak and asked if there is anyone present interested in speaking on this particular application.

Mr. David Cathcart of 16960 Knolls Way was present in person to testify.

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

Mr. Cathcart testified that six months ago in the Fall he told his wife that it is time for them to leave, they have spent five years there, it has been wonderful but this problem is just going to get worse, as Kenny Rogers says “you got to know when to hold them and when to fold them” but he is still here and he has some hope that we can move forward. He said the peeper frogs come out in three weeks in the retention basin, it is the most beautiful thing you ever heard, they keep their windows all the way open and he just doesn’t want to have to leave the community so what is the main issue here. He said he has submitted a letter that his wife wrote and his wife and he signed and then there is another one that she signed that he thinks she is going to talk about on Zoom so those have been submitted and he asks that they be included in the record. He said he thinks the situation he has here can be very easily explained or discussed in the application or the more current application for the Still. He said this was found in their application, it is K (3) (c), it is a short question but to him it is crucial so with your indulgence and with the indulgence of Johnny Carson, he is going to go back and use the comment the “Magnificent” in trying to explain it, remember what he would do is he would put an envelope up to his head and it would have a question he would answer so he wants to give the answer that Ms. Dangelo gave in that application. “No. This project will enhance the property to create a beautiful 14.5 parcel of gardens and restaurant/event space. It will benefit the township and the county through tax revenue, job creation and reputation.”

Mr. Cathcart continued by saying the only word he paused on that answer was the word reputation, is it a good reputation or a bad reputation, he understands what they are saying but on the other hand if you want Bainbridge to be the Walt Disney of wedding receptions that is one way to look at. He said maybe how we should look at it it depends on how the property is being operated, is this being operated in conformance with the community and in conformance with the neighborhood or is it in sync, yes that would help the reputation, if it is an irritant to the community the opposite is true. He said the fact that they are going to increase the size of the mound that is very encouraging because he thinks that ultimately if there is a solution it will have be a mound or a fence, that is ultimately going to have to be part of the solution and we are talking about parking spaces here, he can pretty much tell how much liquor has been served with the parties by the noise that occurs in the parking lot after the event is over. He said he is a little concerned about what he heard here, an agreement that is trying to be reached between the various parties, he is not personally an actual participant he just heard second hand and he knows that time is of the essence of the Dangelos yet when you asked questions about the Still, when are these giant doors going to be open, when are they going to be closed, who is going to be out there and the answer is we haven’t gotten the final construction drawings yet so in other words he would like to cooperate and move as fast as he can but how fast can we move if we really don’t know all of the information and the last thing he thinks any of us want to do is go off half-cocked here. He asked what does the success or failure look like, success is if we can get rid of the nuisance he and Dr. Cathcart can go over to Sapphire Creek every week when it goes on happily.

Mr. Cathcart continued by saying what does failure look like, well from his wife's standpoint failure looks like the fact that she is going to be on a 911 call at 11:15 during the weekends calling the police who are then going to route that call to the policeman who is getting paid by Sapphire Creek for the party, Sapphire Creek is going to say they have no control over the band because the band is hired directly by the bridal party and nothing is going to happen, it is going to be a circle of frustration. He asked what does failure look like to him, his son might be on the Zoom call, he has an Electrical PhD from the University of Tokyo, four times in Iraq, sent to be with the Marines to help them work on sound waves and radio waves to stop the terrorists from being able to use explosive devices, he knows sound and what he said to him was Dad you've got to remember that sound goes in two directions, if the neighbor throws his garbage on my property he is going to throw garbage back over on them. He said if they give nuisance, noise to him it will be returned, he doesn't want that to happen he doesn't think it is going to happen, he is cautiously optimistic because the Dangelos have been nothing but courteous to him, he thinks they have a real desire as do we to settle this but it is going to be a very much a hands-on project by you guys. He said we have the best lawyers in the state on either side working on this and he guarantees they are both working to solve the problem. He said for the Dangelos this is a project that is a dream for them, he is impressed so again he wants to accomplish this but it is going to be difficult. He said he is not talking about the color of a roof here, we are talking about how do you balance the beautiful traditions of Bainbridge and yet allow something new in so we can move, it is a difficult balance but that is why you guys give up your time to do it so he wishes you well and any assistance he can provide he will.

Mr. Bruce Corson of 16850 Knolls Way was present in person to testify.

Mr. Lamanna swore in Mr. Bruce Corson and he let the record reflect that Mr. Corson was duly sworn.

Mr. Corson testified that he lives half-way up the development and he has some videos here, keyed up and he did participate in this sound testing the other day and he was inside Sapphire Creek with the DJ and we had it cranked and four or five of us went into Chagrin Knolls and it was a pretty low sound level and we did some real live videos of what actually happens during the summer on wedding weekends and he asks the board to share that now. Mr. Corson said while we are waiting, these videos, he wishes he paid more attention to the capacity, he kind of took videos when they could hear it and he wishes he took them all of the time. Mr. Corson said that he pulled it up on his cell phone.

Mrs. Martha Cathcart of 16960 Knolls Way was present via Zoom to testify.

Mr. Lamanna swore in Mrs. Martha Cathcart and he let the record reflect that Mrs. Cathcart was duly sworn.

Mrs. Martha Cathcart testified that she is married to Dave Cathcart who just spoke before Bruce Corson and he hopes he can get his videos soon. She said the sound is emanating from Sapphire Creek and it has been just terrible to her, she is not a sleeper and to have music blaring until sometimes 1:00 AM in the morning is very painful and she actually had to go to her Michigan summer cottage to get away from this two years ago. She said she opposes any approval for the Dangelo property until the owners are required to abide by the Chagrin Knolls and Knowles Industrial Park judgment entry and conform to the applicable zoning codes. She said in that document it is clear that audio visual barriers are required, they do not exist to this day on the property at Sapphire Creek. She said the judgment entry concluded that earthen mounds provided the best visual and sound protection, she proposes that similar mound be constructed on the east and south edges of the existing retention basin. She said she simply does not understand why Sapphire Creek was allowed to begin construction without meeting the provisions laid out in the document she just described. She said their condo as her husband mentioned is closest to Sapphire Creek and not only exposed to noise to wee hours of during their operation they also had full exposure to the sound created by the construction of that building. She said since many trees were removed at the construction site they heard every chainsaw, every wood chipper, every leaf blower and then they were exposed to construction noise without any sound barrier. She said the same exposure to the construction noise will happen again if the proposed new restaurant gets approved without complying with above provisions. She said they are located a bit uphill from the new proposed restaurant so it is clear that we have line of sight and therefore direct noise exposure above the fence level of a reasonable height.

Mrs. Cathcart continued by saying they believe that they deserve to be shielded from this offensive noise since we are assured by the above documents that all permitted uses of restaurants and dance halls must be completely within an enclosed building and do not create any offensive noise or vibration or other objectionable influences. She said she saw no reference to installing those barriers in the plans for this restaurant, construction of a new building will increase our exposure unless a mound is built prior to construction. She said to summarize, audio and visual barriers are required and all permitted uses of businesses in this area from her understanding including restaurants and dance halls must be within the enclosed building. She said she recommended denying the variance request for this property and she would like to submit this for the record which she believes her husband already did.

Mr. Corson asked about his videos.

Mr. Lamanna said we are having some technical problems and we couldn't load them in.



Ms. Dangelo said she heard these videos and she was unhappy with them herself, she heard them and she made a commitment to your lawyer Mr. Markowitz when we did the sound test that bands and DJs will not be permitted outside for weddings, that was a COVID consideration, we will not do that anymore and their decibel test that we conducted on Monday showed the normal circumstances in which a DJ or a band plays and we did not hear any music at your location.

Mr. Lewis asked did you by any chance use an independent audio firm to take those measurements with reports generated.

Ms. Dangelo said no we did it with, Mr. Markowitz had a sound meter on his phone, my lawyer had a sound meter on his phone and she had a sound meter that they purchased, she doesn't know what brand it was, it was a noise level meter.

Mr. Lewis said without revisiting all of the police reports with the winery and the stuff with the DJs and people not shutting the music down we are trying to mitigate that so it doesn't reoccur, we don't want to live yesterday.

Ms. Dangelo said she agrees.

Mr. Lewis said and part of that of course with the music is the buildings are enclosed which means you have a wedding, you've got a DJ or a band, the sliders don't get opened, it is the way it is.

Ms. Dangelo said they actually had the sliders open when they did the sound test on Monday.

Mr. Lewis said he is talking about going forward, your music is contained within the building, the doors and windows are closed.

Ms. Dangelo said she understands.

Mr. Lewis said that has been consistent with the other businesses that have the same offerings in town as well.

Ms. Dangelo said she understands your point but to address the noise issue she thought that we were on a path to resolution with our Monday meeting.

Mr. Lewis said there are two elements, you are trying to say how much impact is there on the adjacent property owners and we are also looking at what is in the code and what is in the consent decree and what we have to comply to.

Ms. Dangelo said she would like to add one other thing about the mound, when we bought the property in 2004 the mound was already established at that point, we had nothing to do with building that mound and she thinks it was done by Knowles and/or Chagrin Knolls, she is not sure who put it up. She said when they bought the property the previous Zoning Inspector Frank McIntyre asked them to plant a row of evergreens that is now planted on the top of the mound which they did so at that point when we began construction on the landscape company the mound was in compliance with the consent decree order so at no point did we think nor do we now think that it is out of compliance. She said that is all she wanted to add about the mound.

Mr. Lamanna said he is not sure the mound is your responsibility, he thinks the mound's responsibility would be the appellants in the original case.

Ms. Dangelo said she just wanted to add what they did.

Mr. Corson said he will finish up and because he is missing his evidence and you addressed that and if what you say is true and everything will always be inside that would be fine. He said the experience this past summer was horrible every single weekend, loud, you could hear people yelling and when your DJs were talking sometimes it was kind of unpleasant talk and he has done that too at weddings, he knows how that goes but it was not something that was fun to live next to, thank you.

Mr. Lamanna said just out of curiosity, did you provide these videos to the applicant.

Mr. Corson said yes we did.

Mr. Lamanna said just from the standpoint if we can't show them tonight here, at some other point the board may look at them and the applicant certainly has an opportunity now or at the next meeting because this is not going to be resolved tonight obviously it looks like, to comment on those is to present any contrary evidence or to dispute them.

Ms. Dangelo said she did hear that video and she was very unhappy with it and she does really want to be a good neighbor, that is why she told Mr. Markowitz they were making a commitment to not have weddings, bands or DJs outside ever again, it was because of COVID.

Mr. Lamanna said understand, things have had to be done given the exigencies of the current situation.

Mr. Dennis Burnside of 16815 Knolls Way was present in person to testify.

Mr. Lamanna swore in Mr. Dennis Burnside and he let the record reflect that Mr. Burnside was duly sworn.

Mr. Burnside testified that he is a resident of Chagrin Knolls and he just wanted to state a few things of observations and in no particular order. He said from their perspective this is a quality of life issue for us, we all enjoy the right to have a right of quiet and enjoyment where we live and he would offer to you to walk through our development in the summertime when these weddings and affairs are taking place it is obnoxiously loud and there is no getting around the fact that our experience has been there has been a total disregard for our quiet and enjoyment by the folks at Sapphire Creek and he would invite you to spend some time and observe it first-hand. He said he doesn't want to be redundant, there have been a lot of things said but Mr. Cathcart mentioned the fact that as we looked at the drawings and renderings of the new building there is a lot of glass that we believe is going to be opened to the outside and a lot of outdoor seating and he has a hard time comprehending how the Dangelos are going to control these weddings and affairs at night when people have a few cocktails, DJs get going and the noise will just emanate. He asked are they going to stand there and tell the folks to be quiet, shut it down, we have sent police over there and we've gotten no results. He said their experience has been terrible and we don't see anything that is going to change when in fact it is going to be exacerbated based on the 700 capacity for weddings and affairs, that gets really loud and will be very noisy. He said it is a matter of quiet and enjoyment, our property values are being affected by this, if Mr. Cathcart wanted to sell his place he is telling you he couldn't be able to sell it for as much money as it is worth because of this. He said it is affecting us not only on our day to day living but also when it comes to our property values and he thinks he doesn't hear anything from the Dangelos that gives him comfort that they are going to play by the rules going forward, it is nice to say all of these things now but when weddings start, affairs start who is going to control the fact that they might be violating everything they say that they are going to do in good faith tonight. He said he just doesn't see it and thank you for your time.

Mr. Corson stated that he found one of the videos on his phone and played the video for the board from his phone.

Mr. Lamanna stated that the matter is on the record.

Mr. Corson said it is annoying, thank you.

Mr. Lewis said you're welcome. He asked if that was phoned in as a complaint to Bainbridge PD.

Mr. Corson said that particular night, we have in the past. He said the trouble is we know those guys too and kind of feel they can't do anything anyway, but your saying we should have.

Mr. Lewis said there are no noise ordinances in Bainbridge Township but if it reaches the point where it is disturbing the peace, you certainly have a basis, anybody does to phone that in, it could be somebody's German Shepherd that obnoxiously barks for 45 minutes at 2:00 AM every day, you can phone that in.

Mr. Rinker stated that if he may for what it is worth, one of the discussions we've had but again preliminary with Mr. Markowitz is trying to see if we can reach an agreement on performance standards. He said as an example the City of Solon does have a sound ordinance, Shaker Heights is another, most communities just as Mr. Lewis indicated it is sort of a more subjective and it reaches a point of where people are frustrated and an unacceptable sound but we know that there are communities that we mentioned too that actually do have performance standards, they look to the dBA levels they put those into their code and we believe looking at those as a benchmark is something Ms. Dangelo can abide by so frankly it would be something beyond which Bainbridge even has. He said we haven't reached that agreement, we haven't been able to craft that but the point of the discussion was to find something more that is more measurable for what it is worth, he thinks that is something that reflects what a lot of communities are trying to do and by the way it is not in the zoning code, it is not in the building code, it is in the general offences code for most communities and he suspects that when the police department is called out they are facing how do they charge the offense. He said what we are trying to do is to do something that would give everyone a benchmark.

Mr. Lewis said it has come to the board's attention that it is not just Knolls Condo Association but the development behind to the south of you, Tulip Lane is also affected with the noise, the hours and the outdoor activities and the things we are talking about right now. He said it appears this may have to be a combination of buffering in compliance like all of the other businesses in Bainbridge that have live music or DJs, same thing. He said there are no sound systems outside, there is no outdoor entertainment and that the windows and the doors in an enclosed structure are closed at all times that the music is on and that is consistent with what other businesses have been required to do in the township and that is the most quick and least expensive and most effective way to mitigate the impact on the adjacent properties.

Mr. Dale Markowitz, attorney for Knolls Condo Association was present via Zoom.

Mr. Markowitz said that Mr. Lewis mentioned Tulip Lane and he agrees that Tulip Lane is impacted but also there is impact to the people in McFarland Woods and some of those residents are here tonight. He said we are proposing to work out some kind of a solution if possible with Mr. Bruce Rinker and Ms. Kathleen Dangelo but they came to us kind of late in the game to start trying to do some sound testing and then to try to work out a solution. He said we weren't able to do that until Monday because the meeting we had scheduled before that was canceled by Ms. Dangelo for some reasons, he is not sure why so we couldn't get anything done until Monday and then on Tuesday Mr. Rinker and he spoke and started talking about the parameters but he can't get his clients all together to a. understand about the use issues which he will go into in a minute and secondly how we would deal with the sound issues in a short period of time and the other part of it as you mentioned we believe that McFarland Woods Subdivision Association should be a part of any solution that we try to reach. He said he thinks this case is compelling a continuance until the next meeting to give us time to try and work this out. He said Mr. Rinker and Ms. Dangelo said at least a half a dozen times tonight that they would like to agree with us on various things and he is hopeful that it can and maybe we will but there is no way we are going to get it done during this meeting tonight and so we need some time to get that accomplished and he thinks that if we get this matter continued until a meeting four weeks from tonight so we can have a comprehensive agreement and the reason why he says that is for example Ms. Dangelo said "we would not have DJs or bands for weddings outside". He said that is fine but it is only a small piece of the puzzle because there are other parties, there are Bar Mitzvahs, there are birthday parties, there are anniversaries, there are reunions, there are all kinds of things that could happen so we need to be able to cover all of those issues and it is going to take us a little bit of time to do that. He said there is also a really critical issue here and he knows that Mr. Lewis and Mr. Lamanna both touched on it earlier and that is it is clear to him that the proposed new plans for the Still are not in compliance with the consent judgment entry or with Chapter 530 or 520 of the old 1968 zoning code and that is because those plans provide for a significant part of the building area to be used for outdoor activities, likewise that pavilion should never have been permitted because that pavilion is not an enclosed building and is in violation of Section 530.11. He said the winery, he doesn't know from the original plans whether they showed any outdoor facilities or not so Ms. Endres may not have known whether it would comply or not with the code if they were going to have outdoor activities. He said he knows that consent judgment entry better than anybody, he drafted it with Ms. Lorrie Sass twenty some years ago and at the time he was representing the developers of the Chagrin Knolls Development and he was also representing the property owners in the Knowles Industrial Park because we were having a number of issues over whether or not the zoning code that had replaced the M-1 District applied or whether the M-1 District applied and as a result there was an issue over a prior decision that your board made about 30 years ago. He said the judgment entry when it was put in place specifically said that you could have the 530.11 uses and you could have the 520.11 uses but the 520.11 uses could only be used to the extent that they were permitted under 530.11 and 530.11 only allows the type of uses in 520.11 that could be used in an enclosed building so to make the argument that they could have a racetrack is not appropriate because that wouldn't be in an enclosed building, an amusement park he supposes could be but the point of it is that when the consent judgment entry was put in place as well as when 530.11 was adopted it was clear that any commercial use that would be allowed in the industrial district had to be inside of a building so that it didn't create problems either for the industrial user who might get complaints from the people who are trying to use commercial uses outdoors or vice versa the people who lived in the residential areas that abutted the industrial area.

Mr. Markowitz continued by saying the other thing the judgment entry clearly required and you can see it it is at the very end of the entry is there was to be a mound built that went all the way to the west end of the property and Mr. Dave English will tell you the reason that he didn't build the mound all the way to the end is that the Geauga County Soil and Water District required that retention basin that is there but that doesn't prohibit the Dangelos from putting in a mound on their property and Mr. Lamanna, he would disagree with your thinking that the entry doesn't require the Dangelos to do so, he says it does because when they acquired that property they became the successor and beneficiary of that judgment entry as well as an obligated party under that judgment entry and so to the extent that that mound has to go on their property he thinks it is their obligation to do that and Ms. Dangelo said to us the other day that she would be willing to put more mound up there and he believes her when she says they will put a mound up but we need to get some detail on it, how high, how wide, how will it be maintained, what is the slope ratio so it will take some doing to get there so that is the main reason why they need some time on this. He said there was some sound testing done on Monday with Ms. Dangelo and Mr. Rinker and he stood on the Cathcart property along with Mr. Mark Consolo and Mr. Bruce Corson stayed at the winery with the DJ while they played music and he would say to you based on his one observation that day that if they were to keep the music and he is not talking about all music because they have speakers outside that have bothered his clients, they've had people outside with microphones who have bothered his clients, they've had DJs, they've had bands, even acoustical bands at 11:30 at night if is not amplified can be a real nuisance to the neighborhood so if we are going to work this out we have got to make sure there is no openings for there to be the kind of outdoor activities that are going to create a nuisance to McFarland Woods, Tulip Lane or to the Chagrin Knolls Association. He said if they can keep the levels down and we were measuring it, typically it was around 40 dB's where we were standing, when they were playing the music inside the winery and they had the back door open but there is a screened area around it, you would have to see it to understand it, but there is a dark screen, very tall area, that is there and if they keep that screen and they keep everybody in and they play only that kind of music inside he thinks we will be able to work it out, that again presumes that we get all of these communities together and we can agree on all of these issues. He said the concern that his clients have and the McFarland Woods people have is that there is some history here of things happening that are not in compliance with the codes or the consent judgment entry like the pavilion and we found out recently that the pavilion was not only built where it shouldn't be but it didn't comply with the building code so Ms. Dangelo said she hadn't worked out the building permit because there were structural issues that had to be dealt with and maybe that is part of why they are willing to take it down now and he respects them for it and he hopes that the building stays down because that pavilion could be if it is moved a significant source of noise that would bother the neighboring communities and he can tell you from his client's experience that when there has been loud noise, amplified noise outside and they call the police most of those complaints didn't get registered and he read all of those complaints that Mr. Todd Lewis put in the record, he doesn't know how many complaints there are, there are many, many, many complaints and almost all of them are either cars left there by people who were drunk, drug use or theft by employees or patrons or whatever.

Mr. Markowitz continued by saying there was a couple of complaints, one by Mrs. Martha Cathcart, and he knows she has called a number of times and we have heard from the people in McFarland Ridge, they have called a number of times and what happens is the police don't want to go there and have to enforce that because they are unsure what they are enforcing and they don't want to be enforcing the zoning provision so his view is if we can come to some agreement and put that into the record and that becomes part of any approvals that you grant at a future meeting then it becomes enforceable by either injunction by you or injunction by neighbors who have standing or it could ultimately be a criminal violation and you could take it to the county prosecutor to enforce it that way. He said he would like to speak to the parking variance, it is interesting there was a mention by Mr. Bruce Rinker about a case in Middlefield, that is the infamous Duncan case that he had some involvement in with Mr. Duncan so he got to know him, he represented himself in that case, he had no lawyer, it went to the Supreme Court and they came up with a number of standards and they didn't have input from anybody on what to do so they kind of threw it altogether but what he didn't hear a word of tonight is that nobody mentioned why the variance was needed, why can't they get their parking on site, not one iota of why a variance is needed, he doesn't care that this is an area variance, you still have got to prove that you can't use the property reasonably without the variances being granted. He said not one iota of testimony on that was presented. He said he could tell you from the few times he has been there, when just the winery has been in existence that there has been parking shortages and he read their analysis that Ms. Dangelo gave you and he would defy any you on the board after you read it again to understand the logic of what she was saying. He said as he understands Ms. Endres' analysis 409 parking spaces are needed, they are proposing 243 on site and he will get to the off-site ones in a minute, so the shortage is 40.5% deficiency in the parking. He said he considers that to be a very substantial variance which is one of the factors in the Duncan test. He said also he didn't hear a single word about why they can't meet the 10 x 20 or 200 sq. ft. minimum requirement, all he heard is they want to have 9 x 18, there is no reason why they can't meet it. He said the same thing with the bumper guards, he doesn't think anybody is getting excited about them but again why can't they meet the bumper guards. He said even if you went with what they want to do as opposed to what anybody who owns it in the future might be able to do as Mr. Lewis was grilling them they still need a 26% variance which is significant and in his view it is not warranted when there has been not one iota of evidence of why the variance was needed. He said clearly the 1968 code applies you can't just use the parts you like on it and then not use the other parts you don't like. He said the Geauga County Prosecutors over time think the 1968 zoning resolution applies and when you look at the different uses and they are coming here seeking approval for what is a restaurant and also a dance hall, if you look at the application, that is what they did and dance halls are permitted under 520.11 but under 530.11 they can only be in enclosed spaces and when you look at their plans the Still facility is going to have a number of outdoor spaces, there is going to be four of them, there are three patio areas, one is a covered deck with 1,000 sq. ft. and another deck is 1,641 sq. ft., there is another patio that is 2,061 sq. ft., a basement patio of 530 sq. ft. and of course the pavilion that they are going to take down and then there is a lawn area that they want to use of 4,000 sq. ft. so you've got a significant area of outdoor use and in addition to that the winery is 2,641 sq. ft., with a patio of 2,061 and a basement patio 540 sq. ft. and the lawn area of 4,000 sq. ft., the Still has patios of 720 sq. ft., a dance hall patio of 943 sq. ft. and then you've got essentially six or seven areas of outdoor use. He said in his view they haven't presented you with any reasons why the variance should be granted because they haven't shown a need for any of those.

Mr. Markowitz continued by saying one of the things he found interesting was when one of you asked Ms. Dangelo about the doors whether they would be opened or closed for events, he heard three inconsistent answers in a period of about 15 seconds, again it screams out to why we need a very significantly negotiated out hard-hammered written agreement that gets into the record so that you and us all have some clearly understandable and enforceable basis for this to proceed. He said it is an interesting question that his clients want him to explain which is why would we even try to compromise when you can't grant these parking variances because these parking variances are for spaces that are in part outdoors and there is no outdoor facilities permitted in this district if you are going have these kind of uses under 520.11 or even anything under 530.11. He said what he found interesting is that Ms. Endres had said that the pavilion was an accessory use, even if it is an accessory use it is still an outdoor use that is not permitted. He said he thinks you are going to have to think long and hard about how you deal with that and it may be something that would require some amendment to the consent judgment entry and that is something that has got to be talked through. He said the Chagrin Knolls Association is a party to that and Mr. Dave English is here tonight and still has units left to build and he thinks he is going to be going forward shortly in doing that, he still has some interest in that so he thinks we can get all of this together to get something accomplished on that and come back to you and then go file an amendment with the court in order to get that done but again that is part of what has to be accomplished. He said he thinks that it is pretty clear to him that when you have a discussion about 510 occupants possibly in the winery, 710 in the Still and you've got 1,220 and you are only proposing 243 spaces, if you have two events going on the same night there is no way that you have enough parking. He said unfortunately he didn't get to see the leases until they got handed to Ms. Bridey Matheney who was there the other night and she texted them to him and he was able to read one and the leases are for one year and after a year the lessor can terminate it and either party can terminate it on 30 days notice so if you want to count those spaces those could be gone 30 days after they were entered into so that is not a long term solution. He said in the communities that he represents when we allow off-site spaces to be counted we require either easements or some kind of an interest or a lease-hold that is a long, long term so that we don't have to worry about it for decades and that is not the case here, so in his view he doesn't think we should count any of those off-site spaces, even if you did you still only get to 348 and then you are still short 61 spaces. He said the other thing is there is no indication that those off-site spaces will be available, what properties are they with, how do we know that they don't have night shifts and that their employees won't be using those spaces, there is no evidence before you as to the viability of using those spaces. He said the other thing is he noticed those leases, at least what he was handed weren't notarized and maybe there is another page or two he doesn't have but those leases are not enforceable when they are not notarized. He said to him the leases are kind of a token throw out to you and by the way the consideration is those owners get \$150.00 worth of food and drink at the restaurant, if they get tired of that or they don't like it or there is an argument with the bartender those leases are going away so he doesn't think there is any viability in talking about those.



Mr. Markowitz continued by saying he knows he has talked a lot and you have been very courteous to let him speak without interruption here, he would tell you that there are a lot of issues to digest and it is clear to him from what he heard the board ask and that you've got to be thinking the same thing he does that we are not ready for a decision tonight and there are issues that really need to go back to Ms. Endres to look at, which is how do you approve this even if the variances are granted when the plans as presented to her that are in front of you have a significant number of outdoor uses which violates Section 530.11 and there is nothing in 530.11 that says oh if it is a 520.11 use subsections 2,3 or 4 if they want to be outside they can't. He said it is not in there nor is it in the consent judgment entry. He said he talked a lot, he will stop now, he may ask to reserve a minute or two after other people have spoken, thank you and he appreciates all of your patience tonight, thank you.

Mr. Corson said if his files can be played that would be great. His audio files were played for the board.

Mr. Lewis asked if that was a DJ or a band, you have to know where they were physically located.

Mr. Corson said no he doesn't know, it was down near the Cathcarts at 9:25.

Mr. Lewis said okay.

Mr. Lamanna stated that we are going to bring this hearing to a close shortly.

Mr. John O'Brien of 16860 Knolls way was present via Zoom to testify.

Mr. Lamanna swore in Mr. John O'Brien and he let the record reflect that Mr. O'Brien was duly sworn.

Mr. O'Brien testified that he sent a letter to the board on February 4, 2021 which he would like to have entered into the record and he would just take a couple of passages from it, he won't go through the whole letter. He said he and his wife live at 16860 Knolls Way, they have been at this address a little over ten years and previously they lived in Chagrin Falls and for four years he was on the planning and zoning commission in Chagrin Falls and six years he was on the board of zoning appeals for Chagrin Falls, the last three as the Chairman. He said as a result he believes he has a genuine understanding and appreciation of the responsibilities and challenges that you all face but property owners have disputes. He said your job is made easier when the property owners behave in good faith and show appropriate respect and regard for one another. He said unfortunately the owners of Sapphire Creek Winery have not always acted in good faith and have shown little or no respect or regard for the residents of Chagrin Knolls. He said as a result of numerous incidents, you heard them tonight, extremely loud and offensive music was emanating from Sapphire Creek late at night, clearly you heard in our development despite repeated requests by our association to refrain from such conduct.

Mr. O'Brien continued by saying the trust is so gone between neighbors, simply it does not exist in this matter and moreover it is also obvious that the owners of Sapphire Creek Winery do not show any respect for or regard for the Bainbridge Township's building and zoning rules as evidenced by the fact they built a pavilion without a building permit or zoning permits. He said while he served on the Chagrin Falls Board of Zoning Appeals we were very reluctant to reward bad behavior with zoning variances. He said consequently it is extremely important to the Chagrin Knolls residents and to Bainbridge Township that you our board of zoning appeals has a condition of any variance granted, place terms and limitations on the owners and operators of Sapphire Creek Winery which can be enforced by the Bainbridge Police Department and the Zoning Department to prevent its operations from continuing to be a nuisance in our community in the future. He said the nuisance to which he writes is primarily noise, they live near the Corsons about midway into the development and when we are outside on our patio deck we can hear loud music and worse the DJ or band leaders shouting into the microphone to rev up the crowd. He said several times we have walked to the south end of our condo development and the noise level from the music and shouting are intolerable therefore he must respectfully and of course put in a request that you make as a condition of any variance that they only agree to a self-imposed condition that becomes part of their zoning permit, that if they can install and maintain more mounding and trees as a sound buffer and there be no amplified music or shouting outside the Sapphire Creek Winery or any other buildings owned by the Dangelos Ltd. company and their property contiguous to Chagrin Knolls Condominium Association. He said those are the requirements that the permitted uses of their property as set out in the consent judgment entry that created the right for the property owner to have a restaurant and/or dance hall that the use not create an offensive noise otherwise these very substantial parking variances they seek should be denied, thank you for your attention and patience.

Mr. Grant Cathcart of 16960 Knolls Way was present via Zoom to testify.

Mr. Lamanna swore in Mr. Grant Cathcart and he let the record reflect that Mr. Cathcart was duly sworn.

Mr. Grant Cathcart testified that he is the son of Mr. David Cathcart and Mrs. Martha Cathcart. He said his major concerns are primarily from the noise perspective but more dealing with the mitigation plans put in place which are essentially non-existent and as you saw from the original plans for the Still there are open walls and there is going to be a significant amount of noise and these are things that can be mitigated but given the history and situation he thinks it is very important that there are plans to ensure that these noise issues will not trouble the areas around them and he thinks they have shown that a very active approach to try to mitigate these issues on their own, it is commendable but currently they are not done in a professional manner.

Mr. Mark Radefeld of 7975 McFarland Ridge was present via Zoom to testify.

Mr. Lamanna swore in Mr. Mark Radefeld and he let the record reflect that Mr. Radefeld was duly sworn.

Mr. Mark Radefeld testified that the first thing he would like to mention and he was looking at Google maps here, there was a reference to Chagrin Knolls, McFarland Ridge and possibly Tulip Lane and as the crow flies his house is about 1/3 of a mile from the winery right now and certainly in the summer and on weekend nights we can clearly hear the music probably not like Chagrin Knolls but it wakes up the neighbor's kids and it causes the dog to bark, it interrupts us and we can't enjoy time sitting out relaxing on our deck and with respect to the noise mitigation we were just talking about one of his concerns is over that 1/3 mile there are hills, valleys, rivers and essentially it is a 100% fully developed forest and it doesn't stop the noise so putting an extra five feet of dirt or an extra couple of trees or fence, it is not going to stop the noise from going to Chagrin Knolls, it is not going to stop the noise from coming over to McFarland Ridge and frankly looking at the map he is surprised that we don't have people from Lake Lucerne or Hidden Point Drive or Bridgeway. He said we have the valley right there that he thinks acts as an echo chamber so any of the noise created by the winery will travel both directions fairly easily and any sort of mounds or trees will have a minimal effect. He said one of the other issues he has and a lot of them have already been said, everyone has been very well spoken and laid out the issues well but certainly our concern is not with Sapphire Creek operating a first class facility, he is here for the noise they create and the nuisance they create, he loves Sapphire Creek, he and his wife frequent there on a regular basis and he thinks the new plan for the Still looks awesome and he would be excited to go there himself but with that being said he agrees with the opinion that no questions asked any sort of approval would need to be conditioned upon no outdoor music, no outdoor noise, he doesn't care if they want to have outdoor dining or something, if you guys want to grant a variance for some sort of outdoor use, although it is contrary to the zoning, as long as that use has nothing to do with sound or music or noise, certainly when he goes there for dinner he enjoys walking on the path and the landscaping and enjoying nature but not enjoying as you saw in the videos the obnoxious noise and that should be contained completely indoors. He said the other thing he had a concern about and this is not a direct issue right now, other people have spoken about some sort of decibel level or noise level and his concern with that is there is no reasonable or workable way to enforce that. He said one of Chagrin Knolls residents holds up his phone and takes a measurement and taking a screen shot of it and he is happy but do we call the police and say hey the decibel levels are at 52 and by the time the police get there it is at 40, decibel levels change literally every second so he sees that as kind of an unworkable standard and in lieu of that he thinks that the proposals that the board and others have made that you don't need a decibel standard you just need the doors closed, windows closed and music and loud noises inside the enclosed building, that is all he has to say and he appreciates your time and thank you.

Mr. Lamanna said at this point we have reached 11:00 P.M. and since we have been at this for four hours the board is getting a little tired and worn out here and we've made great efforts not to continue these meetings on too late so if you didn't get a chance to speak tonight, this is going to be continued to our next meeting so you will be given an opportunity then. He said he would like to thank Mr. Markowitz for making some points that he now doesn't have to make but he is going to ask the applicant to be sure to address those because he was going to add that in that we really need to address some of these points very clearly and have evidence as to why there really is a practical difficulty here in terms of the nature of the property and other issues. He said the board will look at the parking issue more closely in between here and see what other questions we have, we have had a little more time to read through all of these submissions and ponder them a little bit and the other thing is just for the record he is going to figure what steps we need to take to bring these 530 issues into the these applications because since they are obviously going to have to be discussed and he just wants to make sure that we have the record properly reflect that and any notices properly reflect that so we will do that.

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

Motion BZA 2020 -35 and 2021- 4 – 16965 Park Circle Drive

Mr. Lamanna moved to adjourn these applications and continue them to our next regularly scheduled meeting to be held March 18, 2021.

Mr. Lewis seconded the motion.

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

Mr. Gutoskey joined the meeting.

Since there was no further testimony, the public hearing was closed at 11:00 P.M.

Respectfully submitted,

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

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

Date: March 18, 2021

AUDIO RECORDING ON FILE

Bainbridge Township, Ohio  
Board of Zoning Appeals  
February 18, 2021

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 11:00 P.M. by Mr. Michael Lamanna, Chairman. Members present in person were Mr. Brent Barr, Alternate; Mr. Michael Corcoran; Mr. Ted DeWater; Mr. Joseph Gutoskey and Mr. Todd Lewis. Mr. Ian Friedman, Alternate was present via Zoom. Ms. Karen Endres, Zoning Inspector and Mr. Steven Averill, Assistant Zoning Inspector were present in person. Mr. Jeffrey Markley, Bainbridge Township Trustee was present in person to monitor and host the Zoom meeting.

MINUTES

Mr. Gutoskey moved to adopt the meeting minutes of January 21, 2021 as written.

Mr. Lewis seconded the motion.

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

APPLICATIONS FOR NEXT MONTH

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

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

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

The applicant is requesting a substitution of a non-conforming use to permit a rental business in a residential district, variances relevant to lot consolidations *and area variance(s) for the purpose of constructing an accessory building*. The property is located in a R-3A District.

Application 2021-4 by Dangelo, Ltd. for property at 16965 Park Circle Drive -  
Continuance

The applicant is requesting area variance(s) for the purpose of constructing a restaurant/event center. The property is located in a LIR District.

Application 2021-5 by Jeff Hyde for property at 8290 Lucerne Drive

The applicant is requesting area variance(s) for the purpose of constructing an addition to an existing detached garage. 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 March 18, 2021 at 7:00 P.M. at the Bainbridge Township Community Hall, 17826 Chillicothe Road, Bainbridge Township, Ohio and unanimously resolved to request the Bainbridge Township Board of Trustees to issue a purchase order for legal advertising.

Since there was no further business, the meeting was adjourned at 11:05 P.M.

Respectfully submitted,

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

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

Date: March 18, 2021