

Bainbridge Township, Ohio  
Board of Zoning Appeals  
February 19, 2009

Pursuant to notice by publication and certified mail, the public hearing was called to order at 7:07 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Todd Lewis, Mr. Mark Murphy, Mr. Mark Olivier and Ms. Lorrie Sass.

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

The following matters were then heard:

Application 2009-4 by Bainbridge North Land Development LLC for property at 18813 North Market Place Drive - Continuance

The applicant is requesting an area variance for the purpose of constructing a retail building. The property is located in a CR District.

The zoning inspector's letter dated January 15, 2009 was read and photos of the site were submitted.

Mr. Matt McGill of Bainbridge North Land Development LLC was present to represent this application.

Mr. McGill testified that he is looking for a setback variance and referred to the site plan. He said there is a proposed building on there and it will be the fourth major anchor on the north side. He said when they are dealing with a larger national retail tenant they have certain prototypes that are essential that they abide by as the certain retailer they are dealing with and they have shown the prototype on the drawings and the only place they can possibly fit it is over here (he referred to the site plan) and because of that the drive goes past the 50' rear setback area next to the railroad tracks. He said they tried moving this building up but it creates a problem in front of it, the buildings where the drive goes through, and that is the whole purpose why they requested the back variance but the building would be outside the existing setback line that exists.

Mr. Murphy asked what the variance is he is asking for.

Mr. McGill said he is asking for a 34' variance on the rear setback for the parking and drives.

Mr. Michael Joyce, Zoning Inspector, testified that it is a 24' encroachment into the rear setback.

Mr. Lewis asked with the addition of this building, where does it put the applicant with the total square footage and lot coverage percentage that the board allocated for this entire project.

Mr. McGill said he would have to go and do that calculation but since they originally showed the site plan coming over to here (he referred to the site plan) there is a lot more building here (again he referred to the site plan) because there was a 160,000 sq. ft. building here (he referred to the site plan) along with two other additional retailers. He referred to the site plan and said in addition they still have a vacancy here, here, here and over in here which is all shown as being built so he can do the exact calculations and provide them to the zoning inspector.

Mr. Lewis said it is to make sure we don't exceed that and asked Mr. McGill about the two adjacent parcels #10 and #11 and if they are separately sliced and deeded.

Mr. McGill said right now they have not separated out those at all, they are just shown on there as potential out-parcel users as this road has kind of become a through-way to the other center.

Mr. Lewis said so those are imaginary lines.

Mr. McGill said they are completely imaginary.

Mr. Olivier asked if the retailer requires the depth of the store as opposed to making it wider than it is deep.

Mr. McGill said yes they do and that is the problem, obviously they could widen the building on paper but they have specific prototypes and going through a market like this where they don't feel that they would be constricted by land or they could just go somewhere else and not be constricted, they need to abide by the prototype.

Ms. Sass asked if there is a deal with this retailer.

Mr. McGill said they have a letter of intent yes.

Ms. Sass asked how strong the letter of intent is.

Mr. McGill said the retailer specifically said that they want to be in the market and this is where they want to go.

Ms. Sass asked Mr. McGill if he gets this if they are in.

Mr. McGill said once they have the letter of intent, they move to make sure they have all of the entitlements and then he will sign a purchase agreement with them or a ground lease in this case but he can't say for sure that if they get a variance they are going to be 100% here and with the economy they could change their mind at any minute.

Mr. Lamanna said if they don't come in here then ultimately what goes in here will be different than this.

Mr. McGill said at this point this is the only place between the two sides that we can put a retailer of this size.

Mr. Lamanna said if this retailer does not come in, you are not going to build this building.

Mr. McGill said correct.

Mr. Lamanna said the next person that comes in may have totally different space requirements.

Mr. McGill said correct and there are other areas where they can accommodate them with the new vacancies that opened up.

Mr. Lamanna asked what the elevation difference is right now between where the railroad right-of-way is down to where the ground level is.

Mr. McGill said he has the topography in his office, he does not have anything with him but he would have to say probably between 10' – 15', it is pretty substantial up that railroad track.

Ms. Sass asked about the square footage of the Linens N Things space.

Mr. McGill said 33,000 sq. ft. which is the same as Circuit City which is 34,000 sq. ft.

Mr. Olivier said there is a vacant lot to the right of Circuit City.

Mr. McGill said that can accommodate up to a 60,000 sq. ft. space.

Mr. Lewis said he was looking in the application and does not see the document from the tenant that stipulates that it has to be this size and shape.

Mr. McGill said he did not include that.

Mr. Lewis said there is adjacent land to the left of it so he does not really see any real difficulty in shaping this building to be consistent with the same setback of what is next to it and he does not have the document in front of him from the potential renter that says if it is not this size and shape proportionate it is a deal breaker.

Ms. Sass said the question along that line is, without revealing anything, is there another reason besides this is what they require.

Mr. McGill said no and he can easily make the building skinnier on a piece of paper and eliminate an outline in which he would make the deal however and much like the new Target buildings that are identical, they do a prototype and that is what they do. He said he would agree with the board that they could easily just squeeze the building in and widen it but the difference with the Flower Factory was they are not a national tenant, they are a regional tenant and they don't have specific prototypes and this is what they build and since this case scenario would be a ground lease, they wouldn't actually be building or designing their building, we would have oversight of it and make sure it corresponds to the rest of the development and they have an architect that is nationwide.

Mr. Lewis asked if the Flower Factory has loading docks.

Mr. McGill replied yes.

Mr. Lewis asked where they are located.

Mr. McGill said they are not shown on the site plan but they are right there (he referred to the site plan) and they are facing towards the southeast and there is a mound.

Mr. Lewis said the only reason he sees this outcrop on this building in all practicality is to accommodate a loading dock, other than that he does not see anything.

Mr. McGill said he does agree with Mr. Lewis but he can't modify the tenant's buildings unless they are in an urban setting or they are very restricted on space.

Mr. Lamanna asked if this building is a one or two story and all on one floor.

Mr. McGill said it will be a one story and will be all on one floor. He said just based on the times when the tenants are cutting back their expansion plans in one-half is really what this tenant in particular has done and we thought that it would be better to try and push a prototype building rather than trying to squeeze them into something they don't want to fit in.

Mr. Olivier asked Mr. Joyce about the service drive behind it.

Mr. Joyce explained the location per the site plan.

Mr. McGill said what he has done before is they have a 17' sidewalk up front and they may be able to offset the buildings by approximately 7' or so to make a 10' sidewalk. He said he is not sure what the minimum requirement of the service drive in the back is but they might be able to limit that, right now they are at a 30' drive but if they can go to a 24' by code, they can probably shave another 11' off the setbacks they are asking for.

Mr. Lewis asked how a semi-truck is going to make that turn up in the corner.

Mr. McGill said they will make sure that when they go through the final engineering, these are just general site plans so they will do the auto cad truck routes on that so they know they can make the turn.

Mr. Olivier said the road is pushed back because of the edge of the building and asked if it is just barely over the 50' setback.

Mr. Joyce said it appears it is yes but it is still pervious cover.

Ms. Sass asked Mr. McGill if he might shave 11' off the back and 7' off the front.

Mr. McGill said the minimum is 24' on a drive and they have 30' drives back there right now but if they can shave a total of 11' it would make it significantly less.

Ms. Sass asked if the encroachment would be dropped down to 23'.

Mr. Joyce said yes.

Mr. Murphy asked Mr. McGill if he would have absolutely no interest in pulling the building all the way up front and line up the back.

Mr. McGill said no because then the buildings won't flow like they otherwise would, it just creates an issue.

Mr. Murphy said it wouldn't bother him at all to bring it forward.

Mr. McGill said the key is typically retailers want a drive where you can come in like that and that drive does exist today, they finished everything except for right over in here (he referred to the site plan).

Mr. Olivier asked about the parcel behind this.

Mr. Joyce said it is Parkside Church.

Mr. Lewis said if it is moved forward 7' and skinny the drive from 30' to 24' we pick up 13' and the applicant is asking for 34'.

Mr. McGill said they would really only be asking for 23' if we shave off that 11' and the retailers change their prototypes every year so it is very likely that this person could come back with a smaller prototype that doesn't even require a variance.

Ms. Sass asked Mr. McGill how he got 11' because she thought he said 6' off the back and 7' off the front.

Mr. Joyce said that is 13'.

Mr. McGill said it would only be 21'.

Mr. Lewis said 21' is much better than 34'.

Mr. Lamanna said it really doesn't look like the building is going to encroach.

Mr. Lewis said there is ground cover in the area or impervious but there is not a tall structure.

Mr. Lamanna said there is also an embankment and a railroad track behind it.

Mr. McGill said when this is finally developed there will be mounding and landscaping back there as proposed.

Mr. Lewis said he does not want to set a precedent on a rear setback as the rest of this develops out so he would like to minimize it.

Mr. Lamanna said it has to be minimized as much as possible so the same thing does not apply on other portions of the property.

Mr. Murphy said any square footage that is given up into that setback area ought to be given up out of the out parcels somewhere else into green space not just because a bigger mound is made back there and closer to the property line.

Mr. Lamanna said the total coverage stays the same.

Mr. Murphy said not if there is paving that goes 20' closer.

Mr. Lamanna said the parcel does not change and it is already cast into the original decision even if they use it all up and have two out parcels left with nothing on them so it is up to them to manage that.

The board discussed the lot coverage issue.

Mr. Lamanna said whatever is done still must satisfy the overall lot coverage for the development.

Mr. McGill said this drawing is for visual purposes only and any changes to plats have to go through zoning and then up to Geauga County.

Mr. Lamanna told Mr. McGill that he has to manage the coverage.

Mr. Lewis referred to Chick-Fil-A.

Mr. McGill said they bought their parcel.

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

Motion BZA 2009-4 – 18813 North Market Place Drive

Mr. Lamanna made a motion to grant the applicant a variance of 21' for a rear yard setback for the purposes of building a 104,237 sq. ft. retail building at the location shown on the application.

Based on the following findings of fact:

1. Given the existing parking lot there is a practical difficulty in keeping the service roadway within the 50' setback.
2. Along this side of the property there exists a railroad right-of-way which is on an approximately 15' high embankment so there will be no adverse impact on other adjacent properties as there is a separation provided by this existing area.
3. The board does note that the overall lot coverage with this additional development must remain within the total lot coverage submitted for the entire development under the board's earlier decision with respect to this development.

Mr. Lewis seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye; Ms. Sass, aye.

Application 2009-5 by Jozef Kofol (Northwoods Grille) for property at 16381 Chillicothe Road

The applicant is requesting an expansion of a non-conforming use by the addition of two lighted arch structures. The property is located in a R-5A District.

The zoning inspector's letter dated February 19, 2009 was read and photos of the site were submitted.

Mr. Robert Ryan of the Northwoods Grille was present to represent this application.

Mr. Ryan testified that Mr. Kofol put the lights up because of the two ditches on the side and they have had several people drive into those ditches. He said Mr. Kofol believed that the lighting was in the original plans but found that they weren't and he put the one set of archways over one side of the driveway. He said there is a necessity for lighting there and they were talking with the tow truck people that pulled several vehicles out of the ditch there on the right and it should be noted in the police reports and he has been told just in the last month there were 12 autos pulled out of the ditch prior to the light being installed. He said Mr. Kofol wants to put another arched light on the other side of the exit.

Mr. Olivier asked if this is the northern driveway.

Mr. Michael Joyce, Zoning Inspector, testified by saying yes this is the northern drive and the other one is on the south.

Mr. Ryan said the lighting is functional at the entrance.

Mr. Joyce said he has seen it and it is a very bright bar along the ground.

Mr. Ryan said it doesn't interfere with the traffic and it doesn't shine into the street or obstruct any traffic but it does cover the area where the ditches are that people have been driving into.

Mr. Murphy asked if there is a site plan of the southern driveway.

The board reviewed the site plan submitted.

Mr. Olivier asked if this is out of the right-of-way.

Mr. Joyce said it is 5' out of the right-of way. He added that it is 35' off of the center of the road and explained the location of the light and proposed light poles per the GIS aerial map. He added that the other one is wired but not up yet.

Mr. Murphy said this is an R-5A residential district.

Mr. Joyce said yes and this property is a non-conforming use so any expansion of the use or structures requires BZA action. He added that these are basically two street lamps that have been turned toward each other and attached with an arm with a light in the center.

Mr. Ryan said it needs a paint job and the light goes directly down from the center of the poles and it doesn't obstruct anything on the street, it doesn't go to the street, the light just hits the entrance, it is direct lighting and very functional for that entrance.

Mr. Lamanna asked if there is anything about having things over roadways and driveways.

Mr. Joyce said only signs.

Mr. Lamanna said technically it is a structure so the question is if it is a permitted or non-permitted obstruction. He said that it goes back to the argument about the light post in the front yard and that it is not a permitted obstruction. He explained about the issue from a prior meeting that the zoning code does not deal at all with light posts and if anybody has a light post in their front yard, technically it is a violation of zoning right now and the board is trying to deal with that and this raises sort of the same question.

Mr. Lewis said he would have liked to have seen some photos of this illumination at night.

Mr. Lamanna asked about the specifications of the light.

Mr. Ryan said he has the specifications in the office.

Mr. Lamanna asked Mr. Joyce if he had information on the light itself.

Mr. Joyce said he did not but it is a very focused light and he has seen it at night and would say it is definitely beyond the 2,500 lumens and it is a full cut-off fixture and very focused and there is a narrow beam right across the front. He said it did not bother him when he drove by it but it does not mean it will not bother the next person that drives by it.

Mr. Lamanna said as a matter of course if they wanted to they could pay CEI to put up a pole on each one of those places and stick a light on it for them and we would have no say about it at all.

Mr. Lewis said and probably no cut-offs.

Mr. Joyce said right now it is out of the road right-of-way.

Mr. Lamanna said the light itself is something that could go there by other means and it is not like the light itself is creating a problem.

Mr. Michael Climaco testified that he is here with his wife and they live in the Woods of Wembley Subdivision. He said they live at the first house on the left, or the south side of the street and their home is no more than 500' away from this light.

Mr. Joyce showed the location of Mr. Climaco's house on the GIS aerial photo and said the distance is about 340'.

Mr. Climaco said about 320'. He said he is here with his wife and there are other people here who will probably have some comments and they two probably see the light directly from their exterior windows. He said it is unfortunate when a local business proprietor chooses to ignore rules which are enacted to ensure the community's safety and that of all of its residents. He said it certainly must have to be obvious to this applicant and referred to Mr. Ryan as the applicant and not the owner and presumes it would be obvious to the applicant that installing such a large metal light pole would necessitate a permit from Bainbridge Township however he obviously chose to ignore this and never filed for the permit and simply installed a hideous looking light. He said in addition to its unsightly rusty, gaudy appearance it is no doubt a safety hazard to the heavily traveled Route 306 area. He said the permit, if it would have been applied for and granted no doubt it would have allowed the supervision of the installation as Mr. Joyce would tell you to ensure it would have been done by a licensed electrician who would be familiar with Bainbridge Township's code provisions as well as the load that this fixture would draw from the power grid.

Mr. Lamanna asked Mr. Climaco what relevance this has for anything.

Mr. Climaco said in all due respect, we have several outages in this area, several power outages and we most recently had one and in fact if you listen to people who have been installing and replacing lighting, lines, telephone poles, the Aspen Company who he presumes our community had paid along with other state dollars, hundreds of thousands of dollars to replace all of that, they in fact told me personally when he talked with one of them, that in fact improper installation into the grid and if he is not a licensed electrician and is not familiar with how to do that, could very well trip an outage so it is very important.

Mr. Lamanna said there has to be more relevance than that and told Mr. Climaco that he needs to have evidence.

Mr. Climaco continued by saying that Aspen was hired to re-wire this entire area and it costs hundreds of thousands of dollars and once again he was told by an employee who parked there while they were installing and rewiring posts on either side that the applicant had been warned by them for the potential and yet he still took it upon himself to erect the fixture without a permit and he thinks that should incense this board because he knew he was doing something without a permit. He said secondly these particular structures were phased out of cities including Cleveland nearly 40 years ago and they were initially used over gas pumps to provide light however they were dangerous due to the fact that often times a driver would strike it upon entry or exit causing damage to an adjacent building or other motorists. He said in addition the motorists directly underneath the light could have impaired vision and if you have a car with a sun-roof and that roof was either open or the visor that clouds that would be open, it does blind you as you enter traffic onto Route 306. He said after cities disallowed this, then this began to assure that there was a minimum of a 3' perimeter or concrete structure built around large light poles so that they would not be easily knocked down into the mainstream accidentally by a motorist such as could possibly happen on Route 306. He said obviously this fixture cascading onto Route 306 could cause severe traffic accidents and injuries to motorists. He said as a business owner himself, he understands the necessity for signage for the Northwoods Grille and a sign was designed and approved by a permit and installed to code with a permit by the previous owner several years ago for this very reason, it was lighted and can be viewed by both north and southbound traffic. He said in conclusion, in addition to its unsightly appearance, across from what he considers a beautifully landscaped Woods of Wembley Subdivision entrance, these light poles are absolutely a safety hazard for our community, installed with a total disrespect for our township and its surrounding residents and we strongly urge the Bainbridge Zoning Department to require the applicant to immediately remove this pole and decline any further lighting structure permits. He said if this applicant takes any further action without permits, we also feel that punitive actions should be taken against him and he is sure other members here might have something to say but as you said, this would not be permitted on any overhead light, it is a structure and must immediately be taken down. He thanked the board.

Mr. Lamanna said that is what the board is here to decide.

Mr. Lamanna swore in Mrs. Climaco.

Mrs. Karen Climaco testified that she is married to Michael Climaco and if the board would see this and there should have been photographs and if you pull in and out the light is going to be shining directly into the eyes of the drivers in cars so in addition to the fact that we have a lot of power outages out here and we have lived out here for a number of years and a lot of people in our development have had to get generators and power was out in our development 10 days ago for 12 hours and then we don't have any water so it is a major imposition on our lives and this could easily be knocked down into the wires.

Ms. Sass asked Mrs. Climaco if she thinks the power outages occur more frequently since this lighting structure went up.

Mrs. Climaco said no what she is saying is that they occur frequently enough as it is and she just has a concern that along with a driving hazard that this could be real hazardous.

Mr. Lamanna asked how tall it is.

Mr. Ryan said he thinks it is 23' – 30'.

Mr. Lamanna asked if it is 35' from the center of the road.

Mr. Ryan said yes.

Mr. Lamanna said if it fell it would not make it to the other side of the road to hit the wires and asked Mr. Ryan if there was a building permit for this.

Mr. Ryan said he is not sure.

Mr. Climaco said he did not get one.

Mr. Lamanna asked Mr. Climaco how he knew he did not get a permit.

Mr. Climaco said because Mr. Joyce told him.

Mr. Lamanna said that is not evidence because hearsay is not evidence. He said if he (Mr. Joyce) has researched it that is one thing or if he has talked to the building department we will accept that.

Mr. Joyce said the policy of the building department is they will not issue a building permit until a zoning certificate has been issued.

Mr. Lamanna asked if in their original building permit when they built the building it had this as part of it because they wouldn't have been looking at this particular thing, they would have seen the zoning certificate for the original building and they would not have been worried about whether or not this particular piece of it was within there.

Mr. Joyce said that is true however they do expire in two years and the building went up longer ago.

Mr. Lamanna asked if this went up after the building went up.

Mr. Joyce said yes, several years after the building.

Mr. Climaco said what he was referring to regarding installation is what he was told and as a business owner, he owns several restaurants around the country and he can tell you all is for the reason and the purpose of safety to ensure that it doesn't draw against the power grid and to ensure that it doesn't have any alternative effect and that is why they require permitting and proper installation. He said this was done without anything, it just automatically appeared one day and that is why when he indicated that the individuals who were realigning all of Route 306 with telephone poles for the last year and one-half indicated to him that they told that guy not to install this, he should have somebody properly do this and first of all he said he was not going to get a permit to do this he was just going to put it up and that is exactly what he was told.

Mr. Lewis asked Mr. Climaco if he had any documentation with him that specifically states that the installation was done substandard.

Mr. Lamanna asked who did the installation.

Mr. Ryan said Mr. Kofol hired professionals to do the job but he does not remember the name of the company.

Ms. Sass said the board needs a lot more information from both of you. She said a conversation that is had with a worker from another company has no relevance for the board so the board can't depend on it and has no idea if it is true.

Mr. Climaco said he totally understands that.

Ms. Sass said and that is why the board cannot accept hearsay statements. She said she would like to know who installed it and what kind of code it was brought to and would like to know more details on the installation and an overview of the power grid of the draw and a number of different issues. She asked that Mr. Climaco contact the person or the supervisor that he spoke with to see if they would be willing to put something in writing or if they would be willing to appear here.

Mr. Lamanna said they are subcontracted through CEI.

Mr. Climaco said in all fairness the zoning code does not even permit this. He said 60 homeowners pay thousands of dollars in taxes and he is talking about a potential safety hazard.

Mr. Lamanna said if he is allowed to keep this he is going to have to go and get an appropriate permit from the building department and they are going to have to come out and make sure this is wired up properly and presumably since you just can't tap power out of the ground on that street, this is wired back to the building with some kind of circuit breaker in the building so the total draw is not enough to affect the power grid because it is probably not drawing more than 200 watts at the most because even the biggest light fixtures on the streets don't draw more than 400 and that is an extraordinarily large fixture so this power, this pole, this light is not affecting anybody's grid or causing any outages because it certainly has a breaker somewhere along the line. He asked Mr. Climaco if the light shines into his house or they directly see the filament from it or if he has noticeable light coming into his house from it.

Mrs. Climaco said they have noticeable light coming onto their property from it.

Mr. Lamanna asked about the light that is on the corner of the street on Route 306.

Mrs. Climaco said whatever lighting was there was appropriate and was legal and lawful.

Mr. Lamanna said he is not worried about what is appropriate, legal and lawful, there is a light at the end of the street on Route 306 and it is maintained by the power company. He asked how that light compares with this light.

Mrs. Climaco said she would have to do a real study but she has light pollution in her yard.

Mr. Ryan said that light doesn't hit her yard, that light is a direct light and it hits the driveway entrance and doesn't even go three feet into the street so it doesn't affect any of the traffic and added that the pole needs to be painted.

Mr. Lamanna said the applicant can go to CEI and they will put up a telephone pole with an arch with the same type of arm on it with a light on it the same that is at the end of the street and they will put one at both of those driveways if he is willing to pay them \$75.00 a month.

Mr. Climaco said if done properly then that is permitted he presumes.

Mr. Lamanna said that we have no control over that and there could be a light that is twice as bright as the one that is there now so be careful for what you wish for because you could end up with something that is worse than what is here from that standpoint. He said he wants to find out what the real concerns are of the residents, if there is a light pollution problem here, is there a problem with the fact that this is an ugly structure, just what is the problem. He said again to be careful what you wish for because you could end up with something worse that we have no control of, it could be brighter, bigger and shed more light and illuminate not just the driveway but out into the street because that is the way they do it and bring the lighting even closer to you and brighter on your property and that is why he wants to understand what the problem is.

Mr. Climaco asked as a resident if he can make some assumptions or observations. He asked if for some reason and he can tell the board that these were outlawed by the City of Cleveland and in major cities for years and there needs to be a brick or a concrete structure put around these if for some reason they are installed this close to a road however, if for some reason as this gentleman indicates that vehicles were veering off and going in ditches and if for some reason a vehicle hit that and knocked it westbound into the street, a vehicle traveling either southbound or northbound on Route 306 you could have an impact and an accident of serious proportions that could result in death and that is why they don't permit those being put up without some type of abutment circulating around it. He said he can tell the board as a member of the Cleveland City Council who chaired the committee he knows that for a fact.

Mr. Lamanna said he agrees that is an issue.

Mr. Ryan said if somebody drove into those poles they would be aiming towards the restaurant and it definitely would not be going into the street and that would be the only reason for anyone to hit that pole and it is in far enough, it would have to be going towards the restaurant to hit the pole which would knock the pole into the restaurant.

Mrs. Climaco said how about coming out and the pole could very well hit the wires when you see the photograph from this angle, the pole could possibly go into the wires.

Mr. Lamanna said the wires on that side of the street are telephone and cable wires, they are not electrical. He asked about the height of the wires.

Mr. Joyce said from the center of the road to the pole is 35' so maybe they are 30' give or take.

Mr. Ryan said he is going to see if they can be approved and he didn't realize there was all of this opposition.

Mr. Lewis asked Mr. Ryan if he is the property owner.

Mr. Ryan said he is not the property owner but he is interpreting for Mr. Kofol.

Mr. Joyce said as he recalls Mr. Ryan was not employed at this restaurant at the time the lights went up.

Mr. Ryan said yes he was most recently employed and he actually measured the poles and they are actually from the white lines on the edge of the road so they are 27' 11" from that part of the light pole.

Mr. Lamanna asked Mr. Joyce if there are any building code requirements on those kinds of lights in parking lots because there may be a building code requirement on those lights.

Mr. Ryan said the light doesn't obstruct anything.

Mr. Lamanna said there may be a building code requirement that those kinds of poles have to be protected from vehicles.

Mr. Ryan said the manager who worked there prior to him starting had discussed the requirements of a light with this office and that was a situation to make sure we did have an off-lighting requirement that needed to be met on that and added that it was discussed with this office.

Mr. Joyce said the installation would be under the county building department but we are concerned mainly with the location and the permit to go ahead but if there is a building code on it, like the chairman is suggesting, he wouldn't have known about it.

Mr. Murphy said he would like to read from Chapter 161.12 – Outdoor Lighting from the Bainbridge Township zoning code that says “All outdoor lighting shall be of constant intensity, and shall be directed, reflected or shielded so as not to be of excessive brightness or cause glare hazardous to pedestrians or drivers, create a nuisance or unreasonably interfere with a neighboring property owner's right to enjoy his property.” He said under 161.12 it states (g) “All outdoor light pole fixtures shall not exceed a maximum height of thirty (30) feet.” He said we have to find the height of that pole and we don't even know what the height of it is, somebody stuck it up there, and we have neighbors saying that there is a nuisance already created without even asking for a permit.

Ms. Sass said the board needs more information.

Mr. Climaco said the last time, he believes, this board considered a sign request from a prior owner for lighting on either side of the sign.

Mr. Joyce said that was before he came on board and the last time they were here was for a patio on the front.

Mr. Climaco said he is sure the minutes will reflect that the prior owner had come in and requested a sign variance and additionally he had talked about proper lighting and there are lights that reflect on the sign from the north and the south.

Mr. Lewis said this application is talking about illuminating the ingress and egress driveways into the property which has nothing to do with the sign so they are very different applications with a different objective.

Mr. Ryan said there are no lights on the sign.

Ms. Mary Ellen Knific testified that there are lights on the sign.

Mrs. Climaco said there used to be lights on the sign.

Mr. Murphy referred to Chapter 161.12 (Outdoor Lighting) and said there are other things that say "All sources of illumination of the exterior of buildings or grounds shall be shielded so as not to cause glare which is hazardous to vehicle drivers or is objectionable to owners of adjacent lots." He said there is a lot in here about being good neighbors and this is a residential section.

Mr. Lewis said he would like to see the actual light, it is a down-light and it is covering a specific area and that seems to be how the fixture and bulb are geared.

The board discussed the illumination of the light.

Mr. Lamanna asked if anybody has any idea what the height is.

Mr. Joyce said he could only guess.

Ms. Knific said she lives across the street from Climaco's and when she looks out her family room window she can see the building and there is a street light right outside their development and the light that comes down from that versus this, this is like a factory light, like a safety factory light, it is very bright and the other light they put in on the street is a different light and she wishes the board could see it. She said it is not like the ones on the freeway, it is just a regular streetlight which is not as bright as that but it still lights this area up and there was another restaurant there, Bongiorno's and they never had a problem with it and there was a light, she does not know what happened to it, but there is a light on the sign on both sides.

Mr. Ryan said there is no electricity there, it is buried under the landscaping and there hasn't been a light there.

Mr. Olivier asked if there is some reason for the height of the lights or just because they used lamp posts.

Ms. Sass asked where the light posts came from.

Mr. Ryan said Mr. Kofol brought the posts in from a property he had.

Mr. Olivier said he has a struggle whether if this wasn't here and the board was permitting it for the first time, would we want something up there at that height in a residential district.

The board discussed the height of the posts.

Mr. Lewis said it is a shame that the property owner is not here.

Mr. Lamanna said the board needs to get the specifications for that light fixture.

Mr. Climaco said the applicant has requested to also install the same type of structure on the other driveway and if you would look across towards the west, all of those homes around the pond face directly to this and they would not only be having this light shining in their home, but it would also now shine towards four other homes.

Mr. Ryan said the light shines directly down.

Mr. Climaco told Mr. Ryan he is welcome to come to his home and sit in the living room.

Mr. Lamanna said the board will determine that with the specifications of the lighting fixture.

Mr. Joyce said he will make sure he takes a photograph of it on the way home tonight.

Mr. Lewis asked if there is any possibility that the property owner can be here next time because he sees this being tabled for more information.

Mr. Ryan said he speaks better English than Mr. Kofol and that is why he wanted him here.

Mr. Lewis said but you are not the property owner.

Mr. Kenneth Polanka of the Woods of Wembley subdivision asked if there is an architectural review of any kind.

Ms. Sass said no, not in a township and explained that townships do not have the authority.

Mr. Polanka asked if the board did not approve the sign when they put the sign up.

Ms. Sass yes but not the aesthetics of the sign, signs as far as location and size are regulated by zoning but as far as how it looks or what it says, the township has no control over that and we have no control over aesthetics.

Mr. Lamanna said there is a consideration here since this is in a residential district and the impact on the adjacent property owners of the lighting is certainly a factor. He said it would be different if this was in the middle of a commercial district but it is also on a major state highway so that also goes into the consideration as well, that is part of what the board has to consider but aesthetically whether we like this design or we would rather have a single pole with an arm on it with a light on it, the board can't really deal with that. He said there are height limitations and things like that the board has to deal with.

Mr. John Sowers of the Woods of Wembley asked Mr. Joyce to pull up the photograph looking west and testified that the only house you see there is his. He said the light is bright, will it change his lifestyle no, but he does worry about the safety of that thing coming down right at that intersection because he and his wife come up to that intersection all of the time, the grandkids are coming over all of the time and if somebody hits that, it is going to go down because there is nothing supporting it. He said he is not an architect but he was not born yesterday and just looking at it you can tell.

Mr. Lamanna said if somebody goes off the road on Route 422 and hits one of the light posts at the exit there, it falls onto the road too and added that he is talking about the illumination poles.

Mr. Ryan said the concrete that is supporting that at the bottom is about 4' deep.

Mr. Lamanna said it is going to sheer off if somebody hits it but there are a gazillion light poles like that around along the sides of roads that in most cases are sticking out the other way so their weight is out actually over the road so if somebody hits them, they fall onto the road.

Mr. Murphy said he thinks it is unfortunate that it was built without a permit and he thinks the Bainbridge zoning has a lot to say about lights and light fixtures and light bulbs and so far none of it looks like there is any reason to grant any kind of variance for the existence of this so unless the board is going to get more information, he does not see any reason to let it stay there. He said it was put up illegally without going through proper channels, there is no building permit for it, the board has no way of knowing there is 4' of concrete there, whether it does or doesn't and if it is 30' 1" above the ground it is already too tall according to Bainbridge zoning not that the board can't grant a variance for that, the rules for lighting talk about being aware of your neighbor's concerns and quality of life and we have a fairly hefty showing tonight from the neighbors.

Mr. Lamanna said the board needs detailed information on this and there may be other options too.

Mr. Murphy said the board does not know what the wattage of the bulb is but if the filament of that bulb is visible our zoning calls for full cut-off lighting which means you have a light fixture and if the filament of the bulb is not hidden completely at a horizontal from the light shroud it is illegal, it is not acceptable, the board does not know anything about the fixture and we don't have the spec of that fixture in front of us.

Mr. Ryan said all of that was submitted to this office. He said Linda Kruse, the manager before him, brought this stuff to the office because it was asked for originally and she wanted to make sure it was the correct lighting that needed to go up there.

Ms. Sass said if Linda brought in the specifications how come nobody got a permit.

Mr. Joyce said after the fact, the first structure went up, he went down to see the owner and told him he needed to have permission before he did it which is why he did not install the second arch at this time although the wiring was there and the intent was there, he did hold off and as you can see in the summary, it did take some significant effort to get here, he doesn't know what the wattage is on the lighting, it is a full cut-off fixture, he can't speak to the light trespass, these people live with it he does not but he can have photographs and he will have night photographs of it that can be shown at the next meeting and he will definitely have the height.

Mr. Lamanna said the height is definitely an issue for a residential district even though technically we permit the 30'.

Mr. Lewis said 30' in a commercial district is a lot different than in an R-3 and R-5 District and even though it is a full cut-off because of how high it is, if it is 15' off the ground, he can't see the bulb until he is pretty close to the fixture but if it is way up here, he is going to be able to see the bulb from a whole lot further away so even if the light is going down, what is full-cut if you are ½ mile up in the air, you can see it from three miles away and he thinks this is probably one of the points these folks are saying as well so it is not just the fixture, it is the height. He said the board can't help out much with the architectural part because taste is not on the table.

Mr. Climaco said he understands that but he wants to take notice of the fact that why they normally put a concrete or brick abutment around the poles.

Mr. Lewis said that is a secondary question.

Mr. Lamanna said in parking lots or roadways a cement abutment is required.

Mr. Climaco said actually anything that could any way enter the right-of-way.

Mr. Lamanna said this is outside the right-of-way.

Mr. Lewis said the light post in his front yard needs to have a concrete piling put around it because pulling out of his driveway with probably another thousand homes in Bainbridge that you could knock the light post into the street so he is not so sure that is a practical consideration.

Mr. Climaco said he understands but he is sure that the residential light posts are not over 30' high and this is a residential area.

Mr. Lamanna said he knows but from a light post safety standpoint they have those same type poles that actually extend out over the road and are actually in the road right-of-way barely off the paved shoulder of the road.

Mr. Climaco said he is sure they were permitted.

Mr. Lamanna said he knows they are permitted but there is a difference between something being permitted and something being a safety hazard.

Mr. Joyce said Chapter 161 is applicable to all districts and the height limitation would fall in residential, as well as commercial and as industrial.

Ms. Knific asked if it is zoned residential.

Mr. Lamanna replied yes.

Ms. Knific asked if this application is going to be continued and not decided tonight, if they would have them turn it off until then because if it is not done legally would they have to turn it off until then.

Mr. Lamanna said it is not within the board's authority.

Mr. Murphy asked if it is on during business hours and then turned off.

Mr. Ryan said it is on a timer and it turns off automatically and when the last guest leaves the restaurant they make sure it is turned off but it is on a timer and it is off around 9:00 – 10:00 at night.

Mr. Joyce said if it is on this evening when he goes home he will take a picture of it.

Ms. Sass asked Mr. Joyce if can go to the Woods of Wembley and take a picture from there too.

Mr. Joyce said absolutely.

Ms. Sass asked if the board has anything indicating authority to make application.

Mr. Lewis said no and no transfer of rights to even speak on behalf of the applicant.

Mr. Lamanna said the property owner should come to the meeting next time and asked Mr. Ryan to get the board the information on the fixtures and who installed it and how and if building permits were obtained to do it.

Mr. Ryan said he will bring every detail with him.

Mr. Lamanna said obviously anything that has been put into evidence tonight will still be considered. He added that the hearing will be picked up again next month.

Ms. Sass said the next meeting is March 19<sup>th</sup> and the board has requested that the property owner be here with all of the pertinent and applicable information they have relative to specific light installation and intensity and all pertinent details that the board needs to be considering.

Mr. Lamanna told Mr. Ryan that he might want to consider whether there are other options for doing this.

Mrs. Climaco asked if Mr. Joyce will be permitted to check out the sign because there was wiring there because we came to the meeting and there was a variance given, and you can check the records of the township, to light the sign from the north and south.

Mr. Ryan said there is not a light on the sign.

Mr. Lewis said the board approved it but if they want to light the sign or not light the sign that is the property owner's choice.

Mrs. Climaco said she knows, but the board is missing her point.

Mr. Ryan said he would like to bring that up at the next meeting.

Mr. Murphy asked Mr. Ryan how long he has been there.

Mr. Ryan said he has been there about 4-1/2 months.

Mr. Murphy said the board heard it before the patio about two or three years ago and for awhile there were ground lights.

Mr. Lewis said he is wondering if that is the circuit they grabbed but once again if it is the right power rating and it is going through a breaker and an electrical panel there is absolutely nothing wrong with doing that, they abandoned something that they have chosen not to do which maybe was illuminating a sign and they have every right to tap power on their property.

Ms. Sass said assuming they meet the other criteria.

Mr. Lewis said if they put in a washer and a dryer to take care of their Inens they probably have a more significant power impact on their cost and their meter than a couple of light bulbs.

Mr. Lamanna asked the residents if there is some issue with the sign being lighted.

Mrs. Climaco said no it was fine and added that she was not making herself clear and what she was trying to say is they are trying to be good neighbors to them, that was a variance, we came to the meeting, we saw the sign and that was fine and that was several years ago, so they were trying to be good neighbors and obviously not everyone was a good neighbor in return.

Mr. Ryan said Mr. Kofol isn't trying to inconvenience anybody, he is just trying to take care of his business and that is the bottom line, he wants his neighbors to be guests at the restaurant, he did not know that there was all of this hostility about his light, he doesn't know that and he is here to do business in Bainbridge.

Mrs. Climaco said if he would have applied he would have known.

Ms. Sass said the board has some chronology of the steps that have been taken by the zoning department to attempt to correct it and he was made aware time and time again that he had to comply with certain requirements so he knows.

Mr. Ryan said in his defense the people didn't represent him well at all and a lot of times in interpretation, he thinks people misunderstood Mr. Kofol's intentions.

Ms. Sass said then Mr. Kofol needs to establish better communication from within.

Mr. Lewis said but Mr. Kofol's correspondence is going to the River Road address in Hinckley and asked if that is his residence.

Mr. Ryan said that is his residence, yes.

Mr. Lewis said our zoning office is corresponding directly with him at his residence, not with his employees at the property.

Mr. Ryan said he gives his mail to the people that manage his business here.

Ms. Sass said that is his responsibility.

Mr. Lewis said that is his prerogative and the point of it is, it is going to him and it would be a good idea to have him here next month.

Mr. Olivier said between now and then he may want to meet with the neighbors and talk about alternatives or at least look at alternatives.

The board reviewed Chapter 161.12 regarding lighting.

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

Motion BZA 2009-5 – 16381 Chillicothe Road (Northwoods Grille)

Mr. Lamanna made a motion to continue this application to the next regularly scheduled meeting to be held March 19, 2009 at which time the applicant will have additional information for the board as requested.

Ms. Sass seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye; Ms. Sass, aye.

Since there was no further testimony, the public hearing was closed at 8:35 P.M.

Respectfully submitted,

Michael Lamanna, Chairman  
Todd Lewis, Vice Chairman  
Mark Murphy  
Mark Olivier  
Lorrie Sass

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

Date: March 19, 2009

AUDIO RECORDING ON FILE

BZA PH 2/19/2009

-25-

Bainbridge Township, Ohio  
Board of Zoning Appeals  
February 19, 2009

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 8:35 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Todd Lewis, Mr. Mark Murphy, Mr. Mark Olivier and Ms. Lorrie Sass.

Public Comments

Messrs. Roger and Robert Corsaro met with the board regarding BZA 2009-2 – 8515 Tanglewood Square – Giant Eagle (hearing of January 15, 2009) for a drive-thru pharmacy. They expressed their concerns about the U-turn in the lot for the pharmacy since they own the professional building right next to it that houses a daycare so they are concerned about the additional traffic in the area because of the children and the buses.

The board members explained their reasons for the approval of this application because of the creation of a curbed landscaped area and the addition of a stop sign.

Minutes

Mr. Lamanna made a motion to adopt the minutes of the January 15, 2009 meeting as written.

Ms. Sass seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye; Ms. Sass, aye.

Applications for March 19, 2009

Application 2008-32 by Jon Bruce for property at 8573 Beacon Hill Drive - Continuance

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

Application 2009-5 by Jozef Kofol (Northwoods Grille) for property at 16381 Chillicothe Road - Continuance

The applicant is requesting an expansion of a non-conforming use by the addition of two lighted arch structures. The property is located in a R-5A District.

Application 2009-6 by Debra L. Simmons for property at 7386 Chagrin Road

The applicant is requesting area variance(s) for the purpose of constructing a 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 19, 2009 at 7:00 P.M. at the Bainbridge Township Community Hall, 17826 Chillicothe Road, Bainbridge Township, Ohio and unanimously resolved to request the Bainbridge Township Board of Trustees to issue a purchase order for legal advertising.

Since there was no further business, the meeting was adjourned at 9:15 P.M.

Respectfully submitted,

Michael Lamanna, Chairman  
Todd Lewis, Vice Chairman  
Mark Murphy  
Mark Olivier  
Lorrie Sass

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

Date: March 19, 2009