

Minutes of Zoning Commission

August 31, 2006

The regular meeting of the Bainbridge Township Zoning Commission was called to order by Ms. Lorrie Sass, Chairman, at 7:30 P.M. Members present were: Mr. Donald Sheehy, Mr. David Weiss and Mr. Stephen Yingling.

MINUTES

Mr. Yingling made a motion to approve the minutes of the July 27, 2006 meeting as written.

Mr. Weiss seconded the motion that passed unanimously.

CORRESPONDENCE

1. Bainbridge Township Board of Trustees Meeting Minutes, dated June 26, 2006, July 6, 2006, July 11, 2006, July 17, 2006, July 21, 2006, July 24, 2006, July 31, 2006, August 7, 2006, August 14, 2006.
2. Zoning Inspector's Reports, dated June 2006 and July 2006.
3. Bainbridge Township Board of Zoning Appeals Meeting Minutes, dated July 20, 2006.
4. Letter from Mr. John Andras, dated August 31, 2006. RE: Proposed Zoning Amendment Z-2006-5.
5. Plain Dealer Article, dated August 16, 2006. RE: Zoning Restrictions used illegally to block group homes, law firm claims.
6. Invitation to OPC Cleveland's 18th Annual Planning & Zoning Workshop.
7. Memo from the Geauga County Planning Commission, dated August 2, 2006. RE: Agenda for August 8, 2006 – County Planning Commission Meeting.
8. Memo from the Geauga County Planning Commission, dated August 24, 2006. RE: Shops at Marketplace Subdivision (Re-subdivision of Sublots 3 and 4) – Final Plat.

Mr. Yingling made a motion to recess the regular meeting.

Mr. Sheehy seconded the motion that passed unanimously.

The regular meeting was recessed at 7:40 P.M.

PUBLIC HEARING

Proposed Zoning Amendment Z-2006-6

Ms. Sass called the public hearing to order at 7:40 P.M. Members present were Mr. Donald Sheehy, Mr. David Weiss and Mr. Stephen Yingling.

Proposed amendment Z-2006-6 is an application by Doris J. Lanza to amend the following:

To amend Section 141.02 to add permitted and conditional uses to Section 141.02 (a) and (d) and add subsections 117.13 (d) and (e) to add specific regulations for day care centers and schools.

Mr. Dale Markowitz, Attorney for the applicant, and Mr. and Mrs. Frank Lanza were present to represent this application.

Ms. Sass noted that the legal advertisement for the public hearing had been duly advertised in the News Herald on August 21, 2006.

Ms. Sass explained the amendment process to those in attendance.

Ms. Sass then read into the record the recommendation of the Geauga County Planning Commission in a letter dated August 9, 2006 in which the planning commission recommended approval of Z-2006-6 with comments listed.

Ms. Sass read into the record a memorandum from Mr. Frank McIntyre, Bainbridge Township Zoning Inspector, relative to proposed zoning amendment Z-2006-6, dated August 21, 2006.

Ms. Sass read into the record a letter from Mr. John Andras, dated August 31, 2006 requesting to have his proposed amendment Z-2006-5 included with proposed amendment Z-2006-6.

Mr. Dale Markowitz asked what Mr. Andras is asking for in the letter.

Ms. Sass explained that the proposed amendment by Mr. Andras was to re-zone his property to CB, currently zoned residential and it is the property just west of the transportation driveway into the school along E. Washington Street. She said it is currently used as a nursery and Mr. Andras has attended a couple of meetings and he did initiate a zoning amendment and then based on comments from the planning commission and some discussion with the zoning commission members, withdrew it in the hopes that the township as a whole would further examine the surrounding proposed uses and consider re-zoning that property.

Ms. Sass said procedurally, there are two problems. She said first, Mr. Andras would like his proposed amendment included with this one, but that amendment has already been withdrawn so there is nothing pending for the zoning commission to include. Ms. Sass said the second procedural problem is even if it were still pending, because of the procedures that she has already outlined, that a zoning amendment has to go up to the planning commission for review, if the zoning commission were to combine this, the entire package would have had to go up to the planning commission for review and recommendation so technically the zoning commission cannot do this on those two counts but any comments that Mr. Andras has at the time for public comments, will be considered not only relative to this proposal but probably something the zoning commission can carry over as well for Mr. Andras' particular property.

Mr. Sass stated that the proposed zoning amendment as explained from Mr. Dietrich's comments from the Geauga County Planning Commission is to amend the permitted and conditional uses in the professional office district section.

Mr. Steve Yingling said that Ms. Sass mentioned that during the comment portion, Mr. Andras could talk about his proposed amendment and asked if he is interpreting that correctly.

Ms. Sass said he could talk about any kind of impact that this proposed amendment would have on him.

Mr. Yingling said he would like to ask the zoning commission not to do that because he (Mr. Yingling) cannot participate in any discussion related to Mr. Andras so he would rather that his application not be mingled with the Lanza discussion.

Ms. Sass asked Mr. Andras if that was acceptable to him.

Mr. Andras replied no and added that the real estate contract ended four days ago with Mr. Yingling's company so there is no conflict of interest.

Mr. Weiss explained that this is not a hearing on Mr. Andras' amendment and the comments are on this amendment (Z-2006-6).

Ms. Sass said Mr. Andras can address any concerns he has on this proposed amendment (Z-2006-6) and how it impacts his property and Mr. Yingling's involvement is if and when the discussion gets to Mr. Andras' property.

Mr. Weiss said there are three different versions of this amendment and one was with the cover letter dated August 21, 2006.

Mr. Markowitz said he made one minor change and that was he had the word PO capitalized and sent a letter out to Ms. Sass on the 29th of August and it is Section 2, line 2 so the latest version is dated August 21st and it addressed the planning commission's comments.

Ms. Sass said the proposed zoning amendment is a text amendment, the Lanzas are the property owners and the property is currently zoned professional office district and the request is to allow a number of permitted uses to be added and also some could be allowed as conditional uses. She said conditional uses are uses that cannot automatically be granted or denied by the zoning inspector, they have to go in front of the board of zoning appeals. She said since the proposed amendment was received and it has been in front of the planning commission, the applicant has made some changes. She turned the presentation over to Mr. Markowitz and Mr. and Mrs. Lanza.

Mr. Markowitz stated that he read the county planning commission's comments and found them to be well taken so he spent the time looking at other definitions in the code as well as other communities and was trying to accomplish two things with the amendment of August 21st and one was to define daycare centers and to try and eliminate the concept of uses that are primarily retail in nature that are already in the convenience business district and tried to amend to what you would typically see in an office building and that is why he changed the photography studio to limit it to people who are in business that take the photos off site, they eliminated drive-up facilities for financial institutions, it would allow financial management, stock brokerages because there is not a lot of difference between banks and stock brokerages anymore and referred to Merrill Lynch so he eliminated the concept of drive up abilities. He added that stock brokerages can have an ATM now so there is not that much difference but the one thing he kept in mind is one of the primary uses that the township allows is medical offices and medical offices are the most intense office uses in terms of traffic and in terms of people coming and going so it is not as if in this district the township limits uses just by their nature of being very remote, such as no one coming to see them, they are just on the phone and the internet, that is not what is done in the professional office district so we tried to look at what is typically seen in an office building and what was missing here and the reason for us coming is that his clients had a number of perspective tenants that did not fit exactly within definition of what was permitted in the PO district so they would go to the board of zoning appeals to seek a variance and the BZA would say it is really a use variance because it is not specifically permitted and even though it sounds like it could be similar, the BZA suggests going to the zoning commission to get the text changed. He referred to a sleep clinic that came to the board of zoning appeals and the BZA said there is no doctor who is regularly on site therefore it does not fit within the definition of what is permitted and added that it surprised everyone even the BZA when they read it and realized that it was not specifically provided for. He said sleep clinics are found in office buildings, you don't need them in a hospital and they are not found in retail strip centers. He said the second one that happened was the lady who is here tonight that wanted to have an autistic program and for people who have brain injuries as well and related disabilities came to the BZA and they said sorry, this is not permitted either, and even though it is being operated at Centerville Mills right now in a little building, the BZA said sorry we cannot give you a variance it needs to go to the zoning commission.

Mr. Markowitz continued by saying they decided to ask for an amendment and to include some of the uses that should be included and from their experience have been uses where people have asked Mr. Lanza to allow them into his facility and have had to either turn them down or have been told that they are going to have to go to the board of zoning appeals and the delay is so long, they are not willing to do it.

Ms. Sass said a lot of times the BZA will send people here when they believe the use variance request is tantamount to a re-zoning and she does not have a problem with that, and asked if this was their belief.

Mr. Markowitz said the BZA believed the autistic center was and the sleep clinic was and there was a third one but cannot remember what it was.

Mr. Lanza said it was a factory rep and he was going to have his products on display and people that he would sell to would come in and look at his displays, but he would have a small inventory there but the zoning said he couldn't be in this district.

Mr. Markowitz said they have asked to change that because it specifically stated that there could be a manufacturer's rep but they could not have possession of inventory for resale in the facility. He also stated that there is a sports/health club in Bainbridge in the UHHS building on E. Washington Street and they need to move out of that facility and would like to stay in Bainbridge and continue to serve the Bainbridge population and they came to us and said they would like to move over to our building, and we have enough space and there are not a lot of facilities that have enough space to accommodate them, and of course the first thing we said was, we can't do it right now because a health club is not specifically listed as being permitted in an office building, but yet a lot of health clubs are in fact in office buildings, not exclusively, but that is a place where you would typically see them so he put that in there as well and it also could combine with a rehab program because a lot of the facilities take referrals from people who have had to come in for physical therapy and put on a weight training program or exercise/cardio-vascular program so it is a good fit with an office/medical building. He said they did not know the reason why there could be a doctor or dentist in the building but there could not be a psychologist, the same thing with social services which could be people coming in to see a social worker who has their master's or even somebody who has a child that needs some help because of learning disabilities and they need some tutoring or they may need help getting them into college so they wanted to provide for those types of uses here. He said the personal business services for repair for computer hardware/software are some things he saw in other communities that had similar uses in their limited office or professional office district so we put that in there as well. He said the same thing with medical allied and that was a typical program for physical therapy and the sleep clinic or nutritional programs and we thought those would all fit.

Mr. Markowitz said the one that probably came the closest to being within the scope of what Mr. Lanza was saying was an optometrist because an optometrist is primarily fitting and selling glasses and there is some overlap but we did not think that was inappropriate for an office building and we don't see how that would be objectionable to the people who are living in the residential districts because it is not your typical retail use because they don't have to have signs advertising a weekly sale or whatever, like milk etc. so we thought those were all compatible with the professional office district because an optometrist is licensed and we thought that would work. He said beyond that we had a request for daycare centers that would also be a conditional use as well as the school. He said that Ms. Billie Erickson was present to answer any questions the zoning commission may have and added that this program would be providing care for children and adults who have autism and have injuries and other disorders and we thought that was very similar to child daycare. He said that Ms. Erickson went to the board of zoning appeals and they said because she is going to take care of adults, it is not permitted as a conditional use and to go and get an amendment and Ms. Erickson has been patiently waiting for a couple of months. He said they provided for the same conditional uses for the protection of these people who are adults coming to this program, the same as for the kids at the Goddard School program in our building now and actually we have the operator of Goddard School here, Mr. Jim Nerpouni, if anyone has any questions or concerns because they are in our view compatible uses and we have talked with Mr. Nerpouni and we don't see any issues with them. He said these schools may not be your typical school, it is not going to be an elementary school, but Ms. Erickson would be taking care of students who are assigned to her by other school districts and she has that situation now and we wanted to make sure that was covered and that is why we put schools in here and preschools and that language came from other zoning codes where they have allowed these types of uses in these districts. He said the specific regulations which the zoning commission read are very similar to what we already have for child daycare and we felt that if they were appropriate for child daycare they certainly were appropriate for the school and that is generally all that he has. He said the daycare center definition came from trying to meld it into the definition we already had for child daycare.

Ms. Sass solicited comments for the amendment:

Mr. John Andras stated that he might fall into that category. He said just for clarification and to follow up on what Ms. Sass presented, there is an amendment whether it was accepted or acknowledged or not tonight, it is still assigned a number and it was withdrawn in a spirit of cooperation until we had the proper composition of members to be able to vote on it and just because he withdrew it to cooperate does not mean it does not exist but technically he understands and accepts the zoning commission's position. He said his writing the letter and his request today was in support of the Lanzas saying that if their amendment goes through, that he does not see a whole lot of differences between what they are requesting and what he is requesting and so with that in mind he would like to say that is his position tonight.

Ms. Sass solicited comments against the amendment:

Ms. Sue Barnhizer of 8580 E. Craig Drive stated that this is going from the least intrusive use of professional office to include a health club and indoor recreation and asked what the indoor recreation would include.

Mr. Markowitz said they took that out.

Ms. Barnhizer asked if you will not increase traffic with a health club.

Mr. Markowitz said they took the indoor recreation out.

Ms. Barnhizer said there will be extra traffic if a health and fitness club goes in because there will be traffic in and out all day long.

Mr. Markowitz said that Mr. Vic Voinovich is here to answer that and he might take 10,000 sq. ft. or 11,000 sq. ft. and the number of people who would be there in peak time as well as employees is substantially less than the number of employees if it was used for medical or lawyers or dentists and the traffic from that is substantially less than what medical would be and probably no different than what it would be if there were four or five different offices that were using the existing permitted uses. He said when they talked to Mr. Voinovich about it typically the maximum number of people there during peak hours is 20 people, maybe 30 at one time at the highest level of people being there and we looked at the size of the building and divided it by the number of parking spaces you would have to have and they actually have less or equal to the number of parking spaces than the code requests so the way we see it, it fits right into the code with the number of people and of course the employees would be there all day but they are not the people going in and out and in a medical office there are people going in and out all day long and that is the nature of a medical office.

Ms. Barnhizer said a medical doctor has appointments but a health club has people running in and out and more people than you would with a doctor's office assuming there would be one doctor in the office.

Mr. Markowitz said no because if you take the amount of square footage there, you could have 10 -15 doctors in there and added that he represents a number of doctors and they never have just one person at one time, they always have four people.

Ms. Barnhizer said the people come for the appointments that are scheduled.

Mr. Markowitz said if you come to a doctor's office at 8:30 in the morning, there are 30 – 50 people sitting in the waiting room so they have peak hours too and scheduled appointments during the day for doctors are at a higher frequency overall than a health club would be, because a health club at 2:00 P.M. would not have that many people there.

Ms. Barnhizer said you can't pinpoint with a health club and asked what the signs and lighting will be for the health club.

Mr. Markowitz said they are not changing the regulations for signs, it will be the same as it is now, it will be based on the number of tenants they have and frontage of the building.

Mr. Weiss said there are a number of factors.

Mr. Lanza said the sign would be very small and said there is nothing out there by the road.

Ms. Barnhizer said there is one sign.

Mr. Lanza said the big sign is only up there saying there is space for lease and once the space is leased, that sign will come down and explained the two signs that are there and the sign for Goddard School.

Ms. Erickson said she will put a sign next to the door on the building.

Ms. Barnhizer said she has seen other office buildings.

Mr. Markowitz said he was talking to Mr. Voinovich about his use and was thinking about a real estate office that is permitted in this district and during the week it is not too crowded but on Saturday and Sunday there are people constantly coming in and out of real estate offices and to him you have more traffic at a real estate office on the weekend than you would if you have a health club so to us a health club is certainly a compatible use in a building and will have the frequency of traffic as some of the other uses and some of them have very little traffic such as a secretarial service because it is done on the internet now. He said part of the problem is that the PO district is limiting what uses you can have and there are a fair amount of vacancies in the professional office buildings in this town and he knows that because he represents most all of the owners of those buildings and they are constantly having problems with vacancies because of the limited scope of which they can use it for so we are trying to come up with other uses that are compatible without unreasonably interfering with adjacent residential areas.

Mr. Lanza referred to parking and said there are only so many cars per so many square feet and aren't they within those guidelines with the health club and said there might be 40 cars there at worse if everybody had their own car but for that much space, that is not a lot of cars, for a small store there might be a lot of cars but not for all this space.

Mr. Markowitz said his law office is 8,800 sq. ft. and they typically have about 25 – 26 employees and they usually have one-half dozen clients there at one time and meetings with other lawyers and public officials so there are at least 40 people on a regular basis going in and around his office and it is smaller than a health club obviously.

Mr. Lanza said he has 60 spaces total for the whole building so if there are 40 people in there at peak time and two attorneys and they have two cars plus their clients, we are looking at only 44 although they have plenty of parking there for a lot more than that and the biggest problem they have is Heinens with the trucks and the deliveries back there and everyone uses that driveway to go out.

Ms. Lil Fecek of Heatherwood Lane stated that she is not opposed to a school in Bainbridge, but what it seems to her is that this will open up a can of worms for the township for all PO districts and she is concerned about the two at the end of Chagrin Road and said this is like a change to the ten commandments and is major, it is not just a variance and added that she embraces the school as long as it is in an area that is zoned for it. She said there is so much traffic with some of the decisions that have been made and if she goes out in rush hour, she loses inches on her brake pads and this is becoming a gnarled up traffic mess. She said she reads about what Russell is doing and she has been to a number of trustee meetings and we were told that this would be zoned POD so we won't have as much traffic so here we are almost 20 years later and if you allow it for one, you will have to allow it for others and that is why she is here.

Ms. Sass said Ms. Fecek is right, if the amendment were to go through, it is not just for this particular property, it is for every property that is zoned professional office.

Ms. Barnhizer said if this goes through and you find that it is very unwelcome, you are giving away all your control, the intent is to get more uses permitted and this is supposed to be a buffer zone for residential and how can it be with more traffic.

Mr. Jim Nerpouni of Goddard School said a stockbroker or the rehab of autistic children is not retail and we need some flexibility in the zoning.

Mr. Markowitz said he appreciates the comments and added that what the planning commission did was they looked at all the communities that had similar buffer zone type of districts and as you can see from their recommendation they did not have trouble with what we are doing and they had a comment which is what we are trying to address and that is trying to keep the retail nature of these uses out of this district and which is what we are trying to accomplish here and Ms. Fecek said she has no problem with schools and he agrees but why would you have a problem with a psychologist and you don't allow it right now so we are trying to have some more rational basis behind the type of tenants you can have and still meet the township's desire to have a transitional district and the other part is if you are going to have those uses in there and you permit certain office uses such as doctor's offices that already have a lot of traffic, these other uses are no greater.

Mr. Markowitz continued by saying most are substantially less than medical so if UHHS had not gone into the building they did, they certainly could have gone in Mr. and Mrs. Lanza's buildings and you would have a lot more traffic than what we are proposing but yet it is permitted so in a transitional zoning you have to have some realistic understanding that there is going to be some traffic because it is a non-residential use and so we are looking at what are we putting in here that is not any different or any more intense use than what is already permitted and that is what we are trying to accomplish.

Ms. Barnhizer said that Mr. Lanza has been very helpful to her and it is a nice development but when this goes into effect it will have more traffic, more fire engines, more policemen and more to take care of so you can say all these things to begin with but what happens once it gets going and we can't control it.

Ms. Sass opened up the floor for discussion among the zoning commission members.

Mr. Weiss referred to light industrial and said the township allows light industrial but a light version and there are uses the township does not allow and he understands the concept of looking at office buildings and what you typically see in an office building but he thinks the township's professional office is more office building light and there is a difference between an office building on E. 9th Street or on Chagrin Boulevard.

Mr. Markowitz said he thinks an office building on E. 9th Street probably has less typical uses than what is already allowed in the code.

Mr. Weiss said except for the first floor which is restaurants.

Mr. Markowitz said that is a service or retail but typically in an office building downtown, you are seeing professionals, attorneys and bankers etc. and you already allow something greater because you allow real estate offices.

Mr. Weiss said in most offices in intense situations, the first floor has FedEx, Kinkos and there are many uses you find in office buildings that are not meant to be in a professional office district.

Mr. Markowitz said he does not disagree with that.

Mr. Lanza said we don't have that.

Mr. Markowitz said we are talking about a FedEx office.

Mr. Weiss said he thinks optometrist is being confused with ophthalmologist.

Mr. Markowitz said ophthalmology is already permitted in the district.

Mr. Weiss said the government classifies every business through the North American Industry Classification System and there are big groups like manufacturing services and retail and they keep getting more and more detailed and what he attempted to do was he went through all of the current uses and looked up the codes for them to see how they all fit and he looked up the codes for retail and he looked up the applicant's request and he found out that some things fit in very well with what we do and some things are way out and some things with the description as such was so broad. He referred to the medical uses and said the optometrist, psychologist office, physical therapy, occupational therapy for the most part come very close to medical and dental offices so he does not see those being scratched off but what is being described as a nutrition program is wishy-washy but if you just say nutritionist, it also fits in but when you start getting into Weight Watchers etc. it is a little unclear.

Mr. Markowitz said they weren't thinking of that because everything was medical allied or ancillary services.

Ms. Sass said there could be a Physician's Weight Loss Center.

Mr. Weiss said it is unclear and sleep disorder clinics is another step moved away from medical offices and one part that might help clarify it is limited to outpatients.

Mr. Markowitz said a sleep clinic is they are there at night sleeping (overnight) and they usually go there late at night to try and figure out why they are not sleeping.

Ms. Sass said some are long term.

Mr. Markowitz said no, not that he has ever seen.

Ms. Sass said some go for a couple of days.

Mr. Markowitz said maybe for a couple of days but it is not like they go for five years.

Mr. Weiss said the way the applicant described photography studios, that puts it right next to advertising agencies which is allowed and also administrative offices which were called auxiliary offices are pretty close to employment agencies and they have it stuck between the corporate offices and employment agencies. He said the applicant put eyeglass sales in with optometrist and eyeglass sales are right in the middle of retail sales and agrees that it is more retail sales.

Mr. Markowitz said they are combined services.

Mr. Weiss said there are optometrists that don't sell eyeglasses.

Mr. Markowitz said he cannot think of any that don't.

Mr. Weiss said his doesn't, he gets a prescription and walks out.

Ms. Sass said her ophthalmologist sells her contact lenses and they engage in the sale of contact lenses.

Mr. Yingling said he takes his prescription to a lens factory and buys his frames but they do not do the eye exam.

Ms. Sass asked if an optician can go in here and added that it needs to be clarified.

Mr. Lanza said he thinks the main issue is the traffic issue and the township is trying to keep the traffic down and are we creating more than what is already allowed and maybe an eyeglass place would create a lot of traffic but he does not know.

Mr. Weiss said we don't want businesses in that area that typically operate at all hours because it is next to residential, even though we cannot regulate the hours, the businesses that go in there, you know won't be 24 hours a day.

Mr. Markowitz said attorneys can be at the office late.

Mr. Sheehy said but the parking lot is not full.

Mr. Lanza referred to Elite Fitness and said they are in the medical building and when you drive by there, there are not many cars except for peak times you might see 25 cars there and typically there are not many cars there and it is a medical center.

Mr. Weiss said with the eyeglass sales, someone could want a sunglass store so what is the difference between selling glasses and sunglasses, it is basically the same thing so that clearly crosses the line into retail sales.

Mr. Markowitz and Mr. Lanza said they did not have a problem with taking that out.

Mr. Weiss said that manufacturer's reps can't have inventory either. He said when we make this change, it will apply to the whole township so we have to remove ourselves from Mr. Lanza's facility. He said he is not saying the government is perfect but it put health clubs in with arts and entertainment and we can look at it two ways. He said we do provide for that type of facility in our commercial areas and he referred to the Jewish Community Center in Beachwood where there are a huge amount of people coming in there between 9:00 – 10:00 at night and which he believes most health clubs and fitness centers have a large cliental after work so that type of business really does have normal operating hours which go late in the evening that he believes the township is trying to avoid next to homes.

Mr. Markowitz said the township allows tennis clubs in residential districts under a conditional use but they are still allowed and they have ancillary fitness programs and they play tennis at night so why wouldn't you allow health clubs in an office building that is in between residential and commercial and he is thinking of the four areas we have and can't see in any of those areas where it would be more intrusive and people in Wembley don't have a problem with a tennis club next to their houses so why would it be a problem for a health club to have people come there at night and use their facility.

Mr. Sheehy said that is not a great example because the tennis club was in there when the people bought their homes.

Mr. Markowitz said he respects that and the Wembley Club might not be a good example because it was there before, but in your code you still allow tennis clubs so anybody who wants a tennis club in a residential area can do so if they meet all of the criteria and you could have tennis clubs in an area where there are homes developed already and the township does not see that as an incompatible use and that is why he does not see it as unreasonable for health clubs.

Mr. Lanza added that it is all indoors right next to a shopping center but he understands that you have to deal with all sites.

Ms. Sass said to keep in mind also is what we are talking about is development of land on a major intersection and the clubs that you are talking about certainly don't fit at these intersections on major roads.

Mr. Markowitz said they could but that is the point of this that these PO districts are in an area that are already commercial areas and they are all on major arteries because they have to be so it is not like you are having cars drive down a side street to go there, they are coming down E. Washington Street or Chillicothe Road on state or county roads and it is not unreasonable for the them to go to a health club between 5 and 9 at night.

Ms. Sass said if we are talking about the intensity of traffic, you are just going to be backing the traffic up that much further into those residential zones.

Mr. Markowitz said they are not in residential zones and Mr. Lanza has a big property, Winbury might be closer to homes but by the nature of these offices, people have a tendency to work late hours. He added that sports training facilities could be an indoor golf range, the kids from the high school coming over to the facility, special ed training after school that can be done indoors, you could have a place kicker kicking into a net inside the building and his view is for it to be typically for younger kids but it could be for adults too.

Mr. Sheehy said it could be rock climbing, skateboarding, volleyball etc.

Mr. Markowitz said he did not know if there would be skateboarding inside.

Ms. Sass asked if you do have a skateboarding facility will they sell skates.

Mr. Markowitz said he would not have a problem taking it out but thought sports training would not be any different than the scope and intensity of a health club.

Mr. Lanza said that does not need to be in there and that is not their intent.

Mr. Weiss said the conditions on a tennis club are pretty extreme because there is only 10% lot coverage with a 10 acre minimum and you have a limit to the number of members you can have per acre, so you can have 70 members per acre.

Mr. Markowitz said if you have 10 acres you could have 700 members.

Mr. Weiss said that is right but it does not allow for any extension of the lot coverage but for assisted living facilities we offer an increase in lot coverage.

Mr. Lanza said they are not going to put tennis clubs in.

Mr. Markowitz said so far we are removing optometrists and sports training facilities.

Mr. Yingling said he is not sure he wants optometrists taken out and he does not want to be sitting here down the road when somebody at Winbury wants an optometrist in the building and we did not put it in and we could have and asked should we.

Mr. Markowitz said he meant the eyeglasses sales only.

Mr. Weiss said he is still not sold on the health club thing because you are starting to enter a whole other realm of uses. He said with social services the list is so extensive that that is something that a little clarification would be great and added that these can be looked up on the NAICS search engine. He referred to computer repair and there are two sides to this because the government sticks computer repair in the middle of auto repair and heavy machinery repair so that would be a no.

Mr. Markowitz said he came up with that on his own.

Mr. Weiss said if he would take his computer in for repair because the hard drive is broken he would sell me a new hard drive to install so computer repair is retail.

Mr. Markowitz said he is being told to remove that.

Mr. Lanza said he made his property POD because that is what everybody wanted.

Ms. Sass said the sale of retail goods is vague and Mr. McIntyre will have a hard time figuring out what that is.

Mr. Weiss said with computer repair, in many cases, is a hardware problem and would require a physical product to be sold whereas physical therapy for example, if you have problems with your knee, occasionally a knee brace is sold.

Ms. Sass asked if she goes to a doctor and he gives her a knee brace would you buy it or would he give it to you to wear.

Mr. Markowitz asked what the difference is.

Mr. Weiss said that is an example where it is ancillary to the practice.

Mr. Markowitz said he will take out computer repair and he can't wait to see what is said about tailors and sewers.

Mr. Lanza said he did not have a problem removing it.

Mr. Weiss said that tailor shops are really not an intensive use and could easily see that as a home occupation without anyone having an issue.

Mr. Lanza said they are selling material and you could use the argument that he is selling a product and he could be a dressmaker.

Mr. Weiss said but he would be limited to tailoring and a tailor could be a dressmaker but he would not be selling a product. He said his feeling on schools is because schools in general are probably the fastest growing part of education like Kaplan and Phoenix Schools is for adult education which is primarily night classes and they are in office buildings but it is more at night than in the daytime so just having a general school thing, he has some concerns with.

Mr. Markowitz said they have schools, public and private.

Mr. Weiss said that is very open and regular public schools are permitted in residential areas.

Mr. Markowitz said that is where he got it from because they are allowed in residential areas.

Mr. Weiss said that is a counter argument.

Mr. Markowitz said in residential districts public schools are permitted and private and parochial are conditional and we made all schools conditional uses.

Mr. Yingling said his thoughts and issues with the schools are do we draw a line or don't draw a line and he read through the BZA minutes and they seemed to narrow this entire issue down to the fact that Ms. Erickson is providing for the autistic school education that is funded by the public schools so it is a school so it should not be there and we can have them in residential areas and along with the Phoenix schools, and what if Kent State wanted to open a branch in Mr. Lanza's building to do post-secondary for students in high school and he is just concerned about the implication of the BZA that they did not like this because it was a school and he does not know if he wants to narrow this down to say if it is a school you cannot have it in an office district and does not understand why the zoning commission would do that. He added that he does not think a school should be put in a residential area.

Ms. Sass asked if the BZA application was withdrawn.

Mr. Lanza said no, we did not withdraw, they told us to come to this board because they said they could not deal with it, there was nothing they could do and that is the problem we run into because it creates so many delays so we cannot get a tenant because they are intimidated and the sleep clinic needed a community that welcomed them and this community did not welcome them.

Ms. Sass said in order to establish a variance there is a list of criteria that needs to be met and the BZA's job is to make sure you meet them or don't meet them. She said what we are talking about is tantamount to a true re-zoning and can understand the board of zoning appeals saying you are really talking about a rezoning and to go back to the zoning commission but these kinds of uses are really not tantamount to a rezoning in her opinion, they are more geared toward a use variance.

Mr. Markowitz said boards don't want to hear about use variances and that is his experience everywhere, they ask if the land can be used for the permitted uses and we say yes, and they say you don't have an unnecessary hardship, get out of here or go get a zoning amendment and they don't want to sit there and write conditions when it really should be legislation so he respects their thinking on that. He said he would have thought that a couple of them were similar enough that they should have allowed it, but clearly the chairman has the view on the autistic program that it has daycare for adults which was not specifically permitted and the auspices of the school which wasn't listed either, he felt there was a need to come back here and he respects him on that and willing to do that and we have the same conditions of the child daycare and why there is a child daycare and not adult is simple, at the time we came in and asked for child daycare, we did not have an adult program requested so we did not think about it and that is what we are trying to do now, trying to get a little more comprehensive so we don't have to keep coming back and amend, amend, amend.

Mr. Weiss said there is no significant difference between adult daycare and child daycare.

Mr. Yingling asked Mr. Markowitz that when applying for a variance if there are different rules for a use variance and if he has seen a trend that on the use variance thing, the appeals boards push it back to the zoning commission to change the zoning and if that is happening here.

Mr. Markowitz said yes, in your code, you have the standards for practical difficulties which is the area variances and the standards for unnecessary hardship which is the use variance and the county planning commission and the county prosecutor got together and did that as a model code and its great for the BZA and the applicant to know, but he hardly ever goes in for a use variance anymore because it is so difficult to get in terms of the legal requirements and because BZAs are reluctant to give them. He referred to the Dinallo application to go from a five acre zone to a three acre zone which they looked at as a use variance but we did it because we proved there was no viable way to develop that property and it is very rare that you ever have that kind of claim that you can make and in a setting like this where you are in an office where there are office uses that are permitted that you can use it for, it just so happens that in this township because the professional office uses are so narrow everybody has a vacancy problem because you can't find enough tenants that qualify, however, that in and of itself, did not drive us to do this, it was when we got to the autistic center we thought it was a wonderful thing for the people in the community but yet it wasn't allowed and so it was time to make application.

Mr. Yingling asked if there is a reason behind the permitted uses that kept it as narrow as it is and he could not read anything in there why it was made an intentionally narrow scope and as narrow as it is, the residential community would think it is great because hardly anything can go there, whether it is Mr. Lanza's building, Winbury etc., but the things that are not permitted there often times are not going to fit in commercial or retail and we don't want commercial and retail in the office district either so he is trying to sort logistically why the definitions were so narrow.

Mr. Weis said it was done right before he was on the zoning commission but based on his experience on how other things were drafted, the intent was to have no retail and they looked at types of businesses that were not retail that would fit, so his guess is they decided what they did not want and looked around to see what would fit.

Mr. Sheehy said everything zoned professional office district right now was zoned R-3A or R-5A and the people wanted something that was not residential.

Mr. Weiss said the first one was a trade.

Mr. Markowitz said it was a defensive move for the township and referred to S. Russell because there were parcels between commercial and residential that they can't sell for residential and they would have no way to sell their land so they looked for an office district where there is no retail and that would be more defensible for that property where they can't claim a taking.

Mr. Markowitz continued by saying that in Bainbridge, when it was originally drafted, they did it quickly because they wanted to get something on the books so they did not spend as much time thinking about it as we have tonight because there are at least 50 other uses that could fit in there.

Mr. Yingling said it does not sound like it was not there by design, or they intentionally kept psychologists off so he is glad they are asking for other things they may or may not have a use for so the zoning commission is not sitting here looking at things month after month after month and appreciates the residents concerns, but on the other hand if you don't allow it, people will come in and we will be back in court and added that although he is not an attorney he does not think the township would stand much of a chance in court if someone wanted to put a psychologist office in Mr. Lanza's building and they were turned down at every step of the road, and if they would go to court, he thinks the township would lose. He said as he goes through this, he too has a problem with the health and fitness clubs and sports training facilities but he could see Curves fitting there and he would not have a problem with those things going in the building as long as there is some definition but this to him is so wide open.

Mr. Markowitz asked if he is talking about the sports training part.

Mr. Yingling said the health and fitness clubs and asked if Curves is a health and fitness club.

Ms. Sass said sure it is.

Mr. Markowitz said sure.

Mr. Yingling said they are also on E. Washington Street.

Mr. Markowitz said just because it is, doesn't mean it wouldn't be appropriate for the office district.

Mr. Yingling said he is not sure what the rates are but would expect commercial rates tend to be at a higher cost than professional office.

Mr. Markowitz said generally it is more to be in an office building.

Mr. Yingling asked why Elite would not want to go into a commercial district, why do they want to go into professional office.

Mr. Markowitz said because there is no appropriate space for them.

Ms. Sass asked why they are leaving where they are.

Mr. Markowitz said UHHS needs the space.

Mr. Yingling said he thinks that this is way too broad and before we put it in there, the zoning commission needs very specific definitions and said again he is concerned about it being so broad and said he does not think they should be allowed in there and he is also concerned about photography studios and said usually wedding photos are taken outside and then the photographer brings the photos to you, so who would rent space in a professional office district.

Mr. Markowitz explained that some photography studios have a lot of walk in traffic and referred to when his daughter got married, they went to an office building.

Mr. Yingling said most of them have a room to take the pictures.

Mr. Markowitz said if they don't shoot there, they do editing there.

Ms. Sass said most photographers do all off site shoots and sometimes they use those places for storage of negatives.

Mr. Markowitz said some do commercial shoots where they bring in a product where they have the right lighting etc. but most family portraits are done in your house or backyard.

Mr. Sheehy said he would be more concerned with a place to shoot high school senior pictures where you would have hundreds of kids coming from schools.

Mr. Yingling said he looked for definitions of financial institutions and it needs to be defined because he is concerned about what that is and he thinks a financial institution should be permitted in office but it needs to be defined.

Mr. Weiss said we already allow stockbrokers and you would not have a constant flow of cash transactions and with local banks, that is a lot of traffic.

Mr. Yingling said he thinks financial institutions is too broad.

Mr. Weiss said if you look at the government book, you will see the types of financial institutions.

Mr. Markowitz said this is really driven by the need to fill up space so we thought that by eliminating the drive-up window we would avoid a lot of traffic and people coming in, in the middle of the night, to do their transactions.

Mr. Yingling said there is a Republic Bank branch on Chagrin Boulevard that you walk into and you don't even know you are in a bank, you sit down at someone's desk, you do not go to a counter, but that is a bank. He asked about window treatments and sewers and maybe it should be defined as personal apparel/clothes.

Mr. Markowitz said he could take out sewers but tailors and dressmakers would be for personal clothing.

Mr. Sheehy said they could be selling dresses for a bridal shop because dressmakers make bridal dresses.

Mr. Markowitz said you could not have a bridal shop here.

Mr. Sheehy asked what a dressmaker is, they make dresses.

Mr. Markowitz said in a bridal shop, you can walk in and buy a dress off the rack.

Ms. Sass said there is a shop in Beachwood that has all custom made dresses.

Mr. Markowitz said what is wrong with it.

Ms. Sass said it is retail and they are selling a product and a service.

Mr. Markowitz said and a doctor will sell you a knee brace.

Ms. Sass said yes, but you are not going to go to the doctor to buy a knee brace, if you need a brace you are going to go to a CVS etc., you will go to the doctor first to assess what is wrong with your knee and chances are he is not going to sell you the knee brace, he will prescribe the knee brace and you are not going to think he is selling you something, but in reality he is.

Mr. Markowitz said tailors and dressmakers usually are considered a service, they could make you a suit from scratch but he is not going to have inventory sitting out, he is custom fitting. He said it could be eliminated and we could come back if a dressmaker comes to us in the future.

Mr. Weiss said with dressmakers that make custom made clothing, the volume is so low.

Mr. Lanza said they usually have an inventory of material, or wedding dresses to pick from, no inventory for sale other than raw material.

Mr. Markowitz said he is being told to take it out and will come back later if someone comes to us.

Mr. Yingling asked about the facilities for the study of medical treatment.

Mr. Markowitz said they will take that out.

The zoning commission discussed clinical laboratories.

Mr. Markowitz said it was more akin to physical therapy similar to what Ms. Erickson does with her LifeSpan program. He said there are people who have disabilities and she may be doing treatment for somebody, even though she is not a licensed doctor she is licensed by the state to do other things.

Ms. Erickson said some of their materials explain their future in research studies related to autism, services for speech and language, occupational therapy, psychology or education.

Mr. Markowitz said what he was thinking of was a medical allied facility where you don't have to have a doctor there all of the time and yet the people are skilled and licensed and they have the ability to either do studies and take tests and analyze them and report back to the doctors and referred to some colleges that do that.

Mr. Sheehy said all you are talking about is things a physician prescribes like treatment and people who are doing the treatment and is there a way to place that on paper.

Mr. Markowitz said the studies are a little different and the people who are implementing the treatment have to be licensed.

Mr. Yingling said you mentioned doing research with students so do we allow anywhere in the code for market studies, people are asked for their opinions, but they are not selling.

Mr. Weiss said we allow for advertising agencies.

Mr. Yingling said some of these places are not advertising agencies, they just do market testing for products and it seems to be something that fits in here.

Mr. Markowitz said the only place it would fit is in the CB district.

Mr. Tom Finley said the market research firms fall into commercial areas containing office buildings and market research firms are a service to others like an attorney or financial planners.

Ms. Sass asked if we are leaving this in or modifying it.

Mr. Markowitz said they will modify it and thought it was a great idea to leave that in there.

Mr. Yingling referred to item #6 regarding adequate sanitary sewage disposal and said he is personally involved with the septic systems and there is an on-going battle of what the State of Ohio wants versus what the county wants and if the county has to follow the state and vice versa, he is concerned that we are only talking about the State of Ohio and not the county entity, and referred to S. Russell saying they do not allow concrete boxes in the front yards even though the county says you have to and asked if we will run into a problem.

Mr. Lanza said his facility has sewers.

Mr. Markowitz said the county must follow the State mandated regulations because January is when the new rules go in and they will be mandated to have strict enforcement but said Geauga County does not have jurisdiction over commercial uses, only residential. He said you will not have a professional office district on a septic system and everywhere on a main road is pretty much where the sewers are.

Ms. Sass said the question then becomes if the applicant wants the zoning commission to rule on this or if the applicant wants to modify the application or withdraw and submit a new application.

Mr. Markowitz said they are hoping for Ms. Erickson's use and he could come back for the rest of it because he thinks the zoning commission is okay with the adult daycare. He said they could withdraw Section 2 and keep in the rest and added that they really want to get her in and a lot of families are depending on her.

Mr. Weiss said he did not think anyone has any issues with the adult daycare.

Ms. Erickson said she has one student so far.

Ms. Sass said she thinks all of the zoning commission members have issues with the health club.

Mr. Markowitz said he was hoping to come up with a fitness club definition that the zoning commission would find acceptable for this district and added that they could make it a conditional use.

Ms. Sass said that would be a better approach.

Mr. Sheehy that would be good because it would be site specific and would be helpful because the BZA could look at each individual site and this site might be a very reasonable place for a health club but some of the other sites may not so that is why it should be a conditional use.

Mr. Markowitz said they could come up with some conditions that would belay your concerns.

Ms. Sass said she thinks that would be a better idea.

Mr. Markowitz said Mr. Voinovich has to get his facility out of UHHS pretty quickly and he does not know how much more time he has.

Mr. Voinovich, from Elite Fitness, said there are not a lot of spaces out there.

Ms. Sass said we still need the language.

Mr. Markowitz said he could withdraw Section 2 and then come back in but will lose two months on the health club. He said he could separate the amendment out to keep Section 2 continued if the zoning commission approves everything else.

Ms. Sass said she did not know if the zoning commission can do that.

Mr. Markowitz said he would not have to totally withdraw it.

The zoning commission discussed amendment procedures.

Mr. Markowitz said he wants to separate Section 2 that has the health clubs as a separate amendment and for Sections 1, 3, 4, and 5 he would ask the zoning commission to recommend approval and come back just for approval for Section 2. He added that the planning commission already had the opportunity to review that language and said he can certainly reformat it for the next meeting.

Mr. Sheehy made a motion to close the public hearing at 9:41 P.M.

Mr. Yingling seconded the motion that passed unanimously.

The regular meeting was reconvened at 9:41 P.M.

Proposed Zoning Amendment Z-2006-6

Mr. Yingling made a motion to recommend approval of Sections 1, 3, 4, and 5 as presented and to make Section 2 a separate amendment albeit still under the same amendment process as the balance of Z-2006-6 and continue the hearing on Section 2 to September 28, 2006 but in the event that the zoning commission seeks and receives a legal opinion indicating that it cannot separate out Section 2, Section 2 will be deemed withdrawn and subject to re-submittal on its own.

Mr. Sheehy seconded the motion.

Vote: Ms. Sass, aye; Mr. Sheehy, aye; Mr. Weiss, aye; Mr. Yingling, aye.

NEW BUSINESS

Proposed Zoning Amendments

The zoning commission discussed the definition of hospitals and the rezoning of publicly owned land or parks in Bainbridge Township according their use, such as passive or active.

Since there was no further business to come before this meeting of the Bainbridge Township Zoning Commission, Mr. Sheehy made a motion to adjourn.

Mr. Yingling seconded the motion that passed unanimously. The meeting was adjourned at 10:20 P.M.

Respectfully submitted,

Linda L. Zimmerman
Zoning Secretary

Lorrie Sass, Chairman

Date Approved: September 28, 2006

AUDIO RECORDING ON FILE

ZC 8/31/2006