

Bainbridge Township, Ohio
Board of Zoning Appeals
August 16, 2007

Pursuant to notice by publication and certified mail, a public hearing was called to order at 7:41 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Todd Lewis, Mr. Mark Murphy, Mr. Mark Olivier and Mr. Donald Takacs. The following matters were then heard:

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

Application 2007-29 by Matthew Lynch for property at 17477 Chillicothe Road

The applicant is requesting an amendment to a home occupation, for the purpose of constructing an attached garage. The property is located in a R-3A District.

The zoning inspector's letter dated August 7, 2007 was read and photos of the site were submitted.

Mr. Matthew Lynch was present to represent this application.

Mr. Lynch testified that he is asking for permission to tear down the little 20' x 20' shed and essentially move it forward and take out the concrete pad and make a garage two cars deep so instead of it being a two car garage, it will be a four car garage. He added that the current lot coverage is 595 sq. ft. and when the new structure goes up, it will be 480 sq. ft. so it is actually a reduction in lot coverage. He said the structure will be farther away from the property line and he does not think there are any property line or setback issues.

Mr. Takacs said that Mr. McIntyre's notes state that the added overall lot coverage will be .75%.

Mr. McIntyre testified that when they went out to take photographs, they noticed some extra gravel thrown down so they added that into the lot coverage and determined it is an increase of .75%.

Mr. Lynch said he did not think that gravel was lot coverage and thought if water went through it; it was not considered lot coverage so maybe it is an increase in lot coverage. He said he put down gravel around the driveway because of the mud situation with people turning around etc.

Mr. Lamanna asked if the gravel was added to make a turn-around.

Mr. Lynch replied yes and said the turn-around was there because there was a patch of asphalt but they put gravel around either side and it is primarily on the eastern side because the biggest problem is getting out onto Rt. 306 and we tell everybody not to back out onto Rt. 306, to turn around but it is very difficult to do without using the lawn.

Mr. Takacs asked about the purpose of taking the shed down and moving it up and if the existing shed is not useful.

Mr. Lynch said the shed is in terrible condition, the roof fell in this winter and they could rebuild the shed but it makes more sense to move it forward and make it part of the structure.

Mr. Takacs asked what the addition will be used for.

Mr. Lynch said they have a 50" wide zero-turn mower with a pull behind power leaf catcher that takes up a whole car size area and he has a golf cart which he now pays to store in the winter that he would like to store here which will take up another space and he would still like to get two cars indoors and technically he can only get one car indoors and with the golf cart, he will not be able to get any cars indoors, so it is a matter of expanding the space available.

Mr. Lamanna asked Mr. Lynch if he will continue to use the area to the side of the garage.

Mr. Lynch said if they can have the two cars indoors, they would not really have to use that area.

Mr. Lamanna said if this extension is added, then the parking area is not needed.

Mr. Lynch said that is exactly right but he will still need the turn-around area.

Mr. Lamanna said the area next to the garage would not be needed for the turn-around area.

The board discussed the gravel area and the turn-around.

Mr. Lewis asked if the addition will be behind the existing garage.

Mr. Lynch said it will be behind it.

Mr. Lewis said it will be for four cars, two deep.

Mr. Lynch said correct and added that there will be no additional door, just the main door facing Rt. 306.

Mr. Olivier asked if the garage will be just for the employees.

Mr. Lynch said yes and his wife part-time but when he gets a delivery, such as Federal Express, he tells people not to back out onto Rt. 306.

Mr. Lamanna said if the garage is going to be extended, he would like to get rid of the parking area alongside the garage.

Mr. Lynch said he can plant grass there.

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

Motion BZA 2007-29 – 17477 Chillicothe Road

Mr. Lamanna made a motion to amend the previous home occupation grant in 2006-20 as follows:

1. To permit the applicant to add to the rear of the existing garage, an additional area of approximately 20' x 24' to provide space for two additional cars.

With the following conditions:

1. The applicant will remove an existing 20' x 20' frame shed.
2. The applicant will remove the gravel parking area that is immediately adjacent south of the existing garage.
3. The turn-around area can remain and is unaffected by this change.

Based on the findings of fact:

1. After removing the shed and adding this addition, there will be no material change to the lot and actually will move the structures farther from some of the adjoining property owners.
2. It is consistent with the existing area and will not adversely affect any of the neighboring property owners.

Mr. Takacs seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye; Mr. Takacs, aye.

Application 2007-30 by Edward J. Banky for property at 8640 S. Spring Valley Park Drive

The applicant is requesting area variance(s) for the purpose of constructing a pole barn within a riparian setback. The property is located in a R-3A District.

The zoning inspector's letter dated August 7, 2007 was read and photos of the site were submitted.

Mr. Edward Banky was present to represent this application.

Mr. Lewis asked if excavating has begun.

Mr. Banky testified that he graded the area off to see how big of a pole barn he could construct there without knowing that they had passed a riparian act and he was told he was in violation and he decided to check it out and get all of the information from the U.S. Army Corps of Engineers and this is what their rules say in regulation for residential property and submitted a copy to the board.

Mr. Olivier asked if that is the water course that has been graded.

Mr. Banky said the water ditch is approximately 49' or 50' from the back of his house and he has 43' to the 90' setback and he is not going to build a 43' pole barn, he is going to build a 32' x 32' barn.

Mr. Olivier said the actual ditch appears to be dry at the moment.

Mr. Banky said it is a very intermittent stream, the only time that thing gets water run-off is when we get rain and most of the water comes from the North Spring Valley road culverts because they dump their road culvert water down into the gulley and it flows across his property and he was trying to do some management by putting culverts in there not knowing.

Mr. Lewis said it has been excavated to the waterway.

Mr. Banky referred to the statute of the U.S. Army Corps of Engineers.

Mr. Lamanna said they are separate regulations, they are concurrent regulations, the fact that one permits it and one may not allow it, does not matter at all, because there is a very limited scope of what the Corps of Engineers regulates.

Mr. Banky said the Corps regulates a lot of public land and commercial land.

Mr. Lamanna said it does not matter what the Corps says is okay.

Mr. Banky asked why he has to have a letter from the Corps if he is not allowed to do anything.

Mr. Lamanna told Mr. Banky he has to have both, the local zoning and the Corps of Engineer's requirements both have to be met.

Mr. Banky said the Corps of Engineer's requirements are stated in the affidavit and it does not require him to have a permit or anything.

Mr. Lamanna told Mr. Banky he can operate under a nationwide permit, but it does not mean that because the Corps says it is okay, that it conforms with the zoning. He said Bainbridge Township has separate regulations dealing with riparian rights-of-way.

Mr. Banky said they are unconstitutional and it violates the 14th Amendment.

Mr. Lamanna said that could be taken up with the Geauga County court system.

Mr. Banky said in the township's own bylaws, the township cannot do anything that conflicts with the State of Ohio.

Mr. Lamanna said conflict does not mean having a more stringent requirement.

Mr. Banky said it means taking his property rights away from him and referred to Article 1, State of Ohio Bill of Rights and also Article 19, State of Ohio Bill of Rights. He said all he wants to do is build a pole barn and building the pole barn is not going to restrict the water running in that ditch and 90% of the water is from the township's road culvert and added that if he were allowed to put a culvert pipe in there, there would not be a riparian act issue.

Mr. Lamanna asked how big the pole barn will be.

Mr. Banky said he wants to build a 32' x 32' pole barn which causes him to infringe on the 25' riparian setback about 12'.

The board reviewed the application and variance request.

Mr. Banky said he thinks he has topo maps in with his application and he has another map that he can show the board.

Mr. Lamanna asked how far back the barn will be placed.

Mr. Banky said it will be approximately 10' from his 90' rear yard setback.

Mr. Lamanna asked how it compares to his house.

Mr. Banky said his house is 38' wide and the pole barn is only going to be 32' and it probably will not be seen from the road.

Mr. Lamanna referred to the aerial photograph and the stream on the property.

Mr. Banky referred to the ditch and said he dug it in 1997 and showed the board where it starts and where it ends and said he has installed culvert pipe and if he would have continued with the pipe, he would not be in violation. He showed the board where the stream is and said his pole barn will be 15' to 16' away from it.

Mr. Takacs referred to the existing deck on the house and asked if the pole barn will be right up to the deck.

Mr. Banky said it will be about one foot away from the deck.

The board members reviewed the information supplied to them.

Mr. Murphy asked if there was engineering done on the amount of acreage in that watershed or if there is anything known about maximum storm flows, the amount of water in a 50 year flood or a 30 year flood or what size culvert pipe is under the driveway now.

Mr. Banky said that is not the driveway but he has a 12" culvert pipe in there and there is approximately 40' to 45' of 12" pipe in there right now and showed the board the location of the pipe on the site plan.

Mr. Murphy asked if it ever backs up.

Mr. Banky replied no but now the water comes down more fiercely because the township has cleaned out their road culverts and the water runs a lot faster and runs across his property faster. He said it does overflow the front one and comes all over his property further down since they cleaned out the ditches. He explained how the water is drained from N. Spring Valley all the way to Peppermill Chase and referred to the diagram of the streets and from Maplewood Drive and everything west of that flows down into the culverts and runs into the culverts and then the township dumps their culvert water into that.

Mr. Murphy said it is a creek bed and has always been there and has always taken the water from the storms.

Mr. Banky said right, but now he is not allowed to do anything to keep the water in the creek with a culvert pipe since they passed the riparian issue.

Mr. Murphy said there are some issues that cannot be made worse because of a pole barn.

Mr. Banky said it won't even affect the water coming down the ditch because the barn will be 12' – 15' away from it.

Mr. Murphy asked when the 12" pipe backs up how much water will end up in the barn.

Mr. Banky said none because it will go around the side and back into a ditch.

Mr. Lamanna asked if that area is graded flat now.

Mr. Banky said yes and referred to a photo.

Mr. Lewis said it is graded within the riparian.

Mr. Banky said it is within the riparian area not knowing that when he started grading.

Mr. Olivier asked if there were trees, vegetation or grass there.

Mr. Banky said there was a deep gully that he filled in with dirt that he dug out of the bank and there were some crab apple trees that he got rid of.

Mr. Lewis asked if there are any drawings of the proposed structure.

Mr. Banky replied no but it will be 32' x 32' with a flat roof on top.

Mr. Lewis asked if there will be no slope to the roof.

Mr. Banky said there will be no slope but in three or four years he would like to put a second story on top for personal household storage but that would be another issue.

Mr. Lamanna said it is filled all the way into the riparian up to the stream.

Mr. Banky said it was down hill grade, he cut some down and some of the dirt went over into the riparian area and he was told to clean the riparian area back out which he did and he flattened everything out as he pulled it back away from that.

Mr. Olivier asked Mr. Banky if he is planning on keeping the deck after the barn is built.

Mr. Banky replied yes and added that it goes all around the house, it starts at the front and goes all the way around.

Mr. Olivier said the barn could be placed next to the house and it would give a little more room.

Mr. Banky said for the next two or three years, the pole barn will be lower than the deck by about 8" – 10".

Mr. Lewis said the first floor of a two story structure will be built first and two to three years down the road a second story will be added along with the roof pitch appropriate for that.

Mr. Banky said correct.

Mr. Lewis said in viewing this structure down the road, it will be 28' – 30' up in the air and asked about the height of the existing house.

Mr. Banky said the height is close to 30'.

Mr. Lewis said the documentation submitted indicates that the house is 20' and added that he is looking at the grand scheme of putting a 32' x 32' structure up that is taller than the house.

Mr. Banky said it won't be higher than the house because the floor is going to be 8" lower than the deck is now and that is even with the second floor.

Mr. Lamanna asked if the barn will have a paved floor.

Mr. Banky said yes eventually, it will not have a foundation it will have 6 x 6 poles.

Mr. Lamanna asked if the poles will be set into the ground.

Mr. Banky said yes and they will be concreted.

Mr. Lamanna asked how far back this will go.

Mr. Banky said the pole barn will be even with the back of the house and his house goes out 38' and the pole barn will only go out 32'.

Mr. Lamanna said there is a pretty steep slope in the back of the house.

Mr. Banky said he needs to get someone in there with a smaller machine so he can at least get it wide enough to get a lawn mower behind there and he has one big tree that he has to take down.

Mr. Lamanna said the slope is going to have to be brought down to the point where something can be put on there to stabilize it because if the board is going to allow this, the slope needs to be stabilized.

Mr. Banky said that is nowhere near the stream.

Mr. Lamanna said if the bank is not stabilized, every time it rains, run-off will run right down into the stream.

Mr. Banky said he realizes that.

Mr. Lamanna said it is hard to determine the undisturbed ground and the disturbed ground from the photo and asked if the stream was basically a crack in the ground.

Mr. Banky said the water that runs through is 1/2" deep except when it rains and when it rains it might be 5", 6" or 7" deep and about 10" wide and every bit of that will go through a 12" culvert with no problem.

Mr. Lamanna asked Mr. McIntyre if he went out and looked at this.

Mr. McIntyre said yes they did.

Mr. Lamanna asked if the strip is just a little crack in the ground basically.

Mr. McIntyre said it started out as a crack in the ground but it has a defined bed and bank and it is 2' – 3' in areas where the water has washed out coming down through there and there is the back where it is piped in and it carries across under and into that portion of the road.

Mr. Lamanna asked if the grade is raised or is part of the bank cut or part of it is filled.

Mr. McIntyre said there was fill pushed into that area and as he testified, he did bring it back out and added that it is a 25' setback for a 1/2 mile drainage area.

Mr. Lamanna said if he has filled in that area, the board would want to have that retained if this is going to be allowed, with a retaining wall along any fill area because it looks like part of it is cut and part of it is filled.

Mr. Banky said that is not even in the riparian area.

Mr. Lamanna said but when you get to the front where it is filled in and 12' from the stream, the board will want a retaining wall along that fill area.

Mr. Banky said it is not that much fill, only 12" – 14" and he has to go down 48" for the posts.

Mr. Murphy asked with 12' back there if a natural stream bed could be restored there instead of having a big flat plateau with a 30' pole barn and 12' of flat lawn, if there could be enough for a lawn mower and put it back into a slope.

Mr. Banky said that could be done.

Mr. Lamanna said he has cut out part of the slope.

Mr. Banky said then he would be grading it down lower.

Mr. Olivier asked if there was more of a defined bank there before it was graded.

Mr. McIntyre said it was graded prior to them getting out there to have a look.

Mr. Lamanna said part of the bank is missing and he is not sure because of the way this is, it looks like there is some dirt over on the other side of the stream bed.

Mr. Banky said there was.

Mr. Lamanna said if he can get that out of there and from the looks of this here, it does not look like, the fact he cut the bank away, it is going to cause that much problem especially if he can clear out some of this dirt here, there is enough depth there short of the 500 year flood, if it reaches that point whether the bank is there or not it would not have made any difference.

Mr. Murphy said it might make a big difference because with the 100 year floodplain, it is very important and for the board to give permission to build a pole barn there and ten years from now it gets flooded out and washed away.

Mr. Banky said there is a 10' discrepancy on the topo map.

Mr. Murphy said since the construction was started, all the board has is a couple of photos, the board needs more information to make a decision on this. He added that the zoning resolution makes it very clear that nothing is supposed to be built here and the construction project has already been started.

Mr. Banky said the zoning regulations are strictly against residential work.

Mr. Murphy said the board is not against residential work, the zoning is trying to prevent 100 year floods from taking out things in the future because we are smarter than we were 50 years ago and that is the whole purpose of the riparian setback regulations. He asked if there is any reason why the pole barn cannot be put back in the other corner, not in a riparian area.

Mr. Banky said if he moves the barn to the other side, he is in the flood zone.

Mr. McIntyre confirmed that he would have the riparian there also.

Mr. Takacs said the deck could be removed and the barn could be closer to the house.

Mr. Banky said he has a second floor roof on the deck.

Mr. Takacs said that would be the only thing that would give the 12' that is encroaching because the deck is 10' wide.

Mr. Lamanna asked how big the watershed is for this stream.

Mr. Murphy asked if this is taken off the FEMA map.

Mr. McIntyre said yes, ½ square mile.

Mr. Banky said that is probably correct because all the way up to Peppermill Chase would be about ½ mile and North Spring Valley area and Maplewood.

Mr. Lamanna said the stream is already channelized and if it is going to back up, it will back up at the other end but his biggest concern is if it is ½ square mile, it will flood him out.

Mr. Banky said if it backs up it will only back up about 6' because then it will be up over the top of everything and go around.

Mr. Murphy said it could go over the floor of the barn.

Mr. Banky said he does not think it will go that far because it is lower on the other side of the stream and if it flooded it would run around the outer edge rather than come toward the house. He added that the barn will be higher than the area that would flood.

Mr. Murphy said he understands but given the volume of a 100 year flood, that is why these standards or guidelines say that for a 100 year flood, nothing should be closer than 25'.

Mr. Lamanna said in this case if this starts to overflow there is lower ground away from his house and the natural flood plain is actually the other way toward the back so when it runs out of that stream it will be running the other way.

Mr. Murphy asked what the purpose is of the existing 12" pipe now and asked if it is used to get across the creek or used for part of the lawn, yard etc.

Mr. Banky said it was an area where he was wanting to build a pole barn originally but with the fill that is in there, he would never get any poles in the ground because the fill that came there was from the old bridge that collapsed and he has a hunk of concrete in there that is 2' x 4' x 8', one piece, and it is not moving and added that all of this property slopes back so any water that comes down here and backs up is going to run-around and get back into the ditch.

Mr. Lamanna told Mr. Banky that if the board lets him build in the riparian he will have to understand that he is doing this at his own risk.

Mr. Banky said he does not have a problem with that.

Mr. Lamanna said the fact that the board would allow this there would be no ability to come back to the township and say the board should not have allowed this to be built in that area.

Mr. Banky said he would assume all responsibility if anything would happen to that and that is why he has been putting the culvert in there to continue the flow of that.

Mr. Murphy said that culverts get jammed with tree limbs, etc. and it could start flooding.

Mr. Banky said it would be up to him to clean it out.

Mr. Lamanna asked how long the culvert pipe is.

Mr. Banky said he has 50' – 55' of culvert pipe in there and added that he would only need to put in 20' more and then there would be no riparian setback problem then. He said he has been doing his own storm management for water run-off etc. for protecting his property and he knew the water ran across there when he bought the property and he tried to control it and make the land usable.

Mr. Lamanna asked if there is any advantage to restoring or removing the culvert.

Mr. Banky said he did not think he would move it.

Mr. McIntyre said Geauga Soil & Water or Chagrin River Watershed Partners could look at it and advise accordingly.

Mr. Banky said that he could not move the culvert.

Mr. Lamanna said he was not thinking of moving the culvert it was letting the stream revert to its natural bed.

Mr. Banky referred to the hunk of concrete he has in there.

Mr. Lamanna said under all of these considerations, there are three things they have to deal with and the first one is that the bank behind the pole barn is stabilized so that it does not become the source of silt run-off because anywhere there is fill alongside the stream in the riparian, the board will want a retaining wall.

Mr. Banky said there is only 20' of stream that is causing a reason for him to be here.

Mr. Lamanna said wherever there is fill in the riparian, the board will want a retaining wall.

Mr. Banky asked what about a culvert pipe.

Mr. Olivier said where there is an increase in the velocity of water erosion, it is created where the culvert ends.

Mr. Banky said where it ends the water comes out of there and travels so slow that there is no defined bed and bank.

Mr. Olivier said in dry conditions, but in a storm there is some velocity to that water and part of the riparian regulations is to filter the debris and slow the water and prevent erosion so a culvert could increase erosion based on the fact that it has been disturbed and asked if we could have Geauga Soil & Water recommend some vegetation for the bank.

Mr. Lamanna said the final thing was going to be to restore the stream bank back to what it was.

Mr. Olivier said we don't know what that was.

Mr. Lamanna said we can bring in Geauga Soil & Water to determine that.

Mr. Banky said that when Ms. Carmella Shale of Geauga Soil & Water came out there to review this on May 14th, her first suggestion was to just put in another 20' of culvert pipe.

Mr. Lamanna told Mr. Banky he should have asked them for a letter regarding that.

Mr. McIntyre said he had discussions with Geauga Soil & Water and as for regulations if he gets the proper permits from either Geauga Soil & Water or Army Corps of Engineers it can be done and added that he does not know if Mr. Banky requested that paperwork. He said he knows Geauga Soil & Water was there also.

Mr. Lamanna asked if a permit is needed from Geauga Soil & Water to do the culvert.

Mr. Banky said no, according to this you don't, and referred to a document that says an intermittent stream and a signed waiver for 300 lineal feet or thereabouts.

Mr. McIntyre said that Mr. Meiring Borchers from the Chagrin River Watershed Partners was on that site. He submitted a letter to the board.

Mr. Lamanna asked Mr. Banky if he got the letter.

Mr. Banky said no, he never got the letter and asked about the situation where he is not required to get a permit.

Mr. Lamanna reviewed the letter from the Chagrin River Watershed Partners and said these people seem to think a permit is needed and asked Mr. McIntyre if he has talked to Mr. Banky about getting a permit.

Mr. McIntyre said that he was copied on that letter and they have had a discussion about getting a permit and it has been reflected in the riparian regulations to get the proper paperwork from the proper authorities and one of the issues is that Mr. Banky explained to him is that he has been told by the Army Corps of Engineers that he does not need a permit from them but his recommendation to Mr. Banky was to apply for it and have them tell him in writing that it is not necessary or go through Geauga Soil & Water and given the time that it takes the alternative was to look for a variance from the riparian setback.

Mr. Banky said it is quicker to go for the variance than it is to get a letter from the Army Corps of Engineers and that is why he brought the document to show the board what it states in there about the culvert pipe, the 300 linear feet.

Mr. Lamanna said the Army Corps of Engineers still has to be notified because it is actually a permit from them but it is not a special permit it is a nationwide permit, not an exemption, it says a permit will be granted to everybody that meets certain conditions. He asked Mr. Banky where he got the document from.

Mr. Banky said he got it from the internet and added that he talked to Judy Robinson and Jill Kashler at the Army Corps of Engineers.

Mr. Lamanna asked Mr. Banky if he told them he wanted to put in a culvert.

Mr. Banky said no, he never got that far, he made four or five phone calls and did not get a return and he called the Orwell office but never got an answer and they are local compared to Buffalo, New York.

Mr. Lamanna said the board of appeals cannot let him put a culvert in but if a culvert is put in, there is no more riparian. He said the board could grant a variance subject to conditions the board has talked about already and Mr. Banky could go ahead that way or get the Corps to give approval to culvert it, and if the culvert is put in, then he would not have to worry about it so it gives an option to go either way.

Mr. Banky said he would try both ways such as getting the variance to move forward but he will follow up with the Army Corps of Engineers and keep in touch with the board.

Mr. Lamanna said if the Corps gives approval to put a culvert in, then Mr. Banky can go ahead with it and the riparian goes away and if it does not work out, then the terms of the variance will have to be met.

Mr. Murphy said he would like Geauga Soil & Water to advise the board the right way to restore the bank.

Mr. Lamanna said because there is fill behind it, the bank is unstable so it must be retained.

Ms. Wanda Savioli of 8645 N. Spring Valley Drive testified that her property is on the north side of Mr. Banky's and asked how far the barn will be from her property line.

Mr. Banky told her she will not be affected because it will be 90' to 100' away from her property line.

Mr. Lamanna asked Ms. Savioli if her property is subplot 67.

Ms. Savioli said she is on N. Spring Valley directly behind Mr. Banky.

Mr. Lamanna said there is a 90' rear yard setback.

Ms. Savioli said there are no stakes on the south side of her property so that is why she is asking.

Mr. Lamanna asked Mr. Banky if his house is 60' deep.

Mr. Banky said yes and 60' includes the deck.

Mr. Lamanna said the back of his house is approximately 120' at least from the back property line but it is getting a little close.

Mr. Banky said he has 43' behind his house to the 90' mark.

Mr. Lamanna referred to the site plan and the measurements indicated on the site.

Mr. Banky said the house is 75' from the edge of the road and approximately 15' from the front of his property to the road edge and the road is 60' wide, so take 30' from the centerline, so he has another 15' that can be added on.

Mr. Lamanna asked if the 75' is not from the property line.

Mr. Banky said it is from the edge of the road.

Mr. Lamanna said he thought it was supposed to be 75' from the road right-of-way.

Mr. McIntyre said it is 75' because eleven years ago, he was in for a variance for 75'.

Mr. Lewis reviewed the measurements from the site plan.

Mr. Lamanna said there is 18' unaccounted for.

The board continued to discuss the setbacks and property lines and stream.

Mr. Lamanna said the house is only 57' off the right-of-way so the 75' is really out of compliance now too. He asked Mr. Banky if he got a variance.

Mr. Banky replied no.

Mr. Lamanna said the board may as well deal with this now.

Mr. Banky said it was done unintentionally when the house was built.

Mr. Lamanna told Mr. Banky that if a variance is granted for 75' and the 75' was measured from the road pavement edge, then he is not complying with the variance that was granted.

Mr. Banky said the original one.

Mr. Lamanna said yes, the original one and added that he just wants to establish what the state of facts are, so the board may as well grant a variance for that so in the future the record is clear otherwise if the property is sold, the title company may look at it as a non-conforming property and there could be a problem with the sale if there is a zoning violation as it is now. He said because of what he sees here, a surveyor is needed to stake the 90' line so the same mistake is not made again.

Mr. Banky replied okay.

Mr. Lamanna said it is really close and if it weren't so close, he would not recommend to do that but it is within the limits of accuracy of this particular drawing, but recommends that a surveyor come out and stake where the 90' setback line is so the setback will not be encroached upon.

The board discussed the front yard setback.

Mr. Murphy asked about the site plan for the barn and said it looks like it is drawn in two different sizes.

Mr. Banky said he could build a 20' x 30' barn legally without going for a variance at all but the extra 12' makes it a 32' x 32'.

Mr. Murphy asked if it is still a possibility to go with the 20' x 30'.

Mr. Banky said if he went with the 20' x 30' he would have to go underneath the deck and he is trying not to do that.

Mr. Murphy asked Ms. Savioli if she can see the back of his house from her house.

Ms. Savioli said yes she can.

Mr. Murphy said the barn he is asking to build will come 22' closer to Ms. Savioli's house.

Mr. Lamanna said it will still be within the 90' setback, so there will be 180' of clear area between the buildings on either property so there is a fairly substantial clear area and that is within the permitted setbacks and added that the barn will not be any bigger than the house. He said from Ms. Savioli's standpoint, it is probably the best place he can put it.

Ms. Savioli said she will see it regardless.

Mr. Lamanna said only one structure will be seen.

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

Motion BZA 2007-30 – 8640 S. Spring Valley Park Drive

Secretary's note: This motion was made in two parts.

Mr. Lamanna noted that the board has determined that in the course of discussion here the applicant's main structure does not conform to the existing variance that was granted for the setback from the street. The applicant measured the 75' but the setback variance that was granted from the road right-of-way is not actually set back 75' it was set back approximately 59' or so.

Part One

Mr. Lamanna made a motion to grant the following variance to the existing setback of the house.

1. That setback to be determined based on an actual survey of the property showing what the actual setback of the house is from the front lot line to be conducted by the applicant.

Motion BZA 2007-30 – 8640 S. Spring Valley Park Drive - Continued

Part Two

Mr. Lamanna made a motion to grant the applicant the following variance unless the applicant otherwise obtains a permit to culvert the existing stream and remedy the area in which this barn is placed to be no longer a riparian area.

1. A variance from the minimum required riparian setback of 25' to 13' for a variance of 12'.

With the following conditions:

The following conditions are added to this variance for the purposes of protecting the riparian area and are necessary in order for the board to make the findings that will support granting this variance.

1. The applicant will have a surveyor mark the 90' rear yard setback line to assure that the proposed structure does not encroach the setback area.
2. The applicant will also appropriately grade the bank and stabilize the cut bank area that will be behind this barn to provide appropriate erosion control on the west side of the proposed barn.
3. The applicant will also provide retaining or any area within the riparian where fill has been placed between the fill area and the actual stream itself keeping that retaining as close to the structure as practical.
4. The applicant will also within the riparian area outside of the variance restore the stream bank to its previous condition or to such condition as determined by the zoning inspector after consultation with the Geauga Soil & Water Conservation District to determine the most appropriate way to restore that area.

Based on the following findings of fact:

1. The reason for granting the first variance is a practical difficulty. The applicant has already constructed his house and appears to have inadvertently measured from the pavement edge instead of from the actual edge of the right-of-way on his property.
2. The reason for granting the riparian setback variance is that this is a small riparian area. Part of it is already culverted which limits the flow.
3. Because of the location topology it is unlikely that after satisfaction of the conditions that the action of the applicant will materially impede the flow of the stream or increase the risk of flooding on the applicant's property.
4. The board also notes that the applicant has been advised that he is assuming all risks of placing this structure within the riparian area and any consequences that result from it.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, nay; Mr. Olivier, aye; Mr. Takacs, aye.

Application 2007-31 by Dalcan LLC dba Panera Bread for property at 8535 Tanglewood Square, Unit T-7

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

Secretary's note: This application was withdrawn by the applicant.

Application 2007-32 by David & Laurie Belville for property at 18068 Elliott Drive

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

The zoning inspector's letter dated August 7, 2007 was read and photos of the site were submitted.

Mr. Bradley Toman and Ms. Laurie Belville were present to represent this application.

Mr. Toman testified that he is the attorney for Ms. Belville. He said that she purchased this property about seven years ago in 2000 and it is along the lake in the Pilgrim Village Subdivision and one of the main reasons for purchasing it is all of these properties have lake access and when she purchased the property it had an existing deck but this past spring she got a survey of her property and found out that unfortunately her deck is located pretty much on her neighbor's property so all they are proposing to do is simply have it rebuilt on her property but the problem with that is her property is pie-shaped and smaller towards the lake and does not allow for the 15' setback and it is only about 30' at the bottom so we are requesting a variance that only requires 1' 9" on each side. He said the deck she is proposing to rebuild is actually smaller than the existing deck so with the rebuilt deck there will be a lesser violation.

Mr. Lewis asked if they had anything from Pilgrim Village ARB that gives approval.

Mr. Toman said yes Pilgrim Village has signed off and the neighbors also gave their approval.

Mr. Lamanna asked if it goes down into the lake a short way.

Ms. Belville replied yes and testified that the lower level goes down into the lake.

Mr. Lamanna asked if the rest of the lake is owned by the association.

Ms. Belville said the portion that goes down into the lake is just wide enough for a canoe and to take a boat or canoe off of it.

Mr. Takacs asked about the existing deck and if it will be taken down.

Ms. Belville said it will be taken down and they will reconstruct it because it has to be turned and added that probably 2/3 of it is on the neighbor's property.

Mr. Takacs asked if the neighbors have one too.

Mr. Toman said they have a little beach front.

Ms. Belville said it is not so much a problem for them as it is for a future sale down road, the legality of it.

The board reviewed the application and the ARB document.

Mr. Lewis said there is the side yard setback and lot coverage to look at.

Ms. Rosemary Evans of 18050 Elliott Drive, and next door neighbor, testified that she had no problem with this.

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

Motion BZA 2007-32 – 18068 Elliott Drive

Mr. Lamanna made a motion to grant the applicants the following variances for the purposes of constructing a deck/dock at the rear of their property which is on Pilgrim Village Lake.

1. A variance from the minimum required side yard setback of 15' to 1' 9" for a variance 13' 3".
2. A variance from the minimum required rear yard setback of 15' to 0' for a variance of 15'.
3. A variance for additional lot coverage of .5%.

Based on the following findings of fact:

1. A practical difficulty exists because the applicant has a pie-shaped lot that tapers toward the lake so the point that reaches the lake is very narrow and would be impossible to put any kind of deck or dock on the lake.
2. Because of the distance to the actual rear lot line in the lake itself, there would be no room to build anything on the edge of the lake without encroaching on the setback.
3. The structure being proposed is consistent with the other kinds of structures used or permitted on the lake.

Motion BZA 2007-32 – 18068 Elliott Drive - Continued

4. The rear setback has no adverse impact because there is a substantial setback provided by the lake itself.
5. This area is far back from residential structures and will not adversely affect the use of the neighboring property owner's lakefront as well.

Mr. Takacs seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye; Mr. Takacs, aye.

Application 2007-33 by Timothy W. Bloxson, Sr. for property at 16780 Geneva Street

The applicant is requesting area variance(s) for the purpose of relocation and installation of a single family dwelling and detached garage. The property is located in a R-3A District.

The zoning inspector's letter dated August 7, 2007 was read and photos of the site were submitted.

Mr. Timothy Bloxson was present to represent this application.

Mr. Bloxson testified that his plan is to relocate a house at 7399 Chagrin Road and actually relocate it on Geneva Street in Chagrin Falls Park with a garage also.

Mr. Lamanna asked if this is the house where the road is coming out.

Mr. Bloxson said right, exactly, for Judson Retirement and it is directly in line with the construction drive.

Mr. Lamanna asked if the detached garage will be added with a breezeway connection.

Mr. Bloxson said that is his plan.

Mr. Lamanna asked if there are five lots there.

Mr. Bloxson said yes, 100' x 100'.

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

Motion BZA 2007-33 – 16780 Geneva Street

Mr. Lamanna made a motion to grant the applicant the following variances for the purposes of relocating an existing house and detached garage and connecting them with a breezeway.

1. A variance from the minimum required front yard setback of 100' to 30' for a variance of 70'.
2. A variance from the minimum required rear yard setback of 90' to 35' for a variance of 55'.
3. A variance from the minimum required side yard setback of 50' to 18' and 19' respectively for variances of 32' and 31'.
4. A variance from maximum lot coverage of 10% to 21.83% for a variance of 11.83%.

Based on the following findings of fact:

1. A practical difficulty exists.
2. These are pre-existing lots of record.
3. There are five of them together, which is a consistent size for the Chagrin Falls Park area.
4. All of the setbacks being provided are also very consistent with all of the properties in the area as is the size of the structure being moved onto the property and therefore it will also not adversely impact the neighboring properties.
5. It is consistent with the overall development in this area of the township.

Mr. Takacs seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye; Mr. Takacs, aye.

Application 2007-34 by Theodore G. Manfrass AIA (Project Architect) for Sky Bank for property at 8420 East Washington Street

The applicant is requesting a conditional use permit for the purpose of adding a second drive-thru lane at Sky Bank. The property is located in a CB District.

The zoning inspector's letter dated August 7, 2007 was read and photos of the site were submitted.

Mr. Theodore Manfrass was present to represent this application.

Mr. Manfrass testified that this is currently a Sky Bank branch and the second week of September it will become a Huntington branch and they have the permit to do some interior work on the building and the staffing levels for Huntington are higher than they were for Sky Bank so they had to get an extra platform or workstation in the interior. He continued by saying that there are two existing lanes, the inside lane is an ATM and night deposit only so there is one drive-thru lane and what they would like to do is add a second island, a second set of brick columns to match and extend the canopy to match an additional 11' to provide protection for the new outside lane so they can have two drive-thru windows at this facility. He said in conjunction with that from the site plan, that entire area to the west of the bank right now is all asphalt and they are proposing putting in a landscaped island so they can take traffic from the front around the left side of the island and give them a turning radius to get into the lanes and much of the traffic comes around the back of the building and turns in but they wanted to make sure they had adequate room for the second drive-thru, a by-pass lane and room to come around the island to make the turn into those two lanes so they are removing a section of asphalt underneath that landscaped bed.

Mr. Takacs asked if this is replacing the other Huntington Bank down the street.

Mr. Manfrass said he would assume so, but he does not know and added that he is doing four eastside branches that are being changed over with both interior and all of them are adding an additional drive-thru lane.

Mr. Olivier asked if they will be teller lanes.

Mr. Manfrass said the inside lane is an ATM and night drop and the two outside lanes are tellers and explained the existing machine that is there will be replaced and they use a video machine that has a monitor and a camera on it so the site lines from the tellers are not as important as they used to be, they were always staggered so the teller can see the drivers but here they are moving both machines all the way to the south which gives more room for stacking cars because they don't need to stagger cars underneath the canopy.

Mr. Murphy said the drawing seems to show three drive-thrus more so with a canopy completely covering an entire car's width and there could conceivably be large trucks coming along the back and they would have to stop and turn but there is still definitely enough clearance for them.

Mr. Manfrass said there is 24' from the new island to the landscape, there is 10' from the drive-thru lane and another 14' from the bypass lane.

Mr. Murphy asked if that is from the canopy to the island.

Mr. Manfrass said from the canopy to the island would be about 19' and added that all of the materials will be the same and the entire front will be new material and old material will be used on the back.

The board discussed the proposed signage for this facility.

Mr. McIntyre said there has not been any signage considered in this application.

Mr. Manfrass said he assumes they will be back in for signage.

Mr. Takacs asked if where it is striped if that is where the landscaping island is going to be.

Mr. Manfrass said very similar to that, yes and added that the entrance drive will be 14' wide and the landscape island will also be 14' wide, the bypass is 14' and the third drive-thru lane is 10'.

The board discussed the proposed landscaping.

Mr. Lamanna said it would be nice to see some dwarf ornamental trees in the island that would not get much more than 14' tall so they would not be hanging out over the roadway.

Mr. Manfrass said they are putting in the curb and the island and Wald & Fisher is doing the landscaping and added that he does not have a problem with it.

Mr. McIntyre said when the zoning was changed a couple of years ago, this fell into the conditional use category.

The board discussed the setbacks for the existing building.

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

Motion BZA 2007-34 (Sky Bank) – 8420 East Washington Street

Mr. Lamanna made a motion to grant the following:

1. A change of ownership of conditional use from the existing owner Sky Bank to the new owner Huntington Bank.
2. The board will allow the extension of the existing canopy and drive-thru by 10' to add an additional lane.
3. A variance from the minimum required side yard setback of 100' to 54' for a variance of 46'.

With the following conditions:

1. The applicant is going to add, as shown on the submitted drawing, a landscaped island with the plantings as shown with the addition of two ornamental fruit trees or similar trees to give a little height to it.

Motion BZA 2007-34 (Sky Bank) – 8420 East Washington Street - Continued

Based on the following findings of fact:

1. It is an existing bank structure and this extension canopy is a small increase in the footprint of the building which is more than offset by the addition of the landscaped island which will reduce the overall lot coverage slightly.
2. The extension of this canopy area will not adversely affect the adjacent property owners as all the adjacent buildings are a substantial distance from the property line and thus consistent with the use and development in this area.

Mr. Takacs seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye; Mr. Takacs, aye.

Application 2007-35 by SP Greenville Land Co. LLC for property at 7150 Pine Street

The applicant is requesting area variance(s) for the purpose of an expansion of a non-conforming use (deck addition). The property is located in a R-3A District.

The zoning inspector's letter dated August 7, 2007 was read and photos of the site were submitted.

Mr. Phillip Siegel, owner of the Greenville Inn, was present to represent this application.

Mr. Siegel testified by giving a brief history of what he was doing there. He said he purchased the Greenville 1-1/2 years ago and he talked to some of the neighbors and received some complaints in regards to noise from the Greenville so one of things he tried to do is find a way to keep the doors closed so in order to do this, the Greenville has always been a smoky place and one of the reasons he was keeping the doors open was to get all the smoke out. He said he installed air conditioning and smoke heaters so after he did that he was able to keep the doors closed to get the noise down for the outside, but then the State of Ohio passed a law which prohibits smoking inside the bar so he immediately complied on January 1st, even though it wasn't enforced, he complied with it and it created an unforeseen problem on the property. He said what happened was, in his attempt to keep the Greenville closed, the smoking ban kind of stopped him from doing that because he had people constantly entering and exiting the building every few minutes to smoke a cigarette and therefore the doors were being kept open etc. He said on top of that, he had 20 – 30 people congregating in his parking lot smoking cigarettes, talking and just being loud and making a mess out there so that is one of the main reasons why he is requesting the deck or patio area in order to address this problem he is having.

Mr. Siegel continued by saying the law that was passed by the State of Ohio created a specific hardship for him and specifically he wants to control the people while on the premises but because of the smoking ban, they are wandering throughout the property and it makes it very hard for him to control the people and he has people opening the back door which he tries to keep closed all of the time, there is a lot of noise and he is trying to be a good neighbor there and it goes against what his goals were for the property. He said specifically in regards to the deck, it is not a large patio and the reason why he specifically chose the location for it, instead of putting it in the back where he has extra land, if he puts it in the back, it will face more of a residential area, and trying to be respectful to the neighbors he did not want to have a patio that could potentially have more noise than otherwise behind the building facing a residential area so he tried to figure out the best location to place it which is why he decided to place it in the front corner of the building which faces office parks and essentially it is an area that is zoned industrial and specifically what he is trying to do with the design of the patio is it is really going to be for a smoking area this way instead of having people exiting the bar, he will create a doorway through the wall and the doorway will specifically access the smoking area that is really to accommodate the usual number of people he has that stand in front of the building anyway until 2:00 A.M. and smoke cigarettes so this way he can keep them out of sight, control the mess and keep them supervised and controlled. He said another thing he was trying to do with specific design of the patio was, he was not going to have bands outside like the Eagles club across the street that can be heard throughout the whole neighborhood and they have a slat on slat fence, he was going to put up a solid wall in order to keep the sound down and the front door will be closed now because when people go out and smoke they will exit into the patio and when they open the door, it will open onto an enclosed space so the sound won't escape from the area and that is one of the goals for the design for the patio.

Mr. Lewis asked if there are any plans to regulate keeping the door closed onto the patio because the idea will be to try to contain the music in, within the structure so the only noise would be the ambient noise of the smokers. He asked how tall the walls will be.

Mr. Siegel said he does not have a specific height yet, they will be a minimum of six or seven feet. He said when he initially did the drawings for it, it was before the law was finalized and when he initially noticed the problem he hired an architect to do some drawings and then he heard the law was going to be changed, so he shelved it until he had specific guidelines about what he was allowed to do. He referred to the initial drawing and said the walls will conform to the rest of the building and it will be a stone faced wall topped with either stucco or stone faced all the way to the top of the wall and there is a stone wall that wraps around the building and he will terminate it at that height so it blends in with the property and then above that he will blend it in with stucco walls but there will be no roof on the structure. He said there is an existing overhang that is on the building now so if people need to go outside to smoke on a rainy day, they can stand under the overhang and smoke but at least they are not sitting in their cars and not sitting under the trees behind the neighbor's houses, etc.

Mr. Murphy asked if part of it will actually be under the front overhang.

Mr. Siegel said yes and referred to the drawing.

Mr. Lamanna asked if people will be allowed to consume out there.

Mr. Siegel said currently it is part of his permit but in order for them to do that, it would have to be inspected and that is another reason for him creating this and one of the issues he has on the property is every time someone goes out and smokes a cigarette, they have to basically pat them down to make sure they don't walk out with their beer or drink and this way they are not constantly entering and exiting the building and his staff can do what they are supposed to do which is keep an eye on the crowd and watch the door instead of acting as a security guard and basically checking people out for drinks every time they leave the building.

Mr. Lamanna asked if there are any plans to actually serve out there.

Mr. Siegel said he does not have any plans to serve out there, and he would have to check with the State of Ohio, but if people want to take their beer out they would be allowed to take their beer out there.

Mr. Lamanna said he thinks as a practical matter, it would be a difficult time controlling people walking out there with their drinks and as long as the place is contained people can't get out because there are no doors.

Mr. Siegel said there will be a fire exit and he will design a door in there.

Mr. Lamanna said the board would not want it to become an outdoor service area where people come out and take orders, and where people would actually be served out there.

Mr. Siegel said he would have no service other than at the bar.

Mr. Lewis asked if there will be seating and tables out there.

Mr. Siegel said it is not a large space and if anything he may wrap a shelf around the outside of the wall for someplace for people to set their drinks and it is not going to be very large, he may have room for one big table out there.

Mr. Lewis said it seems that the sole purpose is to accommodate the smokers.

Mr. Siegel said before the smoking ban he did not have any intention of having this and one of the other things two is when he considered the design that he did, and of course location, he talked to some of his neighbors, Brian Rundle and few of the other people that live in the area and they also said when the door opens it lets out noise so one of the things was a solid wall facing the residential area, it will direct any sound away from the houses instead allowing it to spread out into the neighborhood.

Mr. Takacs asked what the surface will be on the inside.

Mr. Siegel said it will probably be concrete.

Mr. Takacs said unless it is porous, the sound will bounce.

Mr. Siegel said he discussed a few different ways of doing it and if it was requested, he actually preferred using the patio pavers there.

Mr. Takacs said concrete or something that has got some porosity to it to absorb the sound and if hard wall or dry wall is used, when the door is opened the sound will start bouncing around.

Mr. Siegel said the walls won't be flat, the shelf will help to bring the sound down and it won't be smooth, it will match the rest of the building and that is more of a porous material.

Mr. Takacs said drywall will bounce sound if it is smooth, there has to be a nice texture on it.

Mr. Murphy asked if a sand finish is better for sound absorption as opposed to glass smooth.

Mr. Takacs replied yes.

Mr. Siegel said that is his intention and from what he was told, the previous owner, Dave Benson had made an attempt to soundproof the building which is one of the reasons why he refaced it and he tried to follow along with what Mr. Benson was trying to do by actually taking the next step and installing the air conditioner and smoke heaters so instead of having the doors open all of the time in order to get the smoke out of the bar, he could close the doors, turn on the smoke heaters and run the air conditioning. He said that is all there but now it does not serve its purpose anymore because he did not know they were going to put this law out even though he still will obviously run the air conditioning with the doors closed but now the smokers can go on the deck.

Mr. Olivier asked if the patio wall will be in front of the existing entrance and just to the right of it.

Mr. Siegel replied yes.

Mr. Tim Bickett of 16390 Mogul Street testified that he owns two duplexes and his concern was when he saw a 24' x 24' deck was the parking because Mogul Street gets filled up with cars and blocks the tenants in their driveways and it causes problems for him so his concern is consuming more of the parking lot and dragging more people up on the streets in the neighborhood.

Mr. Siegel said he understands that concern and that was something that he also thought about and that is why originally he proposed this behind the building but had to weigh the impact on the neighborhood and he actually measured the patio out specifically and measured it to be three parking spaces so that is three cars he will not be able to park in the parking lot and added that 80% of the time he is open, it is not an issue, there are certain nights when it is but three spaces is not going to have much effect but it will help keep the people inside the building instead of wandering around and doing who knows what.

Mr. Lamanna asked if there is any other place there are parking spots that can be used after normal business hours and if he talked to any of the business owners.

Mr. Siegel said yes he has and they have not given him much of a problem, people do park in front of the buildings across the street, they have a fenced in area and there is gravel on the side of the road and they park head-in and that is usually where people park unless it is an extremely busy night and then sometimes they extend up the street a little way but usually that takes care of the majority of the parking unless it is an extremely busy night.

Mr. Olivier asked about the occupancy of the building.

Mr. Siegel said occupancy is 105.

Mr. Lamanna asked Mr. Bickett if people park right in front of the driveways, if that is the issue and if signage would help, if Mr. Siegel put up some signs.

Mr. Bickett said signage would be great and added that the building across the street has parking and he does not know if the patrons are allowed to park there or not but it is blocking the driveways and they have been encroaching on the driveways so cars can't get out.

Mr. Siegel said obviously there is not a lot he can do to control parking on the street but if they are parked illegally, they should be towed and added that he runs the student housing at Kent State University so he sees the worst of it so he imposes parking very strictly and what he does with people that don't park in the right place is have them towed whether it is on the city streets or on his own property, that is what he does.

Mr. Lamanna said there are several ways to deal with this and that is to put up a couple of signs in those two areas indicating do not park or it may be towed.

Mr. Bickett said it would be illegal for him to have a car towed off of a street in Bainbridge.

Mr. Lewis said the police could have it towed.

Mr. Bickett said the police said they can't do anything because there is no parking ordinance in the township.

Mr. Murphy said he thinks driveways go out into the right-of-way of the road and if they are out in the road but in the driveway, he would think that signage could be put up for that and then tow the cars.

Mr. Lamanna said there is a problem of the right-of-way and if somebody is in the right-of-way, you can't have them towed because they are not on the property.

Mr. Murphy said a suggested couple of signs might work and they could delineate that driveway because it is dark at night.

Mr. Siegel said realistically he tries to be a good neighbor and as long as they agree on a style he would be happy to put up a sign.

Mr. Bickett said his only concern is he heard a 24' x 24' deck and that is why he is here.

Mr. Siegel said he wanted to have a minimum effect on the neighborhood and parking is one of the biggest things he tries to enforce at Kent State University.

Mr. Ken Elinsky of 7180 Chagrin Road testified that he lives directly across the street from the bar and that he did not get any notification of this zoning meeting and found out because he is a friend of Mr. Bickett and he does not know if the neighbors on either side knew about this and he just found out at 6:30 tonight, but on either side of him there are married couples with small children and noise comes out of the bar on the night the band plays and it is disturbing, it is hard to go to sleep, there are people out in the parking lot making noise and he tries to be a good neighbor too and never complains and never calls the police and tries to understand but he does not think it is right to change this business to open up a 576 sq. ft. area to allow permanent outdoor noise when people are going to be talking all of the time and that door will be open to the bar and the music, it will be a permanent nuisance and it is just not right to change this for the worse and people will be out there. He said people don't want to drink at the bar and then go out to have a cigarette and return to the bar, they want to drink and smoke at the same time and this will create an attraction for people to be permanently outside making noise and that is just the way it is. He said an excellent sound proofing system can be put in to prevent that and respects the intention of putting up a solid wall but he wants to make sure the board makes that a prerequisite that this is not creating a situation where people will gather at 2:00 or 2:30 in the morning.

Mr. Elinsky continued by saying that the F.O.E. hall stops their parties at 11:00 P.M., they start early and end at 11:00, they are loud but they stop at 11:00 P.M. He said from 11:00 P.M. to 2:00 A.M. is a huge difference and when you have to get up at 6:30 in the morning to go to work, even on Saturday, and you are laying in bed at 1:30 and you hear the beat of the drums, and his house is vibrating from the music, he does not want the situation made worse, so he is asking the board to please consider that.

Mr. Siegel said that is one of the things he considered when he was trying to do all this and he is trying to control the people in the parking lot making noise and this way he can actually keep the doors closed to control the sound.

Mr. Lamanna said the board is trying to figure out what the best trade-off is because that is an issue that people are still going to come out.

Mr. Elinsky said the people will take the drink with them and stay outside to smoke.

Mr. Lamanna said there will be more people outside but they will be going in and out less.

Mr. Siegel said people are there to see the bands and when the bands are playing the smokers are inside watching the band and when the band stops playing the crowd spills out in the parking lot, everybody is talking and smoking and basically the attraction to go to the Greenville is to see the bands, when they are on the patio, they will not have access to the bands so it will not encourage people to stay out there when they specifically come there and pay a cover charge to watch the bands and people are not going to stay out there all night, because, what is the point, they could go somewhere else, they come to the Greenville to see the bands.

Mr. Lamanna asked how long the bands go.

Mr. Siegel said the bands usually play in three sets starting about 9:00 P.M. and usually finish up about 1:30 A.M. to 2:00 A.M. give or take.

Mr. Lamanna said one of the options is to close up the outside patio at midnight.

Mr. Siegel said but then the smokers would all come outside.

Mr. Lewis said he does not know if he would want to encourage thoroughly intoxicated smokers wandering around in the parking lot finding mischief, he would rather put them in a box.

Mr. Siegel said it does happen and he tries very hard to control the parking lot and instead of his doorman watching the door, he sends him out there to keep an eye on what people are doing so that defeats the purpose of having a doorman, when the focus is to sit there and check IDs.

Mr. Lamanna said one advantage is, at least if they are outside in a totally enclosed area, there is some sound attenuation.

Mr. Elinsky said he wants to make sure when this thing is built, that professional sound proofing is done to make sure it improves the situation not only for the Greenville but for the neighbors.

Mr. Siegel said he understands that and realistically they may be able to curve the top of the wall to reflect the sound back in.

Mr. Takacs said that is one thing that can be done and another thing is rather than make a solid wall with two by sixes, make it two by fours and have a gap that they won't come all the way through so it does not reverberate the sound through and added that it is a big thing in sound proofing.

Mr. Siegel said one of the things he was considering because it somewhat extends out there where people will be driving, he was going to do a block wall and put rebar through the block and then pour concrete inside of it so that it not only will be solid, it will be solid and safe.

Mr. Lewis asked about lighting for that area.

Mr. Siegel said there is actually already lighting that illuminates the front, there is lighting underneath the overhang and he probably would not have to do much more than what is already there.

Mr. Murphy asked Mr. Siegel if he is planning on putting the door where the window is.

Mr. Siegel said he will put it right about where the bench is and added that the only way he would use that window as the doorway is when he has somebody come out to install the doorway and they say structurally the building is already designed to have that opening there for the window but he is wanting to put the door on the side so he will still have the window.

Mr. Murphy said maybe the idea is to not make it so comfortable out there with seating etc.

Mr. Siegel said he has no intent on putting any seating out there.

Mr. Elinsky said he thinks the nature of a bar is that people are going to go out there whether there is seating or not but the whole key is to reduce the sound that comes out.

Mr. Siegel said that is his intention to reduce the sound it is not a side thought it is one of his intentions.

Mr. Lamanna said if there are solid walls it is going to help a lot.

Mr. Siegel said it is going to be a solid wall but the only place where the wall won't be solid is he is planning on having a fire exit and he will check with the building department about what is allowed but in the case of something happening people could actually exit that way also.

Mr. Lamanna told Mr. Siegel that he has to make sure there is nothing on the building that will act as a reflector.

Mr. Siegel said that is something he did think about and referred to the brick buildings across the street that reflect the sound back but this will have an overhang that goes over the opening so if the sound reflects off the wall, it reflects into the overhang and back down towards the ground.

Mr. Lamanna said you have to be careful about things on the building that will act as a sound reflector so it is easy enough to pay attention to when it is designed.

Mr. Siegel said the cost of making it quieter will be minimal compared to the cost of the overall construction.

Mr. Lamanna said it should be done at the design phase instead of having to fix it later.

Mr. Siegel said one of the things he would like to do is put some vines and plants on the wall or a planter along the top of the wall that would make it nicer and it will help keep the sound down, and with the vines growing down the wall, it will help to block that much more sound, something natural to look nice.

Mr. Lamanna said that would be a good addition for sound proofing purposes.

Mr. Murphy asked when they relocated that street, who owns those two triangles on either side.

Mr. McIntyre explained the property that the Greenville owns and what the Metro Parks owns and what Gauga County owns.

The board discussed the retention basins and waterways in the area.

Mr. Siegel said he has had discussions with the Metro Parks regarding donating his parking lot for their bike path.

Mr. Murphy said since there is some semi-public land there it would be nice to plant some evergreens and a sound barrier with shrubs and trees that would help all of those houses on Chagrin Road as well.

Mr. Siegel said he knows from talking with the Chagrin Valley Jaycees, they call that Jaycee Park and they put up Christmas lights there for the holidays etc.

Mr. Elinsky said it seems to him that the door between the deck and bar will be propped open and people will be listening to the band, not everybody but some people.

Mr. Lamanna said a sign could be posted that states "This door must be kept closed by order of Bainbridge Township".

Mr. Siegel said the smoking law requires that the door be closed, there will be a door closer and the nice thing is instead of his doorman constantly checking the parking lot, one of the reasons the doors will be side by side is he can be there and for selfish reasons, if he can keep the doors closed his electric bill will be lower because the air conditioning will not be running needlessly.

Mr. Elinsky said on a nice September night, people may tend to go out the door.

Mr. Lamanna said that will be part of the agreement.

Mr. Siegel said he will post it on the door and that is a non-issue.

Mr. Lamanna said obviously there will be no piping of music outside with speakers, etc.

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

Motion BZA- 2007-35 (Greenville Inn) - 7150 Pine Street

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

1. A variance for an expansion of the pre-existing non-conforming use with respect to the construction of an outside patio smoking deck (24' x 24') as shown in the application.

Subject to the following conditions:

1. The smoking deck area will be completely enclosed on all sides by a solid wall which will be a minimum of 8' high.
2. Said wall to be designed for as much sound absorption as is possible.
3. The applicant will take all reasonable steps to insure that there are no other architectural features that will reflect the sound to the neighboring property owners.

Motion BZA- 2007-35 (Greenville Inn) - 7150 Pine Street - Continued

4. The deck area will have no seating areas and no direct service will be provided on the deck nor will any music be piped out or loud speakers of any kind placed on the deck area.
5. The door between the deck area and the main building must remain closed at all times except when actually being used to enter and egress and will have a sign on it stating that such requirement is mandated by Bainbridge Township and/or the State of Ohio as applicable.
6. The applicant will have some appropriate signs to indicate that his patrons shall not park in front of the driveways of the adjacent rental properties including signs in his building and/or on the street as appropriate.
7. The board will also note that it will not allow the building to be enlarged in the future by adding a roof to this deck.
8. With respect to lighting of this area, the applicant will use existing lighting as much as possible and any other lighting provided will be designed in a way that is inside the area and will be used only to light the area and does not spill over beyond this deck area.

Based on the following findings of fact:

1. It is only a slight extension of a pre-existing non-conforming use and is not intended to really increase the actual use or occupancy of the building but more to control an existing situation with smokers where otherwise they are congregating outside the entrance to the building or in the parking lot.
2. This will not change the use but will better control noise and other potential adverse effects from people smoking outside of the restaurant and is not intended to increase the usable area of the restaurant nor is there any intent that at some future time that this area could be completely enclosed as an expansion of the building.

Mr. Takacs seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye; Mr. Takacs, aye.

Since there was no further testimony, the public hearing was closed at 10:14 P.M.

Respectfully submitted,

Michael Lamanna, Chairman
Todd Lewis, Vice Chairman
Mark Murphy
Mark Olivier
Donald Takacs

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

Date: September 20, 2007

AUDIO RECORDING ON FILE

BZA PH 8/16//2007

-36-

Bainbridge Township, Ohio
Board of Zoning Appeals
August 16, 2007

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 10:14 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Mark Murphy, Mr. Todd Lewis, Mr. Mark Olivier and Mr. Donald Takacs.

Minutes

Mr. Lamanna made a motion to adopt the minutes of the July 19, 2007 meeting as written.

Mr. Takacs seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye; Mr. Takacs, aye.

Applications for September 20, 2007

Application 2007-36 by Arnold (Andy) Leeb for property at 8450 E. Washington Street

The applicant is requesting a conditional use permit for the purpose of establishing a veterinary hospital. The property is located in a CB District.

Application 2007-37 by Archer Sign Corporation for Buffalo Wild Wings Grill & Bar for property at 18865 Giles Road

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

Application 2007-38 by Gary Spiros for property at 9233 Wilderness Passage

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

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

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

The Bainbridge Township Board of Zoning Appeals set a public hearing on the above applications for September 20, 2007 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 and the services of a court reporter.

Since there was no further business, the meeting was adjourned at 10:22 P.M.

Respectfully submitted,

Michael Lamanna, Chairman
Todd Lewis, Vice Chairman
Mark Murphy
Mark Olivier
Donald Takacs

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

Date: September 20, 2007