

Bainbridge Township, Ohio
Board of Zoning Appeals
August 20, 2015

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

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 2015-17 by Dennis Guritza for property at 17727 Lost Trail - Continuance

The applicant is requesting area variance(s) for the purposing of constructing a shed. The property is located in a R-3A District.

Mr. Dennis Guritza was present to represent this application.

Mr. Guritza testified that he is hoping to put in a shed for garden equipment and he has consulted with the neighbors and would rather put it at the border rather than the center of the lot because they have a wonderful view and it is all treed and they are asking for a 4' easement from the edge of the lot but where the trees are situated this time of year you wouldn't see the shed from the road and he has consulted with all of the neighbors and they were in agreement with the placement at that location.

Mr. Lamanna asked if there is any physical reason why this shed cannot be located farther from the property line.

Mr. Guritza stated because of aesthetics, they enjoy the back lot and they have a wonderful view.

Mr. Lamanna said aesthetics are not a basis for granting this variance, it is something the board may consider in the course of it but as a basis for a practical difficulty variance, the fact that he would like it better looking out the backyard that the shed is over next to his neighbor's property is not a legal basis for granting a variance, it is necessary that there be some physical reason why the requirements can't be met. He asked what the lot width is.

Mr. Guritza said 150' x 300'.

Mr. Lamanna said now for example because the lot is only 150' wide the board has a basis for giving some relief from the 50' setback but not 46'.

Mr. Lewis asked how far the garage is off of the lot line where the driveway is.

Ms. Karen Endres, Zoning Inspector testified that it is about 39' or 40'.

Mr. Gutoskey asked if the 30' side yard is accurate or is that from a mortgage survey. He said in Pilgrim Village they don't have the property lines drawn exactly over the lots on the GIS, they are shifted.

Mr. Guritza said they have consulted the neighbors and he is putting this in a place that is the least intrusive for all of the neighbors, he realizes that aesthetics are not a basis but they thought that that would be the best location for the shed and all of their neighbors were in accordance with that.

Mr. Murphy said it seems like if you were to go past the house and around the whole clump of pines and evergreens off to the right you could take it back and it might fit right in there.

Mr. Guritza said the neighbors here and here, this part is very heavily wooded, (he referred to the aerial photo) and tucking it in this location this is a much preferred spot for everyone's view and putting it in this location, even from the road, it would be invisible.

Mr. Gutoskey said right now it is invisible because there are leaves on the trees but in the winter, once the leaves fall, you will be able to see it.

Mr. Murphy asked if this property has a septic system.

Mr. Guritza said no, sewers.

Mr. Murphy said so again if you were to go behind the evergreens to the right end of the lot and not 4' off of the property line but maybe 20'.

Mr. Lewis said how about 30'.

Mr. Murphy said or 30' with the shoulder of the house. He said the township has asked us to try to keep backyard sheds to be at least in line with the house and behind it as opposed to another thing visible from the road and he is asking if there is any reason why it can't be there (he referred to the aerial photo) down to the left. He asked if the neighbors are here. There was no response.

Mr. Lewis said there is no practical difficulty.

Mr. Lamanna said the shed is huge too, it is a monstrous shed, it is not some 6' x 8' garden shed, it is a 12' x 24' structure.

Mr. Murphy said in the winter when you are looking down the driveway you can see the shed from the road and the wording in the resolution says that you can tuck the yard sheds and accessory structures behind the main architectural feature from the road. He added that he is not the only one that will make this decision but in his view to put it behind the cluster of evergreens would be an ideal place and he is not sure why that wouldn't work as well.

Mr. Guritza said there is another intervening problem and that is he was unaware of the zoning variance requirement for the shed and they have already started the construction in that location.

Mr. Lamanna said there is no way that location is going to be approved because there is no basis for granting a variance because there is no practical difficulty and even if there existed some practical difficulty the board would never let you build at 4' away from the property line, nobody has been able to build a shed that close to the property line, even people who had some fairly extreme topographical difficulties on their property such as ravines etc. where the suitable location for putting in an accessory structure is very limited so if you started to build it, he is sorry it is started, it is unfortunate but people are charged with knowing what the applicable regulations are but that location is not going to ever be acceptable. He said if it is put on the other side with a 30' setback a variance would not be required because there is a specific provision that is in the ordinance that if you keep it behind the side of the house, even though the side of the house may be less than 50' from the property line, a variance is not needed in that case so you can bring it as close as the side of your house is to the property line.

Mr. DeWater said but no less than 20'.

Mr. Lamanna said even in that case the board cuts people off at 20' and in this case, maybe 35' or 40' might be a possibility but that is the kind of numbers we would be talking about and even that is stretching it because there are certainly places that it could be built easily that would require no variance at all. He asked Mr. Guritza how he would like to proceed.

Mr. Lewis said we have another issue with this lot, something was put in without permits.

Mr. Lamanna asked if an application was made for the patio.

Ms. Endres stated that the only application she has is for the shed, she thought we would get this straightened out and figure out what lot coverage might be approved because that is also a lot coverage issue.

Mr. Lewis said he is at 11.33% now without the additional structure.

Ms. Endres said and that is the current lot coverage and that includes the patio that is there already and when you added the shed it takes it up to 12%.

Mr. Lamanna said his inclination is to say let's table this application.

Ms. Endres said the variance part could be merged into one.

Mr. Lamanna said have him apply for the patio and he needs a variance from the lot coverage because of the patio. He explained that the board can deny the application but once it is denied it is denied, you then cannot come back with a new application unless there is a material modification that you have asked for or the board can table this application and the applicant can come back with a revised location which is in a location where there is a basis for trying to grant the variance or the application can be withdrawn at this point but there is a problem because it is already under construction so the shed is already in violation.

Mr. Guritza said he would request that the application be tabled.

Mr. Lamanna said if the board tables it if he would, in the next few days, make an application for the patio so that this can be consolidated and dealt with in one hearing next time so the board can deal with that aspect of it as well. He said we don't want to sound difficult but we really do have to follow what the zoning is and what happens is if you build it this close then everyone else who comes in after you is going to say that the board let him build it that close and we don't have any principal basis for saying why the next guy is different from you because everybody who comes in that wants to put up a shed it is always aesthetics because they don't want to look out their back windows and see a shed sitting in the middle of their yard, they would rather have it over on the side somewhere so that their neighbors can look out their back windows and see the shed sitting there so unfortunately if you want to build a shed on your property you have got to try to keep it within as much as possible those setbacks, that is what they are there for and the trade-off is if you want a shed you may have look at it when you look out your back window so that is where we are and we will see you next month.

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

Motion BZA 2015-17 – 17727 Lost Trail

Mr. Lamanna made a motion to table this application to the next regularly scheduled meeting on September 17, 2015.

Mr. DeWater seconded the motion that passed unanimously.

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

Application 2015-19 by Timothy Roach for property at 7285 Aurora Road - Continuance

The applicant is requesting area variance(s)/use variance for the purpose of selling outdoor and seasonal products. The property is located in a CR (MUP) District.

Mr. Timothy Roach, Jr.; Mr. Timothy Roach, Sr.; Mr. Anthony Koziar and Mr. Sid Koziar were present to represent this application.

Mr. Lewis said the board has some left-over questions on this regarding the current owners and their use of that one existing structure and whether it was going to get torn down.

Mr. Gutoskey said when that was approved they said they were going to fix that building.

Mr. Anthony Koziar testified that they were talking about tearing it down.

Mr. Gutoskey said but it is still there.

Mr. Sid Koziar testified that there is a moratorium.

Mr. Gutoskey said you can still tear it down.

Mr. Sid Koziar said they didn't want to create any kind of issues but they got quotes and it was too much money to fix it and they would be happy to get rid of it.

Mr. Murphy said it is your building.

Mr. Sid Koziar said yes.

Mr. Lewis said the gazebo can't be an office. He said one of the core issues was where the business office was going to be because they couldn't bring a trailer on the lot, there were sanitary issues, the employees are having to go somewhere, then shifted to the landlord almost giving these guys a permanent office space which would give them a business office and the use of the facilities so that they could do their business transactions and the property that they were on would basically house the materials and that any heavy equipment such as loaders and excavators, dump trucks be stored behind the existing building.

Mr. Roach, Jr. said they wouldn't house anything there, they would just need one loader and it is a small loader to load pick-up trucks.

Mr. Lamanna said to use on the operations on the site.

Mr. Murphy asked the applicant to take a laser pointer and walk the board through the lot via the aerial photo for his business and the owner's business.

Mr. Roach, Jr. explained that they have taken out the little island and showed the location of the stone pallets. He said the plants are here, the greenhouse is right here but as far as the entrance from the road, it is right here.

Mr. Murphy asked if they drive around to the back.

Mr. Roach, Jr. said sometimes people do but they are able to turn around right here (he referred to the aerial photo).

Mr. Murphy said it appears that the driveway and drive-around is not all on the property. He asked if the yellow line is the owner's property.

Mr. Sid Koziar said the people who own the wetlands back there came out and put stakes in along the property line. He showed the board the location of the stakes on the aerial photo.

Mr. Gutoskey said he thought that whole driveway was barely on the property line.

Mr. Murphy said it looks like the owners are taking over the wetlands.

Mr. Anthony Koziar said they are not taking over the wetlands, Sirna had encroached on the wetlands but it has all grown back and we are aware of the property line.

Mr. Sid Koziar said they brought the whole property up to what it required.

Mr. Lewis asked where they are at with an arrangement with their tenant on office space.

Mr. Sid Koziar said they can use their restrooms, and they have no problem giving them a little bit of room to operate.

Mr. Murphy asked if they are going to take down the old structure.

Mr. Sid Koziar said yes and we would probably ask for another structure to be built, a slab structure.

Mr. Murphy said for this new business that we are being asked to approve.

Mr. Sid Koziar said yes and storage for us.

Ms. Karen Endres, Zoning Inspector testified that if you have a multi-tenant situation with more than two business it becomes a conditional use.

Mr. Sid Koziar said they have no intentions of that.

Mr. DeWater said we talked about signage last month and Ms. Endres brought up that only one sign would be allowed.

Mr. Anthony Koziar explained they had a sign before.

Mr. Sid Koziar said there is a brick structure for a sign and they have a small sign hanging there right now that they are more than welcome to use.

Mr. Lamanna asked if they are planning on changing any of the curb cuts or entrances or relocating any of the entrances from where they are.

Mr. Roach, Jr. said there are three trees in the front and he took each tree and put a retaining wall around the front of each one, one foot high to showcase some of the stone, there are no plans necessarily but if the board wants him to take it out he will.

Mr. Lamanna said no the board likes it being dressed up along there.

Mr. Roach, Jr. said it slows people down, if it was wide open they would fly right through.

Mr. Murphy said you did take down that long peninsular along the building.

Mr. Roach, Jr. said yes it was just rotted timbers.

Mr. Murphy said you basically widened that driveway.

Mr. Roach, Jr. said yes.

Mr. Sid Koziar said that was all railroad ties that were rotted.

Mr. Roach, Jr. said he took the railroad ties out and replaced them with stone and there is an i-beam there but it still blocks the telephone pole there.

Mr. Murphy said you can see the previous owners didn't know where the property line was and it is important that that doesn't happen again, we lose wetlands ½ acre at a time.

Mr. Roach, Jr. said it is a really big lot but they only use the front half of the property.

Mr. Sid Koziar said they don't cross the property line.

Mr. Roach, Sr. said the grade drops between the two properties.

Mr. Anthony Koziar said there are big trees and you can't even walk through it.

Mr. Roach, Jr. stated that the bins will be 10' away from that line.

Mr. Lamanna said that is a structure so it will have to meet the zoning requirements for a structure.

Mr. Sid Koziar said the gulley is at least 25' wide.

Mr. Roach, Jr. said it drops off 20' and wherever it starts to drop off, they will be at least 10' off.

Mr. Murphy said zoning is 20'.

Mr. Lewis said before you build anything, check with the zoning inspector to make sure the side yard clearances are good.

Mr. Murphy asked if the property was surveyed.

Mr. Gutoskey said when they got the property and came in they actually had a survey.

Mr. Murphy said we talked about parking vehicles and agreed that you are not going to have 10, 12 or 6 landscape vehicles parked behind the building and you are not going to park on this property with landscape vehicles.

Mr. Roach, Jr. replied no.

Mr. Lewis said the board will be looking for the addendum to the lease with your landlord that there is a clause inserted in here that clearly states that you will have office space in the primary building including the use of sanitary facilities because they can't have a business office in a gazebo or trailer and this is really important for them to run a business out of that piece of the property and that this condition is in writing and the board will get a copy of that.

Mr. Sid Koziar said yes.

Mr. Anthony Koziar said he will take care of that tomorrow.

Mr. Murphy said that Ms. Endres mentioned earlier that this is now a two tenant property and when you get to a three tenant property the zoning will start changing.

Ms. Endres said once there are more than two tenants on a property then it changes and you might want to take care of the outside operations such as the gazebo.

Mr. Roach, Jr. said the last time they were it was said it would be okay to have a greenhouse.

Ms. Endres said they talked about the greenhouse last time.

Mr. Murphy said we talked about a greenhouse for the summer, portable and temporary or with concrete and glass.

Mr. Roach, Jr. said this is one with 40 millimeter plastic.

Mr. Murphy said he doesn't think we ever really resolved that greenhouse structure.

Mr. Anthony Koziar said it is a temporary structure with PVC pipe.

Ms. Endres said that zoning doesn't really recognize temporary structures.

Mr. Lamanna said the structure needs to satisfy the zoning and whether the building department will allow you to have it depending on their requirements for a temporary structure.

Ms. Endres asked if they will be growing plants in the building or just selling them.

Mr. Roach, Jr. said just selling.

Mr. Murphy said it counts as lot coverage and if you want to put it on the drawings and include it in the application then you will have to get a building permit to be able to construct it.

Ms. Endres said the building department wants to make sure it is safe and secure along with the fire department will want to check it. She said it might be better to do a permanent structure instead of constructing something temporary.

Mr. Lamanna said the gazebo is a structure itself and asked if it is permanently fixed.

Mr. Roach, Jr. said it is not on a foundation.

Mr. Lamanna asked if it is a wooden gazebo.

Mr. Roach, Jr. said no it is steel and it hasn't moved all year with the storms.

Mr. Roach, Sr. said the customers like to sit in it.

Ms. Endres said that should have had a permit.

Mr. Lamanna said it is more like a tent, a gazebo is not made out of fabric and we don't want operations conducted out of a tent, it should be a building or structure of some kind. He asked where they are planning on putting the storage bins, ingots.

Ms. Endres asked if the site plan that was submitted with the application is still relevant.

Mr. Roach, Jr. said it is relevant until the building is taken down and then they will change the landscaping. He referred to the aerial and said ideally the greenhouse should be here and the mulch will be right here.

Mr. DeWater asked if that is what he gave them at the last meeting, the layout is the same.

Mr. Roach, Jr. replied yes. He said he won't have five different kinds of mulch, black, brown and regular bark mulch and a pile of topsoil, just four things.

Ms. Endres asked how big the piles will be.

Mr. Roach, Jr. said approximately 20 yards a piece, give or take, 20 or 30.

Ms. Endres asked how high they will be.

Mr. Roach, Jr. said 30 yards, depending on how far spread out it is, but 8' to 10' high, just how condensed you want to put it.

Mr. Lamanna asked if he is putting concrete dividers in.

Mr. Roach, Jr. said yes, at least two high and it depends on how much volume we do out of there.

Ms. Endres said outside sales and displays is another variance. She said his property is processed under CR zoning.

Mr. Roach, Jr. said they have a box with five different kinds of gravel in it. He added that they have it on display and they can go pick it up at another location and deliver it.

Mr. Lewis asked when they get a delivery of mulch if it will come in a 20 yard dump truck.

Mr. Roach, Jr. said usually yes.

Mr. Lamanna asked if there is anyone interested in this application.

Mr. Lewis asked about hours of operation and how will Christmas tree sales be handled at night.

Mr. Roach, Jr. said he just created a solar powered waterfall so he is trying to do some solar stuff and just trying to be a little greener by the way they present themselves and as far as lighting he is not worried about that, he can light stuff with solar so it is not too bad there for now. He said they will have Christmas trees in the winter and pumpkins and cornstalks during October and firewood and they want to utilize the location seasonally.

Mr. Lamanna asked what the maximum height is.

Mr. Murphy said for the mulch piles.

Mr. Roach said they shoot for 4'.

Mr. Lamanna said 4' may be a little short.

Mr. DeWater said you don't want to lock yourself into something that Ms. Endres is going to have to enforce.

Mr. Roach, Jr. said they have three bays for mulch and would like to have another one for topsoil but to have the topsoil one they would have to have an awning cover over it to protect it.

Mr. Murphy said to put that in the back.

Mr. Roach, Jr. said and bulk salt for the winter.

Mr. Lamanna said that is so close to the line.

Mr. Murphy said it would be close to the creek there.

Mr. Lamanna said that is a kettle of different fish because now you have issues of run-off that could run-off into the wetlands area.

Mr. Lewis said he wants to hold off on that.

Mr. Roach, Jr. said the topsoil would be under the over-hang.

Mr. DeWater said it is very hard to contain the salt from running down into the streams.

Mr. Roach, Jr. said the idea was to sell bulk salt for \$5.00 a bucket instead buying bags of salt and when there is a shortage we would have it in bulk.

Mr. Murphy said salt sucks moisture out of the air and bleeds salt water right downstream and if it is under cover it does not stop it from leeching.

Mr. DeWater said it would probably involve the EPA.

Mr. Lewis said you are a green company and the last thing we need is that type of thing.

Mr. Roach, Jr. said that is fine.

Mr. Lewis said you have too many other great things going on.

Mr. Roach, Jr. said it was just an idea.

Mr. Lamanna asked how many pallets of stone he is thinking of having there.

Mr. Roach, Jr. said it depends on demand and added that they are not selling full pallets, they are breaking them down into thirds so that multiplies the amount of pallets but there will be between 20 and 50 and right now he has probably 35 and it covers this little area right here (he showed the area on the aerial photo).

Mr. Lewis asked when the pallet is sold, does the pallet go with the material to the customer.

Mr. Roach, Jr. said yes they take it or we deliver it to the customers.

Mr. Lewis said so we are not going to see 400 pallets stacked up in the yard.

Mr. Roach, Jr. replied no.

Mr. Lamanna said it shows on your drawing that you have them along here.

Mr. Roach, Jr. said people park right through here (he referred to the site plan) and they can get loaded and head out.

Mr. Lamanna said his inclination would be to keep the pallets of stone on the back part of the property.

Mr. Roach, Jr. said this is the barrier and you can barely see the stone from the road, you have to pull in to see it.

Ms. Endres said there should really be 70' of greenspace so the intent is to have a 70' buffer.

Mr. Lamanna said the nursery items can be displayed, that is clearly allowed but it should still be 70' from the road right-of-way before anything is displayed for sale.

Ms. Endres said if the building is torn down that is going to give a lot of options too.

Mr. Roach, Jr. said once that is cleared out it will open it up a lot and change everything.

Mr. Lamanna said it is a separate requirement and just because what you are selling is not enclosed in a building doesn't mean it doesn't apply to you, it still applies.

Ms. Endres said she was measuring the centerline.

Mr. Gutoskey said it is probably just a little bit behind the power poles.

Ms. Endres said from the pole to the building it is about 50' to 60'.

Mr. Gutoskey said his guess is the front of that asphalt parking lot is probably on the right-of-way line.

Mr. Lamanna asked if those two buildings are pretty much in line.

Mr. Sid Koziar said one is slightly forward a little bit.

Mr. Gutoskey said where the concrete apron ends, that is probably the right-of-way line.

Ms. Endres said she thinks the right-of-way there is 60' but she is not positive. She explained the road right-of-way according to the aerial.

Mr. Lamanna said we should use the front of the building as a measuring point because it is there already until it is a torn down.

Ms. Endres said the Sirna building is just a few feet back further from the road.

Mr. Sid Koziar said once we get to that point we will approach the zoning and figure out a plan that works for everybody.

Mr. Lamanna said we will use the front setback line of that building so all of the products have to be behind that line.

Mr. Roach, Jr. said it is a new adventure and a new business so we are still learning what people like, what is working and what is not so we are moving stuff around constantly to see how it works. He said once one car pulls in then four or five pull in because it is kind of hard to see that we are even there but when traffic is in there, it gets pretty packed in there.

Mr. Lamanna said the issue is the outside storage of products for sale is a prohibited item except for nursery stock so this is a little bit of an extension of that and that is why the areas will be limited to four areas for the bulk mulch and topsoil and some amount of pallets of stone and his inclination is to put a number on it so then we know what it is on the basis that these are incidental items to the operation of the nursery stock business.

Mr. Roach, Jr. said he doesn't need the whole place packed with stone.

Mr. Lamanna said we don't want that and when we are looking at this, these are incidental things to another business and the stone is kind of an unusual thing because how do you practically deal with stone, you are doing landscaping design and how do you show the stone to people and have stone available to look at the variations etc. He said to allow this to go forward the board would be doing it on the basis that this is really an incidental and necessary part to the rest of the operation and we want it to stay that way and we don't want it to turn into a stone yard so if we don't have some restrictions on it we have no way of making sure that it doesn't do that. He said he thinks we have come to an understanding of what you want and size we are looking at works for the board.

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

Motion BZA 2015-19 – 7285 Aurora Road

Mr. Lamanna made a motion to grant the following.

1. A variance for the purposes of operating a nursery stock and associated materials business and also for other landscaping services. With respect to the front yard setback from 70' to the front of the existing separate structure on the property being somewhere around 60' as the front yard line for the placement of that product.
2. With respect to the denial of the application, the board has determined that with respect to Chapter 143.04 that the applicant may have four bin areas (three for mulch and one for topsoil) on the property holding no more than 50 cubic yards in each one and they may also have up to 50 small pallets of landscaping stone for display which may be outside on the basis that these are ancillary to the nursery stock and landscape construction business and because of the size and nature of these materials it would be difficult to place them inside of a permanent structure.
3. The limits are meant to assure that they are only ancillary and quantities greater than the amounts permitted will not fall within this interpretation of the definition with respect to the actual operation of the business as proposed by the applicant.
4. As a matter of clarification there will be no landscaping equipment stored on the premises unless it is placed within an actual building although this does not limit the applicant from selling the landscaping services, dispatching the vehicles from another location nor from building or other related sales and building operations with respect to those landscaping services.

Motion BZA 2015-19 – 7285 Aurora Road - Continued

5. The applicant also will agree to have a tenantable permanent space from which to conduct the business and will not be conducting the business from any kind of trailer or other temporary location and the applicant will also make arrangements for sanitary facilities for use by the employees and will provide written evidence of those arrangements to the Zoning Inspector prior to the issuance of the zoning certificate.
6. Regarding the arrangement of the bins, the applicant will keep them towards the rear of the property and the covered bin for the topsoil will be in the rear most of the four bins.

Based on the following findings of fact:

1. The reason for making this interpretation is that the board finds that the outside storage of these materials and the limited quantities is ancillary to the permitted operations and is necessary for conducting those permitted operations.
2. The quantities that have been proposed will not adversely affect the character of the neighborhood or adversely affect the adjacent property owners with the all commercial or industrial style businesses.

Mr. Lewis seconded the motion.

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

Mr. Lamanna swore in additional persons who intended to testify.

Application 2015-21 by Dr. Brian Hivick for property at 8433 E. Washington Street

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

Mr. Leon Sampat and Mr. Brian Hivick were present to represent this application.

Mr. Sampat testified that they are proposing to build a 4,800 sq. ft. structure that is going to be a two-tenant structure and the doctor will occupy approximately 3,500 sq. ft. and the future tenant space will be about 1,300 sq. ft. He said they designed the structure to have hardboard siding with stone accents and asphalt shingles and they have located the two-lane entrance drive at the east side of the property for access with the majority of the parking in the rear and they do want five parking spaces in the front. He said the plan for the structure is the doctor will occupy the southern portion of the building and the northern portion which is closer to E. Washington Street will be a retail business use.

Mr. Sampat continued by saying if there is no parking in the front that space would never get rented and he plans on entering his practice from the rear so the majority of the parking in the rear will be for him and his staff. He said based on the existing lot size they are requiring variances for the side yard setbacks and if they put the parking at 70' the building would end up being approximately 120' back from the right-of-way so it would be approximately 10' behind the existing NAPA building and there would be no visibility of his structure whatsoever if it were to remain at the required setbacks and they tried to have as minimal variances as possible.

Mr. Murphy asked if we will see the actual back of the lot.

Mr. Sampat said no it goes back 682' and the 11' x 17' site plan has the actual full lot shown.

Mr. Murphy said it is not as deep as the Sears lot.

Mr. Sampat said no, it is a 1.56 acre lot and it will be a one-story structure.

Mr. Murphy said he doesn't know why it has to be so close to the front when there is a lot of room in the back of the lot.

Mr. Sampat said the problem is visual.

Mr. Murphy said maybe the future tenant wants to be closer to the roadway, but your clients just drop in.

Mr. Sampat said that is why the retail space will be in the front.

Mr. Murphy said he thinks this is a welcome addition to the community.

Mr. Gutoskey said it may be a problem to make this right turn.

Mr. Lewis said it is a real hard turn.

Mr. Gutoskey asked if there is any way to get a little triangle on this corner (he referred to the site plan). He said it is really close in trying to make a turn out of there.

Mr. Sampat said they could do something to that effect and they looked at that but it pushes it really far.

Mr. Gutoskey said yes but you eliminate all of the space in front of the building.

Mr. Sampat said he doesn't have a problem rotating the spaces that way.

Mr. Lewis said it will make it safer getting out of there.

Mr. Sampat said he doesn't have a problem with it at all.

Mr. Lamanna said otherwise what is going to happen is if somebody is going to turn right they are going to swing left and then somebody ends up trying to come in making a left-hand turn and they will realize that there is not enough room for them to get in because there is a car sitting in the middle.

Mr. Gutoskey said you are showing your turn-out going into the right-of-way line and that is the pavement so there is no room. He said an easement for a turn-out could be obtained from the adjacent property owner.

Mr. Lamanna asked about the lot coverage for Sears and if they could give up a little space and we are not talking a whole lot here. He referred to the problem at Haskins Road and E. Washington Street and they put in a right-hand turn lane.

Ms. Karen Endres, Zoning Inspector testified that it looks like Sears has 1.6 acres of lot coverage and their acreage is 3.5 acres and that includes the right-of-way so they are over lot coverage.

Mr. Lewis said it looks like you will have to try to re-align it and you want to leave enough in the greenspace and he is presuming you will want a sign.

Mr. Sampat said yes a ground sign.

Mr. Lewis said with that green area and the setback from the road and the frontage that you are trying to preserve gets to be really important and so the sign is not sitting on the driveway portion and it is not blocking views so you will need to work with Ms. Endres on signage, sizes and limitations and placement.

Mr. Sampat replied yes.

Mr. Lewis asked if they are set with the amount of parking spaces required per square footage.

Mr. Sampat replied yes.

Mr. Murphy referred to the 70' setback and the parking.

Mr. Sampat said parking is an issue.

Mr. Murphy said he knows you love the thought of being up close to the road but he thinks the open space in the front yard doesn't require you to be hugging the road as much as the NAPA building, you would have more grass, a nice sign area and a more comfortable turn-out and he doesn't think anyone on the board would mind that idea. He added that it looks like a nice looking building and asked if there will be stone and architectural shingles.

Mr. Sampat replied yes.

Mr. Gutoskey explained the suggested amended site plan.

Ms. Endres said the driveway can be 2' off the side line and the parking has to be 20' and they would need a variance if it is less than 2'.

The board discussed the loading area.

Mr. Lamanna said the applicant needs to understand that right now there will be only two tenants but if the front space gets subdivided, when you get to three tenants, it kicks into another issue.

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

Motion BZA 2015-21 – 8433 E. Washington Street

Mr. Lamanna made a motion to grant the applicant the following area variances for the purposes of constructing a building with dental offices and retail space as follows.

1. A variance from the minimum required lot width of 150' to 82'.
2. A variance from the minimum required front yard setback from 70' to 23' for the parking lot.
3. A variance from the minimum required side yard setback on the building from 20' to 10' on the west side of the building.
4. A variance for the parking and driveways from 20' to 9' on the west side of the building and 1.5' on the east side of the building.
5. A variance from the minimum required front lot line from 150' to 96'.

Based on the following findings of fact:

1. This is a pre-existing non-conforming lot of record therefore the lot width and front lot lines are existing and not subject to change.
2. With respect to the other variances, due to the narrow nature of this lot it would be impossible to construct a building on it and maintain the required setbacks, in fact many of the requirements have been complied with.
The building size is reasonable and proportional to the size and width of the property.

Motion BZA 2015-21 – 8433 E. Washington Street - Continued

3. The two adjacent properties are commercial properties and the granted variances will not adversely affect those properties and nor will they adversely affect the character of the neighborhood where there being numerous driveways and parking areas that are closer to the street than the minimum of 70' and closer to the sidelines of a minimum of 20'.
4. There is adequate egress space permitted for emergency vehicles so construction of this building at this location should not adversely affect the delivery of government services.

With the following condition:

1. The applicant will, with the submittal of final plans, reconfigure the front entrance to rotate the parking area from parallel to the front of the building to perpendicular to the front of the building which will allow the exit and entrance area to be curved and brought more into a perpendicular orientation to E. Washington Street so that it will allow the safe entrance and egress from the property. It is necessary to preserve the safety of the vehicles coming in and out of the property.

Mr. DeWater seconded the motion.

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

Application 2015-22 by Nick Gautam for Elizabeth and Byron Hays for property at 16871 Cats Den Road

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

Mr. and Mrs. Byron Hays were present to represent this application.

Mr. Hays testified that it was a combination of a horse stable, garage and an apartment but in February a fire destroyed it and we are proposing to erect a two-car garage adjacent to the current apartment. He said the former apartment that was there had a kitchen but we are not going to restore that, we are going to have a storage area. He said the last page is a drawing of the two-car garage that we will use for a storage area and the new two-car garage will be built adjacent to that and the two-car garage will have an area for tools, a riding mower, etc.

Mr. Murphy asked if they are going to rebuild on the existing slab that is there.

Mr. Hays said they will use 80% of the slab and the footprint is 1,550 sq. ft. and they will only be using 1,150 sq. ft. of it. He said the existing slab is in very poor condition so a new slab of concrete will be the base for the garage.

Mr. Murphy asked if the distance of 20' to the lot line is off of the existing building.

Mr. Hays said yes, approximately.

Mr. Murphy said the old building was actually closer and you are not going as far back.

Mr. Hays said the property line is triangular.

Ms. Karen Endres, Zoning Inspector testified they are reducing the size and it will be further from the lot line.

Mr. Murphy said they are 20' off of the Myers lot line and asked if the new structure will be better than the old structure and further away from the lot line.

Mr. Hays said that is correct.

The board acknowledged the letters of approval from the neighbors.

Mr. Lewis asked what caused the fire.

Mr. Hays said the renter had a space heater in the loft over the stable and he thinks the space heater fell.

Mrs. Hays testified that there is no way of knowing.

Mr. Lewis said so by removing all of the plumbing we have eliminated this unpermitted renter in the future.

Mr. Lamanna asked if the stable had two stories.

Mr. Hays said it had a loft over it.

Mr. Gutoskey asked if there is an attic over the garage.

Mr. Hays said that will be a storage area and not insulated.

Mr. Gutoskey said the lower level will be a workshop/storage and asked if he will have enough room to get a mower in there.

Mr. Hays said yes through the garage and added that the storage area will not be insulated.

Mr. Lamanna said the roofline will match across so when you look at it it will be a continuous roofline.

Mr. Hays replied yes.

Mr. Lamanna asked if they are leaving the fireplace in there.

Mr. Hays said we are going to leave it there, it can be used as a Franklin stove in there.

Mr. Murphy said he sees it as a nice replacement of something that they lost and he doesn't have a problem with the structure.

Mrs. Hays testified that one of the reasons they are building it is for the sake of a future buyer in mind.

Mr. Murphy said when he was a kid there were actually horses in that stable and the structure has been there way beyond his lifetime and he thinks the fact they are eliminating the unpermitted residence in there and replacing it with a two-car garage, he doesn't have a problem with it.

Mr. Lamanna asked about the property to the right.

Mr. Murphy said it is the backyard of Myers' on Chagrin Road and they are quite a distance. He said they are sort of that back corner.

Mr. Lamanna said it is a pendant flag lot and it is 2.39 acres.

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

Motion BZA 2015-22 – 16871 Cats Den Road

Mr. Lamanna made a motion to grant the applicant the following variances for the purposes of constructing a garage next to an existing storage area which are the remains of a former storage area/stable that was partially destroyed by fire. The applicant may build a garage and rehabilitate the remaining part of the structure in the manner as shown in the application. The rehabilitation of part of the area and the replacement with a new foundation and in addition a two-car garage approximately 24' x 28.8'.

1. A variance from the minimum required rear yard setback from 90' to 20'.
2. A variance from the total maximum lot coverage of 10% to 10.7%.

Based on the following findings of fact:

1. A practical difficulty exists because this is an odd-shaped lot.
2. This was an existing structure that was only built less than 20' from the property line.
3. This will actually be slightly improved from the previous condition.
4. The adjacent property line is the back end of a very long and deep lot off of Chagrin Road so this structure will not adversely affect that property nor will its position adversely affect any of the other properties or be inconsistent with the character of the neighborhood.
5. This structure will be lower in height than the structure that previously existed there.
6. The increase in the lot coverage is a small amount and will not be inconsistent with the neighborhood or adversely affect the character of the neighborhood or adjacent property owners.
7. The applicant has slightly less than a full three acres required in this district so that creates a practical difficulty.
8. Because of the positioning of the house on the lot it required a long driveway in from the street which added to the lot coverage and therefore it is a reasonable amount of lot coverage and consistent with that which would normally be expected on a residential lot.

With the following condition:

1. This is a replacement of a formerly existing building and any prior uses of that building are terminated with this variance and this structure will not be used as an apartment or otherwise a living area.

Mr. DeWater seconded the motion.

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

Application 2015-23 by Colonial Auto for property at 8228 E. Washington Street

The applicant is requesting a renewal of a conditional use permit for the purpose of auto repair and sales. The property is located in a CB District.

Mr. Gus Budin and Mr. Rich Basta were present to represent this application.

Mr. Budin testified that Mr. Basta runs the repair shop.

Ms. Karen Endres, Zoning Inspector testified that the conditional use was transferred to his partner and it has expired.

Mr. Lamanna said it is the car repair that requires a conditional use.

Ms. Endres said there are multiple businesses, there is the car sales and car repair business. She explained that the BMV has started enforcing a regulation previously unenforced and requiring car sales businesses to be located in completely different buildings than any other business and she is sure Mr. Budin can do a better job of explaining it.

Mr. Budin testified that they came in and threatened to take his license if he didn't separate his businesses so he said he could put a separate door in the building and close off the shop so they would be separate and they said no. They said he would have to take the used cars at the front of the building by the street and move them to the building and then chain it off. He told them that would take away his exposure for used cars and they want him to chain off the lot and Mr. Frank Lanza has the same problem but they basically told him that he needs to put a building up so they said 180 sq. ft., a shed, they don't have to have running water or a bathroom as long as you have electricity, heat and a desk and a couple of chairs and a light and phone, that is all you need. He said if he is going to put a building up he wants to use it and they have been totally unreasonable and it seems like he is the only one trying to comply with what they want, it doesn't seem like anybody else is doing it and you can get them to come back out and he thinks they told Ms. Endres that he has 18 months to do this.

Ms. Endres said she called and talked to the BMV at the state and at that point they said they were 18 months backlogged on their hearings.

Mr. Budin said that is not what his letter says and he was told to Fax over to the state and plead his case and the inspector for the state told him not to do that because if they do that and they deny it, they will pull his license right away so that is when he opted to do the building.

Mr. Lamanna said he is aware of this situation.

Mr. Budin said he has been in business for 26 years and Mr. Basta has been there since 2008 and all of sudden we have to do this, what goes with cars, repairs.

Mr. Frank Lanza testified that he thinks we all agree but unfortunately the state is the law, we didn't make it, we don't necessarily agree with it but nobody can make a decision on this. He said the state (BMV) tells us one thing and the county tells us another, we are caught in the middle and you guys are caught in the middle. He said he has talked to the county and they can't make up their mind what they want, the state is saying you can have a trailer up there, 180 sq. ft. but the county says a whole different thing, they are saying if that is an office building you have to have a handicap accessible building and you have to have a handicap bathroom with water and sewer so he is asking which one is it.

Mr. Lamanna said this is where you start running into the problem of two different agencies that have different jurisdictions and what the BMV people view is what, with reading our statutes, this will satisfy as an office but you still have to satisfy the zoning and building code requirements so if the building code people say if you want to have a structure for which you sell cars then they think it has to meet all of these requirements, that is their interpretation.

Mr. Lanza said he talked to Mr. Mike Mihalisin at the county and he worked with an architect and he came up with handicap restrooms etc. but the state says you don't have to have that, the county says you do so he called the county again and spoke with Mr. Mihalisin and asked if he had to have sewer and water or not and he said it is a stupid law, he doesn't agree with it and was going to check on it and told us to talk to Rep. LaTourette and it can be appealed and it will be 18 months before they even hear it so the best thing to do is let him look into it and he will let him know. He said his last conversation and this might help Mr. Budin is that he is waiting for Mr. Mihalisin to tell him do we need sewer and water and do we need handicap accessibility and a handicap bathroom and that is what he is checking on and that is the reason he, himself, has not done anything. He said he talked to Mr. Steve Ciciretto and he said that is a requirement, it is a sales office, no matter how small it is. He said the county doesn't know what to do either so they are looking into it.

Ms. Endres said this is not a zoning regulation.

Mr. Budin said they have an office in the back with a bathroom.

Mr. Lanza said his sales office is in his building. He said he was going to put up a building for Enterprise Rent-Car, they sell cars, and they rent cars and have a used car department in that same building and they said you can't do that, the used cars has to have its own building, so in the meantime we are wondering what they want us to do, it isn't like we don't want to comply, we just don't know what to do, the county says one thing and the state says another.

Mr. Lamanna said one has certain requirements and the other has certain requirements and you have to meet the guy with the higher minimum requirements unfortunately.

Mr. Lanza said if there is something the township can do to help us out, that is why he called Ms. Endres and Mr. Mihalisin.

Mr. Lamanna said call your state representative and senator.

Mr. Lanza said the new car dealers are exempt from it.

Mr. Lamanna said the used car dealers need to get organized and put pressure on the state representatives.

Mr. Murphy asked if the board is being asked to look at this.

Ms. Endres said it is not the building itself.

Mr. Budin said this is not a partnership, he owns his own business and Mr. Basta owns his, but now the state has come in and they want separate. He said he asked about outbuildings, so he put the little building out front and he wants to use it.

Ms. Endres said the building itself complies with zoning but the conditional use needs to be renewed.

Mr. Lamanna said this (building) doesn't relate to the conditional use though.

Ms. Endres said the conditional use was transferred.

Mr. Lamanna said this has nothing to do with the business of the car repair nor is it changing the area where the conditional use is taking place.

The board discussed the fact that there have been no issues on this property.

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

Motion BZA 2015-23 – 8228 E. Washington Street (Colonial Auto)

Mr. Lamanna made a motion to renew the conditional use permit for the car repair business located at this premises for a period of five years from the date when the board's decision becomes final.

1. All of the existing conditions previously enacted with respect to this use will continue in effect as well as all other generally applicable provisions of the conditional use ordinance.

Based on the following findings of fact:

1. The reason for granting this five year extension is it appears they have been complying with all of the requirements.
2. There have been no outstanding problems or complaints with respect to the property.

Mr. Gutoskey seconded the motion.

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

Since there was no further testimony, the public hearing was closed at 9:44 P.M.

Respectfully submitted,

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

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

Date: September 17, 2015

AUDIO RECORDING ON FILE

Bainbridge Township, Ohio
Board of Zoning Appeals
August 20, 2015

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 9:44 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Ted DeWater; Mr. Joseph Gutoskey; Mr. Todd Lewis and Mr. Mark Murphy. Ms. Karen Endres, Zoning Inspector was present.

Minutes

Mr. Lamanna made a motion to adopt the minutes of the July 16, 2015 meeting as written.

Mr. Gutoskey seconded the motion.

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

Applications for Next Month

Application 2015-17 by Dennis Guritza for property at 17727 Lost Trail - Continuance

The applicant is requesting area variance(s) for the purposing of constructing a shed. The property is located in a R-3A District.

Application 2015-24 by Peter Walter Becker for property at 9615 Nighthawk Drive

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

Application 2015-25 by Alexandra and Travis Jorgensen for property at 8254 Westhill Drive

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

Application 2015-26 by Samuel and Jennifer Bradstreet for property at 249 (aka 16361) S. Franklin Street

The applicants are requesting area variances(s) for the purpose of constructing an addition. The property is located in a R-3A District.

Application 2015-27 by David W. Demming for property at 8660 Tamarack Trail

The applicant is requesting area variance(s) for the purpose of expanding a home occupation. The property is located in a R-3A District.

Application 2015-28 by Kevin Gray for property at PP# 02-175170 English Drive

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

Since there was no further business, the meeting was adjourned at 10:17 P.M.

Respectfully submitted,

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

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

Date: September 17, 2015