

Bainbridge Township, Ohio  
Board of Zoning Appeals  
April 18, 2019

Pursuant to notice by publication and ordinary mail, the public hearing was called to order at 7:07 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Michael Corcoran, Alternate; Mr. Joseph Gutoskey; Mr. Todd Lewis and Mr. Mark Murphy. Mr. Ted DeWater was absent. Ms. Karen Endres, Zoning Inspector was present.

Mr. Lamanna welcomed everyone to the regular meeting of the Bainbridge Township Board of Zoning Appeals, explained the public hearing process and swore in all those who intended to testify. He let the record reflect that everyone had been duly sworn in.

Application 2019-10 by Northeastern Inc. for Lisa Meyer for property at 17122 Sunset Drive - Continuance

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

Mr. Lamanna noted that this application has been withdrawn.

Motion BZA 2019-10 – 17122 Sunset Drive

Mr. Lamanna moved to terminate this case for reason of the applicant's withdrawal of the application.

Mr. Gutoskey seconded the motion.

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

Application 2019-13 by Speedway, LLC for property at 7353 N. Aurora Road

The applicant is requesting a review and renewal of an existing conditional use permit for a gas station with a convenience store. The property is located in the MUP District.

Mr. Lamanna noted that the applicant has requested a continuance until the May hearing date.

Motion BZA 2019-13 – 7353 N. Aurora Road

Mr. Lamanna moved to continue application 2019-13 to the next regularly scheduled meeting to be held May 16, 2019 at the request of the applicant.

Mr. Gutoskey seconded the motion.

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

Application 2019-14 by Michael Blake for property at 8107 Pettibone Road

The applicant is requesting area variance(s) from the front setback and side setback requirements to permit the house as constructed. The property is located in a R-3A District.

Mr. Michael Blake was present to represent this application.

Mr. Blake testified that apparently when he went to expand the foyer and he came in to get permits, the house was built back in 1984 and it was discovered that it was never 100' from the road and the road was widened also so the need for the variance is to continue to build their foyer.

Mr. Lewis said so we are kind of doing some as-built variances.

Mr. Blake said yes.

Mr. Lewis said the structure has been up there a really long time and the builder dug the hole in the wrong place.

Mr. Blake said yes, that is what happened.

Mr. Murphy asked if the septic system on the lot is in the back.

Mr. Blake said yes it is.

Mr. Murphy asked when the house was built.

Mr. Blake said 1983.

Mr. Murphy asked Mr. Blake if he was the original owner.

Mr. Blake replied no.

Mr. Lewis asked how we know these dimensions are accurate. He is looking for a survey or who pinned this so the variances will be correct now.

Ms. Karen Endres, Zoning Inspector testified that there was no survey with this, the measurements were taken based on aerials.

Mr. Gutoskey asked Mr. Blake if he has a mortgage survey when he bought the house or anything like that.

Mr. Blake said he doesn't believe so.

Mr. Gutoskey said that typically when it goes through the bank and it is financed you usually get that with your closing which is generally pretty close. He explained when Pettibone Road was redone and said it is probably less than 75'.

Mr. Murphy said there is no way they can get 50' on either side of the house.

Mr. Lamanna said it is only a 150' wide lot.

Mr. Murphy asked if there is anyone here interested in this application.

Mr. Oleh Shapowal of 8137 Pettibone Road testified that he is the neighbor to the east and there is an empty lot between him and there which he owns. He said basically his concern is he is not sure what is being proposed to be done here, he has heard nothing about it but when this house was initially initiated for building he had to go down there and talk to the contractor because he was in deed restriction violation with what he was intending to do. He said he had the house within 15' of the property line, he showed him the deed restrictions that mandated 25' minimum so whatever is happening here, he wants to make sure that isn't getting violated.

Mr. Murphy said what it looks like from what he sees here is that house exists right now at about 32' off of the line on the right side of that.

Mr. Shapowal said when he pointed out to the builder he went a little bit overboard on the side because he was irked by the guy who hired him, when he told him about the 15' he was irked by that so he moved it slightly further away.

Mr. Murphy said that is a good thing he did and asked Mr. Blake if he is proposing any work on that end of the house.

Mr. Blake said no just in the very front because when you walk into the foyer unfortunately when you swing the front door open you actually hit each other so we are trying to get a little more room in the front.

Mr. Lewis said Ms. Endres already approved that because it didn't bring it closer to the street and there was no lot coverage issue with that little bump.

Mr. Murphy told Mr. Shapowal that it is not going to get any closer to his property.

Mr. Lewis said we are not moving anything, our code requires 50' on the side yard and it was built 32' so this is more of a housekeeping effort and we want to look at any kind of variances that might be considered so that it is permitted, we are not making any changes, we are not moving, we are not doing any additions. He said we have the same thing on the side yard on the other side of the house, that is 50' and it was built at 45' so this is pretty much a housekeeping effort. He said he doesn't have any questions on this.

Mr. Lamanna said with the front setback there is not much we can do about it now, the current owner is certainly not responsible for it but fortunately we are looking maybe at a 20' variance setback and he doesn't really think it is that far out of line looking at the other houses along there, there are some houses that are closer on Pettibone, some of the older houses and with regards to the side setbacks, given the width of this lot we would have given side setback relief anyway and from the looks of the way these houses are positioned actually it is better that it is set to that side of the lot anyway because the other house looks like it is closer, the one to the left, so that has the greater setback. He said if this was before us before the fact he thinks we would have come out somewhere with these setbacks anyway. He said the board will make the front setback 80' just because the house is not going to move and since we know it looks like that is more than it actually is hopefully so the applicant will not have to come back here again in the future because if someone looks at this closely and actually has a location survey done the next time the property sells and it turns out it is 78' you are going to have to come back and try to seek further relief. He said in not any of the dimensions it is not intended to create additional encroachments to whatever currently exists.

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

#### Motion BZA 2019-14 – 8107 Pettibone Road

Mr. Lamanna moved to grant the applicant the following variances:

1. A variance to the front yard setback from the minimum required 100' to 80' for a variance of 20'.
2. A variance from the minimum required side yard setback (east side) from 50' to 30' for a variance of 20'.
3. A variance from the minimum required side yard setback (west side) from 50' to 43' for a variance of 7'.
4. The variances are granted without having an actual survey of the location of the house on the property therefore these variances may be more than are necessary.

Motion BZA 2019-14 – 8107 Pettibone Road - Continued

5. The applicant accepts the fact that in lieu of actually performing a survey at this time he agrees and understands that these variances are not intended to allow or permit any construction which would encroach upon the actual front setback and side setbacks as they actually currently exist.

Based on the following findings of fact:

1. A practical difficulty exists because the house, with respect to the front yard setback, had been inadvertently built at that point and nobody realized it at the time.
2. With respect to the side yard setbacks, it appears there may have been some approval by the zoning inspector at the time the house was built.
3. Additionally in terms of the actual lot width being 150', if this situation was before this board this variance would have likely been granted anyway given the nature and location of the adjacent houses.
4. The fact that the lot is only 150' wide and therefore this is consistent with the character of the neighborhood and would not adversely affect either of the neighboring properties.

Mr. Lewis seconded the motion.

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

Application 2019-15 by New Creation Builders for Anthony Marra for property at 18770 Elmwood Drive

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

Ms. Diane Bija of New Creation Builders was present to represent this application.

Ms. Bija testified that she is the contractor and Mr. Marra could not make it because he is out of town so she is sitting in for him. She said from the very beginning they worked really hard with Mr. Marra because his ultimate intention for this accessory building is to attach a breezeway to his house and financially this was not a good time for him to do it and we went back and forth probably for about three or four weeks trying to make it financially feasible and he is looking at possibly now a year down the road so that is one of the reasons why we are asking for the front setback. She said in order for the accessory building to line up to the house to attach that breezeway we would need that footage. She said that is their first, there are three and the next is the height, we are asking for 24' high because they have a lot of storage and they really plan on keeping this home for their family home forever.

Ms. Bija continued by saying they would like the height so they can properly stack whatever they are storing and they could stand up to move around. She said the next one is the size and he is asking for 576 sq. ft. as opposed to the 300 sq. ft. and they have extra vehicles, they have a lot of storage. She said this family is just oozing out of its present structure and this would eliminate the hardship of some of those matters.

Mr. Gutoskey asked if they have a garage now.

Ms. Bija said no there is none attached.

Mr. Gutoskey asked if the existing garage will just go over what is paved now so there are no lot coverage issues.

Ms. Bija said she doesn't know that, we were trying to build it at the end of the driveway, you see that little shed there, that is where the new one is going. She said she doesn't know if there was ever a garage at the end of that driveway but for the sake of the breezeway and being connected to the house and the setback being 50' off the side they had to move it over enough.

Mr. Gutoskey said he was just curious, as far as he is concerned, it is behind the existing house, they are increasing some lot coverage but it is less than the 10%. He said he doesn't think this size or height is anything out of the ordinary.

Mr. Murphy said it is not.

Ms. Bija said they are aware of the township's stipulations.

Mr. Lamanna asked if this house is a one-story or a two-story, it is hard to tell from the picture.

Ms. Bija said they would be doing a reverse gable on that so it would match the aesthetics to the home.

Mr. Lewis asked about siding.

Ms. Bija said it will match what was on the house but the reverse gable she is talking about, rather than having a reverse gable on the house and point gable in the front they would make it consistent.

Mr. Murphy said so this is not the front of the garage towards the street.

Ms. Bija said no that would be the side and that one rendering is wrong.

Mr. Lamanna said so the ridge line is going to run the same direction as the house.

Ms. Bija said correct and of course she will submit to Ms. Endres information for that garage door being a reverse gable.

Mr. Lewis said so these elevations are not what you are building.

Ms. Bija said the gable will be reversed, that is all, it is what they are building but the gable will be reversed. She said she thinks that was an afterthought because once they looked at it from the street it just made more sense aesthetically to make the gables match.

Mr. Murphy asked if there are any neighbors here interested in this application.

Mr. Lamanna asked why the interior height is so big.

Ms. Bija said for storage and the house provides no storage at all. She said they are a growing family.

Mr. Gutoskey asked if that house has a basement or is it on a slab.

Ms. Bija said she believes it is on a crawl space, that is another reason there is no storage.

Mr. Lamanna asked if there can be storage in the attic too.

Ms. Bija said it looks like that is a 3/12 pitch so she can't imagine there is a lot of room, that would give them 21" maybe.

The board discussed the proposed roof pitch.

Ms. Bija said it is 9 to what they call the mass.

Mr. Lamanna said you have got the overhang so you have a little bit more than 12. He said it is almost a 45 degree pitched roof. He said he doesn't understand why the roof is pitched so steep.

Ms. Bija said so they can have storage up there.

Mr. Lamanna said he just asked if the attic is going to be used for storage but you (Ms. Bija) said the attic wasn't going to be used for storage.

Ms. Bija said she thought you were referring to the attic in the house and why isn't it used for storage because there is just not enough room.

Mr. Murphy said the garage is all storage, that is why they are doing this.

Ms. Bija said yes it would be his only storage, his Christmas tree, the kayaks. She said it was such a big lot using the garage as a garage and then lawn equipment.

Mr. Lamanna said he understands the storage.

Mr. Gutoskey said you want the pitch of the roof brought down a little bit.

Mr. Lamanna said everything in there pretty much has low pitched roofs, all of the houses in that area have low pitched roofs and now you bring in this one structure that has got a totally different style pitched roof and it is going to be right next to it.

Ms. Bija said she wishes she could show a rendering with the breezeway plans, it will pull it all together.

Mr. Lamanna said the current house is probably 14' or 15'.

Ms. Karen Endres, Zoning Inspector testified that she doesn't think she has building plans for the house.

Mr. Lamanna said the pitch may not be fourth well, it is a ranch house on a slab.

Mr. Lewis said yes.

Mr. Lamanna said that means the roof elevation could be 13' or 14', this would be 10' higher.

Ms. Bija said one of the reasons they were trying to get the breezeway attached now is because once it was attached to the house that height would not make a difference, it would be an attached structure so this is kind of like a catch 22 for him right now until he gets this breezeway attached.

Mr. Lewis asked if the roof is going to be done with pre-fab trusses.

Ms. Bija said no she believes this is done framed, they can if you want us to.

Mr. Lamanna said if he wants storage you probably want the open frame.

Ms. Endres said she found the application from 1957 when the house was built and the application indicates the building height is 11'.

Ms. Bija said that wouldn't give them much wall.



Mr. Lamanna said it is on a slab so it is starting out with 6" at the most and with 8' studs and that roof could be a 3/12 pitch so let's be generous and say it is 12' so we are doubling the height. He said he doesn't have anything against 24' high it is just that we are putting this technically within less than the setback and it is going to look strange.

Ms. Bija said that is why we tried to get the breezeway done.

Mr. Lewis said he sees that as a connection, he sees one main structure with a 3/12 pitch roof with a very low profile and then he sees another structure going next to it 6' to 10' away that is double the height.

Ms. Bija said but if it is attached it is allowable.

Mr. Lewis said that is really substantial.

Ms. Bija said she agrees.

Mr. Lewis said he understands the need and the desire for a two-car detached garage and he understands the convenience of a breezeway when you are bringing in groceries but this is pretty big.

Mr. Lamanna said it is a cube, it is 24' x 24' x 24'.

Mr. Lewis asked if it is going to be side entry.

Ms. Bija said the man-door will be facing the house.

Mr. Lewis said so the garage doors face the street.

Ms. Bija said correct.

Mr. Lewis said we going to look at shingles from the street.

Ms. Bija said correct.

Mr. Lewis said we are going to look at the roof rather than a peak.

Mr. Lamanna asked if this is to save money rather than making it 32' deep and keeping it at a more reasonable height. He asked what drove the footprint of this, the 24 by 24.

Ms. Bija said the homeowner.

Mr. Lamanna said rather than extending it out and making it lower but a larger footprint.

Ms. Bija said that is very possible, they could have taken it backwards. She said they were designing it with the homeowner and again knowing what the code is it was their driven force to get him to get it attached so this would not be an issue because we knew it would be.

Mr. Lewis said this is tricky too because the owner is not here.

Ms. Bija asked the board if they want to table it.

Mr. Lewis said it is tough to work a compromise when the property owner is not here.

Ms. Bija said it would be to everyone's advantage to table it right now and it would also give her the opportunity to convince him to attach it but this is what he wants.

Mr. Lamanna said he thinks ultimately it would help to take a look at an actual elevation of the two structures together because his real concern is after it is built, it will not really look so hot and yes if they actually attached it now it might not have been an issue but as he sees it when you put it as a free-standing structure there are some real questions about whether this adversely affects the character of the neighborhood so maybe it is better to table it, go back and take a closer look at this and see whether this height really makes sense or whether maybe some reconfiguration would be a little better.

Ms. Bija said 24 by 30 would probably work fine and she will see what the homeowner wants to do.

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

#### Motion BZA 2019-15 – 18770 Elmwood Lane

Mr. Lamanna moved to table this application to the next regularly scheduled meeting to be held May 16, 2019.

Mr. Gutoskey seconded the motion.

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

#### Application 2019-5 by Soupbase, Inc. for property at 7207 Chagrin Road - Continuance

The applicant is requesting a substitution of a non-conforming use. The property is located in a PO District.

Application 2019-6 by The Set Fitness, LLC for property at 7207 Chagrin Road -  
Continuance

The applicant is requesting a substitution of a non-conforming use. The property is located in a PO District.

Mr. Lamanna noted that these applications will be heard together since they appear to raise similar issues.

Mr. Dale Markowitz of Thrasher, Dinsmore and Dolan, attorney for the applicants, Mr. Steve Ciciretto and Mr. Peter Carey were present to represent these applications.

Mr. Markowitz testified that he has been coming here for 43 years and he is sure he has been here more than twice a year. He said he represents 7207 Chagrin Road and Mr. Ciciretto has been involved with this property since before it was even built and he will testify and Mr. Peter Carey is also here, he is the property manager and has some good, current history on recent uses and the tenants are also here and added that he is glad the applications are combined, it makes more sense and he was going to ask the board to do that. He said Mr. Dave Sievers and Ms. Angela Shorr are here from Soupbase and Mr. Derek Hoch from The Set Fitness. He said he has some photographs he was going give the board when Mr. Carey is testifying but he handed them out so the board can review them beforehand. He said the reason why we are here tonight on a substitution of a non-conforming use is that when these buildings were built with one exception. He referred to the aerial photo and said this is Chagrin Road here and these properties here were developed by Mr. Tom Burns and the one down here is an insurance office building and these are primarily used for industrial or warehousing spaces or particular uses such as some realtors or Pilates and when these buildings here that you can see were first built the zoning was LIR and in 1991 for reasons that are not clear to them, they got rezoned into the POD they believe by mistake because the plan was to build the one down here as an insurance agency as a POD and the addresses are somewhat confusing and these buildings, 7207 and 7209 both got rezoned into the POD even though they were built as industrial buildings and have been continuously used as industrial buildings over the last few decades and as a result there has been a lot of confusion and a lot of issues and tenants had to come here before this board, probably less often than they should, the tenants didn't know they were supposed to come here but we came in for a substitution of non-conforming uses. He said we hope to remedy that very soon, we have made an application to do a map change for 7207 and 7209 Chagrin Road so that we can get those back into the LIR so that we won't have to come back for substitution of non-conforming uses. He said the buildings over here, the ones up here, (he referred to the aerial photo) those are still zoned industrial so we are surrounded on the west side and to the south behind us is South Franklin Circle.

Mr. Markowitz continued by saying the two tenants that we have tonight are Soupbase which makes soup bases and spices and Mr. David Sievers will tell you what they do but they are a typical small manufacturing, warehousing type of use and are consistent with the original intent of your code for LIR and in fact consistent with prior uses of that space and the building and Set Fitness is a little bit different than your typical gym because they are primarily small classes or individual training classes so they don't have a lot of people coming through their facility every day and so they don't take up a lot of parking which some fitness centers tend to do. He said your code doesn't really deal anywhere with fitness centers so he thinks what Ms. Endres and her predecessors have had to do from time to time is say that the fitness is permitted because they are core education or for weight loss or for those types of uses so it is not specifically set out as fitness classes for Yoga or Pilates or for weight lifting etc. but we are hoping to resolve that via LIR and they are also asking for a text change to include specifically those types of fitness facilities into the LIR. He said he has gone to a lot of fitness centers over the years and he would say the majority of them were in small industrial parks and sometimes in strip centers but the newer ones or larger ones are standalone facilities so we saw that as a fitness center as a typical substitution type of a non-conforming use that could go into this facility. He said because of what happened with the zoning change in 1995 Mr. Tom Burns or actually Mr. Frank McIntyre went to Mr. Burns and said why don't you zone this back to LIR and at the time Mr. Burns thought that was a great idea and filled out the application and it never got filed. He said he wants Mr. Ciciretto to give a little bit of history and Mr. Carey can go through the prior tenants so you can see what kind of continuation we've had and then Mr. Sievers is here from Soupbase and Mr. Hoch will do the same on Set Fitness.

Mr. Steve Ciciretto testified he actually started his practice in 1986 and just a few years later Mr. Tom Burns approached him about doing this development for him and it was basically intended in the LIR to be multi-tenant office warehousing and manufacturing and that was allowed at that time. He said 7205 is the Process Valve building, it was originally the Fram property known as the Amerigas property so Mr. Burns bought it in the mid-eighties and at that time the whole area was zoned LIR as Mr. Markowitz said and basically the intent was to expand and add onto the Process Valve building at 7205 so that little middle chunk was the original building and the two wings that make a U were added on and the whole building was renovated. He said that building still remains in the LIR today with many different tenants but not part of this ownership so 7205 was started with Process Valve and they made valves and equipment and they had other office type spaces in the front so that building started with a little bit more glass and windows and the industrial building in the back where we knew that the purpose was going to be for these sort of more industrial type uses. He said 7207, this was all in 1988 to 1990 so in three years they had built these buildings. He said the large building marked 7207 is that L shape building, 7207 was the first 18,000 sq. ft. of industrial warehouse with big garage doors in the back, he thinks they might show up in some of those pictures and there is an office in the front.

Mr. Ciciretto continued by saying the original tenants of that building were Mogul Dexter and they did industrial shipping out of there and Aaron Overhead Door, they were a supplier and manufacturer of overhead doors, Musky Home Improvements, they were a warehouse for vinyl siding etc., a communication company that did a lot of wiring and communication systems so they warehoused and a company that was something computer related so those were the first five tenants and following suit with those over the years there were the same types of things, metal stamping etc. He said the third building at 7209 which is the Hemlock building, Hemlock Landscaping owned the building at the time, (he referred to the aerial photo), and this is their original building, they did a couple of wing additions and some gardens and courtyards to house their lawn equipment and fertilizer etc. that were allowed in that building. He said in 1990 Mr. Tom Burns contemplated doing this building (he referred to the aerial photo) which we call the Park Place International building and 7227 was actually in a residential zone so you see the industrial zone from the Chagrin line to the residential at 7227 so actually the township zoning thought that this would be a perfect place to implement the new concept that they just had come upon at that time of Professional Office District and Professional Office District allowed for the transition between the industrial and the residential zone so actually 7227 got rezoned as part of a package that we are not really sure why and he would be remiss to tell you that he knew the exact reason but he believes the intent was to create a buffer to these residences and by the way there is a very steep ravine that goes over to Franklin Circle so it is kind of a natural border to there, there is a creek there and this is a very steep drop that separates these so there is a natural border to the south but there was no way to stop the industrial affecting these property values so 7227 and 7207 as it was called were filed the time to be changed into the Professional Office District. He said he knows for a fact that he and Mr. Burns thought that this was their buffer because it came back to the industrial zone and somehow that property got rezoned to LIR at that time so the 7227 building got rebuilt under the Professional Office District, they did need variances, it was short of size for the POD and some certain issues, some area variances which this board approved so that building was successfully built and has served its purpose as an office building and transition. He said that would have been in 1991 as Mr. Markowitz said when the zoning got re-changed there and somewhere after that the Boardwalk property they did next to the Eagles club, it is off the map up there the semi-circular building there that sits behind the Eagles club, that was transferred to Professional Office District also so it stopped the spread from the border and that was kind of an unhealthy property, it used to be the Kehres lumberyard and it was actually in the R-3A District also so in the end that stopped the other side and then lastly in 1995, he is surmising it was the same situation as these folks are facing, somebody came in and applied to Mr. McIntyre for a zoning permit or for occupancy at the 7207 building and he said it isn't appropriate, it is an industrial use, not a professional office so Mr. McIntyre asked Mr. Burns and he filled out the form for Mr. Burns to ask the Zoning Commission to have that property zoned back to LIR, he even has the cancelled check and receipt and we had the application and he knows that they went to the Zoning Commission, he knows that the meeting was tabled and he doesn't know why and they never came back so from 1995 to now he thinks it has just been status quo.

Mr. Lamanna asked who initiated that, was it the owner.

Mr. Ciciretto said actually what happened was Mr. Burns went in and said he thinks there was a mistake because they thought that 7227 was going to get rezoned but how can you do 7207 and not 7209 because this would be POD and this would be industrial (he referred to the aerial photo) and he thinks Ms. Endres' records show that for some reason they had the whole property at 7207 or something so some error happened and he doesn't know on whose part or what happened, he can just tell you that 7207 got changed, the current zoning map shows 7209 included as LIR and we have no record of that ever happening so in theory what we really had was 7207 as POD, 7209 as LIR and then 7227 is POD but when Mr. Burns came in for those applications, Mr. Burns told him at the time that Mr. McIntyre said the best thing is to just get the map changed back, leave 7227 as intended to be the buffer and then change the industrial type buildings, they have no windows nobody wants office space, they want manufacturing and warehouse space so that happened in 1995 when we came to the zoning but it did not get changed, it got tabled and here we are today with uses that are consistent and compliant with LIR over 20 years and we are intending to straighten it out.

Mr. Lamanna said that is probably the only way you can do it otherwise we are basically talking about going through and trying to investigate and nobody has presented to us any of the records from any of the hearings and who got notified and who appeared.

Mr. Ciciretto said he does have a lot of that information if the board needs it.

Mr. Lamanna said there is no way we can make a decision based upon that it was a mistake.

Mr. Ciciretto said of course.

Mr. Lamanna said that is a pretty heavy duty decision for the board to make trying to say the Zoning Commission and Board of Trustees made a mistake when they enacted this legislation and before we take that step we are going to have to see some pretty clear evidence of what happened.

Mr. Markowitz said we just want to say we are substituting non-conforming uses if we get the rezoning approved as he expects they will then they won't have to come back but for these two tenants who are in limbo, we need to get them approval and it takes a few months to get the zoning done so we are going down two different avenues. He said what he thinks happened is 7207 and 7209 were on one legal and he thinks they just got added on when the map change was made because we can't find the application for the POD so we don't know what happened.

Ms. Karen Endres, Zoning Inspector testified that she did a little research to try to help clarify things and she went out and printed out tax maps showing property line configurations and in 1987 and 1990, 1991 and 1994 because it appears that in 1987 they were one lot.

Mr. Ciciretto said he thinks they were developed as one lot and subsequently subdivided into two lots.

Mr. Lamanna said the other issues are if you take the one property as a standalone POD District he thinks it is a sub-sized POD District so there might have been some logic for them to say they were going to extend it to the whole area.

Mr. Markowitz said when 7207 was built and 7209 got added on they got permits for approval because they were in the LIR and it is only since 1995 that the rezoning request was made that from then until now nobody on our side realized that it was not LIR, they thought that the township had gone through and rezoned it and it was a shock to Mr. Ciciretto when we called him and asked him what happened, it is not zoned LIR and he couldn't believe it because Mr. Burns thought he had initiated the process and thought that the township took care of it for him because as Mr. Ciciretto said, the buildings are designed and you will see from the photo we have all of those dock doors, holes in the ground to get the big trucks in so it was clearly designed to be warehousing/storage.

Mr. Ciciretto said all things weren't obviously allowed in the POD so you got buildings that are totally against what POD allows.

Mr. Lewis asked if there are any POD tenants in any of these other units currently.

Mr. Markowitz said there are.

Mr. Lewis said when it flips to LIR.

Mr. Markowitz said they would be okay in the LIR.

Mr. Gutoskey said typically you don't build a zoning map like this, the one you have in LIR is surrounded by Professional Office.

Mr. Lamanna said the entrance road is coming into the LIR.

Mr. Markowitz said you have common drives and easements and it is all intertwined for two of the buildings and then the building from here and this building here (he referred to the aerial photo) you would have to walk across the grass to get there but at one time there was common access among all of the buildings.

Mr. Murphy asked if those two above are LIR.

Mr. Markowitz said yes those are LIR.

Mr. Gutoskey said again, you don't build zoning maps like this, that is what doesn't make sense to him how that ended up PO, then you have the LIR, then the PO. He said you are usually transitioning from more intense use to less intense use to residential.

Mr. Markowitz said it is hard to tell on the map because these colors are so close but if you look you have residential here and POD there. He said he will ask Mr. Peter Carey to explain these pictures and tell you who the tenants have been so you understand that we are just substituting one LIR type use for another.

Mr. Peter Carey testified that he is an industrial real estate broker for the last 35 years and he represented Mr. Tom Burns, the former owner of this property starting about ten years ago so his direct history with the tenancy, the folks that have occupied the buildings, goes back ten years. He said he talked to Mr. Burns extensively about the history of the uses of the building and we are trying to establish that in the 7207 building in particular the uses have been continuous since it has been constructed, the categories are industrial or manufacturing categories that fit in the LIR district. He said in particular when the building was first built one entire wing of the building was leased to Mogul Corporation as a warehouse and they stayed in the building for about 15 years from 1990 to about 2005 and in that space, when Mogul left the space, it was leased to a company called Safeguard Technologies and they manufactured and distributed safety stair treads all over the world and eventually outgrew the space about seven or eight years ago and we leased it to a company called Exports Protective and they had an internet based business that sold protective sports gear and they eventually sold their business and moved out about four years ago and they leased the space to a company called Alexanders Estates that used it entirely as warehouse space for their inventory from estate sales and they also did online auctions and sold home furnishings from the space and delivered those using the docks and they finally moved out a few months ago and we leased the space to Soupbase and that brings us up to the current period so the point is that as far as they can look back, the space has been entirely used for industrial or warehouse purposes. He said the other tenants that are currently in the building are next to Soupbase there is a warehouse that is being used by the Chagrin Falls High School performing arts group and they use it to store their sets and their costumes there and in addition to that they have three or four small tenants there that occupy the office and warehouse spaces including the Set Fitness that uses one of the suites. He said all of the suites have overhead doors as you can see from the pictures and they were originally configured as 2,300 sq. ft. units with a small office and a warehouse behind them and some of those units have built offices into the warehouse section and reconfigured the suites over the years but still the basic configuration is 2,300 sq. ft. units that line up next to each other on the other wing of the building.

Mr. Markowitz asked Mr. Carey to give a background on the tenants before Set Fitness.



Mr. Carey said in the Set Fitness space which is the one space in the building that remains as it was originally configured, a little small office and a warehouse behind, they had the Burntwood Tavern who leased it for several years and they did all of their cabinetry and their interior cabinetry and assembled and constructed it in that space. He said before that there was a cabinetmaker called Riverwood that was there for several years and then the first tenant was actually the Home Improvements Company so we think it has been continuously used for a shop space.

Mr. Dave Sievers testified that he started Soupbase.com 25 years ago in his bedroom and a garage and since then they had to expand and 99% of their stuff is on-line so they ship everything out the back door, and that is pretty much what they are about and they also manufacture dry rubs in that same space, they don't make soup bases they make dry rubs but they sell soup bases and they have been involved with Nestle for the whole 25 years, they have been selling their professional line of cooking ingredients that they make for chefs, restaurants, they have been selling those for Nestle for 25 years.

Mr. Gutoskey asked how many employees they have working there.

Mr. Sievers said max four.

Mr. Gutoskey said you sell just internet based, you don't have anybody coming in.

Mr. Sievers said somebody might come in to see what we have or one or two people drop by but other than that everything is done on-line. He said they have some customers that come and pick up stuff at the back door.

Mr. Gutoskey said so it is not general sales or advertised, he was trying to get how much traffic comes in and out.

Mr. Sievers said very little.

Mr. Lewis said not like a retail store front.

Mr. Sievers said not nearly as much traffic as any type of retail store, much less, we may have only two or three people on an entire day.

Mr. Gutoskey said we are just trying to get an idea of what kind of traffic you have.

Mr. Lamanna asked what category you are fitting this into.

Mr. Markowitz said it is more office/warehouse.

Mr. Lamanna said once you start making things you are not an office or a warehouse anymore, you are making different things and he doesn't see that there is a food manufacturing.

Mr. Markowitz said they are not manufacturing, it is like sitting in a kitchen, she has a bowl and she is just taking these ingredients and mixing them.

Mr. Lamanna said that is a manufacturing process.

Mr. Markowitz said not any more so than what you do in your own kitchen.

Mr. Lamanna said it doesn't matter, what I am doing in my kitchen I am doing it for myself, I am not doing it to sell to other people.

Mr. Markowitz said right but it is no different than if you are woodworking and making cabinets, it is a limited industrial use, it is supposed to be industrial uses that are not creating excessive noise or pollution.

Mr. Lamanna read from the Bainbridge Township Zoning Resolution and said, it says "only the following uses shall be permitted" so it is not like any industrial use, it is a list of permitted uses so he is saying he doesn't see where under the list of uses permitted in an LIR district that this use fits, it doesn't fit in the warehousing, it doesn't fit in the wholesaling because wholesaling means you buy a product and resell it in a different distribution level.

Mr. Markowitz said their primary business is wholesale.

Mr. Sievers said they do wholesale.

Mr. Lamanna said it is a primary business but when you then go beyond that.

Mr. Markowitz said the only thing incidental to that is the rub.

Mr. Lamanna asked if that is the only thing they are making themselves.

Mr. Markowitz replied yes.

Mr. Lamanna asked what percentage of their business is that.

Mr. Sievers said he thinks 10%, not long, we just starting doing that.

Mr. Gutoskey said it does allow wholesale operations for groceries and related products.

Mr. Lamanna said but when you make your own.

Mr. Gutoskey said they could make it at home and bring it in.

Mr. Markowitz said they could do that. He showed the board a picture of the blending area.

Mr. Sievers said they make small batches.

Mr. Lamanna said there is a point at which if it is an incidental part of your business the board is not going to be super particular about it.

Mr. Markowitz referred to the photo and said if you look at this little white box here.

Mr. Lamanna said if your whole business was bringing in spices and grinding them up and compounding them into different mixtures and rubs and different styles of combination seasonings, that might be a different situation.

Mr. Sievers said they have close to 1,000 products and only six of them are rubs.

Mr. Markowitz said if you have no more questions on Soupbase, Mr. Derek Hoch will speak on the fitness part.

Mr. Derek Hoch of The Set Fitness testified that they have been around for three years, they just moved out of their former location on S. Franklin and sought out an opportunity to come to the Bainbridge area and they are a personal training studio, they only do small group classes by appointment only or one on one, appointments only. He said they are not a big box gym, they have no intention of ever being that, they do not have key fobs, again they are by appointment only and no more than five to six people in each class and from a standpoint of traffic that was mentioned before they are getting maybe two or three cars because a lot of the customers or clients that they have are actually husband and wife so sometimes they come together and they like the fact that they can train in a private space in a private studio and again a very wide open warehouse facility allows them to do different types of workouts and training.

Mr. Markowitz testified that if you look at the pictures, they don't really have any windows but they do have a little front office space.

Mr. Gutoskey said he doesn't see where this fits in the code.

Mr. Lamanna said it is the same question. He asked Ms. Endres if there is a specific section that she sees.

Ms. Endres said not in the industrial district, that is one of the conversations that she and Mr. Carey had, when they do the amendment that there may be some text changes also so that the amendment would address new uses that are common to industrial districts.

Mr. Lamanna asked if that is permitted in a PO District.

Ms. Endres said no, if it was she would have given them a permit. She added that it would be permitted in CB however we don't have the progressive zoning, step zoning that some townships have that anything in PO is permitted in commercial and anything in commercial is permitted in industrial, that is not something Bainbridge has right now. She said there are provisions for fitness classes in the commercial district.

Mr. Lamanna said he doesn't have a problem with Soupbase with the understanding that whatever manufacturing they are doing is kind of incidental to their operation and kind of as pretty low level manufacturing operation that with the understanding that this is not something that can be then bootstrapped into something bigger that this is not a basis for them coming in the future and saying these guys were doing this so now we want to bring in somebody that is doing this all of the time recognizing that this is kind of a unique situation with this particular vendor, he thinks that it would fit within the existing things that permit it, the fitness thing is a problem. He said it is unfortunate but this is what happens when new things come along.

Mr. Markowitz said he understands that is why they are doing the text change request as part of the amendment.

Mr. Lamanna said if you are an owner of property in one of these districts you ought to be looking at what your potential tenant space is and looking to see what kind of tenants your zoning permits and if you are looking in the future and thinking this is the kind of thing that may want to come into this area.

Mr. Markowitz said since it was allowed in the other building they assumed it was permitted.

Mr. Lamanna said he doesn't know how they got there or what their circumstances were.

Ms. Endres said there is a lot of housekeeping to do once we figure out what direction to go, if the substitution of non-conforming uses is appropriate, once the commission examines the application for the text change there will be some work at some point getting all of the non-permitted businesses current.

Mr. Lamanna said he thinks we are at the point now where we are not here to fix the fact that something didn't get included in the statute, it is unfortunate but that is not our jurisdiction, it is somebody else's jurisdiction and when he hears that somebody has a rental property that would like to rent to somebody and they didn't think about this far enough in advance to go and try to get the language changed and he just doesn't see any basis on which we can come in here and try to turn ourselves into a 14-sided polygon to accommodate this.

Mr. Lamanna continued by saying in the one case he thinks they can because it is close enough to what they are doing fits, the other one, he doesn't see any place where it can shoe-horn itself in without really totally ignoring what the ordinance was and unfortunately the ordinance was constructed on this is what is permitted and if it is not on the permitted list it is not allowed, that is where we are.

Mr. Markowitz said he understands you are not a court of equity.

Mr. Lamanna said you are right we are not a court of equity.

Mr. Markowitz said sometimes he wishes you were.

Mr. Lamanna said there has got to be some kind of consistency.

Mr. Markowitz said we could add an adult entertainment aspect.

Mr. Lamanna said that might be a little more complicated than you want to get involved with.

Mr. Hoch said when you mention professional office, just out of curiosity, his business partner is certified and trained, he is a personal trainer, he consults with every single client that comes in through the door and spends probably 30% to 40% of his day giving assessments such as weight loss so we do have a professional setting in the front part of the area and then he is allowed to perform the assessment on the clients in the rear area of the building which that is considered to be warehouse space and again to your point, a lot of these new spaces, that are popping up and again it is a moot point for what it says in the book but a lot of these new places that are popping up like Ms. Endres has mentioned, they are going into these warehouse type spaces, the cross-fit type shops and things of that nature so it is something that he thinks is going to become more popular and he is glad they are in Bainbridge because the fact is they are running into this issue unfortunately but they want to get it resolved because there is not a lot of competition around so that is why they chose this space.

Mr. Lamanna said this unfortunately is something that is inevitable because it is hard to keep up with changing new businesses that come up and try to write something that is all encompassing ends up having massive loopholes in it where things will come in that you didn't really anticipate so it is a lot easier if you want to add to the list there is a process for adding to the list and if it is not very controversial it will happen in due course.

Mr. Markowitz said he has the answer. He said you look at the definition of a "professional sales and service office" and there are other words he is taking out of it but "it is any business that provides sales and services directly to the general public and their wellbeing". He said it really supports other businesses for the general public and it is in the definitions under "professional sales and services office" so he thinks it would meet what Mr. Hoch just said.

Mr. Markowitz continued by saying the full definition is “professional sales and services and services office is any business who provides sales or services directly to other businesses or supports other businesses or the general public and their well-being. These include permitted uses other than general retail sales and services.”

Mr. Hoch said that is all pretty much what we do.

Mr. Lewis said you could apply that to just about any business in any category.

Mr. Markowitz said it has to be to the general public and their wellbeing, he doesn't know that he would say that to be true for every business.

Ms. Endres said it is on page 32.

Mr. Markowitz said the board is supposed to construe this in favor of the property owner so they are entitled to the broadest, possible, reasonable definition.

Mr. Gutoskey said he assumes that this definition would apply to something somewhere in one of the districts but he doesn't see this in any of the districts.

Ms. Endres said she is not seeing it right now and she knows the commission is in the process of pulling out definitions that are not used.

Mr. Gutoskey said this was when our code was in the process of the definitions being updated, so this is a definition that was added in that may or may not be in the code somewhere.

Ms. Endres said correct.

Mr. Markowitz said Chapter 155.02 under zoning certificate required, professional, medical, administrative businesses, sales offices and office buildings as permitted uses which require a zoning certificate.

Ms. Endres said that is under LIR.

Mr. Lamanna said if it doesn't appear as it is written it isn't a definition that applies to that section. He said those precise words would have to appear in the section for it to apply. He said that set of words does not apply in the LIR, that defined term never appears, it is in there as a capitalized term, it has to appear as it is written, you can't pick a bunch of words out of a sentence and say the three of the four or five words in this definition are in this sentence therefore this definition is incorporated in the sentence, he thinks you have to have those exact usage of words in there.

Mr. Markowitz said it is, it says professional office.

Mr. Gutoskey said it doesn't say professional sales and services office.

Mr. Lamanna said that is the term, they are not all together that way.

Mr. Markowitz said no.

Mr. Lamanna said he doesn't know where the definition came from or what it applies to.

Mr. Gutoskey said he doesn't see it anywhere else in the code, he doesn't see that exact term in any of the zoning districts.

Mr. Markowitz asked why it is in the code.

Mr. Lamanna said getting back to the same problem we are going to have to go back and research when this came in, what was said when the zoning commission did it, does it appear anywhere else, we will be at this for the next month trying to figure out what the heritage is on this.

Mr. Markowitz said if the board wants to act on the Soupbase and table the other one he doesn't have any objection to that.

Mr. Murphy asked if there is anyone else here for these applications.

Mr. Gutoskey said he thinks the Soupbase fits.

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

Motion BZA 2019-6 – 7207 Chagrin Road – The Set Fitness, LLC

Mr. Lamanna moved to continue this application for four months to the August 2019 meeting as there are unresolved questions that need to be looked into further and the applicant is looking into pursuing a change to the permitted uses within the district to deal with this particular use.

Mr. Lewis seconded the motion.

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

Motion BZA 2019-5 – 7207 Chagrin Road – Soupbase, Inc.

Mr. Lamanna moved to approve the substitution of a non-conforming use.

Based on the following findings of fact:

1. The applicant has presented evidence that this property has been used continuously for LIR purposes.
2. This is generally a permitted use in LIR of warehousing and sale of food products and it is probably a less intensive use than some of the other uses that have been previously in this property.
3. The board does note that the applicant does do incidental amounts of less than 10% of making its own formulations of some of the food products he sells. The board is treating this without any precedence.
4. The future uses is an incidental use by this business and not sufficient to make it an unpermitted use in an LIR District in this particular case limited to the facts of this case as presented.

Mr. Gutoskey seconded the motion.

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



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

The applicant is requesting a review and renewal of an existing conditional use permit. *The applicant is withdrawing his request for approval of an addition of a new 32,000 sq. ft. building at this time.* The property is located in a R-3A District.

Mr. David Barr was present to represent this application.

Mr. Lamanna asked Mr. Barr what has happened since the last meeting.

Mr. David Barr testified that the major reason for his application is to extend the conditional use permit, we are at the time where it is appropriate. He said he is happy to elaborate on the construction project on the property.

Mr. Lamanna asked Mr. Barr to give any update on the project.

Mr. Barr said they are close now, the thing is done except for the last few things they need to do to satisfy some requirements the fire marshal put on during his inspection. He said there were three things that he asked them to do and one is to install a fire rated door which is going to be going in right as the corridor to the building meets the building, that we expect to be done within two to three weeks, the second thing is he didn't like the wiring for the alarm system. He said they had an alarm system in the main clubhouse and put in a new alarm system for the new building and somehow the wiring that is going to be for the new building was not approved so they asked them to do some work on that. He said their security company scheduled the 29<sup>th</sup> so it is a week from Monday, that is the day they are supposed to come out and do that and the last of the three things that we have to do to satisfy the fire marshal is, there were two emergency exit doors that require outside locks to, the doors came without outside locks so that is something that they are also attending to and it should be done in the next three weeks. He said they are also, although it is not a requirement, they are finishing up the drywall in the corridor now as well so that is probably 80% done, there are a few more boards that have to go up and then there is some mudding so that should be done within a few more days. He said they are still planning to hang the curtains too inside, that is a not a requirement of the fire marshal or anything that pertains to the building but tennis players like to have curtains behind their courts and those haven't been hung yet, that will happen hopefully next week.

Mr. Murphy said we are still missing a couple of windows.

Mr. Barr said the windows are supposed to be delivered next Wednesday, April 25<sup>th</sup>, in the front. He said they have to do some seeding too, Snavelly came in and moved some dirt for them and that area needs to be seeded. He said they have two trees that died, they planted somewhere around 30 trees, 28 of the trees survived and two of them didn't so they have two dead trees that they need to replace in the spring.

Mr. Lamanna asked Ms. Endres if there is anything else she can report back to the board since the last time.

Ms. Karen Endres, Zoning Inspector testified she thinks it is fairly current, she doesn't think there were any changes since then. She asked Mr. Barr if the dumpster area has been cleaned up.

Mr. Barr said the treadmill is gone and a lot of the stuff is gone, there is one piece of equipment that remains, it is an old roller that is used to roll clay courts, Wembley years ago had clay courts and they had an old roller, it has been used, it is not in great condition but they believe that one of the local clubs that has clay courts and we are hoping that they are going to pay us a few dollars for it and we will get it out of there before the season starts.

Ms. Endres said relative to the windows, are they still on backorder.

Mr. Barr said the builder has told him that the arrival day is supposed to be the 25<sup>th</sup>.

Ms. Endres said she has a picture of the elevation that was approved and asked if there is going to be stone along the front.

Mr. Barr said he doesn't know that, he is not aware that stonework is supposed to go in, the builders have the plans.

Ms. Endres said these are the approved plans so this is what she will be looking for, she knows we discussed the windows already but she wanted to discuss the architectural features, the little peak things and the stonework so she is assuming the contractor still needs to do that work.

Mr. Barr said he will have to ask him about that.

Mr. Lewis said he can bring this up, he is looking at the renderings that were submitted that the board gave the approvals on, the architectural drawings and on both elevations it very clearly states "metal roof, color to match existing clubhouse".

Mr. Barr said clubhouse right.

Mr. Lewis said it is right here.

Mr. Barr said yes.

Mr. Lewis said he is understanding that the roof color on the new structures do not match the color of the clubhouse.

Mr. Barr said they match the clubhouse as closely as we could get a match. He said go out and take a look at it and you will see it is not black.

Mr. Lewis said it is not silver, the colors don't match.

Mr. Barr said they match the clubhouse.

Mr. Gutoskey said when he was out there today they didn't appear to match visually the roof on the clubhouse.

Mr. Barr said that is different it says to "match the clubhouse", it doesn't say to match the roof on the clubhouse.

Mr. Lewis said the metal roof is to match the clubhouse, it is right here in black and white.

Mr. Barr said yes he agrees, it says "roof to match clubhouse".

Mr. Lewis said the word color, it is right there.

Mr. Barr said color to match clubhouse.

Mr. Lewis said the roof color to match the clubhouse, they don't match.

Mr. Barr said clubhouse, it doesn't match the clubhouse roof, it matches the clubhouse.

Mr. Gutoskey said not the roof.

Mr. Barr said it matches the clubhouse, the words there say to match clubhouse.

Mr. Lewis said the description is referring and pointing right to the roof, not the sidewalk, not the siding it is pointing at the roof and it shows up in two locations on your rendering sir.

Mr. Barr said it says to match the clubhouse.

Mr. Lewis said actually he found it in a third place. He said he will read it one more time. "Metal roof color to match existing clubhouse", the roof, that is what it is talking about, they are different colors.

Mr. Barr said he is going to disagree, it says to match the clubhouse.

Mr. Lewis said then he must be color-blind.

Mr. Barr said if you are reading extra words.

Mr. Lewis said he is reading word for word, exactly what is on what you submitted.

Mr. Gutoskey asked Mr. Barr if he wants to see what it says.

Mr. Barr said it says to match existing clubhouse.

Mr. Lewis said roof color.

Mr. Gutoskey asked what color is this and what color is this, he referred to the rendering.

Mr. Barr said it is matching the clubhouse and it is also blending in with the dome behind it as well.

Mr. Lamanna said if you also look on this it says “metal siding color to match existing clubhouse” so doesn’t that, in most people’s minds mean that the siding of the new addition will match the siding of the clubhouse and the roof will match the roof. He said he doesn’t know how you would come to any other interpretation, they are totally different things and he can’t imagine anybody would be matching the roof of one building to the siding of another building, especially when you’ve got right on the same thing, siding will match, roof will match.

Mr. Gutoskey said the siding does closely match the clubhouse, the siding of the clubhouse.

Mr. Lamanna asked Mr. Barr if there is a reason he chose silver.

Mr. Barr said they were matching the clubhouse.

Mr. Lamanna asked if the clubhouse is silver.

Mr. Barr said that is the closest match they could get to the clubhouse.

Mr. Gutoskey asked if they don’t make a paint that is close to the roof of the clubhouse.

Mr. Lamanna asked what the color of the siding that he is building there. He said if the siding of the new building is matching the clubhouse and then the roof is matching the clubhouse, wouldn’t then they all be the same color. He said if he is to follow the logic of what you (Mr. Barr) are saying it would be the same color.

Mr. Barr said it was as close as they could get.

Mr. Joe Laehu of 8285 Woodberry Boulevard testified that he works in the paint business and they match colors to whatever structure you want.

Mr. Lewis said he also wanted to point out and just be sure that the landscaping was being completed simultaneously as the buildings are going to be done so we have simultaneous completion dates.

Mr. Barr said the landscapers have an idea when the time of the year it is more appropriate to do seeding and whatever their recommendations are we will follow, they told us earlier that it wasn't the ideal time yet.

Mr. Lewis said in one of our motions it was clearly stated that they are supposed to be happening simultaneously and because the construction project is running a little bit behind and we are now mid-April and landscapers are out doing stuff everywhere everyday so what are you seeing as a completion date.

Mr. Barr said he doesn't know what is going to come out of the meeting here.

Mr. Lewis said right now we are just talking about building the building and doing the landscaping.

Mr. Barr said if the roof is going to need to be a different color then we are talking about a different completion date, if we are not talking about that, if we are just talking about the things that he said when he started talking about the fire marshal we should just be about three weeks away.

Mr. Lamanna said let's just say on the roof, his view of the roof is, number one that is a material change to what was approved as part of this construction project and he thinks if you want to have a different color roof you've got to come in and make a separate request to modify our pre-existing decision. He said he is not comfortable addressing that in this particular application because this is kind of a new thing that hasn't been noticed out as part of this whole thing and he thinks it is far enough away from the things that we have been discussing that needs to be addressed separately.

Mr. Barr said okay.

Mr. Lamanna said at this point as far as a further discussion here tonight, he thinks it is a moot issue to be dealt with in a future application.

Mr. Barr said okay.

Mr. Lamanna said he would like to say you are now technically in violation of what was approved and you need to come in and seek modification to what was previously approved with respect to that and the second the application, that is just a matter of procedure, it wouldn't be appropriate for the board to consider that change on this application because that was not really what was part of the original application. He said he thinks the board can push that bite of that discussion to another day and another application.

Mr. Barr said sure.

Mr. Lamanna said he thinks here tonight what we need to do is we need to address any of the open issues on the renewal, that is what we are trying to focus this thing on at this point.

Ms. Endres said right, some of those issues may have to do with ancillary uses on the property.

Mr. Lamanna asked about the parking situation, let's start with the issue of what the required parking is currently and how that was calculated and whether there is anything different.

Ms. Endres said there were variances over the years on parking and the final requirement was 86 parking spaces, she doesn't know how the zoning inspector came up with the 86, originally it was 95 and a variance was granted to permit 86, she doesn't know how the zoning inspector came up with the calculations. She said she provided a sheet in the packets showing how she would calculate it based on the parking spaces required in Chapter 169.06 and it is for outdoor pools, country and tennis and racquet clubs, there is one for every five (5) persons capacity plus one (1) for every four (4) seats or one (1) for every thirty (30) sq. ft. of floor area used for seating purposes, whichever is greater. She said the first formula would come up with the greater number of parking spaces required so then Mr. Barr provided to her the number of seats that he had in the facility and the pool seemed to be one of the big issues causing parking overflow so she contacted the building department to find out what the capacity would be for a pool, we have that five person capacity, one for every five persons capacity so she is thinking what is the capacity of the tennis courts, what is the capacity of the swimming pools and it is kind of interesting that the capacity for the pool was the end result would be 107 parking spaces for the pool capacity which is a different variance than what was approved in past hearings so she is not sure that former zoning inspectors included pool capacity in factoring their minimum parking requirements. She said based on her calculations it appears that 150 parking spaces would be needed and we have 86.

Mr. Murphy asked Mr. Barr if he ever had 531 people in that pool.

Mr. Barr said no.

Mr. Murphy asked if he could actually get 531 people in that pool.

Mr. Barr said he didn't think so.

Ms. Endres said that number came from the state.

Mr. Lamanna asked how they did it.

Ms. Endres said they have some kind of formula they use. She said there was a worksheet that the health department sent her and it is in the board packet and it is an email from Mr. Dave Sage.

Mr. Gutoskey said it is 25 sq. ft. per, that is where that number comes from.

Mr. Lamanna said they are using it to calculate the water turn-over rate.

Mr. Murphy said for filtration, maximum allowable.

Mr. Endres said she told Mr. Sage what she was looking for and this is the information he provided, he said this would be the pool capacity.

Mr. Gutoskey said they look at the deck surface too because it is a function of the deck and the pool. He asked Ms. Endres if she figured out how they came up with 95 spaces.

Ms. Endres said she couldn't figure out how they came up with that.

Mr. Lamanna said they are looking from a design standpoint for the filtration and chlorine system and they probably have a pretty stringent requirement, it doesn't necessarily translate to the parking because he is not sure that this number was selected, it looks to him it was selected as a health reason in the design of pool systems and probably to make sure that they have adequate capacity to treat the water if they get that many people in there, whether that actually fits into a real world pool somewhere in terms of how many people you are going to have there.

Ms. Endres said she is not disagreeing.

Mr. Lamanna said since this is a membership pool it is not like you have all comers, there is not a potential source of people that fill up the pool and you get so many members and one can figure that if there are X number of members at any given time the maximum will be some percentage of that X who will be there with some wide percentage of guests perhaps so you can figure out an operational situation that this pool may actually, in the real world, only have so many people there at any given time and that may be where it came from.

Ms. Endres said it was a real challenge to find a formula to the facility.

Mr. Lewis said what sort of goes with that because this is a design capacity giving us a head count maximum, we have a certain amount of parking spaces so we probably in all practicality should be okay except when there is a swim meet, now we have an excessive amount of people on the property and now we also have parking issues because we have overflow parking, not parking on the premises. He asked is it not enough parking to accommodate the full use of what this property is being used for which are the highs and the lows, the pool is closed in the winter but Labor Day weekend, there is a meet.

Mr. Barr said the pool is open in the winter, we enclose it in the winter, people swim in the winter.

Mr. Lewis said people like to go to the pool and sit in the sun, he thinks you have a little more activity during the summer.

Mr. Barr said we have more in the summer, yes.

Mr. Lewis said so for parking capacity you can't just look solely at what is my membership enrollment or what does the filtration system in the pool say what is my max and know what is really going on on this property.

Mr. Lamanna said you size the parking generally for the regular course of business. He said if you go to Heinens the day before Christmas or the day before Thanksgiving there is not enough parking there, there are lots of places like that that one or two days a year there is not going to be enough parking and he doesn't think you size parking for one day and if we did, we try not to pave over the world and we should at least do our part by being sensible in trying to figure out what parking is needed.

Ms. Endres said she is fine with the board choosing a different formula.

Mr. Lamanna said unfortunately this is a difficult thing, he doesn't think we really have the kind of guidance that you would like here, he thinks it is a little bit more generous with respect to this particular case and these are not the types of situations where nice specific rules are not necessarily going to work, there are unique facilities that it is harder to find people who are willing to create a formula that we can apply to those cases, it just doesn't work.

Mrs. Linda Nolan of 8405 Woodberry Boulevard testified that they live next door to the Wembley Club and there is just a handful of swimming in the course of the year so the overflow is there for a couple of hours, it doesn't bother them, in fact Mr. Barr asked them when he bought the club if they had any objection to having cars parked in front of their house and we said absolutely not, it is summertime, it's the kids, it is a couple of hours so the swimming thing, they don't want that to cloud the issue, the parking lot never seems to be at full capacity other than a couple of few swim meets.

Mr. Lewis said he has a talking points list that is a carryover from the last meeting and all we want to do is to make sure we revisit all of the things.

Mr. Barr said fair enough and please do that, that is fine. He said he wants to add one thing to it, last year the biggest problem in terms of overflow at the pool has always been the invitational that happens at the end of the year and the invitational is something that started many years ago, he doesn't know exactly how long before he bought the club and they had invited four or five or maybe as many as six teams, some of the people here can probably tell you the history of that more than he could, the end of the year invitational was always held at Wembley and that was the biggest transgressor by far, with most regular swim meets, the parking lot got pretty full but not all of them caused overflow but the invitational was by far the worst because there were so many teams there. He said last year before any of this happened, before he knew that he was going to be talking to the board today, he told the swim coach that he didn't want to host the invitational because he knew that some of the neighbors were concerned about overflow, they didn't hold the invitational at Wembley last year, it was held in Mentor and we didn't have that big overflow last year so he thinks probably most people here don't remember the details quite as much as he does but he can tell you that 2018 he thinks they had less overflow than Wembley has had in many, many years.



Mr. Barr continued by saying on Memorial Day, they had a little overflow, if they have nice weather on Memorial Day, that is a big day for them, probably a little overflow, some years they do, some years they don't but the regular swim meets he can tell the board as well that their swim team is much smaller than it used to be and so even on their regular swim meet day they have less participants and the regular swim meets are not what they were five, seven or ten years ago. He said he has seen pictures of the Wembley swim team from years ago when it was at least double, maybe triple the size the team is now so the swim meets don't bring as much traffic as they did previously.

Mr. Lamanna asked Mr. Barr if he looked into the possibility of using one of the churches across Rt. 306 there for parking and shuttling people back and forth.

Mr. Barr said they haven't, we haven't looked into that, he thinks that if you came out and saw what our swim meets look like now with a smaller swim team, he thinks you would see that 2018 and 2019 are not the same as 2012, the swim team has shrunk and he doesn't think that you would find it to be an issue today.

Mr. Lamanna asked how many teams usually participate.

Mr. Barr said it is just two teams.

Mr. Lamanna asked if that ever causes a problem generally.

Mr. Barr said that is the most full the parking lot ever gets. He said he thinks last year they may have had a few cars overspill and we have people who live across the street here. He asked them if last year they had a lot of cars on the street.

Ms. Shannon Holodinski of 8360 Woodberry Boulevard testified that there were some.

Mr. Lamanna asked how many swim meets are there.

Mr. Barr said they have four home meets scheduled this year.

Ms. Holodinski said out of 14.

Mr. Barr said he told the swim director to have away meets so we have ten away meets and four at home. He said they thought about not having a swim team at all.

Mr. Lamanna asked how many people are on the swim team now.

Mr. Barr said last year they had about 50 kids on the team and he thinks previously for years it was over 100.

Mr. Lamanna said one thing they could address is we could establish that if you have this many people you can have this many meets a year and if you want to have more than that.

Mr. Barr said he doesn't and added whatever the board decides on the swim meets it is fine with him.

Mr. Lamanna said the board could leave you the possibility of saying if you want to make arrangements for off-site parking then you can have other meets besides that or bigger meets but if you want to do that then you have to arrange for off-site parking. He said we will leave that as a possibility.

Mr. Barr said okay.

Mr. Lamanna said people will know that there will be this many events and that is going to be it and if it looks like at these events there is a small possibility that there could be some overflow but it is a public street so people park on public streets for a few hours a few times a year, he doesn't think it is worth building 20 or 30 or 40 more parking spaces.

Mr. Barr said it is definitely not.

Mr. Lamanna said it is just not a good trade-off he thinks from a land use planning and zoning standpoint to add more.

Mr. Nick Yuhas of 8320 Woodberry Boulevard and 8260 Wembley Court testified that it was everyone's understanding that in front of the new building that was going to be tennis courts and it was also going to be bermed up with Pine trees to soften the blow and now he understands that that is turning into a parking lot or that is what they have been told. He said in the original site plan he thought it was supposed to be tennis courts.

Mr. Barr said it is not turning into a parking lot.

Mr. Lamanna said he thinks they were originally talking about putting some outside courts in there but they have scaled back that piece of development now.

Mr. Gutoskey said he thinks they were supposed to put Pine trees in there.

Mr. Lamanna asked Mr. Yuhas if he was thinking that landscaping went with those tennis courts.

Mr. Yuhas said the circle was supposed to be bermed up and it was supposed to have Pine trees to soften the structure so we are not having a parking lot in the Nolan's backyard or on the side yard. He said he understands turning it into a parking lot but that wasn't what he thought was agreed to.

Mr. Murphy said there are no plans to turn that into a parking lot.

Mr. Yuhas said maybe you had better talk to Mr. Barr.

Mr. Barr said that application was withdrawn.

Mr. Yuhas said on the original site plan when the tennis structure was being built it was tennis courts were going to go in front of that and they were going have the trees and the berm up there to try to kind of soften it because now you are looking at some kind of a free-standing here or air conditioning unit but it is kind of at the corner of the new building so you are looking right at that as you are driving by and since we are talking about parking he thought that it was important to mention.

Mr. Lamanna said if in the course of doing a development and you decide not to do a piece of the development you can decide not to do a piece of the development. He said you can't decide not to do something that the board required you to do for no purpose so if you decide not to build the tennis courts that is fine but you can't go build a parking lot there without getting another approval and there is nothing on the table now with respect to adding in a parking lot, it may have been in his earlier application but that is now withdrawn. He said that doesn't say anything about those trees because those trees were there for a buffer for a bigger purpose not just related to the tennis courts, they were related to the whole project so he doesn't think that the trees, that part of it should change and that part of it should be completed.

Mr. Lewis asked if that mounding is done.

Mr. Yuhas said no.

Ms. Endres said she didn't remember there being a mounding requirement.

Mr. Lamanna said you have to go back and see the minutes and see if there is a drawing that indicates that. He asked if those are new trees that were going to be around a circle there.

Mr. Murphy said they were supposed to be new trees.

Mr. Lamanna asked Mr. Barr what his understanding is as far as the trees.

Mr. Barr said the builder had told him that they planted the trees that they needed to plant on the east side of the property.

Mr. Murphy asked didn't we originally plan on the air conditioning condenser to be behind the building, is that now on the side of the building.

Mr. Barr said they don't have air conditioning.

Mr. Murphy asked what that big structure is.

Mr. Barr said that is heating.

Mr. Murphy said it doesn't seem to be on any of the drawings either.

Mr. Lewis said the motion made on application 2016-37, Item #6 states “there would be two rows of 12’ Spruce trees planted approximately 15’ apart on the edge of that side and that they will be in the full landscape plan when the applicant is required to submit prior to getting a zoning certificate.”

Mr. Barr asked if that is the east side.

Mr. Lewis said yes, he thinks it refers to the east side.

Mr. Barr said that is done.

Mr. Lewis said he was just double checking and is that on the north.

Mr. Barr said yes.

Mr. Lewis asked if those are the ones that Ms. Endres mentioned that a couple of them had died.

Mr. Barr said two died.

Mr. Lewis said he just wanted to make sure he was aligning the right motion with the right thing.

Mr. Yuhas said the line of the circles all the way on the northeast side of the circle, those were all supposed to be new trees that were put in, he believes on that drawing.

Mr. Lewis said we were looking for the motion.

Mr. Lamanna asked Ms. Endres if she reviewed and approved the landscape plan.

Ms. Endres said yes she reviewed it.

Mr. Gutoskey said in the motion of 2014-24 the board originally approved this, “The applicant will submit a detailed landscape plan to the Zoning Inspector for approval prior to issuance of the certificate showing the conformance with the various discussions of the board including the screening to the north of the new outdoor courts, additional screening on the east side of the property starting with the jog out.....”. He said the board did ask for screening along the north. He said the building was moved closer to this property line and that is when we put that actual requirement on the trees but the original motion from 2014-24 required screening on the north side there, north of the new outdoor courts. He said they originally came in and they had to move the building over because of some mechanicals here that they couldn’t move.

Mr. Barr said the generator.

Mr. Gutoskey said you had to slide the back part of the building closer to the property line so because of that the board added some additional screening versus what we originally had in 2014 but the 2014 condition still applies.

The board reviewed the screening requirements.

Mr. Lewis said it states “including the screening to the north of the new outdoor courts”.

Ms. Endres said she believes that is the only landscape plan she has.

Mr. Yuhas said all of the circles right here are supposed to be bermed up with trees, those are all new trees that would block our view of looking right out our front door at 8320 in looking at this and the other thing that it might help hide is that heat exchanger or heater that is now sitting there so this is what he is talking about specifically.

Mr. Gutoskey said if you continue reading this number one it says “additional screening on the east side of the property starting with the jog out ...” but then it says “and also in the area around the oval similar to what is shown on the aerial perspective providing screening from the western view of the property”. He said that is in the first condition from 2014-24.

Ms. Endres said she thinks that the trees need to be planted along the oval.

Mr. Lewis asked if the stuff along the driveway and the oval are not in yet.

Ms. Endres said she didn’t think those are in yet. She said this is the approved plan however she didn’t know if there were provisions for mounding, she doesn’t remember seeing mounding on the plan.

Mr. Lamanna and Mr. Gutoskey both said they didn’t see any mounding.

Mr. Gutoskey said the mounding may have been discussed but he doesn’t see anything in the motion for mounding.

Mr. Yuhas referred to the site plan and said this is all open right here and what Ms. Holodinski was referencing is up here, this north side is supposed to have trees to help block that in.

Mr. Lewis said that drawing there also doesn’t show the double staggered row of trees that are already in on the east side of the building.

Mr. Yuhas said correct.

Mr. Lewis said what we are really kind of looking for is there is some stuff on that site plan and some other on the other so he thinks we are talking about the east side where the two trees have passed away. He said we don’t seem to have a landscape plan that has the north end trees, the driveway trees and the east side trees.

Mr. Tom Nolan of 8405 Woodberry Boulevard testified that he lives just east of the club and there are not two rows of trees on the east side of the clubhouse, there are not two rows.

Mr. Lewis said he doesn't know if they are staggered or if they were calling for 12 trees and we typically stagger them a little bit so they grow out good as opposed to two heavily defined rows.

Ms. Endres said they are supposed to be staggered.

Mr. Nolan said he understands that but there are more than two that are dead also.

Mr. Lewis thanked Mr. Nolan.

Mr. Nolan said just for the record, they are not staggered.

Mr. Lewis asked if they are 6' to 8'.

Mr. Nolan said they are in a row along the perimeter, they are not staggered.

Mr. Lewis said he is not sure the board's motion required them to be staggered, he will have to go back and re-read it. Mr. Lewis read BZA motion 2016-37 (6.) "...two rows of 12' Spruce trees planted approximately 15' apart to the edge of the east side...". He said they are not quantified, it just says two rows of 12' trees so he is gathering what the board was after was that they would pretty much run the length of the building and this rendering of the landscape plan kind of shows them going full length. He said there is one row of 12 and one row of 13 showing on the rendering, staggered, two rows and so far we have 12 planted.

Ms. Endres said she will have to go out and count them again.

Mr. Lamanna said that still doesn't answer the question about the trees to the north, what happened to the trees to the north and what happened to the trees around the road.

Ms. Endres said she would consider these to be part of the approved site plan. She said these are there to buffer the tennis courts.

Mr. Lamanna said it is more than just the tennis courts and obviously they couldn't put them close to the building because the tennis courts were in the way. He said both of those trees are mentioned in the original approval.

Ms. Endres said so even though they are not on the site plan, sometimes they have a separate landscape plan from the site plan.

Mr. Lamanna said so it is possible that this was submitted just to show the trees along the side.

Mr. Gutoskey said he thinks it was submitted for the updated conditions. He said it was approved in 2014 but they didn't get around doing the plans until 2016 and they found they had to move the building so they came back in and asked for that and that is where those other additions came from.

Mr. Lewis said the east side modification with the landscaping so they depicted that on the site plan.

Mr. Lamanna said so that the board does not sit here and try to enforce all of the completion requirements on this project which is not yet finished that we address this by shortening the period of the renewal so that we can come back and revisit that all of these things actually get completed as they are supposed to be completed next year then we don't need to go over every single item on the requirements.

Mr. Gutoskey said that way Ms. Endres can go through the conditions to see that all of the conditions were completed.

Mr. Lamanna said obviously this has happened over an extended period of time and as things happen over an extended period of time it is easy for the people doing the project to lose sight of some of the requirements especially when things are changing and moving around etc. so that Ms. Endres has a list of what she thinks is required and then Mr. Barr can review it and if there are issues the board can address the issues but he thinks most of the stuff is pretty clear from the record but the easiest thing is to make sure we go through the record and find all of the requirements and then she can get the applicant a list with the items that need to be completed to comply with what the board has said and he thinks that is the way to handle this otherwise we are going to be here another two hours arguing about where the trees are and where this thing was placed or where something else was placed and he doesn't really think we need to do that at this point in time.

Mr. Pearce Leary, on behalf of Woods of Wembley resident Mr. Ed Smith of 8300 Wembley testified that with respect to the roof, if you look at the elevations, the roof is shown dark as the roof on the clubhouse is dark, there is no question that that roof is supposed to be dark and match and that is what your zoning code requires.

Mr. Lamanna said that is going to be a separate matter.

Mr. Leary asked don't all of the open issues have to be addressed before you do anything other than a short extension but the other issues that have to be addressed are the operating issues and the issues of use variances which your zoning inspector has pointed out that he is operating a summer camp with summer classes and a variety of things for non-members which violates your code, and as you said to Mr. Markowitz, the code is the code and clearly accessory uses have to be for members only or their guests and he has an advertisement here for a summer camp which says non-members welcome, that is a violation, he needs a use variance for those things and he thinks that has to be addressed before you decide whether or not to grant a lengthier extension.

Mr. Lamanna said he agrees, we are not done here yet.

Mr. Leary asked what does your code mean by private tennis club and he said he thinks private, you have to construe to mean what it says, private and he has admitted that he has non-members participating in the tennis and that is a violation of your code and he thinks you have to address all of those, he has to file a request for a use variance or something has to change, he is violating the code.

Mr. Lewis said Wembley Club was granted, and this was the foundation of the club, a conditional use permit for the purposes of operating a tennis and pool recreation facility and if you go into our code Chapter 135.05 it clearly states, tennis, health club facilities, bathhouse, dressing rooms, sanitary, swimming pool, volleyball, squash and racquet ball courts, that is it.

Mr. Leary said right.

Mr. Lewis said so now, and this is a private club which means that it is membership driven so it is not a non-members, walk-in off the street, rent by the hour, it is a private club, you buy a membership whether it is tennis, seasonal or annual or you are buying the summer pool package, those are the types of memberships you are doing so his curiosity is, he asked Ms. Endres to bring up Wembley's home page. He said as you start to dive into Wembley's website and all of their offerings in virtually every category, swimming, tennis, camp, there are advertised member rates and adjacent to it, there is a non-member rate. He said it is a private member club so how can you pay a non-member rate at a club that is a members only club, if you want to be a part of the club then you should buy a membership so this whole non-members and he has seen it across all of it, even in some of the opening statements, members and non-members are welcome so we could talk about the tennis element of it, you buy court time by the hour, any drive-by with a Visa card can have an hour's worth of court time. He said summertime, the pool, you have a family membership, is there a limit on your non-members or are they guests, he doesn't know what that definition is. He said he has no idea in the world with what is going on with a private club for the purposes of swimming and tennis, racquet related sports why there are SAT study group courses that you can purchase which has nothing to do with racquet and swimming and you can buy those as a member or a non-member so it appears at least to him there are a lot of activities outside of the core definition of what this club received its conditional use permit for and its core activities. He said there has been no petitioning for an expansion of other activities there, they are not on the list, no so we are back to square one so as far as renewing a conditional use permit from what he sees there is a tremendous amount of housekeeping to do here. He said the board has looked pretty closely at all of the related activities and we need to sort out member, non-member, swimming and racquet versus completely unrelated activities and he realizes there is an effort to serve their membership but there also seems to be a concerted effort to serve non-members and for that you pay a premium but you do get a pass to come in so these were more observations, he really wasn't challenging the applicant on it, most of the stuff if you go through the website it is pretty much there that if you are interested in doing something at Wembley, member or non-member the invitation is there, you can pretty much do it.

Mr. Leary said and it violates the code so that has to be addressed.

Mr. Lewis said significantly but he doesn't have their membership profile, he doesn't have their records, he doesn't know how many memberships were sold last year and he doesn't know how many non-members converted to members which is a great way to grow your business.



Mr. Leary said this board has to review that before any conditional use or interim conditional use is granted.

Mr. Lewis said right now Wembley is here requesting a renewal of their conditional use permit which in many cases runs as much as five years, but Mr. Lamanna has said we are talking about shortening that to one year at this particular point in time and not only do we have the physical impact on the community and the completion of the current construction and making sure that all of those compliances and conditions are being met but we also want to take a closer look to the activities that are being sold at the club to make sure that they conform to what the permit is which doesn't mean that Wembley can't petition modifications, it just means there is no slam dunk on a multi-year renewal he doesn't see at this time.

Mr. Leary said all he is saying is if they are going to petition they should petition for a use variance.

Mr. Lewis said that is the appropriate way, we don't go to the website and find that the pizza store is selling tractors.

Mr. Barr stated that he can speak regarding tennis clubs. He said they are approved as a private tennis club and every private tennis club has non-members coming into their clinics and referred to the Cleveland Racquet Club. He said it is not in violation of being a private tennis club, we are doing things that private tennis clubs do.

Mr. Lewis said he knows but we are the ones that issue the conditional use permit and what somebody else is doing two towns over is not a carte blanche to proceed with their model, you have a very specific conditional use permit with a lot of definitions in it, if you are looking to modify outside of those you need to come and see this board and what somebody else is doing two towns over that is great but the model doesn't carry, it doesn't mean we are not open to talking to you about it, you need to bring this stuff in.

Mr. Lamanna said we all get down to these questions about when some use becomes so insignificant that it really doesn't become a violation, for example, if somebody says they will have perspective members come in so they will allow a certain thing to happen, it is just a question of where do things go and also unfortunately there is another provision that comes into play here, it is not what he would call the world's best drafted provision because it says a club means a building or premises owned or operated primarily for exclusive use of members and guests which in his view he certainly would never draft anything like this because it seems like it is a little bit of an oxymoron and it goes on to say "whether for a social, literary, political, educational or recreational purpose."

Mr. Leary said as you know the law, the law says specific control over the general, that is a general statement, Section 135 is very specific about accessory uses.

Mr. Glen Knific of 8460 Woodberry Boulevard testified by saying motion 2016-37, if he interpreted it correctly, provided an extension of the conditional use permit through December of this year and asked if that is correct.

Mr. Leary said the construction was to be done in May of last year with a review 18 months later, December 2019, we are not there yet.

Mr. Knific said the question is, is a renewal even in order with the issues and the incomplete state of the building and in fact the renewal is not due until December of this year.

Mr. Lewis said that is what we are here for, to discuss that, pretty much what is going on tonight is centered on the renewal of the conditional use, although we did visit the construction project.

Mr. Lamanna asked Ms. Endres when the current CUP expires.

Ms. Endres said she thinks there are two of them going on concurrently, this is one of those.

Mr. Lewis said he thinks we gave him three years the last time.

The board discussed the renewal dates.

Ms. Endres said the actual permit expires December 2019.

Mr. Lamanna said that was the intent but we have to be a little bit more careful when we do these modifications.

Ms. Endres said the reason he is early for the CUP was originally for the expansion to renew and expand the conditional use.

Mr. Lamanna said this issue runs across all of these things is that when somebody is in a five year thing and then half way through it they come and the board modifies the condition and sometimes we extend the time.

Mr. Lewis said we reset the clock.

Mr. Lamanna said he thinks it is clear here that we pushed the date out until December of 2019.

Mr. Gutoskey said we are supposed to be reviewing this after the building is done.

Mr. Murphy said he has got to get some building and landscaping done and he needs to possibly change the color of the roof. He said he is in construction and it is pretty obvious that if he sees something pointing to the roof and it says the same color he would have thought they meant the color of the roof but it says same color as the clubhouse but he finds it hard that that isn't read as it should have said on there, the same color as the clubhouse roof. He said the drawings all show a dark roof on it and we all talked about it to make sure it was a dark roof to match the roof of the clubhouse that it matched the roof of the clubhouse, that was in the conversation.

Mrs. Nolan said she wanted to say one thing on the wording, the intent all along as you suggested is that the color of the roof match the color of the roof of the clubhouse and Mr. Novak who is the architect, he had said on January 15, 2015 that the building is fully engineered with a metal roof to match the roof on the clubhouse and the color will be matching so it should blend from far away so the intent all along was that the new roof would match the roof on the clubhouse.

Mr. Lewis asked if the metal roof is powder coated.

Mr. Murphy said that is probably powder coated.

Mr. Laehu stated that it comes out that way, it is rolled steel and they shape it into a roof but you can custom color to whatever you want and they will match black, you can have browns, they will match it to whatever you want.

Mr. Murphy asked if it can be painted.

Mr. Laehu said yes it can be painted.

Mr. Lamanna suggested not belaboring the roofing, that is a question for another day. He said he thinks right now is the biggest issue we seem to have is this question of what things are permitted and what things are not permitted and he thinks we have to go back to what the zoning ordinance says and it allows certain accessory facilities and it says very specifically for the use of members and their guests only and goes down to platform tennis courts, health club facilities, bath houses, swimming pool, volleyball courts, squash and racquetball courts, it doesn't say anything about the tennis courts.

Mr. Leary said they used the word private.

Mr. Lamanna said then whether the other section applies in that case.

Mr. Leary said that has to have some meaning and private means private, members and guests.

Mr. Lamanna said you understand that once you go down that road then you do go down the road of what that means so you are opening yourself up to when people run private tennis clubs, this is what they mean.

Mr. Leary said we just have to determine what your code means, it doesn't matter what they do in Newbury or anywhere else, your code says private tennis club.

Mr. Lamanna said he can't interpret this code without looking at what that word means in the world.

Mr. Leary said he thinks it is pretty clear what private means, it means it is not public.

Mr. Lamanna said when you get down to the intricacies of how these things work it is not that simple.

Mr. Yuhas said it is very clear.

Mr. Lamanna said the board spent months dealing with a very similar issue with the golf course at Tanglewood so we plowed through lots of these issues. He said in that case it is a different situation, they were created under a PUD and the language was different but a lot of these things are different and ultimately the solution to some of these things is going back to the zoning commission and saying this was fine when it was adopted in 1987 but it is 40 years later and the world has changed or 30 years later and the world has changed, it is not the way things are run anymore, reconsider, that would be the appropriate way to handle it because they can look at various issues and talk about things like maybe they should allow some percentage of outside people to participate in certain things, they can deal with those kinds of issues of what makes sense and the like but he thinks it is pretty clear here that it is members and guests and it is things that are listed here, it is not other things, if you want other things then you are going to have to get the zoning commission to change it.

Mr. Barr said okay.

Mr. Lamanna said when these things were created they weren't designed to be created, here is a facility, now let's do all of these things in there. He said we had the same discussion with Federated as to what they can have conducted on their facility as a church.

Mr. Barr asked just so he is clear, is he telling his wife starting tonight she is not allowed to tutor anymore at Wembley.

Mr. Lewis said you can tell her in our zoning code, Chapter 135, here are the six permitted things.

Mr. Barr said so the answer is yes, she is not permitted to tutor at Wembley, right.

Mr. Lamanna said that is not allowed, no.

Mr. Lewis said if you go to the code it is there to guide you it is not there to make your life miserable or disrupt your business it is to give you what our township guidelines are. He said if you are looking for an exception, then go through the process please, that is all.

Mr. Barr said he is not complaining, she can tutor somewhere else.

Mr. Lamanna said a private club is a private club and until you get some kind of relief on that he thinks you have to operate as a private club. He said if somebody says, on a legitimate basis they are going to let someone in who are perspective members to try out the facility that is part of running a private club but just to have people able to come in on an anytime basis and pay whatever to use the facility, that takes it from a private club.

Mr. Lewis said he sees a distinct difference between selling non-memberships and as a business owner and you are courting customers to offer a guest experience as a guest of the club for an afternoon but at that particular point you are not selling to non-members, you are either a club guest or you are a member, we will have to work on that.

Mr. Lamanna said he can figure out what kind of memberships he wants to have, there is nothing in here that defines the types of memberships and that sort of thing. He said people have gotten very creative on how they created private clubs to allow people to be able to drink at a private club when you couldn't have bars or restaurants serving alcohol. He said you (Mr. Barr) have got to look at these items here and see what is permitted and he thinks health club facilities certainly gives a broad range to offer classes for your members and guests.

Mr. Barr said so spin class is permitted.

Mr. Lamanna said yes he thinks a spin class, within the limitations, is permitted.

Mr. Barr asked about a yoga class.

Mr. Lamanna said yes, all that falls into health club facilities.

Mr. Barr asked if the board is in agreement with that so we can continue.

Mr. Gutoskey said if it falls into the definitions of what is allowed.

Mr. Lamanna said he thinks within the definition of what a health facility would be, that would include offering health related classes.

Mr. Barr asked about personal training.

Mr. Lamanna said personal training for your members and guests is fine.

Mr. Barr said okay.

Mr. Lamanna said within the structure of the club membership and getting members and guests, you have got a pretty broad range to offer athletically related classes and training and that sort of thing, if you read through the things there is a lot of leeway there and he thinks that part was intended, it was meant for a fairly broad range of athletic activities incidental to what you are doing.

Ms. Endres asked Mr. Lamanna about summer camps, that was one of the things that came up in an email, are those going to be okay. She said she needs to have a direction to go when it comes to enforcement.

Mr. Lamanna said same answer, if summer camp was in the items that are covered here.

Mr. Barr asked if these same stipulations are going to be applied to the Chagrin Valley Athletic Club or no.

Mr. Lamanna said no.

Mr. Barr said they can have non-members in their tennis clubs.

Mr. Lamanna said yes.

Ms. Endres said that was originally a swim club and swim clubs were removed as conditional uses from the zoning resolution.

Mr. Barr said so they can have non-members in their tennis club.

Mr. Lamanna said they are a pre-existing non-conforming use.

Mr. Lewis said the non-member thing is an issue, they can buy a membership but there is not over the counter walk-in trade as a non-member.

Mr. Lamanna said there is a history there because that was originally a different zoning district there like the body shop across the street, there were some other commercial things there and again this was created in 1987 and nobody thinks ahead that far to what might happen. He said in 1987 this made a lot of sense, but times have changed and the way you have to push the change in the zoning is people who being affected by it need to go to the zoning commission and to talk to them about updating this because the business model is changing, the way people use it is changing and maybe we need to rethink how this fits into a community but this is a special situation, it is a tennis club that is allowed to situate itself in a residential community and because of that there are barriers around it that aren't around a similar facility that is embedded in a residential community.

Mr. Lamanna continued by saying you say why are you different, that is why you are different plus he thinks Chagrin Valley Athletic Club has been there so long, it predates zoning so they are pre-existing non-conforming.

Mr. Chris Weathers of 8220 Woodberry Boulevard testified that he wanted to point out one of the board's comments about Mr. Barr is free to define memberships as long as meets the terms of rules in place and you point out 135.05 (I), it is actually Wembley's membership to 700 members.

Mr. Lamanna said right, he is still within that numerical limit.

Mr. Weathers said he just wanted to point that out.

Mr. Lamanna said that is still there and that prevents him from being too creative, that is probably one of the reasons why it is in there to prevent overly creative ideas.

Mr. Yuhas stated that he heard someone reference earlier that we don't know if he has members or non-members and asked if anybody asked for a membership roll from the Wembley Club.

Mr. Lewis said asked and answered. He said he was declined that information.

Ms. Endres said she has the numbers, Mr. Barr provided her with some numbers, it is 420 all year and 90 summer memberships in 2018 but the roster was not provided.

Mr. Lewis said that is confidential information and really what he was searching for was he was trying to get a definition of how many memberships were sold as members and how many memberships were sold as non-member status and he was trying to separate that as well and see what was happening during the summer pool season. He said it really has nothing to do with who the names of the members are, that is private information, that is for a business owner.

Mr. Yuhas said he was just wondering since he heard it referenced earlier.

Mr. Lewis said he doesn't know the ratio but he can suggest going forward there will be substantially more oversight between selling memberships to members and non-members, you are either a member or you are not so working towards housekeeping it may give the business owner the realization over the next few months that he has got to transition some of his client base. He said we need to cool our jets for a minute and let this thing take shape, there are a lot of things in play right now.

Ms. Endres said this whole thing harkens back a little bit to Judson, remember the Judson restaurant, and much of the resolution we got there simple came down to advertising. She said Judson was no longer permitted to non-residents, non-members and maybe that is the easy answer here is to just change the website so they are not soliciting non-members.

Mr. Barr said he can tell you that a significant part of our direct tennis income comes from having non-members in these tennis clubs.

Mr. Lewis said it is not the definition of what your CUP is.

Mr. Barr said understood, he is telling you that there is going to be outcomes here as a result of this.

Ms. Endres said she is thinking from an enforcement standpoint, she is going to be coming out here and doing what is supposed to be done according to the resolution and from the ruling of the board of zoning appeals and we dealt with this before with another business of sorts where they were offering services that were supposed to be only offered to residents, this is similar and the resolution there was that they were not advertising to non-residents.

Mr. Lewis said we need to revisit this in September or October, when construction is done.

Mr. Lamanna said if he wants to make any changes to the existing plan, then that is a separate application.

Mr. Gutoskey said he agrees.

Mr. Lewis said to the physical site plan.

Mr. Lamanna said the board is thinking it is going to continue the CUP renewal until October, that will give 60 days before it runs out so we will have a chance to go over all of these things and if there is anything the applicant wants to change from the existing approved modification plan, including but not limited to the color of the roof, then he needs to come back here hopefully sooner rather than later with a separate application to modify that plan. He said with these other issues he suggests he talk to the zoning commission if he thinks they are too inflexible to talk about some changes.

Mr. Gutoskey said this board has to enforce what is in the code, the zoning commission makes changes to the text uses so if you want to get different uses you have to go to the zoning commission.



Mr. Lamanna said if he wants to change what the definition of private is and you want to be able to have this many who aren't members or classes with 25% non-members, you would address that issue with them. He said in theory you (Mr. Barr) could ask for a use variance from this board but the standards for granting a use variance are so stringent that he would doubt very much you could ever satisfy them.

Mr. Barr asked what the standards would be.

Mr. Lamanna said based here you couldn't continue in business at all, you would get no useful financial return from the property, it is pretty hard, it would be a lot easier to take the other course just because the way we would have to approve it would probably be more than you would want to go through, you could talk to Mr. Markowitz if you wanted to and you would get a good idea of what that might involve and what it might cost. He said you would have to have legal counsel representing you.

Mr. Mike Uth, 8205 Woodberry Boulevard and Vice President of the Woods of Wembley homeowners association said he has a question on the process, if he were to decide to go to change the zoning ordinance as he understands, what is the process for that, what notice would we have and what opportunity would we have to weigh in on that, how does all of that work.

Mr. Lamanna said there is a board called the zoning commission, he could make application to it, they give public notice of what they are doing.

Mr. Gutoskey said there would be public hearings at the county level because they have to approve any of our changes and then it has to come to the trustees.

Mr. Lamanna said it is adopted like an ordinance by the trustees in the end. He said the zoning commission makes a recommendation and then the trustees would act upon that and it would have to go through that public hearing and the county planning commission as well so there are actually three levels of review and public hearings.

Mr. Uth asked if he wanted to change the existing provisions on what a private tennis club can do, that is the process he would go through.

Mr. Gutoskey said he would start with our zoning commission.

Mr. Lewis said if he wanted trampoline and zip line he would have to go the zoning commission and petition to have those uses added to the list of permitted uses.

Mr. Murphy asked if the zoning commission notifies immediate neighbors.

The secretary responded not if it is a text change, only rezoning of the property.

Ms. Endres said there is public notice in the newspaper though.

Mr. Gutoskey said they meet the last Tuesday of the month and if you look on the Bainbridge Township website there is an agenda page so you can look on there, plus the minutes are on there too.

Mr. Murphy said the last time we were here, a lot of you look familiar, and it seemed like everybody was fairly happy to have this club in the neighborhood and asked if that has changed.

Mr. Knific said that depends on if the new structure conforms and at this time he is late in terms of having this thing completed so he guesses from the standpoint of are we happy well we are glad the structure is up but we are unhappy in terms of the length of time it has taken him to do something like this and if he can't construct his new facility on a timely basis, how is he ever going to apply for a second structure that supposedly he is declining to go forward with at this point in time, that is their concern.

Mr. Uth said the usage here that we talked about for the last half hour, a private tennis club under the existing code.

Mr. Lamanna said we have made it pretty clear as to what parameters of that are so we expect that he will go forward within those parameters.

Mr. Uth said they want the club to be successful but it has to honor its commitment, everything that was discussed tonight, that needs to happen and he thinks there was a great deal of concern but if it is refiled, let's not go there.

Mr. Lamanna said that whole issue is made moot by the private club aspect of it.

Mr. Uth said we expect him to honor the commitment he made and the conditions this board established with respect to the appearance of the building and screening and all of that and to comply with the law when it comes to what private tennis clubs are used for.

Mr. Lamanna said one thing he would suggest is that, what the homeowners may want to explore with Mr. Barr is at least some provisions that allow him to offer a different arrangement with people who actually live in the Woods of Wembley. He said Tanglewood Country Club has done that to try to improve things.

Mr. Laehu said in concept, he lives right next door to it so in a perfect world it would have the right trees, it would blend in and it would serve the purpose of what it was and what was intended and the trash cans covered up so he doesn't have to look at the back of a trash can, all of that being said and if it fit and we work together, it has been there and existed and the neighborhood has grown around it, it is working together to find that, it is not building a big building etc.

Mr. Lamanna said we have had this discussion with a lot of other people such as Tanglewood's Golf Course, we went through a long period of time with that, the big problem there frankly was that the owner didn't get along with anybody let alone the residents until it finally got taken out of bankruptcy.

Mr. Yuhas said there are a lot of moving parts and everyone wants to see the Wembley Club succeed because nobody wants it to go empty but it might be all the drawings and all of the promises hopefully they will operate within the law and then when the secondary structure came up it kicked in the hornet's nest, you are not doing what you are supposed to do here and then you come along and build another building.

Mr. Lamanna said he would also say to Mr. Barr that when we ultimately worked out things with Tanglewood one of things that made it a lot easier to do is that the final solution was absolutely 100% supported by the homeowners association.

Mr. Barr said whatever solution you had there with Tanglewood is not working.

Mr. Lamanna said there are structural issues.

Mr. Barr said there are a lot more issues than that.

Mr. Lamanna said but it makes it a lot easier if you've got the support.

Mr. Barr said whatever happened there didn't work.

Mr. Gutoskey said maybe the other thing is to just try to communicate with the HOA.

Mr. Barr said he has done that.

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

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

Mr. Lamanna moved that the board continue this application until October 2019.

1. The reason being that after reviewing the current status of the conditional use permit that does not expire under the various modifications that have been made until December so that would be an appropriate time to review all of the matters.
2. The board also notes that in the course of hearing this application there have been substantial discussion about what is and is not permitted at the club and the applicant has an understanding of that and the board expects that the applicant will be modifying any operations that are necessary in order to comply with the specific terms of the zoning ordinance with respect to private tennis clubs.
3. It appears that there may be some issues concerning the current facilities under construction and the requirements of the previous approval of the modification of the conditional use permits in 2014 and 2016 with respect to that construction.
4. The board would expect that the applicant knows of any non-conformances and if his desire is to have those changed that he expeditiously determines what those items are and make application to the board as soon as possible so those matters can be resolved in a timely manner before it runs up the review for renewal of the conditional use permit.

Mr. Gutoskey seconded the motion.

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

Since there was no further testimony, the public hearing was closed at 10:35 P.M.

Respectfully submitted,

Michael Corcoran, Alternate  
Ted DeWater  
Joseph Gutoskey  
Michael Lamanna, Chairman  
Todd Lewis, Vice Chairman  
Mark Murphy

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

Date: May 16, 2019

AUDIO RECORDING ON FILE

Bainbridge Township, Ohio  
Board of Zoning Appeals  
April 18, 2019

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 10:35 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Michael Corcoran, Alternate; Mr. Joseph Gutoskey; Mr. Todd Lewis and Mr. Mark Murphy. Mr. Ted DeWater was absent. Ms. Karen Endres, Zoning Inspector was present.

BZA 2019-9 – 17122 Sunset Drive – House

Mr. Lewis explained to the board that this application was previously approved on March 21, 2019 but the applicants have since withdrawn their application because their house plans have changed.

Motion BZA 2019-9 – 17122 Sunset Drive – House

After some discussion the board made the following motion.

Mr. Lamanna moved that respect to the minutes from the last meeting of the Board of Zoning Appeals regarding BZA 2019-19 – 17122 Sunset Drive (House) to rescind the board's decision in that case because the applicant has indicated that they are going to go forward with a different plan and under a new application and therefore also dismiss the case as moot.

Mr. Gutoskey seconded the motion.

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

MINUTES

Mr. Lamanna moved to adopt the minutes of the March 21, 2019 meeting as written except with respect to the change just adopted by the BZA on case 2019-9.

Mr. Gutoskey seconded the motion.

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

## APPLICATIONS FOR NEXT MONTH

Application 2019-13 by Speedway, LLC for property at 7353 N. Aurora Road - Continuance

The applicant is requesting a review and renewal of an existing conditional use permit for a gas station with a convenience store. The property is located in the MUP District.

Application 2019-15 by New Creation Builders for Anthony Marra for property at 18770 Elmwood Drive - Continuance

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

Application 2019-16 by Lee Ann Jones for property at 8381 E. Washington Street

The applicant is requesting a review, renewal and expansion of an existing conditional use permit to continue operation of a service station/Lube Station and to permit the addition of a 500 gallon propane refill station. The property is located in a CB District.

Application 2019-17 by Northeastern Inc. for Lisa Meyer for property at 17122 Sunset Drive

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

Application 2019-18 by Chad D. Kane for property at 8410 E. Washington Street

The applicant is requesting a new conditional use permit for the purposes of a change of ownership for auto repair (Highway Garage). The property is located in a CB District.

Application 2019-19 by Eric Birnesser for property at 7061 Bramshill Circle

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

The Bainbridge Township Board of Zoning Appeals set a public hearing on the above applications for May 16, 2019 at 7:00 P.M. at the Bainbridge Township Community Hall, 17826 Chillicothe Road, Bainbridge Township, Ohio and unanimously resolved to request the Bainbridge Township Board of Trustees to issue a purchase order for legal advertising.

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

Respectfully submitted,

Michael Corcoran, Alternate  
Ted DeWater  
Joseph Gutoskey  
Michael Lamanna, Chairman  
Todd Lewis, Vice Chairman  
Mark Murphy

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

Date: May 16, 2019