

Bainbridge Township, Ohio
Board of Zoning Appeals
July 17, 2008

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

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

The following matters were then heard:

Application 2008-11 by Vocon (Michael DeMarco) for Key Bank for property at 8481 E. Washington Street

The applicant is requesting area variances for the purpose of constructing a new Key Bank branch bank. The property is located in a CB District.

The zoning inspector's report dated July 17, 2008 was read and photos of the site were submitted.

Mr. Scott Wallenhorst of Vocon Design located at 3142 Prospect Avenue, Cleveland, Ohio was present to represent Key Bank.

Mr. Wallenhorst testified that Key Bank purchased the original Huntington Bank a few months ago and what they were originally going to do was to do some modifications to the existing building on the site and a small addition but after further investigation of the building, it was deemed not the best idea because structurally there are some issues and it was pieced together with two different types of structural systems. He said Key Bank now is looking to put in a larger investment to put in a brand new branch and the reason they are here is they would like to maintain the existing street frontage. He said the building currently sits back about 26'-2" from the street and Key Bank would like to have their building sit at the exact point. He said one of the main major reasons for that is they have an ATM that is accessible 24 hours a day to their customers and it needs to be visible from the street from a security standpoint. He said there is a 70' setback and that is why they are here to get a variance for that and by moving this building 70' back it will be too far away from the street and not make the ATM visible from the street. He continued by saying that they are looking to kind of maintain what is currently going on in the same area right now by not pushing the building too far back and added that the other bank across the street is not that far back off the street as well either and they realize that the traffic gets very backed up and they plan to separate the curb cuts a little bit more to hopefully alleviate the ingress and egress out of there.

Mr. Wallenhorst showed the board a topo and referred to E. Washington Street, the parking lot and said the two lanes along the back of the building are lanes where you would pull up and put your money or checks in a tube and it would go back into the building to the teller and showed the location of the ATM. He displayed what he called a rough landscape drawing of what they are proposing to do on the front of the building, along the side and along the back. He displayed the elevations that they are proposing to do such as the parking lot side, the elevation facing the street, the elevation that would be facing the back of the building where the vacuums are and the elevation where the ATM would be. He displayed a proposed interior floor plan, entrances to the building, offices along the side, mechanical and restrooms and the conference room up front.

The board reviewed the plans and site plan submitted.

Mr. Lamanna asked Mr. Joyce, Zoning Inspector, what the current lot coverage is on this property.

Mr. Joyce said it is approximately 27% and not more than 28% and the total acreage is 1.84 acres but it looks higher than that. He added that he noted in his summary sheet that there were two lots and they did merge the property into a single lot to eliminate future problems.

Mr. Murphy asked if the dotted line represents the two lots that were merged.

Mr. Wallenhorst said that is correct.

Mr. Murphy asked if this building intended to go back right on the same slab or will the whole structure be removed.

Mr. Wallenhorst said the entire structure is being removed.

Mr. Murphy asked if the only reason they are staying as close to the road as they are asking for is because they want the ATM to be visible from E. Washington Street.

Mr. Wallenhorst said that and they would like to maintain the existing street frontage that they have but the ATM is the main purpose because it creates a security issue if it can't be visible from the street.

Mr. Joyce said the proposed building is larger than the existing building so it could not fit on the same foundation.

Mr. Lamanna said he sees no particular reason why this building needs to be so close to the street because the existing building looks out of place as it is and one of the things the board is trying to do is keep the buildings back along E. Washington Street to something close to the 70' setback. He said because this lot tapers back a little bit there may need to be some relief on it because the lot narrows as it heads back.

Mr. Lewis referred to the building for the gas station and the canopy and said if you run down E. Washington Street towards the Sears building, it is way back and then down here is the car wash and National City all the way down to Schneiders and everything is at least 50' and most more than 70' all the way. He said when a building comes down that is non-conforming, it is the board's opportunity to bring things into conformity. He said as far as security for the ATM and the driveway, with the proper lighting and positioning that on one to two sides of the building rather than the rear, he believes that most of the other banks in the area that are substantially off the street, your security and convenience elements can still be met, there is front signage available on the property to put the ATM letters in there that will designate to anybody passing by in traffic that you offer that service. He said he had another issue with the ingress and egress to the property and that is if he looks at the exit, double lanes of exit on the drive-thru side, that is the more easterly portion of the property, you are showing on your drawings two out-bound lanes on the easterly portion, coming through the drive-thru. He said additionally to the west of that you are also showing an in and an out bound lane at the westerly entrance and these are both very close to one another and in very close proximity of McFarland's Corners as you are adjacent to the gas station which already has dual access and egress between your property and the traffic flow which is providing four more points of in and out at the exact position that the traffic light is. He said in looking at this property and the traffic patterns on Washington Street and being able to bring the line of site and the conformity on Washington Street, he would much rather see this property with one lane and one lane out even if that means the building goes back further and you have got a traffic loop or a one way driveway looping around the front and bringing it out but there are cars coming out in four different ways here and plus with the proximity of the setback from the street when you have got two cars coming out of the drive-thru lanes with the building 27' off the road, if you are in the left drive-thru lane and not the right lane and you need to move over to the right then you have got to make a right turn, he does not see with an average car being 16' to 20' long that there is also adequate maneuverability and safety for there as well. He said he also has great concerns with people making left or right turns from the wrong lane as well. He said he really believes that this building needs to be pushed back severely and the parking and the traffic flow and the access and egress completely revisited.

Mr. Lamanna said the existing curb cuts on this building are a problem and they create a real traffic nightmare. He said he goes through there several times a day and it is a problem and when somebody stops there it backs up through in the intersection and causes rear-end issues when people come to a sudden stop because there is not a left hand turn there, the start of the left hand turn lane is farther down and beyond the current entrance and it is actually the left hand turn lane for the eastbound traffic so people can't move over at all so if you want to turn into that bank, you are immediately blocking all the traffic flow down the street.

Mr. Lamanna asked Mr. Wallenhorst if he investigated doing anything with the Sears store in terms of some kind of joint driveway, did you approach them to see.

Mr. Wallenhorst replied no.

Ms. Sass asked Mr. Wallenhorst if that is something Key Bank would consider doing.

Mr. Wallenhorst said he would have to converse with his client.

Ms. Sass said it might not be a bad idea of doing.

Mr. Lamanna said it is going to be very difficult to make a left hand turn exiting on the east side of that property. He said trying to get out of the gas station is a nightmare.

Mr. Wallenhorst said they can address the drives with a right in and right out as well, that can be easily addressed as well.

Mr. Lamanna said it may make a lot of sense to do it that way and added that he would like to see if there is any way to move the west side entrance as far down as it can go.

Mr. Joyce said in addressing a comment earlier, there was a request from the county for an easement to go through this property and they sent it down for him to approve but he sent it back and told them he could not approve that easement unless the BZA first approved the crossing of the lot line so they put in the verbiage that the easement is acceptable to the owners of both properties, Sears and this one at that time but it would require BZA approval.

Ms. Sass asked Mr. Joyce when that was.

Mr. Joyce said it was about three months ago.

Mr. Joyce said it was a thought at that time it is kind of in limbo because it would require BZA action but it would be acceptable to the Sears property owner.

Mr. Lamanna said one issue is they could have their own access.

Mr. Joyce explained the proposed easement to the board.

Mr. Lamanna said he thinks there is an allowance for this and the zoning resolution talks about areas serving the establishment that are shared, or coordinated with similar areas serving such adjacent property and added that that relates to parking and loading areas. He said that would make a lot more sense in terms of if the variance is necessary to deal with the fact that technically they would be abutting the property line, the board will have to look at that more closely, but either way it is a far better solution to the issue if that property could be served by entering and exiting through that same driveway and then maybe having a right-hand exit, that would not be a problem for people turning right onto E. Washington going eastbound but at least that would keep all of that traffic down far enough for this left hand turn provision and he thinks for ease of service, the customers would greatly appreciate entering and exiting from down there because the hassle of getting in and out of that bank before was terrible, it was a real problem.

Mr. Wallenhorst said that is something they can look into and try and work out.

Mr. Lamanna said number one, the board would like to see this thing pushed back.

Mr. Lewis said substantially.

Mr. Wallenhorst asked what would be acceptable.

Mr. Lewis said in line with the Shell station, not the canopy, the same distance off the street as that building is and no less than 70' and his preference would be to have it consistent with closer to 90', and added that a variance would not be needed at 70'. He said if they come in from the side, the grade on this property is pretty flat, it opens up a tremendous amount of parking behind the building instead of parking in the front.

Mr. Lamanna asked Mr. Joyce what the lot dimensions are.

Mr. Joyce said it is 1.84 acres, the eastern side is approximately 520', the back is around 110', the western side is approximately 400' and the frontage at the road is approximately 258'.

The board discussed the setbacks and lot dimensions.

Mr. Murphy said with a complete tear down it seems like an opportunity to make something a little nicer and a little easier for everybody to get in and out of. He said people sit there waiting for two or three lights trying to get out of that building, the bank traffic interferes with the gas station traffic trying to come left trying to go west and it is not impossible to make it better for everything including the bank itself, the look of the bank itself, the traffic flow and it seems like a small attempt at trying to fit into the zoning requirements.

Mr. Murphy said at this point the lot coverage is almost one-half, it is going to 51% and with some extra space up front more landscaping can be added. He said you are asking for more asphalt so more landscaping in front could be added.

Mr. Lamanna said he would definitely like to see the lot coverage below 50% and for this lot, 50% is pretty high especially because it is almost a two acre lot and added that they should be able to slice this thing down.

Mr. Joyce said the western driveway is about 35' wide at its narrow point so that is probably one in and two out and that is existing.

Mr. Lamanna said the board would like to see the lot coverage come back closer to 40 % but if it is 43% or 44% the board could live with that given the size of this lot.

Mr. Wallenhorst asked if 50' off the street frontage would be acceptable similar to the bank that is directly across the street from us.

Mr. Lewis said not for him it won't.

Mr. Lamanna said the bank across the street is a one acre lot and that is why it is the distance off the street that it is because if it was any farther off the street, it would be hanging over its back lot line so unfortunately with a tiny little parcel to start with and that bank is whittled down a bunch from what they originally wanted.

Mr. Joyce said they have .77 acres.

Mr. Lamanna said he was on board at the time and the board whittled down what they wanted to do there and reduced their lot coverage and made them move it back as far as it was so when you look at their lot size, they are really pushed as far back as we could give them and still leave room for a building of any usefulness and in this case, it is not the same issue, you are not up against the lot boundaries here. He said one of the things we are trying to do on E. Washington Street is to get all of the buildings back and get the parking out of the front of the buildings.

Mr. Murphy said they are restricted a little bit because of the pie-shape lot.

Mr. Lamanna said yes, but 70' is not like we are making them go back 100' or 150'.

Mr. Murphy said the structure could almost be put in the back of Nash's.

The board reviewed the application and variances requested.

Mr. Lamanna asked if there was anyone else interested in this application.

Mr. Jack Carson testified that he noticed that the applicant mentioned the setback was for security reasons, you could turn the building 180° and enter on the high side, the east side and egress on the other side so security shouldn't be an issue.

Ms. Sass said there are a number of alternatives that could be explored here to come up with a better end product.

Mr. Lamanna said the key things are we do want to maintain that setback and if it is a question of a couple of feet because of the way the building fits in, the board can deal with that because it is a little bit of a pie-shape lot but the board wants to be close to the setback, we want to get the lot coverage down into the low forties and we do want to keep the parking out of that 70' front yard setback to the maximum extent possible and to keep the parking in the back so there is a better front view as we go down the street. He said he thinks the board needs to table this so the applicant can come back, work on their plans and talk to the Sears people about trying to coordinate the driveway and we can do this next month.

Mr. Wallenhorst said okay.

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

Motion BZA 2008-11 – 8481 E. Washington Street (Key Bank)

Mr. Lamanna made a motion to table this application to the next regularly scheduled meeting in August.

Ms. Sass seconded the motion.

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

Application 2008-12 by Joseph A. Dauria for property at 18789 Sharon Drive

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

The zoning inspector's report dated July 17, 2008 was read and photos of the site were submitted.

Mr. and Mrs. Joseph Dauria were present to represent this application.

Mrs. Dauria testified that they would like to put a storage shed adjacent to their garage and in an area where a fenced in pen currently exists. She referred to the aerial map and said this location is practical and convenient for a shed as well as it will be barely visible to the adjacent property owners and the street especially during the spring and summer months. She said by placing the shed in this location they can avoid the removal of any trees thereby maintaining the current landscaping and views and because of their corner lot location, they believe they have satisfied the practical difficulty standard for an area variance. She said their house was approximately 13 years old when they bought it in 2004 so this is a pre-existing challenge that they did not create and without the variance the only area where they can permissively place the shed would be in a heavily wooded area in the middle of the yard so that is not a viable option for them because they would have to remove numerous trees for the shed and they would also have to create a path to the shed so with a variance the overall aesthetics of the neighborhood and views of the adjoining property would not be significantly impacted. She asked Mr. Joyce to pull up another address that was 18772 Rivers Edge Drive and said as shown there are other homeowners in the neighborhood who have installed sheds in similar positions to their request and some of these sheds are closer to the property lines which we think makes their variance request far from substantial in nature. She said this home we are going to see here is also a corner lot with a shed that is adjacent to the driveway and garage and noted that that shed is less than 50' to the property line.

Mr. Joyce said it would be around 20'.

Mrs. Dauria said there are two other addresses, if the board would like to see, they are not corner lots but they each have sheds and they are 18857 Rivers Edge and 18843 Rivers Edge and the distance of the sheds on those properties is approximately 7' and 12' from the side property lines.

Ms. Sass asked if they are neighboring to Mrs. Dauria.

Mrs. Dauria said no, neighboring to one another.

Ms. Sass asked if we know if those were obtained by virtue of variances, or Mr. Joyce has some visits to make.

Mr. Lamanna asked Mrs. Dauria which location she wants this in, there are two Xs marked on the site plan.

Mr. Dauria testified that it is the top of the driveway so either area would be acceptable.

Mr. Lamanna said so you haven't decided exactly where.

Mr. Lewis said if it is at the end of the driveway it is further from the property line.

The board discussed the variance requested and the proposed location.

Mr. Dauria said where the vehicle that is parked in the driveway there was an option to put it in the front which would be less of a variance.

Mr. Lewis said it would be considered a greater variance and not have visibility from the street.

Mr. Lamanna said when you have it at the end of a driveway, when somebody looks at it you see the building against the sky where if it is back along the side of the house and someone looks, they will see the house and hardly even notice it because the house is going to be behind it and that is what you are going to see and this is only 10' or 12' high.

Mr. Dauria said if the shed was to be at the top of the driveway, you would see it from the street but in this area, the fenced in pen area, is better.

Mr. Lamanna said that is the ideal spot for it there because it will be really less noticeable from the closest neighbor because he will see your house and not be looking at a blank driveway and seeing the shed sticking up in the middle of it and added that the board prefers that location behind the front line of the garage.

Mr. Lewis asked if there is a hard physical measurement from that other location from the property line.

The board discussed the setback from the property line.

Mr. Dauria said the shed will be 12' x 16' as the biggest size.

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

Motion BZA 2008-12 – 18789 Sharon Drive

Mr. Lamanna made a motion to grant the applicant the following variance for the purposes of installing a shed not to exceed 12' x 16' x 10' in dimensions.

1. A variance from the minimum required side yard setback of 50' to 30' for a variance of 20'.
2. Such shed shall also be located no closer to Rivers Edge Drive West than the front line of the garage and no farther away than the back line of the house.

Mr. Lewis seconded the motion.

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

Application 2008-13 by Greg Battaglia for property at 16805 Snyder Road

The applicant is requesting area variances for the purpose of maintaining a deck, relocating a pond and constructing a gazebo. The property is located in a R-5A District.

The zoning inspector's report dated July 17, 2008 was read and photos of the site were submitted.

Mr. Greg Battaglia was present to represent this application.

Mr. Battaglia testified that he has an existing pond that is filling in, he has a bank that the muskrats are tearing into and it is starting to create some walking problems and they would like to fix the banks and move the pond 10' north from the south side and from the north side they would like to move the pond 20' to 30' and they would like to add a gazebo on the south side of the property line approximately 50' to 60' off the property line and on the west side of the pond which would be right behind his house, the closest bank, they would like to put a small building for a waterwheel, like a little kid's bus stop, not at that location but on the corner of the property line. He said they would like to have it, for aeration, for raising and stocking fish. He continued by saying he has an existing deck and he called the county last year about adding a deck to the pond and since then there has become a property line issue but the county told him he did not need a permit at that time, it was the end of February or the beginning of March of 2007 and they told me to call the township which he did and at that time Mr. McIntyre who he spoke with and is not here any longer, told him at the time he did not need a permit to add the deck and at that time he thought it was 30' off the property line, which it is not. He referred to the aerial map and showed the board where he used to cut his grass but after the property line was surveyed, it moved but actually that is not the proper line. He said he called the township and was told at the time he did not need a permit so he went ahead and built the deck at that time and that was in June of 2007, the property was surveyed in October of 2007, still no problem and then Memorial Day weekend of 2008 the deck had become a problem and the people that complained are the same people that helped me put the deck together and have shared cocktails on it after that. He said he has pictures if the board wants to see them and added that the deck is pretty secluded. He submitted photos to the board of what the deck looks like.

Ms. Sass asked how far the deck is off the rear lot line.

Mr. Battaglia said the deck is approximately 7-1/2' to 8' off the property line now.

Mr. Joyce said it is 16' off the rear lot line.

Mr. Lamanna said he finds it hard to believe that the zoning inspector told you to build without a permit.

Mr. Battaglia said he told him he did not need a permit at that time.

Mr. Lamanna said he still finds it hard to believe but he may not have required a building permit but this is a problem we have because what happens is, the board does not know what the whole story is, we don't know if you told the zoning inspector where the deck was exactly, accurately so the fact is the board has no way of verifying anything if there is nothing in writing, the board has no way of knowing if someone accurately conveyed the facts to the zoning inspector, the zoning inspector is not here to say one way or the other so the board does not know what happened.

Ms. Sass asked if there is anything in any kind of file that indicated an inquiry has been made and the zoning inspector determined that no zoning certificate is needed.

Mr. Joyce said he had no letter to that effect, no.

Ms. Sass said especially knowing Frank McIntyre.

Mr. Lamanna explained that this is the problem the board has, we don't know what was said and again what happens is people come in and they tell the zoning inspector one story and later on we find out, it really wasn't 50' away, it was really somewhere else or they don't give all of the information and if someone says they want to put a deck on their house, the zoning inspector assumes they are going to put the deck next to their house and then they build it 70' away from their house and then all of the sudden it was something that wasn't contemplated so that is why we have an application process or if you really want to get an opinion, you should send in something in writing stating what you want to do and if you need a zoning certificate, you would get a letter back saying no you don't need a zoning certificate for the record that shows this is really what you want to do and that is okay and then come back later and do what they say they are going to do or do something different. He said it puts the board in a very difficult situation and if there is not something in the official records, technically he can't grant a variance by saying it is okay to go ahead and do something.

Ms. Sass asked Mr. Battaglia how long he has owned the property.

Mr. Battaglia said since 2000.

Ms. Sass asked if the pond was there at that time.

Mr. Battaglia said yes.

Ms. Sass asked what the water source is for the pond and if it is it spring fed.

Mr. Battaglia said he does not know if it is spring fed, his gutter downspouts do run into it but only once since they have lived there when they had a two month drought did it ever really get low, it usually stays pretty much full except for one year either last year or the year before but it stays full for the most part, but it is all filled in and has been there since the house was built. He said he was told by people that live around here that it was once 8' – 10' deep but now it is probably maybe 4', he has some small fish in there now and frogs and turtles but he wants to open it up and add to the property, they entertain a lot and want something nice back there. He said they are talking about a gazebo with electric and with the existing deck that is there and a waterwheel for aeration, something that is old that you don't see very often and landscaping of course.

Ms. Sass said so you are going to open it up.

Mr. Battaglia said to the north, correct.

Ms. Sass asked where his critter problem is.

Mr. Battaglia said actually it is completely around, it is all the way around. He said he has to cut the grass in that area with a push mower and sometimes still he stumbles because the ground gives away because they dig tunnels and if it doesn't get taken care of it will destroy it because the banks are weak now. He said his original plan was to either put railroad ties around it or large rocks around the bank.

Mr. Lamanna asked about the other building just across the property line.

Mr. Battaglia said it is his neighbor to the south of him, the large structure and it was there when he bought the house and it looks like a garage which he thinks it is only 20' or 30' off the property line but he is not sure.

Ms. Sass told Mr. Joyce that he is going to be awfully busy this coming month.

Mr. Battaglia submitted some photos and said when he stands on his deck, that is what he looks at, which is not a problem, but it is the only building there so it doesn't bother him and then if he walks to the property line, that is what he looks at (he showed the board a photo). He said it is well maintained, the gentleman takes very good care of his property but it is close to his property and it is actually secluded.

Ms. Sass asked Mr. Battaglia if he had a picture of it.

Mr. Battaglia said yes, this is sitting on the deck looking towards his house and the neighbor's house, it is all overgrown and pretty private back there and it is nice you can sit there on Sunday morning and literally watch the ducks flying in. He showed the board another picture and said you can't even see the deck, you have to look for it, that is how overgrown it is, just the opening, you can see a portion of the water.

Mr. Lamanna asked about the deck.

Mr. Battaglia said the posts are 42” or 44” in the ground and it hangs over the water 2-1/2’.

Mr. Lamanna asked if it is above ground.

Mr. Battaglia said yes.

Ms. Sass said to Mr. Battaglia that he is on Snyder but the neighbor with the building is off of what street.

Mr. Battaglia said he is off of Stafford Road. He said the little bus stop is what he wants to put 30’ off the property line with the waterwheel for aeration and the gazebo to enhance the property and make it look nicer instead of looking at green water sometimes.

Mr. Lamanna asked why the position of the waterwheel thing can’t be farther over.

Mr. Battaglia said it probably could it is just when you put the deck, the gazebo and the waterwheel together you can see everything from each location, that is why he came up with those figures but if you are sitting at the gazebo or sitting on the deck you can see the waterwheel, that was the main purpose of putting it in that area and it is 30’ off the property line. He said if he had to move it a little further it is really not a problem, he could actually move it to the other side.

Mr. Lewis said if he was looking at the rear setback of the gazebo and counting structures, the gazebo should be 90’ from the rear setback.

The board discussed accessory structures versus detached accessory buildings.

Mr. Lewis said typically the board has looked at decks as lot coverage but not an accessory building.

The board discussed the waterwheel, deck, gazebo and little building.

Mr. Joyce said he talked with the prosecutor’s office regarding the waterwheel and the waterwheel’s primary function is to give aeration to the pond and support the game fish and his determination was it was agricultural and the pond itself or a small portion of it would be used for game fish, but for aesthetic value, it would not be considered agricultural.

Mr. Lamanna said the gazebo would be a building because it provides some protection from the rain.

Mr. Lewis said the gazebo would enclose, support and protect.

Mr. Lamanna said actually all three are and he will have to go without one, or the board will have to give him a variance.

Mr. Battaglia said if he goes without the waterwheel he would still put a fountain in, either way, he has to do something.

Mr. Lamanna asked how big the waterwheel is.

Mr. Battaglia said it is probably 7' tall by 2-1/2' wide by 2-1/2' deep.

Mr. Lewis asked if it is a possibility for the pump house to get worked into the design of the gazebo.

Mr. Battaglia said absolutely.

Mr. Lewis said to combine the two.

Mr. Battaglia said it is a great idea and he hadn't thought about it.

Mr. Lamanna said the board does not want to take an action and technically leave the applicant non-compliant.

Mr. Battaglia said if he decides for whatever reason not to incorporate the waterwheel and the gazebo and just put a fountain in there if that is okay.

Mr. Lamanna said yes, it would be fine.

Mr. Lewis said you would use a submersible pump.

Mr. Battaglia said correct.

Mr. Murphy asked if the gazebo and deck would be merged.

Mr. Battaglia said no it would be separate.

Ms. Sass said the gazebo and the waterwheel.

Mr. Battaglia said the whole purpose obviously is to make the property look nicer for everybody and all of the surrounding people and the neighbors that want to use it, family, fishing and in his family and he is the only one that has the big yard and his family is always over and the neighbors and that is basically what he had in mind to build for fun and memories as the children grow up.

Mr. Lamanna asked if anyone else here has an interest in this application.

Mr. Robert Block of 16821 Snyder Road testified that he is his neighbor on the south side and yes the pond is possibly on his land also, we had it surveyed and the survey shows that. He submitted the survey to the board. He said they have had a lot of problems with muskrats in their yard with holes and if they fill in the pond 10' moving from south to north, will there be a retaining wall or something so they will not have this muskrat problem.

Mr. Battaglia showed a photo to the board of the property line stakes and the string that actually shows that he owns less than 1' of the bank and that is accurate.

Mr. Block said his string is not the surveyors.

Mr. Battaglia said the stakes are right in line and actually they are my side of his side of the stakes that are in the ground.

Mr. Lamanna asked whose stakes are those.

Mr. Battaglia said those stakes are mine, his stakes are on his line and mine are north on my side and I do show that I own less than 1' of the bank.

Mr. Lewis asked if those stakes were placed by a surveyor.

Mr. Battaglia said no, mine were not.

The board reviewed the survey document and noted that there is an edge water encroachment.

Mr. Lewis said the edge water encroachment will no longer be an issue because 10' will be filled and moved so he is not sure that with wildlife in the country there is no guarantee what wildlife does anymore and he thinks that for the benefit of your property (Mr. Block's) if Mr. Battaglia excavates and fills and moves the pond by 10' that in itself is creating a much more solid buffer and a deterrent for the muskrats to move 10' – 12' toward your property and you (Mr. Block) may just gently benefit from it just by the shifting of the pond location.

Ms. Sass said that is why she wondered how long it had been there.

Mr. Battaglia said the muskrats have probably eaten away a good 2' of that bank since he moved in.

Mr. Lamanna said muskrats aren't going to go very far.

Mr. Battaglia said they tunnel 2' to 3' and that side you are looking at in the picture is soft right now.

Ms. Sass asked Mr. Battaglia how he will fix it.

Mr. Battaglia said he will fill it in and compact it and he is either going to run railroad ties up that wall staggered all the way down in the water or large rocks.

Mr. Lewis said something to deter the muskrats from eroding.

Mr. Battaglia said he is going to do that all the way around the pond, put walls all the way around and not only will it help the banks and the structure of the pond, it will also deter muskrats out of there.

Ms. Sass asked if the pond will be drained and the silt cleaned out.

Mr. Battaglia said absolutely.

Mr. Block said as far as the deck, it is 7' - 8' from his property line.

Mr. Battaglia said that is true.

Mr. Lamanna asked if the deck is adversely affecting the neighbors at all.

Ms. Kim Block testified that when the deck was being built and when the Amish gentleman was there constructing it, they have been on the deck once and when Mr. Battaglia has parties they leave beer cans and cigarettes, it is not secluded and private because Mr. Canitia's barn or garage, his driveway goes right up to it so it certainly is not a secluded area. She said Mr. Canitia's window to the family room looks right out into that, it is not a secluded area so why does he have to put it there.

Ms. Sass asked if Mr. Canitia's family room window looks right at the pond.

Ms. Block said yes, at an angle so it affects their privacy.

Mr. Lamanna said they have this big huge storage building stuck back there 20' from the property line.

Mr. Canitia of 9410 Stafford Road testified that when he bought his house, the barn was there.

Mr. Lamanna asked if the deck bothers him.

Mr. Canitia said no the deck doesn't bother him, the rooster he has bothers him.

Mr. Lamanna said we can't regulate animals.

Mr. Canitia said he did not want to say anything, he has no problems with Mr. Battaglia's deck, he is a great neighbor, Mr. and Mrs. Block are great neighbors, he moved here from South Euclid and it took him 16 years to get out here and get away from where he was at and now this is a nightmare. He said he has no problem with what Mr. Battaglia is doing but he has a problem with his rooster at 5:00 in the morning that he got just to antagonize somebody and it antagonizes all of us there.

Ms. Sass asked him if that is what he means by the nightmare.

Mr. Canitia said at 5:00 in the morning a rooster is a nightmare.

Ms. Sass asked if that is the only thing he is talking about.

Mr. Canitia said things have deteriorated quickly in his neighborhood and he does not like it.

Ms. Block said there are obviously many other issues than the one you are hearing and she has been on the phone constantly with Mr. Joyce and there are just intentional things done and we have heard these promises for eight years and she wants to know if there is a time restraint on moving the pond, having a retaining wall put in and just being done with it. She said she does not see a purpose for the deck, they have not used it all summer and it is overgrown and she does have some photos. She said Mr. Battaglia proceeded to put up his own surveying line which consisted of coffee cups and bags and sticks that encroached upon our property. She said he was encouraged to take the orange tape down that ran down along the border and then he proceeded to spray paint the entire trunk of a tree in the front yard orange and these are just some of the very vindictive things that he has done because we will not sell the portion of our property to him that we gained through the surveying. She said they lost a little bit in the front but they gained property in the back.

Mr. Lamanna said in terms of where the actual line was.

Ms. Block said correct and referred to a photo and said he used to mow over here and he buried a surveying stake with mulch so now we have gained much footage here and this is what has irked him and the surveyor came out in October and we just had it done again yesterday or two days ago to verify everything and we told him at the time to feel free to drive his four-wheelers around, it is not a big deal but it has become such a nightmare in our neighborhood with eyesores that continue.

Mr. Lamanna asked what the eyesore is.

Ms. Block said the orange tree and he put boulders down the property line so we can't mow properly anymore.

Mr. Battaglia said he just wanted to reiterate that he is here for the pond and the zoning issue and not anything else and he can go on for hours about what has happened on his property but he won't go there, he will not lower himself to that level, he just wants to get his pond dug.

Mr. Lamanna said we are not here to have a battle but it is not a good thing to have these types of issues and if there is a way to help facilitate a resolution, the board would certainly do that.

Ms. Sass said the board is certainly not going to resolve all of these underlying issues.

Ms. Block said they would just like to know if there is a time restraint on removing the pond and deck.

The board discussed variances and time restraints.

Mr. Block said the only time they use the deck is when they have people over just drinking and leaving beer cans all over and it is a mess.

Mr. Lamanna asked if the beer cans are on the Block's property.

Ms. Block replied yes.

Mr. Block said we have even had coffee cups on our property.

Ms. Block said if the pond is moved 10', why leave the deck behind.

Mr. Lamanna asked if the deck is still going to be on the pond.

Mr. Battaglia replied correct.

Mr. Lamanna asked how far the deck is from the property line.

Mr. Battaglia said from the south side it is 7-1/2'.

Ms. Sass asked how big the deck is.

Mr. Battaglia said it is 10' wide by 12' deep and 2' of it hangs over the water so what is on land is basically 10' by 10'.

Ms. Sass asked why not do a complex including the waterwheel, gazebo and deck together and move it on the other side of the pond. She asked Mr. Battaglia what his plans are if he obtains approval from this board as far as a timeframe.

Mr. Battaglia said he was told that he would have two years, he wanted to do it this year but he is running out of time with weather and everything else.

Ms. Sass asked Mr. Battaglia if he contacted anybody about having the pond drained and silted.

Mr. Battaglia said as far as excavating, yes, several people.

Ms. Sass said many people who have silt removed from their ponds do it over the winter months and asked if he had anything set up for this winter.

Mr. Battaglia said no he does not and he did not make any concrete plans as far as excavation because it has taken him a couple of months to get to this point. He said he had Geauga Soil & Water come out to make sure he wasn't endangering anything or the septic system or natural land flow.

Ms. Sass asked who he has contacted about having it excavated.

Mr. Battaglia said Ryder Excavating, Buckeye Excavating, another gentlemen that does light excavation, it is not his primary thing but he does it, it is B & B Landscaping and Light Excavation and those are the three people he has used.

Ms. Block said the pond does dry out once a year.

Mr. Battaglia said it does not.

Ms. Block said the pond dries out once a year and the frogs or whatever is in there moves to the adjacent Canitia pond which is several feet away from it so once a year it dries out and you can see the whole bottom of the pond.

Mr. Battaglia said it has only dried out one year.

Mr. Lamanna asked Ms. Block how long she has lived there.

Ms. Block said since 1999.

Mr. Murphy said so the pond was there when you bought the property.

Ms. Block said that is correct and later on we are on the agenda because we want to put up a storage building so we had our property surveyed so the pond was moved in.

Mr. Battaglia referred to the aerial map that shows where he used to cut the grass and from there where it meets the property line and said around there was completely heavy brush which he spent money on having it cleared out to make the pond look good for everybody to use and added that his intentions have been nothing but good and as far as the deck getting used, it just got used this past weekend.

Ms. Sass said the board is not going to dictate how often you have to or not have to use your deck, that is up to you and quite honestly, if it is not maintained in a manner to the adjoining owner, they have the option to pursue a remedy in the court and that is not this board.

Mr. Battaglia said he just wants to make it a nice look regardless of Mr. Canitia's structure back there which is about 20' off of his property line, there really isn't anything else to look at in the backyard and the pond is nice, he cleared it out and he wants to take it one step more and make it something that is not an eyesore, that is his whole goal, it has nothing to do with fighting with his neighbors. He said this is something he wanted to do since he moved in, in 2000 and anybody that knows him will tell you that.

Mr. Lamanna asked Ms. Block if this is moved back to another spot on this property, if it will make any difference to her and if it is moved back to a conforming place, instead of being in the back it will be 90' to the rear and closer to her house and more visible. He asked her from her standpoint if that makes any sense. He said there is already a large storage building there and it is about as far away from everybody as it can be put.

Mr. Lewis said it is a low profile.

Mr. Lamanna said it is not like it is a foot off the property line and he just does not know if there is a better location to put the deck from a standpoint of impacting the neighbor's property and without any consideration of the issues of the neighbors, of all the places this could be put on the property, he is not sure he could pick a better place to lower the impact on the rest of the adjacent property owners.

Ms. Block said the only concern that she has is, the first one is he never got a permit and the second one is the trash.

Mr. Lamanna said the trash can come from anywhere on the property and the board can't solve that problem.

Mr. Lewis asked Ms. Block if she has the property to the south.

Ms. Block replied yes.

Mr. Lewis said he was looking at the overhead on this and sees that there is an accessory building.

Ms. Block said yes.

Mr. Lewis asked how far it is off the side property line because the code is 50' and it doesn't look like it.

Ms. Block said that was there when they bought the home.

Mr. Lewis said he was just looking at all of the properties and what comes to mind is that he is looking at three properties that all touch each other, there is a pond, there is a large storage building and an accessory building and not any of the three of them are conforming and we are spending an hour talking about a 10' x 10' treated wood deck that is a few feet off of the ground at the far back corner of the property next to a behemoth building that is 20' off the property line and what he would like to do is try to bring this back into the focus of the variance request that the applicant has made and maybe lets think about, we have moved from three structures to two structures.

Mr. Lamanna said the gazebo will be on the far opposite side and he will move the pond away from the property line by 10' which means that no muskrat is going to burrow 10' away from the edge of this.

Ms. Sass said not only that, the applicant has said he is going to put a retaining wall in.

Mr. Lamanna said the good thing about the retaining wall is that the pond won't keep naturally expanding which they will do a little bit although around here the soil is such that it is not as big a problem as in other places but it can expand a little bit over time and he thinks that plan will solve the pond, he does not see the deck going in a better place and the gazebo is the same issue therefore it could be farther back because then it is farther away from everybody's house anyway and with this other huge building back there, the other neighbor isn't being affected and he does not know what to do about the rooster and if you have a rooster, somebody might buy a fox.

Mr. Battaglia said he actually had a rooster and two hens but the hens came up missing after the first day.

Mr. Lewis asked if the board wants to move forward with this, issue the variances and encourage these good people to work out their differences.

Ms. Block asked if there is just a two year time frame.

Ms. Sass said no, there is not a time frame.

Mr. Lewis said the variance follows the land.

Mr. Lamanna said there is a non-conforming deck here so a condition could be placed to get this done in a year.

Mr. Block asked why the gazebo has to have a variance.

Mr. Battaglia said he wants to see the pond, gazebo and the deck.

Mr. Lamanna said the farther back the gazebo is, the farther away it is from everybody's property.

Ms. Sass asked why it could not be moved in 10', it is still back and out of the way.

The board discussed the placement of the gazebo.

Ms. Sass said the great thing about having a pond is that you really do get to enjoy the wildlife, assuming you make it nice and pristine, so if you kind of bunch your gazebo and waterwheel together to keep those structures as minimal as possible.

Mr. Battaglia said he has no problem with that.

Mr. Lewis said there is no lot coverage issue so the size of the gazebo is not an issue.

The board discussed the placement of the structures and the variances requested.

Ms. Sass asked about how big the gazebo will be.

Mr. Battaglia said he wants to do a 10' gazebo, octagon, he doesn't want it super big, he just wants it to fit in.

Mr. Lamanna said the waterwheel is going to be attached to the gazebo.

Mr. Battaglia said if he decides not to do the waterwheel, he will just put a regular submersible pump in, but he would like to do the waterwheel.

The board discussed the variances required.

Ms. Sass asked how big the pond is.

Mr. Battaglia said he can't remember.

Mr. Joyce said it is about 65'.

Ms. Sass told Mr. Battaglia that it behooves him to get the excavation done over the winter months because the ground is frozen and many excavators don't have as much work over the winter months.

Mr. Battaglia asked if he wants to do it sooner than that if he can.

Mr. Lamanna said yes.

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

Motion BZA 2008-13 – 16805 Snyder Road

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

1. A variance for the purpose of maintaining a 10' x 12' existing deck that has a variance of 42.5' from the south lot line and a variance of 74' from the rear lot line. This variance is applicable for so long as the deck remains in existence but does not extent any substantial reconstruction of the deck or replacement of it.
2. A variance with respect to altering the shape of an existing pond to maintain the current setback from the rear line of 22' or a variance of 68' and a variance with respect to the setback from the south side lot line to 10' for a variance of 40' which represents a change from the existing zero setback from that lot line and that a retaining wall of rock or wood be placed along at least that side of the pond that parallels that south side lot line with a condition that this will be completed within one calendar year of this decision becoming final.
3. A variance for the purposes of constructing a gazebo not to exceed 12' x 12' x 12' high plus an attached waterwheel structure for the purposes of aerating the pond if so desired and a variance from the minimum rear yard setback of 90' to 50' for a variance of 40'.

Based on the following findings of fact:

1. A practical difficulty exists. All of these items are associated with the existing pond and to totally relocate the pond to make it conforming would be unreasonably expensive and difficult to locate on the property.
2. In addition, the adjacent property to the east has a very large structure within 20' of the property line already so it screens these items from view of the other property owners or makes these existing and proposed structures to have absolutely no impact upon the neighboring property owners.

Motion BZA 2008-13 – 16805 Snyder Road - Continued

3. In considering the other possible locations more distant from the rear setback line would only place the structures closer to the dwellings on the properties to the north and south and create greater impact on them by placing them farther back on the property than the variances allow.

Mr. Lewis seconded the motion.

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

Application 2008-14 by Jozef Kofol (Northwoods Grille) for property at 16381 Chillicothe Road

The applicant is requesting to expand its Conditional Use by the addition of outside dining on a patio. The property is located in a R-5A District.

The zoning inspector's report dated July 17, 2008 was read and photos of the site were submitted.

Ms. Linda Kruse, Manager of Northwoods Grille was present to represent this application.

Ms. Kruse testified that they are looking to build a small outside patio on the west side facing Rt. 306 in an existing area that is currently landscaped and would be surrounded by a white picket fence with an exit gate and they would be removing the first booth behind the hostess stand to create a door going out into the patio area and it will be poured concrete with 40 to 44 seats with 12 tables with umbrellas. She said it will be in the front to the left.

Mr. Murphy asked if it will take all of that lawn and the sidewalk away.

Ms. Kruse said no, the sidewalk will remain, it will just be a small area with 12 four-seated tables in that area with umbrellas, no awning or anything like that, on poured concrete and it will be a nice little area in the front.

Mr. Murphy asked what size the patio will be.

Ms. Kruse said she does not have the dimensions. She said the fenced in area will be inside the sidewalk, there wouldn't be anything removed or taken away, just the dirt and landscaping that is in there.

The board discussed the area that will be used.

Ms. Kruse said there will be an exit gate on the side of the sidewalk facing west, facing Rt. 306.

Mr. Lewis asked if it is going to be for outdoor dining. He asked about the hours of operation, lighting and music for entertainment.

Ms. Kruse said there will be no entertainment, they currently don't have any type of entertainment, they have no future plans for that, they will have light CD's, it is a family style restaurant and very subdued. She said the hours of operation are lunchtime at 11:00 A.M. and they serve until 9:00 P.M. and that is when we end and stop serving, we are not a bar and are closed by 9:00 P.M.

Mr. Lamanna said if you close by 11:00 P.M. that is plenty of time for people to eat and get done.

Ms. Kruse said way before 11:00 P.M., we are out of there and the servers are gone by 10:00 P.M.

Mr. Lewis said he would be comfortable with 10:00 P.M.

Mr. Lamanna said what the board wants is no outdoor speakers because there are residential areas across the way.

Ms. Kruse said pretty much for the summer hours they would be open during daylight hours until 9:00 P.M.

Mr. Lamanna said the board is concerned with people wanting to have music out there or whatever else and that becomes a problem.

Ms. Kruse said there will not be any out there.

Mr. Lamanna asked if it will be mainly just dining.

Ms. Kruse said yes.

Mr. Lamanna said lunchtime is not an issue and during the day there will not be a problem.

Mr. Lewis asked if there is existing lighting for that area because if the hours are until 9:00 P.M. – 10:00 P.M. and when it starts to get dark at 7:00 P.M. or 7:30 P.M. and it is still nice out and asked if that area will be illuminated.

Ms. Kruse said they will probably have ground lighting that would be battery operated or plugged in and it would not be anything elaborate and she does not think the owner is planning on putting any major kind of lighting out there.

Mr. Lewis asked if they are going to pour concrete and put up the fence.

Ms. Kruse said they will pour concrete and the dimensions of the fence should be on the blueprints she submitted. She said it will surround the entire patio and will be a white picket fence and the entrance will be from inside the building and then there would be an exit gate.

Mr. Murphy asked what the fence will look like.

Ms. Kruse said she did not bring her blueprints but she did submit them earlier and the fence will be white and made of metal.

The board reviewed the application.

Mr. Joyce showed the board the original drawing for the patio area and said it only notes that it will have a metal railing, it does not give a color or a design.

Mr. Lewis asked about the height of the fence.

Mr. Joyce said it will be 4' high.

Mr. Lewis said he is okay with that because it also means that it is not an 8' high fence so it doesn't pose a safety hazard and he personally does not care what the materials are whether it is plastic or wrought iron.

Mr. Jack Carson asked if that fence has to be stronger for eating on the deck in case cars come through.

Ms. Kruse said there is a curb there.

Mr. Lamanna said that is a building department issue but does not know if there is any code that deals with that or not, but it is not this board's purview.

Mr. Bill Repke testified that he is representing the Fellowship Bible Church and they really just wanted to come to be supportive of the applicant. He said the applicant has fulfilled everything and has been cooperative through the whole process of their operations and more than that they even put on themselves, a deed restriction that will carry on to subsequent owners that it won't ever be a late night spot and that was so important to us being in a residential area.

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

Motion BZA 2008-14 – 16381 Chillicothe Road (Northwoods Grille)

Mr. Lamanna made a motion to modify the conditional use permit for this location to remove the outdoor dining area prohibition and allow the applicant to construct an outdoor dining area as shown on the plans submitted with its application.

With the following provisos:

1. Service on the outdoor dining area will end by 10:00 P.M. in the evening.
2. There will be no outdoor entertainment or outdoor speakers for music or other sounds or outdoor televisions for the purposes of entertainment in this outdoor patio.
3. All other provisions of the conditional use permit and the generally applicable conditions will continue to apply.

Mr. Lewis seconded the motion.

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

Application 2008-15 by John P. Williams for Bob & Kim Block for property at 16821 Snyder Road

The applicants are requesting an area variance for the purpose of constructing a pole barn. The property is located in a R-5A District.

The zoning inspector's report dated July 17, 2008 was read and photos of the site were submitted.

Mr. John Williams, Mr. Bob Block and Ms. Kim Block were present to represent this application.

Mr. John Williams testified that he is from Parma and they need a variance to build a pole barn and the reason for the variance is he has a septic and a leach field problem so he needs a variance to build a pole barn right behind the trees.

Mr. Lewis asked which property this is.

Ms. Sass said the one with the accessory building in the back.

Mr. Williams said he has a leach field in the back.

Mr. Lewis asked Mr. Williams if he is the contractor.

Mr. Williams said yes and the building will be 30' x 40' and 15' off the property line.

The board reviewed the application and looked at the elevations of the building.

Mr. Murphy asked if the garage door will be facing Snyder Road.

Mr. Williams replied yes.

Mr. Murphy asked about the pitch of the proposed building.

Mr. Williams said it will be a 4/12 pitch.

Ms. Sass asked about the location of the leach fields.

Mr. Lamanna asked if the applicants have a map from the original installation.

Mr. Williams said he did not know.

Mr. Lamanna noted the location of the leach fields on the aerial map and said he sees a lot of space between them and the property line.

Ms. Sass said you can see the indentations and asked if that is the entire leach field.

Mr. Williams said yes, the curtain drain.

Mr. Lamanna said it looks like they start 50' – 60' from the property line.

Ms. Sass asked if there are others that extend farther north on the property.

Mr. Block testified yes, there is one just about to that tree.

Mr. Lamanna said it looks like the tree is 60' off the property line and obviously they can't be too close to the tree.

Mr. Lewis said you could still set it behind the tree so it wouldn't block the driveway and increase the side yard a little bit.

Mr. Williams said he could move it around and move it back behind the tree.

Ms. Sass said the proposed building is 30' x 40' x 15' high.

Mr. Murphy said it is 15' off the side property line.

Mr. Williams replied yes.

Mr. Lewis asked what is going in this building.

Ms. Block testified that it will be storage.

Mr. Block said and a couple of automobiles.

Ms. Block said they have equipment and it will be for storage primarily.

Mr. Lewis said it is not a shop where you are performing a service or constructing things, not automotive repair other than general maintenance to your own vehicles, no livestock.

Ms. Block replied no livestock.

Mr. Lamanna asked Mr. and Mrs. Block if they need something this big, it is a pretty big building.

Ms. Block said it is not as big as our needs, we scaled it down.

Ms. Sass asked about the other accessory building and what is in there.

Ms. Block said that is pretty much for winter storage, patio furniture, grills etc.

Mr. Block said they are out of space and they use a bit of their neighbor's barn right now to keep their stuff.

Mr. Lewis said the space that you have to locate this on your property with the proximity of your leach fields and your side yard 50' zoning code, it could be that this structure is just a size too big for the available space on the property. He said he is looking at it to see if there is a way to locate this and still accommodate the size you are looking for.

Ms. Sass asked what kind of tree it is.

Ms. Block said she has no idea.

Mr. Lamanna asked if the tree is limiting the placement of the building in any way.

Mr. Lewis said if you pull the tree out and push it into that section, you could come way off the side yard.

Ms. Sass said that is sort of what she is thinking but it should not get too close to the leach fields in case they have a problem if they need to do any kind of excavating.

Mr. Block said the leach fields are probably one foot south of the tree.

Mr. Lamanna said so it is not the tree that is the limitation.

Mr. Block said it is the leach field right there.

Mr. Lamanna said the tree is only a convenient marker of where the leach field comes to.

Mr. Joyce said the health department will tell you to stay 10' away from a leach field.

Ms. Sass said it may not be able to be lined up behind the tree like we were talking about.

Mr. Lewis said he does not like coming 15' off of a property line.

The board discussed the requested setback.

Ms. Sass asked Ms. Block if she lives there.

Ms. Block said absolutely.

Ms. Sass asked why she has a Farmington, Michigan address.

Ms. Block said everyone asks that, it is because of the bank holding the mortgage.

Mr. Murphy asked if there are any adjoining property owners here.

Mr. Greg Battaglia testified that he already looks at one big building and he is trying to do things against the back of his property, he does not want to look at another one and that is one of the reasons he moved there, because it is open and he took that into consideration and that one building does not bother him but if they build a building there he will feel like he is in a boxed in warehouse district and he certainly does not want that especially 15' off his property. He said if they want to put it in one of the back corners and landscape it and put arborvitae up so he does not see it that is great.

Ms. Sass said there would be additional variances needed if it is put in one of the back corners because it would need a rear yard variance as well.

Mr. Battaglia said if they want to put it on the side where the existing building is, that is fine too.

Mr. Rob Atkinson of 16783 Snyder Road testified that he also opposed that location.

Mr. Lamanna asked Mr. Atkinson where his property is located.

Mr. Atkinson said he is north of Greg Battaglia and he also has to look at the big structure on the Canitia's property and he thinks by putting another big structure there, there will be a boxed in feeling and you will get rid of the whole neighborhood setting, like a warehouse district, and he thinks it will impact not only the marketability of his home but its value.

Mr. Lamanna said unfortunately from your standpoint, if they didn't have a leach field, they could put this building right in the middle of their property and they wouldn't need a variance.

Mr. Atkinson said sure but that close to the line, if they want to look at it out their back window, it is fine.

Ms. Sass said they can't really look at it out their back window because of the leach fields.

Mr. Lamanna said just because you have a practical difficulty does not mean you get to build whatever you want.

Ms. Block said sure.

Mr. Block said it is just funny that they like looking at openness and everything but they have boulders going up the whole boundary line and red tape and everything but they want it to look nice.

Mr. Battaglia said that is nothing to do with this.

Mr. Lamanna said he understands that part but he thinks the board's issue here is with the size of the building. He said the board has turned down other people who want to build structures like this, this close to the property line because of the impact.

Ms. Sass said when you say a couple of automobiles, how many are you talking about.

Mr. Block said two and they have lawn tractor equipment, the tractor, the cart, the aerator, rollers etc.

Ms. Sass asked how big the other accessory building is.

Mr. Block said he is not sure, 12' x 16', but it is small.

Mr. Lewis said that is still pretty substantial.

Mr. Block said it is on its last leg.

Ms. Sass asked if it is going to be taken down.

Mr. Block said he does not know at this point.

Mr. Battaglia asked if it would be taken down and then build something a little bigger right there, a little wider, a little longer.

Ms. Block said there is a drainage pipe that runs along the south side of that building.

Mr. Battaglia said he knows because he put it in.

Ms. Block said no, you did not.

Mr. Battaglia said yes he did, he backfilled it and everything.

Mr. Lamanna said that is not germane to the discussion here.

Mr. Williams said the accessory building is 13' x 8'.

Mr. Lewis said he thinks he would be more inclined to establish a side yard setback and then allow the applicants to scale their building to fit in there, maybe 30' off the side yard and shape or scale the building to fit in the available space, whether you make it longer or reshape it because 15' off the side yard does not get it for him at all. He said he realizes that there are some leach fields there but he is also looking at the nature of what is going to be stored in there and you have a double garage door and the building is fairly large and he thinks it can be reshaped and kind of leave the burden of the building on the applicant.

Mr. Lamanna said the total size of the building is huge.

The board discussed a 20' x 30' building 25' off the property line with some landscaping on the side of it to soften it up a little bit.

Mr. Jack Carson asked if there is going to be a driveway back to it.

Ms. Block said it will be gravel.

Mr. Lewis said the bigger the building is, the more hard surface water we have to alleviate with an impact.

Mr. Battaglia said yes and if they are already having a drainage problem.

Ms. Block said they don't.

Mr. Lamanna asked if there is a lot coverage issue with the driveway issue.

Ms. Sass said that is a good question and asked Mr. Joyce if they will have a lot coverage issue if they put a driveway back there.

Mr. Lewis said that was not presented.

The board discussed the 10% lot coverage limitation and the total lot coverage.

Mr. Lamanna said if you want to put even a gravel driveway back there, you might have a lot coverage issue.

Ms. Sass explained that you can only cover a certain percentage of your lot and if you put a gravel driveway going back there, that is lot coverage.

Mr. Lamanna said there is already a house, driveway etc.

Ms. Sass explained to Mr. and Mrs. Block that they haven't asked for that and added that there have been no calculations done because they didn't ask for it.

Mr. Joyce said it would be 6,965 sq. ft.

Ms. Block asked about the lot coverage.

Mr. Lamanna said it is about 7,000 sq. ft. and it may be okay now with the existing house and driveway, this will add another 1,000 sq. ft. He said the issue here is the size of the structure and 15' is just too close, we have got to get this back to 25' and scale down the size of the structure. He said unfortunately, the closer you build to the line the rule of thumb is the smaller the structure has to be because obviously it has a greater impact. He said a 60' x 20' structure would not be acceptable either, he is thinking a 20' x 30' structure would be better with some landscaping on the side of it. He said it is too close to the line for that big of structure and the board has turned down other people who want to build structures that size that close to the property line, the board has made people reduce the size of the structure and keep it farther away, it is not fair to encroach that size of a structure and he does not know how the other structure was able to be built, it may pre-date the zoning.

Mr. Block asked if they could go 24' x 30' because he needs to put two vehicles right next to each other.

Mr. Lamanna said that is why he figured 20' because you have a 16' garage door so that gives you two feet on each side.

Mr. Murphy asked Mr. and Mrs. Block if they thought about bringing it all the way up right behind the garage.

Ms. Block said they have two septic tanks there.

Mr. Block said the air conditioner is there.

Mr. Lamanna said that would be really close to the neighbor's house.

Mr. Block said adding onto the garage would put us too close to the neighbor's and we did not think it would look nice, personally, it would be all garage.

The board discussed the proposed size of the building.

Mr. Williams asked about 22' x 30'.

Ms. Sass asked Mr. and Mrs. Block if they do the 24' x 30' building if they can keep it 25' from the side yard.

Mr. Lewis said and 10' off the leach field.

The board discussed septic fields and the distance a building has to be from them.

Ms. Sass asked what the distance is from the side yard lot line to the first leach line and if anyone knows.

Ms. Block said they do not know.

Mr. Lamanna said the board has agreed to allow 24' x 30' and 25' off the line and the applicants can engineer it.

Mr. Lamanna asked for further comments.

Mr. Block asked if they push it further back, they would gain more space.

Mr. Lamanna said if you want to move it up and down, that is okay.

Ms. Sass said yes, but it must be 90' from the rear lot line.

The board discussed the proposed setbacks with Mr. Battaglia.

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

Motion BZA 2008-15 – 16821 Snyder Road

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

1. A variance from the minimum required side yard setback of 50' to 25' for a variance of 25' for the purposes of constructing a pole barn no bigger than 24' wide x 30' deep with a 4/12 pitch roof maximum.

Based on the following findings of fact:

1. There is a practical difficulty due to the existing leach field.

With the following condition:

1. The side of the building shall be landscaped to soften its impact on the adjacent neighbors with some reasonably sized evergreen shrubbery in order to reduce the impact on the neighboring properties.

Mr. Lewis seconded the motion.

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

Since there was no further testimony, the public hearing was closed at 10:04 P.M.

Respectfully submitted,

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

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

Date: August 21, 2008

AUDIO RECORDING ON FILE

BZA PH 7/17/2008

-36-

Bainbridge Township, Ohio
Board of Zoning Appeals
July 17, 2008

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 10:04 P.M. by Mr. Michael Lamanna, Chairman. Members present were Ms. Joyce Hannum, Alternate, Mr. Todd Lewis, Mr. Mark Murphy and Ms. Lorrie Sass. Mr. Mark Olivier was absent.

MINUTES

Mr. Lamanna made a motion to postpone action on the June 19, 2008 meeting minutes until the next regularly scheduled meeting to be held August 21, 2008.

Ms. Sass seconded the motion.

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

Applications for August 21, 2008

Application 2008-15 by John P. Williams for Bob & Kim Block for property at 16821 Snyder Road – Requesting Reconsideration

The applicants are requesting an area variance for the purpose of constructing a pole barn. The property is located in a R-5A District.

Application 2008-16 by Edward D. Ricker for property at 18111 Kenston Lake Drive

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

Application 2008-17 by Highland Construction for Ian & Shari Roche for property at 7070 Bramshill Circle

The applicant is requesting an area variance for the purpose of maintaining an in-ground swimming pool. The property is located in a R-5A District.

Application 2008-18 by Robert Hradek for Maureen Mason for property at 17532 Merry Oaks Trail

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

Application 2008-19 by James D. Evans, Architect for Dunkin' Donuts for property at 16780 Chillicothe Road

The applicant is requesting area variances for the purpose of constructing a new Dunkin' Donuts. The property is located in a CB District.

The Bainbridge Township Board of Zoning Appeals set a public hearing on the above applications for August 21, 2008 at 7:30 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 10:14 P.M.

Respectfully submitted,

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

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

Date: August 21, 2008