

Bainbridge Township, Ohio
Board of Zoning Appeals
March 20, 2008

Pursuant to notice by publication and certified mail, a public hearing was called to order at 7:35 P.M. by Mr. Michael Lamanna, Chairman. Members present were Ms. Joyce Hannum, Mr. Todd Lewis, Mr. Mark Olivier and Ms. Lorrie Sass. Mr. Mark Murphy was absent. The following matters were then heard:

Secretary's note: Ms. Joyce Hannum was appointed to the Board of Zoning Appeals as an alternate member.

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

Application 2008-2 by Meredith M. Wilkes and William F. Pobega for property at 8510 Chase Drive

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

The zoning inspector's letter dated March 20, 2008 was read and photos of the site were submitted.

Mr. Todd Lewis stated that due to the proximity and nature of this application he is going to recuse himself from this application.

Ms. Meredith Wilkes and Mr. William Pobega were present to represent this application.

Ms. Wilkes testified that they live at 8510 Chase Drive and this is basically a classic example as to why they have a variance proceeding and as the board can see from the over-head, their home is situated on somewhat of an unconventional lot, they have a huge beautiful front yard, a great huge side yard and not much of a backyard. She said they have put their shed in the best position possible on that lot and put it back behind the home, it is discrete, it is well placed and it is not right up along the property line and they went to great pains to make sure that it matches the house, it is white like their white house and the shingles on the roof are exactly the same as the shingles on the roof of their home and it blends in very nicely with the landscape. She said their application demonstrates that this is just a little garden shed that will hold some lawn mowers etc. and it is not like they are going to put another home on the property and they are just asking for a few extra feet to put the shed on the land because there is really nowhere for them to put it because of the way the house was built on the property and added that if the board has any questions, they will be happy to answer them.

Mr. Lamanna asked how big the shed is.

Ms. Wilkes said it is 9-1/2' x 12'.

Mr. Lamanna asked about the height.

Ms. Wilkes said she thinks it is about 8' high.

Mr. Lamanna said he is assuming this shed is already built based on the application.

Ms. Wilkes replied yes.

Mr. Lamanna asked why the shed was already built before the variance request.

Ms. Wilkes said when they moved in, there was nothing in their closing papers that suggested permits or applications or anything else were required to put the shed on their property so they did not think that they needed to do anything but as soon as they found out, they got a call from Mr. Shane Wrench in Mr. Joyce's office and as soon as they found out that they needed to do something, they came in to deliver the application to Mr. Joyce and took care of it right away, we had no idea.

Ms. Sass asked if the title papers did not talk about compliance with zoning.

Ms. Wilkes said there was nothing in there that said you have to get an application to build a shed.

Ms. Sass said it would at least have a reference to zoning rules and regulations.

Ms. Wilkes said she is sure there is something in the papers saying you have to comply with the laws but she did not see anything specifically that said you have to go and get a permit and we have been driving around and seeing sheds all over and there is a gazebo on the property.

Mr. Lamanna asked Ms. Wilkes if she talked to the building department about a building permit before she built the shed.

Ms. Wilkes said no.

Mr. Lamanna said this shed actually does not require a building permit under current rules.

Ms. Sass asked where compliance of the zoning would put the shed.

Ms. Wilkes said probably in front of the house.

Mr. Joyce displayed the aerial photo of the property from the GIS and noted the required setbacks.

Mr. Lamanna asked if there are any actual dimensions or a location survey for the house.

Ms. Wilkes said yes and they put it in the application and added that it is adjacent to the gazebo.

Mr. Joyce said it is approximately 22 feet from the back property line as what they showed on the application.

Mr. Lamanna asked if that is based on the applicant's measurements.

Ms. Wilkes said it is based on the survey that was given to them at closing with the pre-existing structure on the property.

Mr. Lamanna asked if they have a location survey for the structures on the property and then the measurement was based on that.

Ms. Wilkes replied yes.

Mr. Lamanna said the board has to have some basis for the 22' because otherwise if the board gives a variance for 22' and somebody surveys the property five years from now and suddenly finds out that it is 10', there would be a problem.

Ms. Wilkes said she understands.

Mr. Lamanna said the board wants to make sure it understands the situation.

Mr. Olivier asked if there is no ability to move it any further from the rear lot line and why 22' versus 28'.

Ms. Wilkes said to make it blend in and make it tucked away and behind the house where you don't really see it.

Ms. Sass asked what the distance is between the end of the house and the shed.

Mr. Olivier said he is trying to understand why it is 22' versus 30' versus 28'.

Ms. Wilkes said it is because of the driveway and the whole layout of the property.

Mr. Lamanna asked if there is a requirement in this subdivision for approval by the homeowner's association.

Ms. Wilkes said they sent me information the other day from the President of the homeowner's association and as far as the materials that were provided to us, we have the approval of the association by virtue of the language of the provision regarding approval and there are a couple of different ways you can get approval.

Ms. Joy Gallagher, President of the Peppermill Chase Homeowner's Association testified that this is a new neighbor she has not met before and our by-laws and deed restrictions have been set up basically to assist a lot of the community but when it comes to an out-building there is a procedure, they have to get permission from the township and then they have to come through the board prior to building it and that obviously did not happen. She said the initial paperwork regarding this was sent to the title company at the request of the purchasers and that was done back in August so she does not know the notification on that. She said they basically always strive for win-win with everyone in the Peppermill Chase community and that is her intent of being here this evening. She said if you drive all around Bainbridge and see these sheds, that may be true, but you don't see them in Peppermill Chase because of the rules we have and how we try to have things obscured from the view of the road and that is the way we have worked things out and it has been very successful so she is looking at that type of situation to happen immediately after whatever the decision is here that we can have the shed placed on an area on the property that will be convenient to the owner but that also would include landscaping to keep this from the view of the road or line of site from a neighbor.

Ms. Sass said so, they don't have approval.

Ms. Wilkes said let's look at the deed restrictions then if that is what we are going to do, we are going to go through and play homeowner's association if that is what the zoning commission wants to do, we can do that but she does not see how the deed regulations for Peppermill Chase Homeowner's Association has any bearing whatsoever on whether or not we are entitled to a variance first and second whether or not they were provided to us at closing, and if you have something in your possession that demonstrates that those were provided to us at closing, she would be more than happy to review that and third, if you look at the provisions, they do have approval because if the homeowner's association doesn't act to enjoin construction, it is over and the shed is deemed approved, so we can't just talk in the abstract about these deed restrictions that hypothetically we violated because we have complied so if we are going to look at deed restrictions, let's get them out and let's talk about them, otherwise they have no bearing whatsoever on this proceeding.

Ms. Gallagher said this would fall under the architectural review committee.

Mr. Lamanna said regarding deed restrictions, the board is not here to enforce deed restrictions, but one of the things the board does consider which is very important is whether the variance requested is consistent with development in the area so if the local homeowner's association has approved a structure, under their rules, there is not much issue as to whether or not that is consistent with development in the area because when the local homeowner's associations approve it, they have established that, yes, this is acceptable with what is going on.

Ms. Wilkes said it has been approved.

Mr. Lamanna said he would not say it has been approved.

Ms. Wilkes asked the board if they have them (deed restrictions).

Ms. Gallagher asked the board members if they would like a copy.

Mr. Lamanna said we do have a dispute here as to what they are and added that he does not have them.

Ms. Wilkes said you can't say they haven't been approved.

Mr. Lamanna said there is conflicting testimony and you are the applicant here so it is your obligation to supply the documents.

Ms. Wilkes said they were given to us on March 13th and that is the first time we heard from the homeowner's association.

Mr. Lamanna said they are recorded documents and you are charged with notice of what is legally recorded.

Ms. Wilkes said that is all well and good but it is been on our property since November 2007 and the first time they heard from the homeowner's association was on March 13th when she left us a package on the 13th to tell us about a meeting on the evening of the March 13th about their shed. She said the provision in the deed restrictions said, after 30 days, if they don't approve your plans, they are deemed approved and if the homeowner's association does not act in enjoined construction, the plans are deemed approved so we have the approval.

Ms. Gallagher asked Ms. Wilkes to show her where that is.

Ms. Wilkes asked Ms. Gallagher if she has them.

Ms. Gallagher replied yes and asked her if she wants the deed restrictions, by-laws etc.

Ms. Wilkes said whatever it is you say prohibits me from having the shed.

Ms. Gallagher asked Ms. Wilkes if she is an attorney.

Ms. Wilkes said yes she is and asked Ms. Gallagher if she has an attorney.

Ms. Gallagher said it is a very nice community and they have gotten advice from a lawyer on various things and added that she does not know if she has everything with her but she does not know if she has the actual architectural review document.

Ms. Wilkes asked the board if they would like to see the provision.

Mr. Lamanna said if you have it, yes.

Ms. Wilkes said Ms. Gallagher has it highlighted and presumably it is for us and submitted it to the board.

The board reviewed the provision submitted by Ms. Wilkes.

Ms. Gallagher said this is an application from a resident with the form that is requested, lot layout, where you want to place your shed or outbuilding and a copy of any mail from the title agent and who she sent all of this to on August 13, 2007 and added that no one called the shed to her attention until this point in time and asked the board if they would like to see the information from the title agent.

Ms. Wilkes asked what that was and if she could see it.

Ms. Gallagher said sure and added that this is typically how someone applies by filling out the form and having a conversation with us, showing us where they want to place the shed on their property, how much they paid for it and what the building materials are and typically that is how things are done and it works out very well and then hopefully this can be resolved in a similar matter.

Ms. Wilkes said they would not do anything to shirk the neighborhood, they love the neighborhood and they love their property and that is why they moved there and they went to great pains to build something in the best position possible on the lot, it is not in the middle of their front yard, it matches the house, down to matching the shingles on their house, they blended it in the best as possible and when the weather permits they are going to landscape around it and it is going to be terrific, so nobody is interested in disrupting the beauty of the community, that is why they moved here because we love it.

Ms. Gallagher said she is happy to hear that.

Mr. Lamanna said the deed restrictions from the board's standpoint are not valid, we are not here to enforce private deed restrictions, the issue is where and how this shed was built and whether it is consistent with other outbuildings in the neighborhood and that is part of the standard for reviewing it so that is the question that needs to be answered whether this location is consistent in terms of line of sight etc.

Ms. Sass asked if there are other properties in the neighborhood that have a similar situation.

Ms. Gallagher replied no.

Ms. Wilkes asked what Ms. Sass meant.

Ms. Sass said similar situations to the homes being situated basically in the center of the lot so any kind of outbuilding would by necessity have to be closer than the required setback.

Ms. Gallagher said no there would not be and this is a unique lot where the house is placed on the corner lot so that there would be a lake view from the front.

Ms. Sass asked if the shed is on a foundation.

Mr. William Pobega testified that it is on support blocks so it would be level.

Ms. Sass asked if it is not on a slab so the only floor is the floor of the shed.

Mr. Pobega said it is on skids and cement blocks and it is certainly nothing that you could pick up and recreate, it was built specifically on that location so it would be level and if we moved it, it would be un-level. He said they do have some pictures.

Ms. Sass asked if they are different than the pictures the board has.

Mr. Pobega said yes.

Ms. Gallagher said there are other places on the lot it could be moved and with proper landscaping it would not offend the line of site or view, you couldn't see it from the street and it wouldn't offend the neighbor.

Mr. Pobega displayed his photos as a power point presentation. He said this is the view as you are on the street and you first make a left onto Chase and if you were in your car driving to our house, this is what you would see. He said this is the view from the front of our house, if you drive a little more and pull into our driveway, this is going up our driveway, there is the shed and there is our gazebo so when she talks about proximity it is in the same proximity from the distance and in line with our gazebo and natural setting of the properties. He explained the location of their garage and gazebo and said as you can see in relation to the shed, the gazebo and garage and the house and added that these were taken last night. He showed a picture from their back porch looking out to the gazebo and shed and he was standing on his back porch.

Ms. Sass asked about the distance between the house and shed and asked Mr. Joyce, Zoning Inspector if he had any idea.

Mr. Joyce said he has not been to the property and no, he does not know but he could estimate it based on the 22' from the back line and the distance between the house and this is pretty close.

Mr. Pobega said it is a little closer to the gazebo.

Mr. Lamanna asked if there is a drawing of the lot showing where this is.

Ms. Wilkes said we put a little X on the drawing.

Mr. Joyce explained per the GIS map that it would put the shed 42' from the house and noted the angle.

Mr. Olivier asked if there is a watercourse behind the house or behind the patio.

Mr. Pobega said it is swamp and in a lower plane and almost like a lake.

Ms. Gallagher asked Ms. Wilkes and Mr. Pobega if there is any other part of their lot they would consider moving the shed to as far to the right of there to meet the regulations with some landscaping where it would not be visible from the road going up or down Chase, and what we are looking for is a resolution.

Mr. Pobega said he thinks it would be visible going up if we moved it anywhere and he does not know how they would even comply with that plus it would be a logistic nightmare to get a snow blower out of there or something like that and if we put it somewhere else he does not know how they would get the snow shovels out to shovel the walkway and it wouldn't be convenient if we moved it. He said they put it in the best location for cosmetics, logistics and fit, form and function is what they considered when they put it there and he thinks the only way to avoid this hearing is to put it in the front yard and obviously nobody wants that.

Mr. Lamanna said that is a violation of the statute.

Mr. Pobega said nobody wants that including us.

Mr. Olivier asked if there is a row of pines or screening or large shrubs that would make it less visible.

Ms. Wilkes said they have some ideas.

Mr. Pobega said they did the approach and when you come into Chase and you drive you up Chase and turn around it is not visible at all, coming down Chase the neighbors can see the shed just like they can see our house and that is a true statement.

Mr. Tom Hall of 8522 Chase Drive testified that he is the neighbor to the northeast, the next driveway, and from his home, he can't see the shed, but when he comes down the street, he can see it. He said one suggestion might be to put gravel in front of the shed to get the equipment out and the other thing is the landscaping around it.

Mr. Pobega said they are very good suggestions.

Mr. Hall said to keep it consistent with the neighborhood, they could try moving it closer to the house and if not leave it where it is at, he knows there are wetlands behind so that is difficult to work with but he would suggest landscaping and a gravel driveway in front of the shed to get the equipment out and it looks like it is quite away from the pavement right now.

Mr. Pobega said it is fairly close to the garage but it easy to get back to.

Ms. Sass said if it were to be closer to the house it wouldn't be as much of a hassle to get the snow blower and snow shovels and everything else out.

Mr. Pobega said it is not a hassle now, but if he moved it farther it would be a hassle, if he moved it closer, it would be un-level if it is not in that spot and it was built so it is level and if you look at it, it is level and it was custom built for that spot.

Ms. Sass said it could be custom built for another spot too then.

Ms. Wilkes said it still won't meet the setbacks.

Mr. Lamanna said the objective is to grant the minimum variance necessary to relieve the predicament and this is the problem when somebody comes in after the fact because if the board had looked at this before the fact the answer would be no, the board would not let you build it there, the board would make you move it in closer and farther away from the property line and probably in closer to the house a little bit which would alleviate the other issue and would make it a little less visible from the street so the board is in a difficult predicament because there is a structure already built and the board is in a position whether or not to grant this variance and there is certainly an ample basis not to do that and we are sitting here now trying to find a reasonable solution to deal with somewhat intractable problem.

Mr. Pobega said he thinks if they move it in, it would be more visible from the street and if they moved it ten feet in, it would start to become visible from the street.

Mr. Olivier said since the shed is there, could the board table this and let them work with the homeowner's association on a landscaping plan that would meet their approval and provide some relief from the sight line issue and bring them back.

Mr. Lamanna said that certainly would be helpful to the board, if the homeowner's association says that it is okay.

Ms. Wilkes said they have the approval and the board said if they are approved that has bearing and she has shown that they are approved.

Mr. Lamanna said he does not mean approved by lapse under the statute.

Ms. Wilkes said if we work with them on the landscaping, what is it do we need from them.

Mr. Lamanna said there is approval by lapse of time and approval by them looking at it.

Ms. Wilkes referred to the deed restrictions.

Mr. Lamanna said he did not care about the deed restrictions.

Ms. Wilkes said you did, the board said if there is approval.

Mr. Lamanna said approval means a conscious decision by the homeowner's association that says this is consistent with their neighborhood, the lapse under the statute does not prove it is consistent with the neighborhood, the act of review and approval by an architectural review board and their stamp saying it is okay, that is evidence and their act of approval is evidence that it is consistent with the neighborhood, that is the distinction he is drawing here so obviously if they come back and say yes, we are happy with this, it goes a long way to make the board willing to say, yes this is consistent with the neighborhood.

Ms. Wilkes said okay.

Mr. Lamanna said he does not want a situation with somebody saying they don't think this is not consistent with the neighborhood, this is a very large variance from 90' down to 22' the shed was built without getting approval so that is a big mountain to cross over here.

Ms. Wilkes said she does not understand how it is because everybody around has a shed.

Mr. Lamanna said that most people in Bainbridge have a shed that was built in compliance with the zoning.

Ms. Wilkes said there is no way the shed can be 90' off the line.

Mr. Lamanna said he understands that.

Ms. Wilkes said there is no one that says she has to comply with what the homeowner's association who says where it has to be moved to.

Mr. Olivier said the board has to grant the least amount of relief not the greatest, the board could give you 30' of relief and you would have to move the shed in and you could do that, there is a place for that.

Mr. Pobega said 10' in makes their case with the homeowner's association harder because now the visibility comes into play.

Ms. Sass said she thinks that is a point that goes to Mr. Olivier's recommendation or suggestion, do you want to take the time to see if there can be some kind of agreement with the homeowner's association whereby you obtain active approval and it is a win-win situation and that is your call as the applicant, if you choose not to, okay, then the board will consider those hurdles that we talked about.

Mr. Pobega said he would prefer to obtain approval from Bainbridge and then he would promise or whatever to work with the homeowner's association and his neighbors for landscaping and make the shed cosmetically or anything they want.

Ms. Sass said to keep in mind also that Mr. Olivier's suggestion might be a good one for you (Mr. Pobega) to consider, but she cannot suggest that you do so or encourage you to do so, however, another one of the actions Mr. Olivier said is if you move it in 30' or if you make the requested variance less substantial than it is, keep in mind, there could also be a no vote and which case you may be back to square one negotiating with the homeowner's association and coming back here.

Ms. Wilkes said she does not understand why.

Mr. Pobega said he thinks they are asking for a vote today and they will take the responsibility with the homeowner's association and that is their purpose here today.

Ms. Wilkes said they are willing to work with the homeowner's association and they want a vote.

Mr. Pobega said they are asking for a decision on their request.

Ms. Gallagher said she would just say that it makes the most sense to her to table it for now and let us work together on a reasonable agreeable solution and come back here hopefully with the homeowner's association's stamp of approval on whatever we decide to do here and then ask the board to make a judgment on this.

Ms. Sass said ultimately that is the applicant's call.

Mr. Lamanna said if they want, the board will act on the record that is before us now.

Mr. Pobega said he will be out of town for a couple of months and is hoping the board can act on it now but she (Ms. Wilkes) will be available.

Mr. Lamanna said the board does not have to do it next month, we can do it in two months.

Ms. Wilkes said we can spend a fortune in landscaping for someone to come up with another reason for us to come back again and keep coming back.

Mr. Lamanna said what we are saying is we can schedule this in two months and it will give you two months to work something out, you are still free to come back and say this is what we are willing to do, you can present to us what you are willing to do.

Ms. Wilkes said she does not understand why the homeowner's association has anything to do with the application sitting before the board right now, it is totally irrelevant because otherwise, the board would become the grand homeowner's association of every development in Bainbridge if we allow a homeowner's association to come in and make a judgment on our application when they have no standing to do so.

Ms. Lamanna said certainly they do.

Ms. Wilkes asked on what basis.

Mr. Lamanna said it is a different process.

Mr. Joyce asked Mr. Lamanna, if there were a ruling today and it were to be a negative ruling, would res judicata prevent a future action by the board that of course would be determined by the board itself as to what would be a substantial change or any minor shift one way or another could possibly be banned by the board's ruling on that.

Mr. Lamanna said yes, that will be a factor, if the board turns this down, the applicant's recourse would be to appeal it in the common pleas court and if you don't appeal it, the board's decision becomes res judicata at which point, you can't just move your shed 5' or 10', you would have to come back with what is deemed to be a substantial change to the prior application and you would really work yourself into a hole here.

Ms. Sass said she noticed that the home was built in 1993 so for 15 years, there was no kind of other accessory building.

Ms. Wilkes said somebody put the gazebo up and it wasn't us.

Ms. Gallagher said the gazebo was approved.

Ms. Sass said the question is whether your predicament can be obviated through some method other than a variance and your answer was that the shed is necessary for the use and enjoyment of the property and looks to her that for 15 years that necessarily wasn't the case by the previous owner.

Mr. Pobega said 15 years ago, people did not have the things that we have today.

Ms. Sass said but two years ago we did.

Mr. Pobega said if he didn't have a shed, he would have a big John Deere tractor that would sit out and be an eyesore for the community and he thinks their circumstances aren't anything like whoever was there 15 years ago, the shed is full of stuff that they need and enjoy to live in their house and maybe the owner before them had a lawn service and most people in their community have a lawn service, they do not, he enjoys some of that left brain activity after a 70 – 80 hour week, he enjoys taking care of the lawn and he ventures to guess that the people 15 years ago did not, that is the norm of the neighborhood.

Ms. Sass said she is not saying that 15 years ago it was determined that it would have been necessary for the use and enjoyment of the property and asked when they moved in and if it was 2007.

Mr. Pobega replied yes and said for example the people they bought their house from did not do their own yard or landscaping and added that he does that and said he can't stress enough that they did take every precaution, they believe it is in the best place and they will work with the homeowner's association but they are asking for a vote from the board today, they would like to leave tonight hopefully with approval and then take it to the homeowner's association.

Mr. Olivier asked the applicants if they have any landscaping plans or anything to submit that they are committing to doing the landscaping around the shed.

Mr. Pobega said absolutely and he will put it in writing. He added that their house was on the market from February until they bought it in August so it needs more landscaping than just the shed, the sellers didn't maintain it, they did not see the house until August and they bought it in August so there is a lot that needs to be done.

Mr. Olivier said that is general landscaping and there is no assurance on his part that the applicant is willing to work with the homeowner's association to make that less visible to the road or the neighborhood and he does not understand why there is this inability to work with them and come back in a month or two.

Ms. Wilkes said no one is saying we are not willing to work with them, we are absolutely willing to work with them, we just don't want to make the approval contingent on some type of resolution with the homeowner's association, we have put together our application, we have made our presentation this evening and we will swear up and down, we are absolutely going to work with the homeowner's association and we have planned to landscape around the shed and the back yard and front yard and all over the place.

Mr. Pobega said since November, they have been actively working on this to get the township's approval.

Ms. Sass asked if they were in Mr. Joyce's office in November and the shed was built in November.

Mr. Pobega said correct.

Ms. Sass asked how close of a time frame are we talking about and if they went in there during the course of construction.

Mr. Pobega said they notified us after it was built, immediately after within a day or two and Meredith physically went and sat in Mr. Joyce's office, but I wasn't there.

Ms. Gallagher said it seems to her that the board has a decision to make about giving these people close to a 68' variance because it is not meeting the 90' setback from the rear line and if they work with us and not get a ruling tonight, and work with us on a landscaping situation and a placement area, it could be exactly where they have it right now with landscaping that we (homeowner's association) feel obscures the view from neighbors and the road and we come back here and I give the homeowner board's approval, saying yes we know they are going to need a 68' variance but they are complying with shielding it with fir trees or whatever, the design is to obscure it from the road, then it is a done deal, however if they insist on a ruling tonight, you could ask them to move the shed 10' forward, left, right or whatever, but if they leave it where it is and work with us and we all come back to the board, everybody is happy, you would most likely leave it where it is which is their desire in the first place.

Ms. Sass said the board still has an obligation to consider the criteria that the board has to for the request under an area variance and she thinks the act of approval goes a long way, as Mr. Lamanna said, talking about the neighborhood compliance or the spirit of the neighborhood and does that mean that the board would, no, we still have a legal obligation to consider with the criteria that we have to consider so it would not be a done deal, but it does go a long way in the consideration.

Ms. Hannum asked Mr. Pobega and Ms. Wilkes if they built the shed themselves or did they contract it to be built.

Mr. Pobega said they had it contracted with Just Sheds, they are out of Medina and his Dad knows them.

Ms. Hannum asked if the company never brought up the fact they you need to get a zoning permit or did they say you need to get a zoning permit for the shed.

Mr. Pobega said it never came up.

Ms. Sass asked if a contract was signed with them.

Mr. Pobega said no, no contract.

Ms. Sass said there was no contract for them to build the shed.

Mr. Pobega said no, nothing written, no contract, nothing like that.

Ms. Hannum asked if there is a guarantee, if it fell down tomorrow you have no guarantee.

Mr. Pobega said the ir website mentions a guarantee just like when he buys a stereo, he does not sign a contract and asked if that is normal to sign a contract and added that it never came up.

Ms. Hannum said she did sign a contract so that is why she is curious.

Mr. Pobega said they are called Just Sheds and do swing sets also.

Ms. Gallagher said they are the same organization that her other resident who requested a shed purchased it from and he did not say whether or not he had a contract.

Ms. Wilkes said they have a receipt for it.

Mr. Pobega said they will come to an agreement.

Mr. Lamanna said he would rather see the landscaping plan before the board approves it and if it was a 20' variance, he would be more inclined to give a conditional approval and work out the details but he is a little leery of relinquishing any control or any review the board has of what is ultimately decided upon so that the board can make sure that it meets the statutory criteria. He asked Mr. Pobega if he understands what the board's problem is.

Mr. Pobega said he does.

Mr. Lamanna said what the board would prefer is that this be tabled until you come back with a landscaping plan in writing so the board can see what was worked out with the homeowner's association so the board can review it and the board can say with some comfort that yes with that plan we feel we can grant this and the drift is it is going to be turned down based on what is before us.

Ms. Wilkes asked because they didn't submit a landscaping plan.

Ms. Sass said no.

Mr. Olivier said there may be a less intense relief and you may be able to reduce that variance and get closer to your existing driveway and house and make it a lesser variance without a hardship.

Ms. Wilkes asked closer to the house.

Mr. Olivier said closer to the driveway and further from the rear line.

Mr. Pobega asked if that wouldn't make it worse.

Ms. Wilkes asked what it is they are supposed to come here for and how to make their application any better than it is right now.

Mr. Pobega asked if there is a budget or number he can throw out.

Mr. Olivier asked if 30' off the rear line is less workable or less amenable to the board and if there is a hardship to bring it in 10' closer to the house.

Mr. Pobega said he can't take it from the lot it is on now and move it to the lot it would be on, it is built correct.

Mr. Olivier said you could have come before the board prior to it being built.

Ms. Wilkes asked what additional information the board needs in the application to review so they can get the variance.

Mr. Lamanna said there are two things and one is what you are going to do with landscaping because obviously that ameliorates any line of site issues and any impact on the neighbor issues and those things and the second thing is more detailed facts regarding the difficulty or impracticality of moving this thing to another location which would reduce more than an immaterial amount the size of the variance we are talking about.

Ms. Sass said not necessarily moving it, but the inability to have placed it closer or further away from your lot line in the first place.

Mr. Pobega said you are asking me to call someone out, a crane or Bobcat to give me a quote to move that and he is sure it is going to cost him, at least \$500 to move it, then the logistics of the shed, he is going to have to hire Just Sheds to come out and re-lay it out because it is not going to work 10' closer and he is willing to have Ms. Gallagher hire the person, we will pay the bill and we are going to work with the homeowner's association, he just thinks it would behoove all of us to make a decision in Bainbridge today, he can hire somebody to give him a quote to rebuild the shed and it is probably going to be more than \$1,000 to do that. He said in his opinion, it is going to look worse, it is logic, it is physics, the closer you get to the road the more visible it is going to be, that is common sense, if he moves it 100' closer to the road it is going to be closer to the road, if he moves it 100' further from the road, it is going to be harder to see from the road so logistically any closer to the road is going to be more visible.

Mr. Pobega continued by saying the homeowner's association he thinks would want it farther away from the road, if he moves it 10' back for example, he does not think his neighbor will be able to see it, or 20' back, then he will have another neighbor issue so again, moving it closer will be more visible from the road.

Mr. Lamanna said the board's concern is as far as visibility from the road goes is much less, it is not really that big of an issue, it is somewhat of an issue from consistency with the neighborhood but the board's issue is we are not going to say to increase the encroachment because it makes it somewhat less visible from the road, the board's tendency is just the opposite, we don't care if it is a little more visible from the road, we do see encroachment.

Mr. Pobega said their problem is less visible from the road, be further away, less of a request for a variance would be closer to the road, we are right in that middle ground.

Mr. Lamanna said the answer may be when you look at this thing is if you move it here or there, this is going to happen so if we come up with a landscaping plan and this is what it is going to accomplish, the board can look at it and say whether it makes sense or does not make sense, the board will have something concrete to rule on and on other circumstances the board has requested landscaping plans to be submitted and if the zoning inspector finds it is okay, the board will grant it but those cases are when somebody has a 10' variance, not a 68' variance so it is tougher for the board to send these off here and he does not want to end up in a situation and say okay, do this and work out something with the homeowner's association and then you come back in two months and say you could not work something out, we would have to hear it anyway.

Ms. Wilkes said it is putting us in this position to make the board happy we will have to go head to head with the homeowner's association.

Mr. Lamanna said you will do that anyway, one way or the other.

Ms. Wilkes said no because if you give us a variance, we will landscape it beautifully and we will not be head to head with the homeowner's association.

Mr. Lamanna said the smartest thing to happen here is this should be tabled for a month or two months, whatever is convenient for you, so tell us what date works for you and come back with a plan, submit it to us and then the board will deal with it and we will have before us a way that we can act on it otherwise it is going to be turned down and then are you going to go and appeal it.

Ms. Sass said that is your decision.

Mr. Lamanna said it is going to get turned down and you will have to go and appeal it.

Ms. Wilkes said if that is what she has to do, that is what she will have to do, she does not understand what basis you reject this variance, she does not know how to make it any better and if it is a matter of a landscaping plan, okay, we still need the 60 plus feet.

Mr. Lamanna said then the board would have something on which to base the variance on and making the appropriate findings of fact.

Ms. Wilkes asked where in the application does it say we have to submit a landscaping plan and what notice do we have to do that, we don't have any notice to do that, you ask for very specific information in your application and we gave it to you so why the landscaping plan and what basis do you have to reject this application, I don't think you have a basis to reject this application.

Mr. Lamanna said this application is to assist people in applying.

Mr. Wilkes said you have secret criteria.

Mr. Lamanna said there are no secret criteria, just look at the case Duncan versus Middlefield and you will learn exactly what the criteria are or look at the zoning ordinance and you will see exactly what the criteria are.

Ms. Sass said the reason why it doesn't state that you need to have specifically approved landscaping plans, what Mr. Lamanna explained earlier is, the criteria that says whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance to the extent that there is a plan in place, where you and the homeowner's association, where you obtain that active approval, that goes much farther in establishing this particular criteria and that is the point she thinks Mr. Lamanna is making.

Mr. Lamanna said that Ms. Sass stated that very well and that is why the landscaping plan goes to that criteria which frankly is the most important criteria in these applications.

Ms. Wilkes asked if the landscaping plan is the most important.

Mr. Lamanna said no, the criteria for the consistency with the neighborhood and the impact on the neighbors.

Ms. Wilkes said you saw the photos.

Mr. Pobega said his suggestion is he would like the homeowner's association, specifically Ms. Gallagher, to hire a landscaper and landscape his shed, he will pay that bill, that is their landscaping plan, carte blanche, right here under oath.

Ms. Gallagher said within reason, not carte blanche.

Mr. Pobega said not carte blanche, but he is sure she has great taste, we are going to landscape it, God as my witness, Easter weekend. He said he really would like the board to approve the variance.

Ms. Gallagher said and stand the chance of denial.

Ms. Sass said everyone that is before the board would like us to approve their variances, but the board has to consider the legal criteria.

The board discussed this application.

Mr. Lamanna asked the applicants if they want the board to act on this as it sits right now and added that the board is not comfortable in leaving this thing open and this is going to be denied based on the record before the board now or we can table it until our next meeting the subsequent month and deal with a concrete plan.

Ms. Sass asked Mr. Pobega how long he is going to be out of town.

Mr. Pobega said it is undetermined, he works for Eaton Corporation so he will be making multiple trips so he does not know, it will be in and out but Meredith will be available, he may be out of town and asked where this is.

Mr. Lamanna said it is your call, the board will act on the application as it is or we will table it until you think there will be a better situation when we return.

Mr. Pobega said we understand, Ms. Gallagher and I will be coming back with a landscaping plan sometime in the near future.

Ms. Sass asked Mr. Pobega if when he contacted the shed company, if he told them where he wanted the shed or did they tell you where the best place would be to put it.

Mr. Pobega said he told the company where to put the shed.

Mr. Lamanna said any further evidence as to why it is where it is would be helpful, like topography, trees in the way and that is helpful to the board, low lying areas, watercourses etc.

Mr. Pobega said they can supply different pictures etc.

Mr. Lamanna asked Mr. Pobega if he could try to have a little more detailed drawing and try to take some actual measurements from each location like the house and the driveway and that would help a lot.

Mr. Pobega asked if has to hire a surveyor.

Mr. Lamanna said no not a surveyor, he thinks this is a decent location survey here but what he would like is if somebody actually goes to the corner of the house and measures from the point of the driveway and what he does not want to do is grant a variance and find out it is not the right number, because the applicant is in trouble and then the board has to re-act on the application again.

Mr. Pobega said then he may need a surveyor.

Mr. Lamanna said no, you need a tape measure to get some good measurements.

Ms. Gallagher said Access Geauga has some tools on there.

Mr. Lamanna said they have a location survey here the board can use and with some good measurements but he does not want to be off 10' and explained about another case with an inaccurate drawing and the board had to re-hear it. He asked the applicants if they would like it next month or the month after or leave it open and let us know ten days beforehand.

Mr. Pobega said they would like the April meeting and put it on the docket.

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

Motion BZA 2008 – 2 – 8510 Chase Drive

Mr. Lamanna made a motion to table this application to the next regularly scheduled meeting to be held April 17, 2008.

Mr. Olivier seconded the motion that passed unanimously.

Vote: Ms. Hannum, aye; Mr. Lamanna, aye; Mr. Olivier, aye; Ms. Sass, aye.

Application 2008-4 by Kenneth Lauer for property at 17372 Snyder Road

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

The zoning inspector's letter dated March 20, 2008 was read and photos of the site were submitted.

Mr. Matt Lauer, son of the applicant was present to represent this application.

Mr. Lauer testified that the house is actually on both properties.

Mr. Lamanna said there are too many out-buildings and the board has seen this before where the out-building was going to be built on another parcel and explained how the board handled it.

Mr. Lauer said they are going to take down one of the smaller sheds and we will move the stuff from that shed into the new building.

Ms. Sass said that helps a lot.

Mr. Lamanna asked if there is any reason not to merge these two lots together into a single parcel.

Mr. Lauer said it would cost \$1,000 to have a survey done and you have to have a survey to do that and he can't see one of the lots getting sold without the other one because the house encroaches onto it.

Ms. Sass said the concern she always has is and a practical one is that what if for example on the lot that has a teeny square of the house on it and the taxes aren't paid and the auditor decides to foreclose, would they foreclose on a teeny sliver or portion of the house which is an issue and chances are it would be very slim for that to happen but it can happen.

Mr. Joyce testified that it did happen in Kiwanis Lake.

Ms. Sass said it can happen, that is correct so merging them up in addition to removing one of the out-buildings it would not be an issue.

Mr. Lauer said they still need a variance from the side yard or location of the building. He explained there are two sections and one building and it is L-shaped.

Mr. Lamanna said the garage is counted as the other building.

Mr. Lewis said there is a garage and a shed.

Ms. Sass asked if the small shed is the one that is being taken down.

Mr. Lauer replied yes.

Ms. Sass said you alleviate the problem if you connect the house with the garage by virtue of a breeze-way, it would be a covered sidewalk.

Mr. Lauer said okay.

Mr. Mark Pfouts testified that he is here with Mr. Lauer and said the board just mentioned multiple out-buildings but there are many properties on this street with multiple out-buildings so he does not see that that is a tremendous issue.

Ms. Sass said they could be pre-existing before zoning.

Mr. Pfouts said he knows that his father got permits six years ago and he has multiple out-buildings and that was approved without any variances.

Mr. Lamanna said this is a big building.

Ms. Sass asked if the building is not being moved back to be in compliance because of the existence of the other shed right now.

Mr. Lauer said no, there is a creek going through there, the septic tank is located in the area between the shed and the house and the entire septic system is in the back yard.

Mr. Lamanna said it could be placed where the existing shed was.

Mr. Lauer said it would be right in the leach field.

Mr. Lamanna asked if any of the neighbors are here.

Mr. Lauer said they talked to the neighbors and nobody has a problem with it.

Ms. Sass said they all would have received a notice and they are not here.

Mr. Lewis asked if this is not a homesite and it is a lot of record.

Ms. Sass said yes, correct.

Mr. Lewis asked if there is a picture or rendering that shows the proposed building.

Mr. Lauer said it is not going to be bigger than the house and showed the board a view from the street, the structure itself and cross-sections.

Mr. Lamanna said it is a big building and 26' high.

Mr. Lewis said it is 2700 sq. ft. and 26' tall and 25' off the property line on a lot without a primary residence on it.

Mr. Lamanna said if it were a two story house, it would be a 5,000 sq. ft. house on a 300' wide lot.

Mr. Olivier asked if there is a second floor or will there be an opportunity for living space up there.

Mr. Lauer said no, it will be for storage.

Mr. Lewis asked what they will be storing in this building, tractors or cement mixers, etc.

Mr. Lauer said his Dad is into antique cars and he is into antique tractors.

Mr. Lewis asked if they have a lift to get them to the second floor.

Mr. Lauer said no, the second floor will be like a loft for storage.

Mr. Lewis said if these lots get joined, this whole structure could be moved off the property line into another area, there is a lot of room there, they seem to be pushing it to the right to avoid building on the actual lot property line and he has a lot of concern about creating a very significant non-conforming lot of record with a structure on it without a primary residence.

Mr. Lauer said that land falls off.

Mr. Lewis said this is not a second structure on this other property that has a house on it, this is a structure on a property with no house on it.

Mr. Lamanna said the lots can be merged and if we can get it over to that line it gets it up to 42' with an 8' variance.

The board discussed the application and the variances requested.

Mr. Lewis asked if the area is treed.

Mr. Lauer said yes it is all woods.

Mr. Lewis said he realizes that CVAC is behind it but he still wants to take it into consideration because this is a really substantial structure and even though they are not a residential property he has a concern. He said a lot joining takes care of a nonconforming property.

Mr. Lamanna said if the house is already in question, let's straighten this thing out. He told Mr. Lauer that the board will give him an 8' variance so the building will have to be moved over.

Mr. Lauer asked how many feet it will have to be moved over.

Mr. Lamanna said if he goes by the front corner it looks like it will have to be moved 17'.

The board discussed the proposed setbacks.

The board took a short recess.

Mr. Lauer returned from calling his father and said his father brought up one point that he did not know about and that is they have drainage under the drain tile running through here and that is the reason he didn't move it over anymore and that is where the lot naturally drains down and the drain tile is actually running through that area now so it would be a lot tougher and more expensive to move it in.

Ms. Sass asked Mr. Lauer what his father said about merging the lots.

Mr. Lauer said all of the neighbors have out-buildings.

Mr. Lamanna asked where the drain tile is.

Mr. Lauer said the drain tile basically runs right along the line and showed where the drain tiles are by referring to the site plan.

Mr. Lamanna said it is more of a surface drain.

Mr. Pfouts said they were going to build up the grade and can't build it up to the edge of the building.

Mr. Lewis said moving pipe and soil is pretty easy, it is all how bad you want the structure.

Mr. Lauer said they would be changing a lot of grade there to alter it to drain it somewhere else.

Mr. Lewis said he does not see any evidence of that yet.

Mr. Joyce said the contour lines are on the screen and explained what the lines indicate.

The board discussed the drop off to the back.

Ms. Sass asked Mr. Lauer if his Dad will need to act on this right away and would he be willing to provide additional information on the drain tile etc. and come back.

Mr. Lauer asked if it would have a direct effect on yes or no.

Mr. Lewis said not necessarily from our point of view.

Mr. Lamanna said the board is inclined to give you a variance of 42' but if you come back and say you need a couple of more feet because of the drain line there, fine but to do that, the board needs to know exactly where that drain line is so we can decide what the variance is and 25' with a structure this size is not going to fly, it is too big of a structure but he thinks if it goes beyond 30' it probably will be okay, we are going to want you to merge your lots together and you will have to get rid of that shed once the building is up.

Mr. Lauer said or we can combine the house and the garage with a breezeway.

Mr. Lamanna said the board will work with you, come back and bring us a drawing, get some measurements and find out exactly where the drain tiles are. He said if you have something that actually shows where the leach field is it would be better.

Mr. Lewis said the lot will probably have to be surveyed anyway and that is also going to give you a baseline to find out where that drain tile is unless you can locate the pins, you will be guessing on your point of measure.

Mr. Lamanna said it might make sense to get a surveyor to survey the property.

Mr. Pfouts said if we know where the pins are, we can measure.

Mr. Lamanna said you have to accurately know where things are with something of this magnitude, we are not talking about a 10' x 10' shed but this is as big as most of the houses along here.

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

Motion BZA – 2008-4 – 17372 Snyder Road

Mr. Lamanna made a motion to continue this application to the next regularly scheduled meeting to be held April 17, 2008.

Ms. Sass seconded the motion.

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

Application 2008-3 by The Montefiore Housing Corporation for property at 16695 Chillicothe Road

The applicant is requesting a conditional use permit for the purpose of expanding a residential care facility. The property is located in a R-3A District.

The zoning inspector's letter dated March 20, 2008 was read and photos of the site were submitted.

Mr. Dale Markowitz, attorney for the applicant, Ms. Arlene Manross, Executive Director of the Weils, Ms. Lauren Rock, President of Montefiore Housing Corporation and Mr. Ed Gembka, Project Architect were present to represent this application.

Mr. Dale Markowitz testified that he is here on behalf of the Weils of Bainbridge which is an existing residential care facility that was approved in 1999 by this board as a conditional use and since that time in October of 2006 we came back to get a conditional use approval for 21 skilled nursing beds which this board approved and it was approved subject to certain conditions which we are still trying to meet. He said they have still not built the skilled nursing facility because when they were ready to go, they determined there was a need for some more residential care facility beds and we determined that we need eight beds and six more rooms so we have got that addition on our site plan which before we had these wings coming out here for the skilled nursing beds, we kind of closed it off here, (he referred to the site plan), and we actually brought the corner down a bit so this piece here is further away from E. Craig than it used to be, it is not a significant difference but it is a little bit further to the south. He said they have the ownership of the property which they gave it Exhibit D, which there is no A, B or C by the way and it is called Exhibit D because it corresponds to paragraph D of the zoning application but his clients have owned title of the property and have been for a number of years and they have gone through all of the criteria in the code and many of the things they were required to provide, they gave them to the township as they became available, some with the application and some after which he will go through in a few minutes. He said they have their certificate of need for their skilled nursing beds and they need to move forward now to build the building so they don't lose their certificate of need so timing is important to them but they also thought it would be cost efficient and effective for the eight beds for the residential care to be constructed at the same time. He said he has with him tonight Arlene Manross who is the Executive Director of the Weils of Bainbridge and Lauren Rock who is the President of Montefiore Housing Corporation to give a little bit of an explanation of what they are doing and noted that Ms. Manross will make the presentation and answer questions. He said all of the conditions that the board has imposed for this facility, they are in compliance with and all of the things that were asked of us to do to build the skilled nursing facility, they are still planning to do with one possible exception which he will explain but that is something that would depend on the fire department's review of their water pressure. He said there are no variances required for this project, they are still meeting all of the setback requirements and they are way below their maximum lot coverage, they are at about 20% and with this new addition, they still have about four more acres of land that they could add buildings and driveway etc. so they still have a lot of space. He said they are meeting all of the setbacks from the riparian and wetland areas and there are no new impacts to the wetland areas or streams. He said they have a traffic study update that they did, Traff-Pro did one for them when they did the addition, they thought even though they were only adding eight beds, they thought it would be worthwhile to explain to the board, there is no more traffic added with eight beds so as part of their plan for the skilled nursing facility, their traffic experts determined that they needed a left turning lane off of Rt. 306 when you are going southbound when turning into the facility and that is still going to be built for this project and they determined that there was no other traffic improvements required as a result of that.

Mr. Markowitz continued by saying they have sewer and water services available to the additional beds, Mr. Saikaly sent a letter at their request to confirm that and Mr. Joyce has reviewed all of the area and yard requirements. He said they had a landscaping plan for the skilled nursing facility that was approved and they plan to use that same plan because there isn't a whole lot of difference with the new addition and the landscaping that they did is going to cover the area where this new addition is going to be built so there will still be the same buffer for E. Craig on the north and they still have the same lighting plan in place because the driveways and entrance are all the same as before. He said the one issue that came up regarding the floor plan for the new facility, they questioned whether they still needed to have a fire pump or water pressure booster for the firefighting that would go on in the building and in particular the wet standpipe in the building and their construction consultant Darrell Young determined previously after they got their last approval that when they did hydraulic calculations that putting in the booster pump wasn't needed and it wasn't going to provide any more water flow than they were going to have without one so he asked if this was explained to the fire department and was told that it had been and we checked and it had not so we had our two consultants prepare a plan and the hydraulic calculations and we just got it yesterday and he gave it to Mr. Bill Lovell tonight and he has not had a chance to review it, he is not an engineer so he can't say yea or nay to that so what their plan is to say to the board that they expect to have their engineer work with the fire department and hopefully the county building department's consulting engineer to go through it and let them determine if the booster pump is needed and if it is we will put it in, if they determine it is not necessary then they can save a significant amount of money for the client so we ask that one of the conditions that the pump will go in if the fire department requires it. He said what Mr. Lovell will tell you is that the residual water pressure has gotten a little bit worse from the last time we were here, so he does have that concern and we will address that with him. He said there is a bigger concern for all of the commercial area on E. Washington and Rt. 306 that Mr. Lovell talked about last time and that is still an issue that the county has to resolve. He said they also have met all of the other requirements in the code when they did the skilled nursing facility addition and they also put the same requirements in for the residential care facility such as providing access to the rear of the building which we have, we have the wet standpipe in the building, they have a remote enunciator panel for the fire department and they have a repeater communications system which you required us to put in the skilled nursing facility and we will have that in place with this addition. He said there is a new communications tower that is being installed in the township and in checking with the fire department we determined that would not be able to improve communications within the building sufficiently to avoid the repeater system so we are still going to put that in. He said the storm water plan for the skilled nursing facility was approved by the Geauga County Soil & Water and they will submit a new grade plan and a soil and water pollution prevention plan to the county soil and water and we would expect that the board would do the same as the skilled nursing facility, condition the permit on satisfying the requirements for Geauga Soil & Water on the plan for the revised project. He said they agreed when they did their last addition approval that the additional building would be included in the evaluation calculation of the payments we will make in lieu of property tax.

Mr. Markowitz said for those of you who were not on the board the time when they got their original approval they were not sure whether they would seek an exemption from real property taxes, it depends on how they wanted to treat our facility, we did say that if we get lucky to be exempt from real property taxes, they felt that they should still pay to the township the taxes that the township would have received if they were not tax exempt and they followed that same pattern with the skilled nursing facility and they certainly agree that the additional that they will be seeking approval for tonight that the added value of that building be included in the calculation for the amounts they pay in real property tax to the township and they recognize that there are significant services that the township provides, we value that and believe that we should pay for that so we consider that as one of the conditions of our permit. He said that is all he has and Ms. Manross will give a background on the facility, the services, what we provide to the community and Mr. Ed Gembka, Project Architect is here to go through the site plan and floor plan, grading plan and landscaping plan and if the board has any questions from him, he will be happy to answer them.

Mr. Lamanna asked how this relates to Phase II, originally there was talk of a Phase II and will this affect this at all.

Mr. Markowitz said yes it does because when we talked back in 1999 we came in with a second phase of 75 units and what they have determined is, it was better to put some of these residential care beds back where the skilled nursing beds are going to be because we think it will be more effective for the kinds of services that these beds will fill the need for. He said when they come for the next phase, it is a guess, it will be for a larger number of residential care beds but it is only a guess at this point, because they don't know. He said the expectations that he has based on what he has seen from all of his clients that he works for, our population is aging and there is a greater need for assisted living and the likelihood is that we will find the need for more beds in a shorter period of time than it took to fill the first 75 rooms so the expectations will come back for maybe 30, 40, or 50 more beds then getting them closer to their maximum, depending on how this lays out whether they will end up getting them or not.

Mr. Lamanna said so this is just basically an interim thing, in the future there is still a possibility of a more sizable expansion like we were talking about.

Mr. Markowitz said the 21 skilled nursing beds come into that also so every time we come back, it will end up being less.

Mr. Lamanna said there is still the possibility for a fairly substantial addition with 60 beds etc.

Ms. Arlene Manross testified that as Mr. Markowitz explained, the Weils originally was 75 suites which are full apartments and we were fortunate to be able to purchase some skilled nursing beds from Geauga Hospital and as a result of that we were able to add the skilled beds and as we looked at that we thought it would be wise to add these eight additional beds, we would have people who might need more care, they are still qualified for our assisted living but they need more care so by attaching those eight beds to the skilled area, we would be able to provide better service to them because they would be in the area where there is more care given and so that is really what is motivating them at this time. She said right now they have about 85 residents in the building and the reason they are in 75 suites is because some are couples and they do have two bedroom suites and they can run pretty much full most of the time and about 20% of those residents do come from the Chagrin Valley and timing in this issue is very important because their skilled nursing beds are covered by a certificate of need through the Ohio Department of Health and in order to comply with their requirements for building, we only have a limited time frame so that is why they are anxious to get approval at this time. She said when they build these residential care beds, they will also be licensed through the Ohio Department of Health and with all of those regulations which are very strict. She said they do provide different kinds of services to the community, we have people who come to us because of age or illness who can't manage on their own anymore so they might need help with bathing and dressing and some are on a medication pass or room care, just basic issues of daily living and they provide that ongoing care on a long term basis for many of them but we also have people who might have a need to only come to us for a short period of time because maybe they have been sick and are getting over an illness and they only need our help for a few weeks or maybe they are at home with a spouse and the spouse has to go away and can't be on their own so they come and stay so we provide both short term and long term care but we also have residents who live with us who are very independent but they would rather live in a group setting where they have a social life where a chef prepares all three meals and they can sit in a dining room with friends instead of being home alone and even though they may drive cars and go to work, they like knowing that we do their housekeeping, we do their maintenance, provide them with activities and there is a nurse there and caregivers 24 hours a day so if something happens, they have immediate access to help. She said they also have transportation for all of the people who are with them, we have cars and vans and five vehicles around and we do provide transportation for everyone that lives with us. She said Mr. Gembka will talk about the facility that is designed and it is harmonious and appropriate in appearance with the existing facility and we are only adding eight beds to what was approved before and a few treatment rooms so it is a minor expansion but one that we think will be very valuable to the residents who live with us and it will be just built in conjunction with the skilled nursing facility.

Mr. Ed Gembka, Project Architect testified that as Mr. Markowitz had gone over, we are looking to add about 6,000 sq. ft. to the area that has already approved and showed the area on the site plan and we are connecting to the existing facility in the same manner as before, they are adding eight beds and six rooms to the existing 132 beds that are approved and 96 rooms that are currently approved. He said they have a 100' setback and their proposed addition will be 110' back and will be 674' from the east property line.

Mr. Gembka said they are adding 12 more parking spaces than their last submission, they are maintaining three sides of access around the building for fire, the sprinkler system will be tied in as a singular system and the fire alarm system will also be all tied into one and will have an enunciator panel. He referred to another site plan and said it shows the detention areas in the front and on the side they need to put in a retaining wall and will not disturb the wetlands and the building will be 6' away from the retaining wall and explained per the site plan the location of the retaining wall and wetlands. He referred to the landscaping plan and said it shows the proposed addition, retaining wall, additional trees that will be added and some of the additional landscaping. He said the overall appearance of the project will blend in with the existing two story building, it will have the same façade, same siding, shingling, and the same color will be on the new addition and from the plans you can see the last approved skilled care component and the parking had to be modified in order to add the six additional rooms and support services for those eight residential care beds and in the end they are required to have less than 1.5 beds per room and with the 140 beds, they are 1.37 beds per room. He showed where all the resident rooms were, the dining area and how they connect and added that there has to be a fire separation, a two door to connect back to the facility and where the enunciator panel is and the where the sprinkler room is.

Mr. Lamanna asked if the increase compared to the last, the 21 bed nursing part is basically added onto the end.

Mr. Gembka said yes and showed on the site plan the limit of the last approved skilled nursing facility.

Mr. Lewis asked how long the retaining wall is and how high it is.

Mr. Gembka said it is approximately 8' tall and about 8' long but it will taper.

Mr. John Miller of 8621 E. Craig Drive asked about the retaining wall.

Mr. Gembka said the retaining wall is set as to not disturb the wetlands.

Mr. Miller asked if it will affect the wetlands because the water that normally drains towards the property no longer will drain and will have to find a new way.

Mr. Gembka said not necessarily because they are not changing any of the grade within 6' around the wetlands itself.

Mr. Miller testified that the retaining wall will be concrete and nothing will penetrate it but if it was earth we know the rain comes and penetrates the earth.

Mr. Gembka said it still does that.

Mr. Miller asked how it would get normally towards the property through the wall.

Mr. Gembka said usually in the retaining walls there is a relief that is put in every 10' or so to allow any water through the retaining wall and everything comes around and drains out the same way it had before.

Ms. Michelle Miller asked if the water will be flowing from the wetlands towards the grade.

Mr. Gembka said there is a natural ridge up here from 205 going up to 210, 211 and all that grade stays from this wall over so there is a natural ridge here anyway and there is a depression that sort of allows the wetlands to occur.

Ms. Barb Drowlette of 8672 E. Craig Drive asked what kind of trees will be planted there.

Mr. Gembka said they will be planting the same kind of evergreen trees approximately 5' to 6' tall and there should be trees on this area right now and we are adding a small amount to match the existing ones.

Mr. Mark Vanek of 16646 Mohican Trail asked what is the proposed Phase II and where would these four acres be of the remaining amount of land and asked if they only have four acres left to build on.

Mr. Lamanna said there is a maximum lot coverage for this use so once they reach that coverage, they cannot expand anymore and anytime they want to expand, they have to obtain another conditional use for that expansion but the maximum they can go to without them seeking a variance is under the zoning and there would be that much potentially available.

Mr. Vanek asked where the four acres would be.

Mr. Gembka said they looked into a number of areas but the most reasonable would be up in this area (he referred to a site plan) in the front, obviously away from the setback line. He said they also investigated some in the back but would have some difficulty bridging the stream and clearing the area back there so more than likely it would be in the northwest area.

Mr. Vanek said but if you did put it in the back part of the area, you would come up Rt. 306.

Mr. Gembka said yes there is always going to be that drive.

Mr. Lamanna said there is no other access and as a practical matter they would have to build up that area, it is a low area and every time you extend your road, all of that road is eating into the space that you could otherwise use.

Mr. Gembka said and the utilities would have to get all the way back there.

Mr. Lamanna said there are a lot of negatives to going to the back.

Mr. Gembka said there would be a lot of difficulties building back there.

Mr. Lee Drowlette of 8672 E. Craig Drive asked what the buffer distance is to the wetlands.

Mr. Markowitz said there is no buffer requirement, there is a riparian setback buffer that the township has but we are not impacting the riparian.

Ms. Drowlette asked if they are planning on building more along the back of E. Craig where we all live and asked what that setback is.

Mr. Lamanna said there is a 100' setback along the whole property.

Mr. Gembka said they have to maintain some sort of a buffer zone, either landscaping or earthen mound.

Mr. Joyce brought up the aerial map on the GIS.

Mr. Vanek asked what kind of illumination will be back there and from his standpoint it is not bad and asked if it will be changed drastically by adding this building.

Mr. Gembka replied no.

Mr. Joyce said light trespass is not allowed.

Mr. Gembka said the lighting will just be around the parking area and the lighting was approved in their last permission for the skilled care, they are not adding anything more.

Mr. Vanek asked if there will be a change to the illumination much more than there is now.

Mr. Gembka said no, it shouldn't be because there is an earthen berm about 10' tall with trees on top of it.

Mr. Vanek said he is towards the back.

Mr. Gembka said it has full cut-offs it should not be noticeable otherwise bring it to the Weils' attention.

Ms. Drowlette asked how tall are the trees that are being planted because she can see the ones right now during the winter and she does not see any evergreens and asked how tall the new trees will be, maybe two feet.

Mr. Gembka said they are proposing 5' to 6' Norway Spruce and Austrian Pines.

Ms. Miller testified that the only trees she can see are her own this time of year.

Mr. Markowitz said the spacing of the trees is designed so that as they grow and get bigger they don't strangle each other because if you space them too close to give you cover now, they will die.

Ms. Miller asked if the trees are fairly young then.

Mr. Dale Markowitz said some of them were put in 2001.

Ms. Miller said then there is still a lot of growth.

Mr. Markowitz said those trees should grow to 40' to 50' tall.

Ms. Miller said that is why she asked how young they were and they are fairly small.

Mr. Markowitz said those trees were 5' – 6' and the calipers were 4" – 5".

Mr. Gembka said the calipers would not be more than 3" when they are planted but you can see the existing trees there on the mound and they look like they could grow a little more.

Mr. Joyce said Blue Spruce trees grow about 6" per year.

Mr. William Lovell, Assistant Chief for the Bainbridge Township Fire Department testified that he had a couple of questions. He asked Mr. Gembka to go back to the floor plan. He said in here, all of this was addressed but the question he has is there was a recommendation to move the laundry units to another wall and asked if that took place.

Mr. Gembka replied yes.

Mr. Lovell said the reason we were concerned about that is facilities like this have a lot of fires and there can be lint build up and you can learn from your own residences the same way so that was the one question. He said you are calling those residential beds and they are nowhere in a close proximity to the rest of what he would call residential beds and asked if he is not understanding how this is working, the whole facility right now is residential beds and then you are putting some more similar beds on the opposite side of the skilled nursing with the intention that they could be utilized for more than skilled nursing.

Ms. Manross said the residents who are there now live in apartments, everyone is in an apartment that has a full kitchen, washer & dryer, living room, bedroom, etc. and that is great when they need some assistance but not total care. She said in these beds there will be a single room, not an apartment, if you have apartments you have a long distance between because of really long hallways and in this instance you will have eight people living in a very accessible hallway where you can see them all of the time, you can monitor them all of the time, your staff can get easily from one room to the other so for someone who is aging or disease process is progressing to the point that they need to be watched more carefully, then these residential care people are placed where they can still get care on the property but they would be more easily accessible than they are in the current apartments.

Mr. Lovell said so they are not classified as assisted living.

Ms. Manross said yes, they are still assisted living and they are within the scope of what we are allowed by the Ohio Department of Health to take care of as far as an assisted living setting.

Mr. Lovell said this is just his understanding whereas the other is skilled nursing.

Ms. Manross said right.

Mr. Lovell said hypothetically speaking, you have all of the skilled nursing units filled and now you have a person that is in one of the other beds that requires that.

Ms. Manross said they would have to send them out.

Mr. Lovell asked what the criteria is.

Ms. Manross said for instance if you have a feeding tube, a patient with stage three or greater, you have by residential care laws if they are bed bound, totally bed bound without hope of getting better, she can't keep them anymore, there are regulations like that that tell them they only can keep them for 120 days and they have to send them to a skilled facility unless they are on Hospice and we know they are in that dying process, then they would still have to send them out but those are all by the Ohio Department of Health so the kinds of things they are talking about are the kinds of things that they are allowed to do by the department of health.

Mr. Lovell said for the board he requests that when and if you make approval of this, to make sure that the wording is in there that we need to be satisfied with the water concern as you can see by my letter there and we need to solve that issue for more than this facility, we need to solve the issue for that whole area but we certainly don't want to allow structures that cannot be served by adequate pressure and as long as we are satisfied with the calculations and it needs to be somewhere in the board's approval if it is approved.

Mr. Lamanna said you can be sure that it will.

Ms. Drowlette asked if there will be an Alzheimer's section, they might wander.

Ms. Manross said they do not specialize in Alzheimer's sometimes we have people who have been there for five years and sometimes they may have some confusion but we would move them on to Arden Court or another facility that specializes in Dementia.

Mr. Miller said he has a petition, he walked E. Craig and got 39 signatures and has pictures of the north side and south side of E. Craig. He submitted the copies to the board. He said he has been here before and the situation with the 21 beds and added that all of those homes but one home signed a petition to ask this not to happen. He said they have issues with drainage and it occurs many years and there is photography here that shows that and he knows that they have talked to the Weils and they said just call us, we will take care of it, he has also talked to the trustees three or four times and we are trying to come up with a resolution for this and he believes that sometimes we move along a little too fast to advance and do business. He said he understands that this is for the elderly and it is a business to make money and we live here and it is our residence and that is where we live and that is what we have to deal with and have all these concerns. He referred to the septic field map and said these properties on E. Craig are in the severe category and that is where all the flooding is happening and with his property when it floods, they can't flush the toilet and one thing he noticed that on January 4th, the town hall was closed because they did not have any water so they closed the township hall, what do I do when it floods and I don't have running water or our neighbors, that is the concern he has and the 39 people on that list. He said what he is asking for, let's figure out what we need to do to eliminate current and future flow problems with the water and then move along to making these changes, additions, etc. it is a developing environment, these things are going to happen and as stated, people are getting older, they are living longer so you are going to need more facilities like this. He asked if there are any questions on some of the items he handed out.

Mr. Lamanna said the question is what evidence is there that this is originating with this adjacent property.

Mr. Miller said the people he is talking with have lived here for 30 years and they haven't had these issues until they built the Weils and the people I bought the property from, they left me some notices to make sure the light does not exit into our property and they had requests put in to put shields up to cut off the pollution into the East Craig properties and when he walks in his back yard, he can see those, the lights going down the road except for where there is a large mound of dirt. He pointed out the property that he lives on and showed where the flooding happens, the pipe that travels thru there and even photographs of the Weils that this area here, down to here, it has flooded on their own property after the Weils was built and he has photographs that he can put up on the screen to show a bigger detail if the board would like.

Mr. Olivier asked if his property is draining towards the Weils.

Mr. Miller explained that the water flow into the new ditch that the township decided to put in that carries more water from these properties (he referred to a map) into this portion of the land, it comes down through here and keeps on going and said the photographs are from 2003 and 2006 and he tries to speak with the facts and data that he has.

Ms. Miller said the flooding that occurred this past week, today they couldn't flush their toilets fully because of all the rain that they had and what happens when it floods, it floods their front yard where their septic is, it can't come out.

Mr. Miller said that home was built in 1959 so that has been there, he bought the property in 2002, you might know Roberta Gast, that is the property location and she was greatly involved with the township she made sure that I was aware of the lights and pointed out these things and I still speak with her but he is just asking to be proactive, that is how you have to be now. He asked Mr. Vanek if there is flooding in his yard.

Mr. Vanek said the area is clay and there is poor drainage but fortunately it is not too bad. He said he is not as close and told Mr. Miller if he has historical facts, he should present them because we all face this stuff.

Mr. Miller said the reason he asked about the retaining wall is the retaining wall will suspend any moisture from traveling in this manner which it does naturally, it is gravity and that is even closer to his property and what is going to happen to his property, we don't know, each time you make these improvements, always someone pays.

Mr. Markowitz said this was an issue that came up before we got the skilled nursing facility approval, we had been advised in 2006 that there was an obstruction in the ditch on our property, we brought out contractors and had them clean out that obstruction because, the then zoning inspector, Frank McIntyre, came to us and called me and alerted me to it, I called the director and we got on it and got it fixed and since then, he believes this picture in 2006, he does not think that is their property but there was some water that backed up on our property because of the obstruction, we cleaned it out and spent some significant money fixing the ditch on our property and to his knowledge, no one has ever indicated there was a problem since that was cleaned out, the problem he sees here is not from something that we have done from our construction, nor will the addition affect this at all, it is a problem that is up stream and if there is a problem in the area, it is a problem that the township needs to address because those are township roads and there is nothing in our plan that is going to be impacting all the drainage to the area he is talking about.

Ms. Sass asked when the obstruction was cleared out.

Mr. Markowitz said in 2006 before they got their approval in October of 2006, probably September, but he does not remember.

Mr. Miller said it was after the photographs were taken and that is what sort of prompted these things to happen. He showed the board some photos and said this picture from 2006 shows the small trees they planted and the flooding of the area.

Ms. Sass asked if this is before that obstruction was cleared.

Mr. Miller said yes.

Ms. Sass said of this most recent round of flooding rains and the unbelievable amount of water, did we have any kind of pictures of that situation.

Mr. Miller said no, the last three days he was gathering all of the signatures.

Mr. Markowitz said there was no flooding on their property and he understands that it is all on E. Craig and there is a problem to a ditch they put in on E. Craig, it still has to get resolved.

Mr. Miller said not according to the township, Mr. Halko and the trustees. He said there is a multitude of issues, he is concerned at both ends, where the water is going and where it is coming from and this is the worse the township has done and this is the ditch they dug out and there is a shattered clay tile, they have done nothing to repair that and he has been working 1-1/2 years with the township, he has made presentations to them and Mr. Halko, if you look at the minutes from one of their meetings, he was supposed to get back to me from October 29th about what they are going to do to fix this and getting the county involved in the drainage problem and between E. Craig and Lake in the Woods and the Weils, if you get the water from here to there, where is it going to go, it just has to continue to flow unless you want a lake or pond or flooding.

Mr. Lewis said in working with this property the last six, seven or eight years, as it stands today, is your property creating a bottleneck with the flow of water that enters your property and then travels across it, are you damming anywhere.

Mr. Markowitz said no, the area that this water is flowing through is a portion of a watershed, the only thing that is different today than ten years ago is we have the driveway going back to the building and there are pipes underneath the driveway where the water flows and if they ever couldn't handle the flow, it would flow over the driveway and keep going to the south because there is no obstruction. He said what happened in 2006 was the ditch from upstream, materials came into the ditch on our property and blocked it and we didn't realize it, the township called and said you have to clean your ditch out which we did, and the water has been flowing freely ever since, we have not had any backup of water on their property.

Mr. Lewis asked if there is any possibility that the land elevation around E. Craig is at a lower level than where the natural elevation is at the Weils and you are in a lower area, you are providing a drainage outlet to let the water come across the Weils but if you are at a higher elevation, naturally with the topography with the land, you have got a lower area, you are going to have a natural basin and that whole street is going to fill up with water and it sounds like the Weils has provided an outlet but the township definitely could be of more assistance.

Mr. Miller said the Weils property flooded to their driveway so that means, it filled up the basin, went up and over the asphalt and kept on going.

Mr. Lewis asked if that was during the time of construction.

Mr. Miller said yes but the obstruction was north of that so the flooding happened after the obstruction, not before it, it happened before it, during and after.

Mr. Lewis said he can understand that the condition may present itself based on an exorbitant amount of rainfall in a short period of time and even the best of areas may experience some temporary flooding.

Mr. Miller said when they do the calculations of the impermeable land, he does not know this personally, he is wondering when you consider that you have flat land and gravity will go straight down and cause the water to permeate straight down, correct.

Mr. Lamanna said not if it is clay.

Mr. Miller said he does not care what it is made of, say it is perfect land, and it is flat, it will absorb more than if it is a hill, water will run away from a hill, now during their construction they needed to dig water retention ponds and now that is a hill that is 30' high.

Mr. Markowitz said it is not 30'.

Mr. Miller said when he looks out it is almost as tall as the trees in his backyard so whatever it is it is still a man-made hill that does not absorb water at the same capacity as flat land.

Mr. Markowitz asked if those are 10' contours.

Mr. Joyce referred to the contour lines and said they are 2' contours.

Mr. Markowitz said there is not a lot of significant fall one way or the other on those parcels but the area where the ditch was, that ditch was there before we built on our property, the ditch was there for some time, it was just that the ditch had to be cleaned out which is what we did and he is sure ten or fifteen years from now, we will have to clean it out again as materials accumulate in the ditch. He said their construction of the first phase that is there now, and the new phases that we will build will improve the drainage downstream, it won't do anything one way or the other for the people north of us because it is all flowing south.

Mr. Lamanna asked if there is actually a ditch dug across there now.

Mr. Markowitz said there is a ditch that goes north to south and front to the rest of the building.

Mr. Lamanna said you actually improved the natural watercourse.

Mr. Markowitz said exactly.

Mr. Miller said it is a ditch that goes to their retention pool and it is stagnant and then if that fills up then it goes through a tube to another retention pool so it is a short ditch to a retention pool, it is not a ditch that runs continuously like the ones that run down the length of the property of E. Craig so it has to fill its capacity before it will continue to flow.

Mr. Markowitz said that is what this soil and water report says.

Mr. Lamanna said the reason for that too is to protect the downstream people from being flooded.

Mr. Markowitz said it wasn't done in the Lake in the Woods, it should have been done and what should have been done on E. Craig is being done on our property.

Mr. Lewis said anything downstream from the Weils is the benefactor of what you have done, unfortunately upstream, there is not a lot you can do.

Mr. Lamanna said what they did is regulated by the Soil and Water District, they come in and look at it and say you have to hold this much water and you can't discharge the water off your property.

Mr. Miller said the more they pull the less that will be absorbed from my property.

Mr. Markowitz said that is not correct.

Mr. Miller said they are supposed to retain the water.

Mr. Markowitz said they are not stopping the flow from your property coming onto ours, we are not slowing it down, it is still coming at the same rate and the same volume that it did before we constructed, what we are doing is by retaining water on our site, we are making sure that by increasing the impervious surface on our property, we not increasing the rate of flow or the volume of water that leaves our property than before we did construction and that is the purpose of these retention basins and in doing the plan, Soil & Water required us to do hydraulic calculations of what that retention area was going to be for our site for the improvement to the building and in addition to that they required us to prove where the flow was coming from north or us so that we can direct that flow through the ditch and into the retention basins because that is part of the analysis in determining how much area we need to contain so we weren't allowed to take your water and stop it or redirect it, it had to go the same way it did before.

Mr. Miller asked how can that be done if you are covering it with asphalt and moving large amounts of dirt and creating extra hills and large mounds of dirt.

Mr. Markowitz said the large mounds of dirt creates the requirement for the retention, it is the impervious areas that cannot absorb the water.

Mr. Miller said what he is speaking of, impervious land would be a hill, a hill is impervious compared to flat land.

Mr. Lamanna said it is all dependent on soil, vegetation cover and even cement if it is perfectly flat, water will fall off the side of it and it will flow off a hill like this.

Ms. Sass said if she has a sandy hill versus clay flat land, the sandy hill is going to absorb more.

Mr. Miller said if you have a great amount of vegetation on there it will act like your concrete.

Mr. Lamanna said vegetation slows the water flow down.

Mr. Markowitz said when the site was designed the county required us to take into account the grade changes they are making everywhere on the site and that all goes into the hydraulic report and it is a very complicated and sophisticated software program that is used to make that determination and it is something that took literally hundreds of years of accumulated knowledge to develop that software and he would be the first to tell you that you really have to be a specialist to understand it, Carmella Shale understands it and Benza and Associates does our work and they do the calculations for all the different stages and they were required to spend the time and the effort to make sure that we are not making the drainage problem worse for anybody on any side of us because we have to take into account what happens upstream in determining how we discharge downstream.

Ms. Miller asked if they are adding two retention pools with this new addition.

Mr. Markowitz said yes, if you look at the plan, these areas are for the detention basins and it is based on what the engineers have calculated and required because of the addition.

Ms. Miller asked how water gets to them in the middle of the building.

Mr. Markowitz explained the location of them and the driveway and parking.

Mr. Miller said if you are surrounded by asphalt all the way around it how does the water get to it.

Mr. Markowitz said it goes over the surface of the asphalt and he is not an engineer so he can't tell you how they designed it all, but it is not going to get approved until the county looks at it and it has either surface or piping method of moving the water into the retention basins and he does not know what the combination is. He said that has not been completed yet because you have to get approval first for the plan, then they will go to the county and submit your approved plan.

Mr. Olivier asked if most of the homes are west of this structure.

Mr. Vanek said they are north.

Mr. Miller said you go from subplot 30 down to 25 and this is where the road is completely submersed on E. Craig and asked if he can be helped, who should he talk to and who should the township get involved with in helping to fix this situation because it appears that something wasn't done right between here, here and here.

Mr. Markowitz said he does not agree with that, what they did on their property is the only thing that was done and if the township comes back to us and tells us we need to do a ditch improvement on our property and it can be done in a way so it won't interfere with our existing and future use, he is sure they can accommodate it because it is not going to be a problem with all of the open space they have but nobody from the township or county has come and said we need your land to alleviate somebody else's problem and if they come to us, we will work with the township to do that, obviously we want to be a good neighbor and once somebody determines that there is a need, we can help. He said he thinks the problem has to be solved on Chillicothe Road and not on our street. He said he thinks there is a problem with diverting the water from Rt. 306

Mr. Miller said that is a good suggestion.

Mr. Markowitz said he thinks there needs to be a diversion before it gets to all of the properties.

Ms. Sass said you (Mr. Miller) chatted with the township trustees and Alan Halko from the Road Department and that he was supposed to have gotten back with you and asked if that has happened.

Mr. Miller said no and he has come to many meetings and discussed it, he actually had Linda White tell him as we discussed the situation, she has had friends on E. Craig and W. Craig and they should never had built these homes, so I asked her why they let them build the Weils and she said that has nothing to do with the conversation we are having. He said this used to be all one farm.

Ms. Sass said what should or should not have happened in the past doesn't really matter at this point, the question is how do you correct it from this point forward.

Mr. Miller said that is exactly what he is saying.

Ms. Sass said you were told that the township road superintendent would be in touch with you again, he has not, are you willing to contact him and tell him he was supposed to get back with you, you haven't heard anything, might he be able to schedule a meeting with you.

Mr. Miller said he has tried that, other residents have tried that, they tried working with Wally, they tried working with Alan, he can't get resolution since 2006, he has been coming ever since then, every few months, I show up and discuss it and try to get a resolution and nothing, I don't get phone calls or anything.

Ms. Sass asked Mr. Miller if he called Alan and asked to meet with him.

Mr. Miller said no he hasn't called Alan, he thought that he would follow through and that is in minutes of our own township.

Mr. Lamanna said this board can't tell the trustees what to do.

Ms. Sass said that Alan does have a lot on his plate, but you should give him a phone call and ask for a half hour of his time.

Mr. Miller said he can't get anywhere with these people. He said the township should do a study here, it has been an issue since 2006.

Mr. Lamanna said he understands the problem but our issue is we aren't experts in drainage and flow etc. however, there are people at the county who are experts in that and they have to review all of this when it goes in, the property owner is not obliged to increase his drainage capacity beyond that which existed before he built his facility, he is only required to not make it less than it was before, that is his obligation, his obligation is to collect his own water and feed it into the discharge so it that it doesn't increase the flow off of his property. He said if you have more water coming from upstream and he has so much capacity for letting the water flow across his property, you are stuck in the middle.

Mr. Jack Miller asked what happens if his blocks up and floods.

Mr. Lamanna said then he has an obligation but that can happen to anybody, things get dammed up and regular maintenance has to be done to clean up logs etc.

Mr. Miller said he does not see any relevance to that especially because it was flooded after, before and during, that whole ditch so that was a flooding issue across the board.

Mr. Lamanna said you say there was a flooding issue one time.

Ms. Miller said it also flooded in January of 2007.

Mr. Lamanna asked what flooded.

Ms. Miller said their front yard, in the street and down the ditch through the Weils and the water had no where to go, it was going into the Weils, it was stuck and the Weils was full so it was basically not even a continued flow, it ends up in our yard because we are the lowest point on the street.

Mr. Miller said along with the other three houses down and across the street.

Ms. Miller said he unplugged the end of the neighbor's ditch and was able to unclog it so it did flow a little bit but we still had no toilets for another day and our septic tank is in the front yard and when it floods, we have no toilets.

Mr. Lamanna said the water can flow away only so fast and the main problem is it is flat and the water does not move fast and you get a bunch of rain and it is just not going to go anywhere very quickly, short of putting in major catch basins and running pipes for five miles before you get enough fall to get rid of it, there is nothing you can do.

Mr. Miller asked how much fall happens after the Weils.

Mr. Lamanna said once you get to E. Washington Street it starts to drop off pretty rapidly.

Mr. Markowitz said the township owns the land south of us and we would be happy to let it flow through the township's property and let them put in a huge retention basin on the township property. He said the township has the power by statute to resolve the problem, it is just a question of how much money they would be willing to spend, but they have the power to create ditch improvements and they have the power to solve the problem so you need to keep asking the township to solve the problem.

Mr. Miller said he appreciates the help with that kind of knowledge.

Mr. Markowitz said the township does own a significant parcel of land to the south of us that is just to the west and maybe they can help you solve the problem because they are not using it for anything else.

Mr. Lamanna asked if they have retention basins in the watercourse of the property as well.

Mr. Markowitz said the ditch flows into one of the retention basins.

Mr. Gembka explained the location of the ditch and the outlet.

Mr. Lamanna said all of these projects for the last 15 years have all been pretty thoroughly reviewed by soil and water to evaluate these issues but somebody could come and say they are not complying with the soil and water regulations, but we can't sit here and say somebody has built a berm and they cut off flow but in these area, they really haven't done a whole lot in terms of what they have built, they have not built in the area of the watercourse, all of the construction is away from that.

Mr. Jack Miller said it created more run-off with the building.

Mr. Lewis said it is downstream run-off and it is being captured in retention basins.

Mr. Lamanna said it cannot be discharged any faster than the property would discharge in the first place so they are collecting it and discharging it out, they are not even sending any water to E. Craig.

Mr. Miller asked where the water flows and added that the retention ponds are already full.

Mr. Markowitz said it goes south.

Mr. Miller said if it doesn't go back north, how does he get water to fill the ditch backwards.

Mr. Markowitz said that was because the ditch was blocked.

Mr. Miller said the ditch was blocked further north than where the flooding was.

Mr. Markowitz said the ditch was blocked on our property for a longer ways further south but the point of it is when you have these 500 year frequency storms there is no system that is designed that will be able to handle the flow so it is going to overflow, the point of that is on our property, we are not sending the water that is coming from our side back to you, our water is going south and it is going down towards Rt. 306.

Mr. Miller said but is holding it.

Mr. Markowitz said no, it is not holding it, we are not holding the water, it is flat, so it is really slower than you would like it to be, we are not holding your water back. He referred to the topos and noted the slight drop in the back and said in the front there is almost no fall and that is where the drainage is in that area. He said had we not built our building and you would have the prior owner still owning it, he is sure he never would have cleaned the ditch but even it he did, you would still have the same problems because the construction of our buildings have not kept the water from flowing slowly during periods of heavy rain.

Mr. Lamanna said you would not have any obligation, it is a natural water course.

Mr. Markowitz said actually we do, the township can compel property owners to clean their ditches on their property.

Mr. Lamanna asked ditches or natural water courses.

Mr. Miller said the township just paved our road and I came to meetings asking them, he has a culvert that is underground and I asked them to raise the pipe so water can flow through, they said you don't need to, the water gets through there somehow but it is filled with dirt and the township won't even clean the culvert out and asked isn't the township responsible for the ditches along the road.

Mr. Lamanna said he can't answer that question.

Mr. Miller said that is why he is here, he can't get answers from them and hopefully he can get some from you.

Mr. Lamanna said the board of the appeals can't solve the problem, it is the township. He said no one has come to him and said they have not done all the things that were required of the soil and water conservation people. He said this project is not going to affect the problem.

Mr. Miller asked where they get their water from.

Mr. Markowitz said it is county water.

Mr. Miller said people have had buildings come up and it ruins their well.

Mr. Markowitz said they are not using ground water for anything, the water comes from Lake Erie.

Mr. Miller asked if his petition with 39 signatures had any significance.

Mr. Lamanna replied no, 1,000 people could say they don't want it and it does not matter, we have to make a decision based on the evidence before us.

Mr. Miller said he can't find anyone who wants to say they are responsible.

Mr. Markowitz said Geauga Soil & Water does not come out and solve drainage issues on older subdivisions, it is the county engineer or township issue.

Mr. Lamanna said they are in the business of looking at new projects and how it impacts and whatever this board approves, they have to take to the Soil & Water District.

Mr. Markowitz said they have to go to the fire department, building department, soil & water, Geauga water resources, City of Cleveland and at least five agencies and the State Department of Health.

Mr. Lamanna said you probably have more water coming from upstream than you ever used to have in the past and it can't get away any faster going the other way and you are caught in the middle and that is the spot where the water flows down and that is why you have floods. He said there are a lot of studies that go into new projects so it is not haphazard here, there is a lot of detailed engineering work that goes into it.

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

Motion BZA 2008-3 – 16695 Chillicothe Road (The Montefiore Housing Corporation)

Mr. Lamanna made a motion to modify the existing conditional use permit for the facility as it has been previously modified for the 21 skilled nursing beds to add eight additional residential care facility beds in accordance with the plans as submitted by the applicant. All other conditions and provisions of the conditional use shall remain in effect, specifically that with respect to the in lieu of tax payments and this additional construction will be added to the value of the property for that purpose.

With the following conditions for this approval:

1. The applicant will obtain all of the other required approvals for this project including in particular, storm water management from the Geauga Soil & Water District.

Motion BZA 2008-3 – 16695 Chillicothe Road (The Montefiore Housing Corporation) - Continued

2. As a further condition, the applicant will consult with the fire department regarding the booster pump for fire water use and will abide with the final decision of the fire department with respect to whether or not that particular piece of equipment will be required.

Mr. Lewis seconded the motion.

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

Application 2008-5 by Martha T. Martinez for Wal-Mart Real Estate Business Trust for property at 7235 Market Place Drive

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

The zoning inspector's letter dated March 20, 2008 was read and photos of the site were submitted.

Mr. Jose Hernandez was present to represent this application.

Mr. Lamanna asked about the proposed changes for Wal-Mart.

Mr. Hernandez testified that they put the whole addition on.

Mr. Lewis said the Wal-Mart sign is still there, now under it is Super Center, so we have a second line of type, it is above 15', they were above 15' on the original Wal-Mart sign anyway.

Mr. Lamanna asked if the length of the building increased.

Mr. Hernandez replied yes.

Ms. Sass said she thinks it is the designation of all of the entryways.

Mr. Olivier asked if they are more directional.

The board discussed the proposed signage.

Mr. Lamanna said it used to be the main entrance that the Wal-Mart was over.

Mr. Hernandez referred to the We Sell for Less sign and the Low Price Guaranteed signs and now we have Pharmacy.

Mr. Lewis asked about the sign dimensions.

Mr. Lamanna said there is a Home and Living sign and asked if these are within the total sign limitations.

Mr. Hernandez replied yes.

The board discussed the proposed signage.

Mr. Hernandez said the top of the marquee is 19'.

Mr. Lewis said the board needs to address the signs all the way across the front.

The board reviewed the calculations of the proposed signage.

The board requested to review the size of the Kohl's sign and what the board had previously granted for it.

Mr. Lamanna said the height is not an issue.

The board discussed these signs and compared them to the other signs in the shopping center.

Mr. Lamanna said if you have a short name, you get to have bigger letters, if you have a long name, you can't.

Mr. Hernandez said they are under the square footage requirements.

Mr. Wrench provided a copy of the Kohl's sign and the dimensions to the board.

The board reviewed the signage for Kohl's and the former Wal-Mart signs.

Mr. Lewis said this is consistent with what the board has already granted and it is consistent with Kohl's.

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

Motion - BZA 2008-5 – 7235 Market Place Drive (Wal-Mart)

Mr. Lamanna made a motion to grant the applicant the following variances:

1. A variance with respect to five signs higher than the 15' height limit.
2. A variance for the purpose of putting a Wal-Mart Super Center sign from the maximum signage of 50 sq. ft. to a total of 225 sq. ft., the size for two signs.

Based on the following findings of fact:

1. The building façade is much higher than 15' and all of these signs are placed to be architecturally appropriate with the height and scale of the building.
2. Due to the size and scale of the building a larger sign is appropriate and also this building sits back farther from Rt. 43 than any of the other buildings in the shopping center.
3. The size of the letters and the total amount of signage is consistent with other signs that have been permitted in this area.

Ms. Sass seconded the motion.

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

Since there was no further testimony, the public hearing was closed at 11:22 P.M.

Respectfully submitted,

Joyce Hannum
Michael Lamanna, Chairman
Todd Lewis, Vice Chairman
Mark Olivier
Lorrie Sass

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

Date: April 17, 2008

AUDIO RECORDING ON FILE

BZA PH 3/20/2008

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Bainbridge Township, Ohio
Board of Zoning Appeals
March 20, 2008

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 11:22 P.M. by Mr. Michael Lamanna, Chairman. Members present were Ms. Joyce Hannum, Mr. Todd Lewis, Mr. Mark Olivier and Ms. Lorrie Sass. Mr. Mark Murphy was absent.

Minutes

Mr. Lamanna made a motion to adopt the minutes of the February 21, 2008 meeting as written.

Mr. Lewis seconded the motion.

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

Application for April 10, 2008

Application 2006-33 by Voproco Properties Limited for property at 16941 Savage Road – Continuance

The applicant is requesting a conditional use permit with variances for the purpose of constructing single family cluster homes. The property is located in a R-3A District.

The Bainbridge Township Board of Zoning Appeals set a special public hearing on the above application for April 10, 2008 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 and the services of a court reporter.

Applications for April 17, 2008

Application 2008-2 by Meredith M. Wilkes and William F. Pobega for property at 8510 Chase Drive - Continuance

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

Application 2008-4 by Kenneth Lauer for property at 17372 Snyder Road - Continuance

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

Application 2008-6 by Bainbridge North Land Development, LLC for property at 18813 North Marketplace Drive

The applicant is requesting area variances for the purpose of installing signage for the Flower Factory. The property is located in a CR District.

Application 2006-33 by Voproco Properties Limited for property at 16941 Savage Road
– Continuance

The applicant is requesting a conditional use permit with variances for the purpose of constructing single family cluster homes. 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 April 17, 2008 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 and the services of a court reporter.

Since there was no further business, the meeting was adjourned at 11:30 P.M.

Respectfully submitted,

Joyce Hannum
Michael Lamanna, Chairman
Todd Lewis, Vice Chairman
Mark Olivier
Lorrie Sass

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

Date: April 17, 2008

