

Bainbridge Township, Ohio
Board of Zoning Appeals
February 17, 2011

Pursuant to notice by publication and certified mail, the public hearing was called to order at 7:10 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Christopher Horn, Mr. Todd Lewis, Mr. Mark Murphy and Mr. Mark Olivier.

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 2011-2 by Fastsigns Lyndhurst for Montefiore (The Weils) for property at 16695 Chillicothe Road – Continuance

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

The zoning inspector's letter dated January 20, 2011 was read.

Mr. Jack Schoenbeck and Mr. Darrell Young of The Weils were present to represent this application.

Mr. Schoenbeck thanked the board for allowing them to present this variance and testified that apparently the existing sign didn't meet the conditions of the first variance in which he tried to research the original paperwork but he was not successful. He said the existing sign is currently at 44 sq. ft. and they are asking for a variance to install a smaller sign at 42.4 sq. ft.

The board discussed the original variance that permitted 32 sq. ft.

Mr. Schoenbeck said the existing is 44 sq. ft.

Mr. Olivier asked Mr. Schoenbeck how he came up with the actual sign dimensions of 44 sq. ft.

Mr. Schoenbeck said he can show the board the drawings from the vendor.

Mr. Horn asked why it needs to be bigger, bigger than what was previously granted.

Mr. Schoenbeck said unfortunately he was not involved in the original construction but he did try to research what might have happened or how it ended up larger than they received the variance for.

Mr. Horn said the board talked last month on whether this is one sign or two signs because there is one in the middle and two smaller ones on each side.

Mr. Schoenbeck said that is correct.

Mr. Murphy asked if the walls are built as the drawings show.

Mr. Schoenbeck said it does arc each panel but they are all straight.

The board discussed the dimensions and square footage of the proposed sign.

Mr. Lamanna said it was formerly approved at 32 sq. ft. but was built at 44 sq. ft. and the new sign is at 42 sq. ft. and change.

Mr. Lewis said we reduced the square footage and increased the count.

Mr. Murphy referred to the variances in 2002 and 2009 which actually gave them a variance for two signs as opposed to a single sign.

Mr. Wrench replied yes.

Mr. Murphy said there is already a variance for two signs as opposed to one.

Mr. Lamanna said there will be two mirror signs except it will have the side panels on it.

Mr. Murphy said even with the new letter area they are reducing the square footage.

Mr. Horn said they are reducing the square footage of what they had, not what they were permitted to have.

The board discussed that they were permitted 32 sq. ft. and this comes in at 42 sq. ft.

Mr. Horn said the name of the facility is on the main sign and the others are just ancillary in terms of describing what they do and he is not sure they are necessary to identify the location of the facility.

Mr. Lamanna said it is not an impulse purchase as you are driving down the highway and he is not sure that it really fits what a ground sign is supposed to look like. He said for one business the permitted square footage is 25 sq. ft. and the board gave them 32 sq. ft. originally. He said if they just put up that center sign it would comply with the current variance that has been granted for the property so technically they are adding on those two additional signs.

Mr. Lewis said he looks at the Marathon and the Speedway stores and they don't have to put up subsequent signs that say gas and oil and he is kind of seeing these as being gas and oil.

Mr. Lamanna said if they want to put it on the main sign certainly they can do that but as he looks at these signs he just does not see that it is fitting within the concept of what the ground sign is, if a ground sign is supposed to be a compact sign.

Mr. Schoenbeck said after they added the addition, the rehab center, there are two product lines.

Mr. Lamanna said he understands that but the purposes of these ground signs is primarily so when people are driving by they can locate the place they are looking for not primarily for advertising what you do. He said he thinks when the signs are added on the side you are now going beyond what the board conceptualizes as a ground sign because now you have a sign with a total width of 16' to 18' for the total sign.

Mr. Schoenbeck said including the masonry.

Mr. Lamanna said yes but there is no other ground sign that has a wing span like this, it is totally inconsistent with anything else there is. He said even where we have got a 20 business location, their ground sign isn't this wide and here we are talking about a one business location.

Mr. Horn asked if one of the reasons for the new sign is changing the color to make it more visible with beige as opposed to the darker color on the previous sign.

Mr. Schoenbeck replied yes.

Mr. Darrell Young testified that he was involved with the beginning and would like to shed some light on this in terms of the sign that is there in terms of what the board is characterizing. He said the masonry wall is a decorative unit and was intended to be part of the signage, it was intended to be decorative.

Mr. Lamanna said the board understands that and that is why it is the way it is because the board understood it was to be a decorative unit and not part of the sign and now we are converting it into part of the sign.

Mr. Young said to Mr. Lewis' comment, he understands that where there is a service station where it is fairly obvious that they are selling gas and oil and whatever they sell these days it is fairly obvious but in a property where we are set back and you cannot see this facility from the road the purpose is to identify what is back there beyond just the Weils and identifying it as a senior community, that was the purpose of the two wing signs and candidly was not intended to really be characterized as three signs, really as one and it was really attached to the masonry decorative wall so that was the purpose in doing it, trying to provide some better visibility and identification for the property. He said he supposes both sides could be argued but he would suggest to the board that in today's environment that people do drive by and being able to identify what is there is critical to the business.

Mr. Lamanna said his suggestion would be that if they want to have Assisted Living and Rehabilitation that that be combined into the main sign because the more he thinks about it, it seems to be inconsistent with what the concept of the ground sign is defined and as practiced compared to other ground signs in the area, the concept of it.

Mr. Young said they will work on redesigning it.

Mr. Horn said if they do what is suggested and combine them all into one it could be used as a guide to determine how much of a variance they may be granted because if they are permitted to continue out to 32 sq. ft. they can't put all of that in there. He said maybe it could be done with 42 sq. ft. and put them all together or with 40 sq. ft. it could be done.

Mr. Lamanna said that is what he was thinking and staying at 40 sq. ft. that would give them some additional room below so the sign could be extended down.

Mr. Murphy said it looks like the proposal shows that you are moving the sign up and taking the oval and raising it a few feet anyway and there is a 12' height limitation but it is possible to bring that sign up a little bit.

Mr. Young said the purpose in raising the sign was to make it more visible so he understands.

Mr. Lewis said the good news is the majority of the traffic running up and down Rt. 306 are local commuters, he does not think anybody from Strongsville is going to be doing a drive-by.

Mr. Young said identification of the property is critical to their business but they will work on redesigning the sign.

Mr. Lamanna said if 40 sq. ft is granted, it should give additional space underneath and you already have 29 sq. ft. so that should be enough room to put that underneath.

The board discussed granting 40 sq. ft. total for each side.

Mr. Young said they will redesign the sign and resubmit.

Mr. Lamanna asked Mr. Young where the left-hand turn lane stands.

Mr. Young said there was a question about the D-cell lane and the turn lane and there was a question on whether or not they submitted information to ODOT and he submitted the letters and background to Mr. Wrench so he knew they had done that. He said he and Mr. Mike Joyce had several conversations about that process and he did submit the information and he talked to ODOT yesterday and they were going to review the file again but it is not exactly on the top of the Ohio Department of Transportation's priority list.

Mr. Young continued by saying he also explained in his correspondence that when they went to put in these lanes they discovered that First Energy relocated main transmission lines along Rt. 306 and whether they can even get permission to relocate those main transmission lines remains questionable anyway. He said further, they submitted with the package to the township, an updated traffic study which he believes the board received a copy of and if not he can get copies of them which further indicated that these lanes were in fact not necessary so he can't speak for ODOT although he is waiting to hear from them and he is happy to share with them any information, her name is Jill Powers and she is in charge of permitting and based upon the data they acquired from Traff-Pro who did the traffic study there was a conversation with First Energy about the main transmission lines which by the way if they can be moved will be moved closer to Rt. 306 because the only way to relocate those transmission lines is to put new poles up and then move the lines and those transmission lines frankly feed most of Bainbridge Township and further north and it is a very, very large undertaking so he has no idea whether ODOT will permit the turn lanes and based upon the traffic update he would suggest that maybe it should be revisited even if it is unnecessary to do that. He said he can assure the board that they have followed the permitting process.

Mr. Lamanna told Mr. Young that he should see what ODOT says and then the board can revisit this and put it to bed one way or the other because it is sitting as an open item now on the conditional use permit. He said there is a traffic study and we will see what ODOT says and we will schedule it at the time of the meeting in the future and make a decision one way or another which way we are going to go and could keep it as a possibility but revisit it in five years or so. He said he wanted everyone to understand that the board looked at it and it was examined on whether it still makes sense and the board has examined the restraints that have come into existence and then we won't have to worry about people coming in, in the future, saying they remember it but the board can say it was re-examined and this is why the board decided to take this back.

Mr. Young said the most important message he would like to convey is and many of the board members were here when they started this ten years ago and we believe we have a very good relationship with this community and worked hard to maintain that we did follow up and did submit to ODOT.

Mr. Lamanna said he appreciates that it was followed up on and he knows personally because he is through that area all of the time and sometimes many times in a given day and he does not really see that traffic coming in and out of the Weils is creating a problem compared to the traffic that comes in and out of Drug Mart and Heinens it is like a trickle in a river so the board appreciates the follow up.

Mr. Murphy said the Traff-Pro consultant that was here in front of the board in 2006 suggested that in fact the left turn lane is warranted so you (Mr. Young) are saying there is a new report that changed it or you have a different report.

Mr. Young said there is a new report that is in there that he would like to point out to the board that the first report that was done prior to the improvements at Rt. 306 and Washington so the report that showed the necessity for turn lanes were predicated on the fact that the improvements to Rt. 306 and Washington were not completed. He said the second report was completed after the improvements to the intersection of Rt. 306 and Washington were completed and it changed the results. He told the board they should have a copy of the report.

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

Motion BZA 2011-2 – 16695 Chillicothe Road (the Weils)

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

1. A modification to an existing variance the applicant has for two ground signs with a total area of 32 sq. ft. to two ground signs with a total area of 40 sq. ft.

Based on the following findings of fact:

1. The applicant is adding some additional information on the sign to reflect the fact that since the original building was built they have added a rehabilitation facility to the assisted living facility.
2. This will actually result in a decrease in the size of the sign since the existing sign that the applicant has is greater than that which was previously permitted.
3. Nevertheless given the location of the sign it is consistent with other signs in the area and will not unreasonably affect any surrounding property uses.

Mr. Lewis seconded the motion

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

Application 2011-4 by Paul Willson for property at 18760 Snyder Road

The applicant is requesting area variances for the purpose of a lot split. The property is located in a R-5A District.

The zoning inspector's letter dated February 17, 2011 was read.

Mr. Paul Willson was present to represent this application.

Mr. Willson testified that he bought the property in 2004 from his mom who got it from her dad who got it from his grandfather and it is in a five acre minimum area and it is over five acres and there are three houses on it and that has a lot to do with his grandfather, he did that before he was around. He said he is asking to split it up and would like it to have the largest house be by itself and the one-bedroom and the other house that has two bedrooms will be on its own. He said he thinks the spirit of the five acres is to keep the area rural and he is not asking for a new building, the footprint of the lot will be the same and he thinks that will maintain if the board goes ahead and allows this but actually when you look around at the adjacent lots there is only one lot that is touching that actually does have the five acres, that is just the nature of the area in Bainbridge. He said he does not know if this is relevant but it is a non-conforming property in terms of mortgages and home equity and even when it was the height of the boom which is when he bought it from his mom in 2004 nobody really did it except Geauga Savings and they actually stopped doing them as well.

Mr. Lamanna said these kinds of properties present a real problem because there is no way you are going to be able to conform them to anything that anybody wants to see.

Mr. Willson said he would be conforming both based on the one-bedroom in-law suite.

Mr. Olivier asked if the larger home will have the larger lot.

Mr. Willson said the two homes will have the larger land and it depends on the septic lines of the new septic that was put in for the two houses that are tied together that was put in 2004 as a condition of him buying it and the filter bed goes behind the larger house.

Mr. Murphy asked Mr. Willson to take the pointer and help him out with the GIS aerial photo.

Mr. Willson said that the rectangle and the five acres are like this (he referred to GIS aerial photo). He explained where the septic is for the two-bedroom house and said the tanks are here and the Geauga County Health Department put the filter bed back here and that is why the lines are the way they are, he was just trying to follow the septic for that but that is technically the larger house.

Mr. Olivier said you are giving that back part to the smaller homes because that is where the septic field is.

Mr. Willson said correct.

Mr. Horn said if the lot is split then either of the houses could be torn down and new houses could be built on those lots right.

Mr. Lamanna said they would need setback variances.

Mr. Horn asked Mr. Willson what the reason is for coming to the board to get this split.

Mr. Willson said at this point he can't really get a home equity loan.

Mr. Lamanna said he does not have a financeable property.

Mr. Willson said he is with Geauga Savings now and they did it in 2004 but they stopped doing that and he needs to get a home equity like a security, personal credit line on the property to help out with some repairs he needs to do.

Mr. Murphy said in essence he has a home with two rental properties on the same lot so it is a business end.

Mr. Willson said it is actually yes.

Mr. Murphy said and now you are asking to take a business and put it on a separate buildable lot. He asked Mr. Willson if one of these is his prime residence.

Mr. Willson said no he moved to Oregon five years ago.

Mr. Lewis asked Mr. Willson if he has financing on these homes now, he has mortgages.

Mr. Willson said yes he has one mortgage with Geauga Savings.

Mr. Lewis said what you are trying to do is get increases in those mortgages but they are existing and intact.

Mr. Willson said there is one mortgage on the entire property.

Mr. Lewis said that this is not holding off the purchase of the property, he already has that and he has mortgages for this property in place so there is no hardship there.

Mr. Willson said he is unable to access the equity in the property but he doesn't know if that would be a hardship.

Mr. Lewis asked if there are three rental properties here.

Mr. Willson replied yes.

Mr. Horn said the board would be creating a non-compliance.

Mr. Lamanna said there is one lot with three residences on it and we are only half addressing the problem here. He said he has a problem with the applicant wanting to fix the problem but it is not going to fix the whole problem because at the end of the day we will still end up with a non-conformity, he would be going to a single lot with two dwellings on it so if the board is going to try to resolve the situation, there has to be a way to get rid of that non-conformity.

Mr. Willson asked if it would be better if the lot were split into three lots.

Mr. Lamanna said he doesn't think it could be split into three because there is not enough acreage.

Mr. Lewis said each property has only one living structure on it.

Mr. Lamanna said the two structures cannot be combined effectively into a single dwelling.

Mr. Olivier asked if there are three separate drives.

Mr. Willson said yes 18760, 66 and 92.

The board discussed the location of the houses.

Mr. Lewis said it is an opportunity to do some housekeeping.

Mr. Murphy said the request would end up as two lots of what kind of acreage.

Mr. Willson said he didn't have it surveyed but it would be about 1.5 on one and five acres total.

Mr. Murphy asked if the houses are the same age.

Mr. Willson said approximately but he thinks his grandfather built this house and his grandfather put the biggest addition on this house (he referred to a site plan) and there was an addition on this in 1970.

Mr. Horn asked when the homes were built, generally.

Mr. Murphy said it says 1901.

Mr. Willson said that might have been the one-bedroom.

Mr. Lewis said it is a shared septic and he understands easements but if we go into two separate lots, he is not interested in easements and shared septics because down the road there could be two sets of owners and both properties should be completely self-reliant.

Mr. Willson said that would be true if you use the lines that he made.

Mr. Lewis said the board is not real excited about two living structures on a lot.

Mr. Willson explained the location of the filter bed that was approved in 2004 and it is for the one-bedroom and the two-bedroom houses. He said the one that has the filter bed on it is what the health department made happen when he bought the property.

Mr. Murphy asked about the age of the septic system for the big house.

Mr. Willson said that was put in or re-done in 1972.

The board discussed the leach fields.

Mr. Lewis asked what the easement is for, where the connection is going over the tip.

Mr. Willson said if there is an easement required there is a pipe that goes from underneath from the one to the other from the back of the filter bed but that is it, it would just be the one pipe because there is a pump that pumps it back.

Mr. Lamanna said the pipe could be re-routed a little bit farther around.

Mr. Olivier said why not cut the point off from that box.

Mr. Willson said he was really drawing the line for the septic.

Mr. Horn said one house was built in 1901 and asked about the other two homes and when they were built.

Mr. Willson said he would have to look that up but it would have been the fifties for the middle house he believes and the addition for the largest house was in 1972.

Mr. Lamanna said what he would like if this is going to be divided into two lots is that the other lot becomes conforming also so basically it would be used as a single dwelling and if the other building is kept there it could be used as an accessory structure but it would have to become an accessory structure and not a separate dwelling.

Mr. Willson asked what the definition is of an accessory structure, is it like a garage or a shed or would he be able to have electric and plumbing.

Mr. Lamanna said as long as it is used as an accessory to the use of the principal dwelling. He said it could no longer become rentable property but if a family wants to move in and occupy both buildings and have some people use it, that is probably okay, it would not be a freestanding rental property anymore, so there would be two conforming properties.

Mr. Lewis said the board would caution with the type of tenant because this does not mean it becomes an unrelated person two-building dormitory.

Mr. Lamanna said if a family moves in and has an in-law living in the other one, that is probably okay.

Mr. Murphy said the board can't restrict him now.

Mr. Lamanna said if he wants the lot split then he will have to have conforming uses on those lots at that point in time, he cannot have the lot split and continue with the non-conforming use on the other lot.

Mr. Murphy said he would be losing one rental property.

Mr. Lamanna said yes.

Mr. Willson said it sounds like he can rent it out with one contract.

Mr. Lamanna said yes as long as he rents it out with somebody using it as an accessory use.

Mr. Willson said it would be a one-rental property.

Mr. Lamanna said he could use both the buildings but it would be a one-rental property.

Mr. Willson said it would be one contract.

Mr. Lamanna said that is right, not two families moving in, it would be a rental property with an accessory building and added that it is not an accessory use.

Mr. Horn said by creating this lot split it is creating two non-conforming lots but on the other hand these structures were built back in 1901 and 1950 so it is not like it was done contrary to the zoning.

Mr. Lamanna said if it was divided up at the time, nobody would have said anything.

Mr. Willson said and again in that area, there is only one property that is five acres that is touching it.

Mr. Lamanna said now we have a non-conforming situation with multiple dwellings on a single property and that is a worse non-conformity than a lot of them, we have a ton of lots that are out of the size requirement, we don't have too many lots that have multiple dwellings on them, there may be a couple of others around that date back to these types of situations. He said he thinks it is nice to put these things into a more standard situation.

Mr. Lewis asked what the lot sizes are of the properties that abut this.

Mr. Willson said one is 2.5, 2.5 and 4.5 and one is just a little over one and that is just the way the immediate area was built long before any of us were here.

Mr. Lamanna said there are already a wide variety of lot sizes in that area.

Mr. Lewis asked if it would be marked an oddity and it doesn't appear that it is going to be and there are substantially smaller size lots around it.

Mr. Horn said there are various sized lots around there, some are five acres and some are smaller.

Mr. Murphy asked Mr. Willson if his grandfather is the Willson that Willson Drive is named after.

Mr. Willson said that was his Uncle.

Mrs. Cindy Rosenberger testified that she lives at 6232 N. Canterbury Road, Parma, Ohio and they are the owners of the property at 18802 Snyder Road that abuts the applicant's property on the south and it runs parallel the length of the applicant's property and we are parties of interest and she is concerned about the community and it is nothing personal against Mr. Willson. She said their objections are in accordance with the Bainbridge Township Guide Plan Land Development 2000 Guide Plan, its revisions and the current Zoning Resolution. She said this is in a R-5A District and the applicant is asking to expand the number of lots in the manner that would cause both parcels to fall below the required minimum and in fact granting this variance will expand the non-conformity and not reduce it. She said expansions are clearly prohibited in Chapter 165 of the Zoning Resolution and in part it says "...It is the intent of this Zoning Resolution to permit these nonconformities to continue until lawful elimination but not to encourage their survival. It is further the intent of this Zoning Resolution that nonconformities shall not be enlarged, expanded, extended or materially altered, and that their existence shall not be used as a reason for permitting new or additional buildings, structures or uses of land which do not conform to the provisions of this Zoning Resolution." She said it seems like the application if granted will result in two non-conformities instead of one. She said based on the information contained in the application the applicant's sole reason for the inability to sell the outside A lot is its current configuration and the applicant was aware of it when he purchased the property.

Mrs. Rosenberger continued by saying hardships are addressed specifically in Chapter 117 whether the variance is substantial, whether the property owner purchased the property with knowledge of the zoning restrictions and in determining an appeal requesting a variance, the board shall consider the following in its findings: unnecessary hardship and/or practical difficulty does not include hardship or practical difficulty that is self imposed, solely financial or for convenience. She submitted a letter to the board and said it goes into more detail of what she said here.

Mr. Lewis asked Mrs. Rosenberger where her property is.

Mrs. Rosenberger said it would be to the south of that property and it has 4.59 acres.

Mr. Lamanna asked Mrs. Rosenberger if that is her residence.

Mrs. Rosenberger said no, not right now.

Mr. Lewis asked if that is a rental property.

Mrs. Rosenberger said right now it is a rental property.

Mr. Lewis asked what the acreage is on her lot.

Mrs. Rosenberger said 4.59 acres.

Mr. Lewis said 4.59, R-5 zoning district.

Mrs. Rosenberger said yes R-5A and it was built in 1972.

Mr. Lewis said they are non-conforming also if you are looking at R-5.

Mrs. Rosenberger said she wanted to mention also that in August their creek dried up to the pond that flows out from the tributary of the branch of the Chagrin River and it is within the Geauga Watershed. She said the reason the creek is drying out is relevant and we are not sure how or why it dried up but it did dry up and since 1983 they know it never has and it could come back in the spring when the snow melts but maybe it won't either and why take a chance on splitting a lot and making it less than R-5 acres which is the current zoning.

Mr. Ray Rosenberger testified that he would like to make a comment in addition to what his wife said and in preparation for presenting this to the board, they did research the guide plan and all of its revisions as they go through the zoning and they also looked at all of the lot split applications going back to 1998 and looked for a similar lot split and could not find one in which there are multiple houses and heard mention of it earlier and again their interest or their opposition to it is for the community.

Mr. Rosenberger continued by saying they are concerned about the creek that dried up because it is a tributary of the Chagrin Watershed and it is outlined in the maps that were given to the board. He said this creek by the way does run right through Mr. Willson's property and they did have representatives from environmental agencies out to look at it and they were optimistic that the water flow will return in the spring, but it hadn't returned at the end of the winter.

Mr. Willson said he is not sure how the watershed would be impacted if the building footprints are the same and he guesses he is confused by that.

Mr. Rosenberger said as delicate as the environment is in Bainbridge Township in that particular area it is very difficult to have a cause and effect relationship so we don't know.

Mr. Lewis said just an observation.

Mrs. Rosenberger asked if she could make one more comment.

Mr. Lamanna replied yes.

Mrs. Rosenberger said they respectfully ask the board to uphold the zoning in Bainbridge Township and to deny the application.

Mr. Lamanna said what they are proposing to do here, basically there is a possibility of three separate families living on this property, three separate groups of people, three rental properties and at the end of the day there will be two properties, two dwellings not three so we are actually going to reduce the current situation from three potential independent dwelling units with three independent families down to two so what we are doing is reducing the intensity of the use of the land.

Mr. Rosenberger said it would possibly appear that way.

Mr. Lamanna said we could wait another two hundred years for this to be back to pure conforming with one house on it and now that there has been a huge amount of money invested in the septic system, that is likely never to happen. He said in his view the non-conformity of having two dwellings or three dwellings on a single property is a bigger non-conformity than a sub-standard lot size because there are all kinds of sub-standard lot sizes all over this area here.

Mrs. Rosenberger said it is in a five acre area and is right now five acres.

Mr. Lamanna said it is also a single dwelling for five acres and now there are three dwellings there on five acres because it is a permitted non-conforming use so it is going from having three dwellings on a single property to two dwellings each on their own separate lot, albeit the lot is a non-conforming size so his view is what they are doing here is decreasing the non-conformity and the fact that there are three dwellings on a lot, it is not only a non-conformity to zoning it is a non-conformity to trying to do anything in the real world with it. He said part of the objective here is to make these things work practically in the real world and to create situations that don't work from the rest of the titling and transfer of real estate and financing of real estate. He said from what he is seeing here, it is reducing the non-conformity and reducing the intensity and use of the property basically from three to two which is going to reduce the impact on your property (Mr. and Mrs. Rosenberger) from the existing non-conformity and it is going to reduce the amount of use that that property is being put to right now so he is having a hard time seeing what the down-side is.

Mr. Rosenberger said the down-side is it appears that in reading the zoning resolution and the attempt was not to do this, not to expand or enlarge the non-conformity.

Mr. Lamanna said it will be decreasing the non-conformity, one will eliminate the non-conformity and it no longer becomes a non-conformity once the new lot size is created and then there will be a legal conforming lot of record being used with a single dwelling on it so now basically it will be no more non-conforming than any of these other lots here that aren't "five acres".

Mr. Rosenberger stated that the zoning resolution clearly states that it has to be a practical difficulty and the only practical difficulty that we found on the application was a financial difficulty and it specifically indicates that he cannot do that, you cannot grant a variance based upon a financial aspect. He said they also understand the issue with the bedrooms and how the demand is placed upon the sewer system or the septic system based on the number of bedrooms.

Mr. Lamanna said the demand is placed by the number of people.

Mr. Rosenberger said that is not what the health department told him.

Mr. Lamanna said they have a way of measuring it and that is their surrogate for measuring how they mechanically calculate demand, the actual demand is created by people, it is not created by bedrooms, that is how they measure it.

Mr. Rosenberger said it seemed to make sense to him and an acre and one-half will now have a five bedroom house on it and you will end up with seven or eight bedrooms on five acres and that is how they compute it.

Mr. Horn said now there are three living units on five acres instead of two living units on the same acreage, they are creating a non-conformity in acreage but we are getting rid of an extra unit.

Mr. Lamanna said you could have a three-bedroom house and have eight people living in it, we cannot control it if a family wants to move into a small house, the county uses it as a calculation so on an average if they use the number of bedrooms it is probably going to work out in most cases, they don't have any other way to do it practically when doing their calculations for sizing etc. He said what we are doing here is reducing the non-conformity and we are eliminating the existing non-conformity.

Mrs. Rosenberger asked don't you think you would be setting a precedent.

Mr. Lamanna said there probably is not another property in the township with this situation, there may be one or two other places where there are multiple dwellings on a single property that have been existing there for a long time and in some of those cases they are very big properties so it may not even be an issue.

Mr. Rosenberger said his question is and would the board not agree that the only practical difficulty at this point is financial.

Mr. Lewis said no.

Mr. Lamanna said the practical difficulty is there are three houses or three dwellings on a single lot.

Mr. Lewis said this is a hugely non-conforming lot, this lot split remedies the three dwellings on a one lot problem without substandard sizing the lot by what is in the area around it. He said they are perfectly fine, they fit the same general overall acreage from minimum to yours (Mr. and Mrs. Rosenberger) at 4.5 acres which is under five that is adjacent to it. He said he sees this as a wonderful piece of housekeeping that benefits the township and benefits the current property owner with absolutely no downside to anything that is going on around it but he does have a curiosity. He said there are other adjacent lots as we heard from you (Mr. Rosenberger) and asked if there is anyone else in the audience.

Ms. Patty Willson of 9299 Charles Drive testified that she has no objections.

Mr. Lewis said he thinks what the board should ask the applicant is in going forward the one lot with the two possible living quarters on it, you (Mr. Willson) are 100% acceptable that that would be a single family rental.

Mr. Willson said one contract, husband/wife or whatever.

Mr. Lamanna said it is an accessory structure now so it has to be used as a single use of the property. He asked Mr. Willson if he consulted with a surveyor at all.

Mr. Willson said he talked before with Mr. Joyce and he recommended before to not take that step until talking to the Board of Appeals and getting approval but that was advice from a couple of years ago.

Mr. Lamanna said when you (Mr. Willson) go out to have this done, he would like the surveyor to talk to the county engineer and find out how they would prefer to have this divided.

Mr. Horn said the county has to approve a lot split so he will have to present a legal description to them.

Mr. Lamanna said a diagonal line may not be the best way to do this, it may make more sense to come back (he explained per the site plan). He said there are going to be some side lot issues here.

Mr. Lewis said the board can't rule on those until the property lines are established.

Mr. Horn said the survey should be done so the board can see what the particulars are.

Mr. Lamanna asked Mr. Willson if he is going to move ahead on this because the board's view of this is right now it makes the best sense to create a lot split here but he wants to minimize the variances, when the lines are drawn. He said the board would like real tidy property lines and one of the things is to try to get rid of long skinny appendages like flag lots etc. and to minimize the need if somebody wants to put a deck on the back of the house to come back and get a variance because the property line runs at a diagonal instead of running straight back.

Mr. Lewis referred to the site plan and said the diagonal line is really close to the structure.

Mr. Willson said he drew the lines himself.

Mr. Horn said it would be better if a surveyor could draw something and maybe the surveyor could come here on his behalf.

Mr. Willson said that would be wonderful and he is good with that.

Mr. Jim Vaca of 1101 Moneta Avenue, Aurora, Ohio testified that he has dealt with zoning issues for years and he really feels the township's definition of accessory buildings, he does not agree with, an accessory building is like a shed or garage, something you don't live in and in Geauga Lake they have homes with three bedrooms with twelve people in it and if that happens who is going to restrict it, who is going to follow up because that never happens. He said the other issue is how many lineal feet are running for the septic lines for both houses and he really thinks this should not be taking place and the board will be opening a can of worms because you will have a lot of people in these homes that shouldn't be there.

Mr. Lamanna said that is the situation now.

Mr. Vaca said he doesn't see how the board is getting two of out three, there are still three, you have the big house and the two little ones. He asked if one of the buildings is going to be taken down.

Mr. Lamanna said no the board is not going to make him tear down a building but now it will be an accessory use on the property.

Mr. Vaca said by accessory it means he can put his tractor in there, etc. but he won't put a family in there.

Mr. Lamanna said you can't put a family in there. He said if one of the kids wants to have his bedroom in the accessory structure he can't prevent somebody from doing that now.

Mr. Vaca said he feels that using an accessory as living space is really not conforming.

Mr. Lamanna said the board would like to table this until it is surveyed and have the surveyor look at this and talk to the county engineer if need be. He told Mr. Willson to tell the surveyor to try to divide it in a way to consider setbacks from the buildings to minimize any additional variances that would be created here and end up with something that is tidy looking. He said the surveyor will have a good idea on how to do that and he will know what the county engineer's office wants to see and there are going to be obviously some variances created on these lots from the normal setback requirements but we have to address those at the time the board grants the variance.

Mr. Willson said okay.

Mr. Lamanna said he would rather do this in a single action so the board will table this application. He asked Mr. Willson if he will be able to return next month.

Mr. Willson said he does not know at this point but will keep in touch. He thanked the board.

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

Motion BZA 2011-4 – 18760 Snyder Road

Mr. Lamanna made a motion to table this application for further information to be provided by the applicant to either next month (March 17, 2011) or the month after that.

Mr. Lewis seconded the motion.

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

Application 2011-5 by Jason Dalessandro for property at 7585 Cottonwood Trail

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

The zoning inspector's letter dated February 17, 2011 was read.

Mr. Jason Dalessandro was present to represent this application.

Mr. Dalessandro testified that they bought in Canyon Woods in September of 2009, they bought lot 284 and over the next six months it changed a little bit and they decided to swap the lot after Pulte bought 19 lots surrounding them so they made an offer to Pulte to swap another lot from the east side of the development. He said in the meantime he already had his house designed for subplot 284 and he had it designed according to the zoning requirements for that lot. He said they closed on subplot 259 and to do it rather quickly because Pulte had started their sales and he was getting concerned about that lot getting sold quick so they moved kind of quick on the sale of it knowing that their house design would need a variance. He said their house is going to be positioned facing Cottonwood Trail which is consistent with the other houses adjacent to them and across on Mystic. He said the lot, because it is a corner lot, has two 50' front lines and in the spirit of the zoning they are facing their frontage on Cottonwood and because there is also a 50' setback on Mystic, their house right now is about 60' over that front line or side line so that is what they are requesting. He said if he wasn't able to get this he would have to struggle with his design and they are trying to break ground in another month and he can't get his financing finalized until he has the zoning so that is why he is here tonight.

Mr. Horn asked if he could redesign the house taking into account the lot change that he voluntarily entered into.

Mr. Dalessandro said they would have to start over on the design of their house and because of the width of the lot and because of the two 50' setbacks on Mystic, it squeezes it, he did try to reposition the house farther back and because of the way the street goes it does allow a little more depth in the back, they did push it back quite a bit from the front 50' in order to minimize the 6' they already had and he thinks if he pushed it forward more towards Cottonwood it would be more like 8' so they put it back as far as they could without making it look like it is sitting too far from the road with the neighboring houses to try to keep it in line. He said in terms of positioning it, they did the best they could with the area they had and again in the spirit of the zoning because it is a corner lot you end up with two front lines where the side of his house is actually facing Mystic.

Mr. Lamanna asked what the whole lot width is.

Mr. Dalessandro said it is a little bit irregular, the front of the lot is a little bit narrower than the rear, the rear is 124.8' and the front, it is not a straight line, but it is around 124' or 125'.

Mr. Lamanna said it is not a perfect rectangle.

Mr. Dalessandro said it is a little bit wider in the back but a little bit helps. He said this development has an 18' right-of-way and then there is another 50' so your 50' is from the right-of-way, not from the street and we still end up initially with 68' from the street.

Mr. Lamanna asked if there are no houses built this way yet (he referred to a site plan).

Mr. Dalessandro said no there are no houses built down this way.

Mr. Horn said there is a house across the street on both sides but there is nothing farther down on Mystic.

Mr. Dalessandro said their encroachment is not on a home.

Mr. James Valliant of 7575 Cottonwood Trail testified that he is to the left.

Mr. Lamanna said what he wants to do is on the other side.

Mr. Dalessandro said obviously there is a street over here and it is not encroaching on anyone else's property it is encroaching on the right-of-way if anything.

Mr. Lamanna said the other house is also facing Cottonwood so his garage is closer facing the other one over here.

Mr. Dalessandro said correct.

Mr. Murphy asked if there are more lots on Mystic as it curves around.

Mr. Dalessandro said they are not parceled out yet but they will be.

Mr. Lewis asked if that is 50' plus the 18' so is it supposed to be 68'.

Mr. Dalessandro said it is 68' off the street.

Mr. Horn said that is from centerline.

Mr. Dalessandro said the lots are tight back there.

Mr. Murphy asked how close he is to the neighbor's line.

Mr. Dalessandro said he is 15'. He explained that he will be 50' from the rear line and explained the location. He said he will be close to even with the neighboring homes on the front line.

Mr. Lamanna said the problem would be if the house on the lower right faced him but it doesn't, his lot runs the same way, it just so happens there they have a street between them and the next houses down here are going to be so far away that the fact that they are only 44' back it is not going to affect the line of site down the street because the street is curving away anyway.

Mr. Lewis said these two homes are going to be 100' apart so the 6' has no impact.

Mr. Lamanna said it is like somebody put a big driveway in between these two houses so their side setback is going to be more than anybody else's but that is really the only property that is affected here, the other property is further down Mystic. He said the houses farther down are not going to be affected by this, it is not going to be a house that is sticking out.

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

Motion BZA 2011-5 – 7585 Cottonwood Trail

Mr. Lamanna made a motion to grant the applicant the following variance for the purpose of constructing a new single family house.

1. A variance from the minimum required corner lot side yard setback requirement of 50' to 44' for a variance of 6'.

Based on the following findings of fact:

1. A practical difficulty exists due to the width of the lot and the fact that there is a 50' setback requirement.
2. The board also notes that the house immediately across the street on this side faces in the same direction as the proposed new construction therefore this variance will not have any adverse effect on that property owner.
3. Due to the fact that the street curves away after this point there will be no adverse impact on any of the other properties or on the character of the neighborhood.

Mr. Lewis seconded the motion.

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

Application 2011-6 by A. & E. Real Estate LLC for property at 17800 Chillicothe Road

The applicant is requesting area variances for the purpose of constructing a stand-alone building in a strip shopping center for animal daycare. The property is located in a CB District.

The zoning inspector's letter dated February 17, 2011 was read.

Mr. Ted Rusnak, Architect and Mr. Larry Shibley of A. & E. Real Estate were present to represent this application.

Mr. Ted Rusnak testified that he is the architect and representative for Mr. Shibley who is the agent for A. & E. Real Estate and Ms. Annie Ryan who is the potential tenant for the building that they are looking for a variance on. He said the variance obviously is to exceed the 40% maximum lot coverage and that would be by 9% and the building as proposed is a maximum of 8,000 sq. ft. and with the inclusion of the parking and the drives and the aprons and a dedicated area for land banking future parking because of the 9%. He said their request is for that 9% over the 40% lot coverage. He said beyond that he has nothing more than if the board has any questions.

The board reviewed the application.

Mr. Lewis said the lot coverage increase is actually an 18.5% increase over the permitted and added that it is substantial.

Mr. Rusnak said he understands that.

Mr. Lewis said it is not a 10% increase which would be moving it from 40 to 44.5%, this is almost a 20% increase in your lot coverage. He said what he is looking at is on this property, the whole, what can be conceded elsewhere potentially to make this possible.

Mr. Rusnak said truthfully the area which is directly behind him and between us and the center on the southern edge of that is the drainage swale for everything on the westerly side of Rt. 306 at this point in time. He explained per the site plan the drainage that goes into a ravine and then down to the east and this portion here is also a swale.

Mr. Lewis asked about the hard ground coverage.

Mr. Rusnak said they are about six parking places over what would be if they just left the center there so it is in conformance at 39.9% but if we were to remove any part of that given the function that the potential tenant has they need a building that is closer to square and the only thing they could have built on there would have been a long rectangular building which would look more like a bowling alley rather than a building and he believes at one time there may have been a building on the particular site they are looking at but he can't remember. He said given the nature of the proposed tenant the building will essentially be interior dog runs and small offices in the corner.

Mr. Horn said there is no real reason for the variance other than you want to have greater lot coverage.

Mr. Rusnak replied yes.

Mr. Horn said and just like any applicant that would come in, according to your request, anybody could come in and say they want to have 80% lot coverage on their property and they need a variance. He asked what separates this particular proposal from others that may come before us.

Mr. Larry Shibley testified that he is the owner of the property and one of the reasons this started is they have been trying to do what they can to enhance this which was a blighted property when they bought it by a lot of people's definition and they still have a lot to do. He said the back of the property they look at as kind of an eyesore and they see the potential of the other side of the street eventually opening up with a development there.

Mr. Horn said there is a conservation easement on it across the street.

Mr. Shibley said but just from the Bainbridge Road standpoint it is not attractive and it is not a viable package economically, it has been difficult and this helps to make the whole project work and to give us a good screening for the back of the property and he believes this is a use that would be viable for the community.

Mr. Lewis said you are at 40% lot coverage right now and you are maxxed out.

Mr. Shibley said from the standpoint of a building footprint they have a 30,000 sq. ft. building on 6.5 acres of land but if you are considering the existing pavement.

Mr. Lewis said if somebody owns the property and the threshold is 40% and the use and the setbacks are appropriate how you build it out is your choice. He said you (Mr. Shibley) have chosen to build it out this way either by self endeavor or by means of purchase and now you are looking at an increase in this lot coverage and it is already at the limit.

Mr. Rusnak said given a choice he does not think Mr. Shibley nor himself would have chosen the particular configuration that you see right there.

Mr. Lewis said however that is on the table when you buy the property so you go in with open eyes.

Mr. Shibley said they do have an excess of parking and probably have never filled more than 50% of the lot and even with people using it for a park and drive for the freeway.

Mr. Lewis said the parking is related to the building square footage, correct, there is a ratio. He asked if any asphalt can be given up to reduce his lot coverage.

Mr. Horn asked about the number of parking spaces.

Mr. Rusnak said they could lose some asphalt and parking.

Mr. Shibley said practically speaking they could lose some but by code he does not know.

Mr. Lewis said the size of the building and how many spots. He asked if the U-Haul rental tenant is still there.

Mr. Shibley replied no.

Mr. Rusnak said the figures for parking are actually on the drawing. He said the parking required is 1 to 250 and that goes to the building, the area they are proposing for that building and it is the same number for the shopping center because as a general area, you can't define it.

The board reviewed the application.

Mr. Murphy asked what the existing building is.

Mr. Shibley said the existing building is on the footprint of 30,000 sq. ft.

Mr. Murphy asked if it is a two-story building all the way.

Mr. Shibley said no there is a two-story of about 6,000 sq. ft.

Mr. Rusnak said he believes he calculated the required parking at 149 and we are at 162 existing slots so there is not a great number we could lose given each one is 9 x 20. He said he is sure Mr. Shibley would have sacrificed any number of them to make this a little more viable.

Mr. Lamanna said it is possible to grant variances to the number of parking spaces required as an alternative and especially in this case because we have some historical knowledge of what kind of utilization there actually is over a very long period of time, it is not like somebody built a new place and who knows how many parking spots are going to be used over time.

Mr. Murphy asked if there is something special about this building that will look better than the rear end of the Sports Page.

Mr. Rusnak said right now we are looking at the dumpsters.

Mr. Shibley said it will fit the rural style of the building style that is back there, there are a couple of barn buildings that are there but it will be a current up to code type structure.

The board discussed the parking.

Mr. Rusnak said they will use natural stone to soften it up, they don't want an industrial building there and the effect they are trying for was the colors and material choices, not so much the final configuration but it would be similar.

Mr. Horn asked if it is possible to reduce the size of the building.

Mr. Rusnak said 8,000 sq. ft. is the maximum square footage which Ms. Ryan is running at about 7,500 sq. ft. right now.

Ms. Ryan testified that it is 7,000 sq. ft.

Mr. Shibley said that 7,000 sq. ft. is possible and of course the interest of the board as far as the design that could be taken into consideration, they are flexible.

Mr. Lewis said the board is looking at if there is any increase in the lot coverage percentage up from 40% if the building size could be modified.

Mr. Lamanna said he would rather look at giving a variance on the number of parking spaces than on the lot coverage.

Mr. Shibley said then approach it by reducing some of the parking spaces.

Mr. Lamanna said right.

Mr. Rusnak said that is one of the reasons he land-banked some of the parking but it still has to be included according to Mr. Wrench in the calculations on the lot coverage. He said if you look at the calculations he presented there at the bottom on 16,470 sq. ft is parking and driveways, the building is 8,000 sq. ft. so it is literally twice as much but your codified ordinances dictate that any coverage of impervious surfaces count and he understands that and so it was shown to be in conformance with your requirements.

Mr. Horn asked if the twelve spaces that are reserved for land-banking are included in the lot coverage.

Mr. Rusnak replied yes.

Mr. Shibley said effectively what we talked about before we know the history of the property and the parking and it is unlikely we would use the land-banked spaces.

Mr. Rusnak said actually in discussing it with Ms. Ryan probably the total number of employees on site would be perhaps five which would be maybe five cars, one each and then the clients would be bringing their animals in and picking them up and be there for a brief period of time. He said he shows twenty on the site and obviously he could reduce that and land-bank that if they chose to.

Mr. Lewis asked if the residents will be walked outdoors.

Ms. Ryan said they will be in enclosed areas they won't be able to see out and you won't be able to see in. She said at her other campus in Highland Heights, she only has six parking spaces because people just drop them off.

Mr. Lewis said the parking spaces number is dictated by our code and the square footage whether they practically will ever be in use or not which is just why we are trying to harvest some parking spots from the other section.

Mr. Rusnak said he understands.

Mr. Horn asked what the name of her place is now.

Ms. Ryan said it is Camp Bow Wow.

Mr. Lamanna said if you eliminate the spots that face out onto Bainbridge Road you eliminate not only spots but you eliminate a huge amount of driveway.

Mr. Rusnak said exactly and he read the definition and he usually sees building footprint but Bainbridge goes to lot coverage which to him is any impervious surface, asphalt, driveways, aprons, buildings so in keeping with the definition, they tried to maximize obviously the entire site and give themselves some flexibility and the board to back away from some of these large numbers.

Mr. Shibley said they probably have enough parking and he is sure they have enough parking currently to handle the building without adding the parking that is shown on there.

Mr. Lamanna said you are going to need at least nine spaces on the one side because that building needs some parking to service it. He said he likes the idea of not having parking in front of the building anyway.

Mr. Rusnak said he would like that too.

Mr. Lewis asked if this building can go down to 7,000 sq. ft. He said if the building goes to 7,000 sq. ft. and we lose all of this asphalt here what does that reset the lot coverage at.

Mr. Rusnak said there is 5,700 sq. ft. just in parking and drive minus another 1,000 sq. ft. from the building which he is sure they can create something that would be more than adequate.

Mr. Lewis said so that brings us 6,700 sq. ft. of reduction.

Mr. Lamanna asked if the parking spaces are above or below.

Mr. Rusnak said they are above or at least a dozen.

Mr. Lamanna said if the board gives a variance of 20 spaces no new additional parking spaces would be required.

Mr. Rusnak said there are parking spaces on that drive coming in from Bainbridge Road. He said it can be manipulated to get the right quantities for parking based on the building size and the building obligation is to show provisions for and then there is the land-banked area which also means we will never put a new building on that.

Mr. Horn said it seems that the parking they have is below the amount required if they still have 12 land-banked.

Mr. Lewis said that Mr. Murphy brought up an interesting point and that is if there is another tenant in this building in the future beyond the current one it is being built for are we creating a hardship on that building by not having enough parking for what could be a future tenant with a much different use and do the parking spots need to be sized for the building.

Mr. Murphy said we have a commercial business here and they are at the limit of 40% lot coverage so what they are proposing is unacceptable, there is no hardship on it, they are looking to put another 20% above what they are now so he does not think it is up to this board to design and come back and re-do the entire thing.

Mr. Olivier said the board could give them a small variance of 2% to 3% and let them come back to us with something in that range.

Mr. Murphy said it is a commercial property and it is fairly crowded at that corner as it is but have we heard why we are being asked to look at this and asked what is difficult about it. He said he appreciates the idea of maybe dressing up the back end of that building but personally he does not think this does it and added that people are bringing in the Western Reserve look and he does not think it is up to the board to redesign the lot.

Mr. Lamanna said we are just exploring the idea that there are different ways to approach this and one way is that the code requires a certain amount of parking spaces because we are not interested in paving over more than needs to be paved and in this case this is not like they are building something new and we have no idea how many spaces are going to be used and we don't want to end up with something like the corner of E. Washington and Rt. 306 there are some places around where there can be real parking issues but here there never seems to be a problem.

Mr. Shibley said they are trying to operate it that way as a community center.

Mr. Lamanna said here is how many spaces we have and here is how much room we have and you want to add another building that would technically require 32 spaces but we think we have enough total spaces in this center and the way it is being used based on the history that we don't really need to add anymore physical spaces to the center as a whole so therefore we would like a variance for that.

Mr. Horn said that basically 49 is not going to work.

Mr. Lamanna said the way this is set up now there is a big chunk of this property that is kind of just hanging out there not doing a lot of good for anybody and within what has been consistent with what has been done before maybe the board can come up with maybe a tiny increase in lot coverage and make sure there is actual adequate parking. He said all parking calculations is a formula and if you are pre-building something, you are not going to know what is going to happen but here there is a multiple mix of tenants so the likelihood is there are some tenants with a high use, there will probably be some tenants with not a high use.

Mr. Lamanna continued by saying if there is one tenant that is the biggest danger because if there is a high use tenant there is nothing to offset that and if there is not enough parking then it starts to spill out. He said here they have access drives for people to get in so they don't stack up out onto the highway.

Mr. Shibley said they could work with the parking spaces that are along the side of the building and we could lose a small section somewhere.

Mr. Lamanna said you kind of see what the board's tolerance is.

Mr. Murphy said he likes the landscape thing, thinking about some trees and there used to be some beautiful trees on the property which used to be Bennett Realty which is now the parking lot for the Burns-Lindow building so when the township took that, they also cut down some big beautiful Maple trees so if you (applicant) are thinking about ways to dress up the property, you might have some ideas with trees.

Mr. Lamanna said he would like it so there isn't parking along Bainbridge Road .

Mr. Shibley said they can definitely eliminate that.

Mr. Lewis said this is a visible area here, it is adjacent to the police department and just around the corner to what is becoming our Heritage Park and our entire nucleus of our town so yes there is a lot of interest into the aesthetic presentation of the structure so this is a chance to really dress the area up.

Mr. Shibley said yes, that is what they are trying to do and in their own plans on doing this they thought about widening this driveway so there could be a landscaped island in the center and separate in and out traffic and they could easily take a chunk of the corner and add it to the landscape and they already illuminated the big trees that are up there.

Mr. Lewis said and the guy who put his sign up saying he is going out of business for the third straight year from Aurora.

Mr. Shibley said he is gone he thinks.

Mr. Rusnak said the bottom line is the re-consideration of the building size and the parking.

Mr. Lewis said maybe they should be given a target to reconfigure to.

Mr. Shibley said they will whittle it down the best they can and put all of these other considerations in with aesthetics and trees etc.

Mr. Lewis said this is a chance to refresh the property, it is in a featured location adjacent to our town center and all of the government offices etc. He said you (Mr. Shibley) are looking for long-term tenants and also looking for them to be successful so how the property presents has a lot to do with getting patrons to stop.

Mr. Shibley said they have a real interest in enhancing this to be a part of what Bainbridge is doing.

Mr. Lewis said Western Reserve and suggests that this be postponed.

Mr. Shibley said he thinks they can come up with something in a month.

Mr. Wrench said the new information is required one week before the meeting.

Ms. Kathy Burns of 17770 Chillicothe Road testified that she is the only resident left at Bainbridge Center and she is concerned if there will be any dogs outside.

Mr. Shibley said there will be no dogs outside.

Ms. Burns said the other concern is animal waste because they already have garbage coming from the plaza onto their lawn so are they going to be having odor problems.

Mr. Shibley said there is a special type of bag that is used and a special dumpster that is emptied twice a week.

Ms. Burns said that was her major concern, barking dogs and odor.

Mr. Shibley said that was his concern as well and they have addressed those things.

Mr. Lewis said their tenant at the end of the main building is a restaurant and bar that also has an outside patio.

Mr. Shibley said he is pretty convinced that this is an unobtrusive use.

Mr. Lamanna said that is a good point and the board will consider it and make sure that that is addressed.

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

Motion BZA – 2011-6 – 17800 Chillicothe Road

Mr. Lamanna made a motion to table this application to the next regularly scheduled meeting to be held March 17, 2011.

Mr. Lewis seconded the motion.

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

Application 2011-8 by Major Harrison of Brilliant Electric Sign Co., Ltd. For Bainbridge Center LLC for property at 17747 Chillicothe Road

The applicant is requesting area variances for the purpose of installing a ground sign. The property is located in a CB District.

The zoning inspector's letter dated February 17, 2011 was read.

Mr. Major Harrison of Brilliant Electric Sign was present to represent this application.

Mr. Harrison testified that he is presenting a case for a new ground sign right across the street that will utilize the service of an electronic message center. He said this will be replacing the existing sign and the current sign out there now has two illuminated panels and on the base of the ground sign is 8 – 10 small tenant spaces. He said in accordance to the justification for a variance, the property in question is a multi-tenant office building and currently only two of the businesses on the property are identified and the hardship in this case is that the eight other tenants lack proper and adequate identification needed to be successful to run their businesses and build and grow. He said due to lack of identification customers go transient and within the township they have a difficult time locating and not getting to their destination. He read the following letter from the landlords who were unable to attend the meeting.

“Dear BZA Members:

This evening we are presenting our application for a message board sign for your approval. There are no direct references to the message board technology signs in the Section 173.07 Sign Illumination. There are currently three message board signs in the township including the Fire Station, Dunkin Donuts and Highway Garage.

With increased traffic in the intersection in front of the building, there is an increasingly dangerous safety issue occurring. We are a multi-tenant building, but our tenants are not identifiable by our current ground sign. Therefore, clients to the building drive past the entrance suddenly realized they missed their turn off and brake quickly, or try to figure out some way to turn around, or engage in other risk prone activity to get to their appointment. Even more dangerously, clients pull into the apron of the drive and stop to try to view the ground sign for clarification. The next car in cannot get all the way into the drive and impedes traffic flow. There have been any number of accidents over the years and numerous near misses almost daily.

This identity issue also translates to daily complaints from township residents, patients and clients that cannot find our offices.

Message board technology will allow each tenant readable signage which translates directly to increased safety in the intersection while staying completely within zoning guidelines on size.

Respectfully submitted,
The Members of Bainbridge Center, LLC”

Mr. Harrison submitted the letter dated February 17, 2011 to the board.

Mr. Lamanna asked if all of the tenants are going to be listed on this sign.

Mr. Harrison replied yes.

Mr. Lewis said this is not going to be Skala Nationwide Insurance for twenty seconds and then John’s Dental Office for the next twenty seconds.

Mr. Harrison replied no.

Mr. Lewis said this is a static message up there all of the time with all of the other eight tenants.

Mr. Harrison said it can be but to keep in mind this is a full color, full capability, video capability message center, it can do anything.

Mr. Lamanna asked what they are planning to do, is it going to be pretty much static or have it change now and then.

Mr. Harrison said they would like to have it change, they don’t want it to scroll they don’t want it to flash they just want to have the name or multi-tenants names.

Mr. Lewis said the board also defined an interval change he thought for Highway Garage.

Mr. Lamanna said we did.

Mr. Harrison said ODOT mandates eight seconds on a billboard.

Mr. Murphy said it would be a flashing light and it was brought up that Dunkin Donuts and Highway Garage have something similar and he thinks if the Fire Department came in front of this board, it would not have been allowed. He said that is exactly what is prohibited in the zoning and scrolling sounds a lot like an intermittent sign and in fact when Dunkin Donuts and Highway Garage wanted the ability to say different things on the sign.

The board discussed the delay in the messages.

Mr. Horn asked if the sign will be the same size that is there now.

Mr. Harrison said he is not sure but it is well within the requirements.

Mr. Wrench researched the records for the decision on the Highway Garage sign.

Mr. Lamanna referred to the variance granted for Highway Garage and said it can only change one time per hour and no moving background image behind the lettering.

Mr. Harrison asked if the duration can only be once per hour.

Mr. Lamanna replied yes, once per hour. He said even if it changes every 30 seconds it doesn't help someone trying to find a tenant but if it changes every five seconds they will not have enough time to read it, there is a window of about two seconds to identify a tenant.

Mr. Harrison asked if Dunkin Donuts has the same mandate.

Mr. Lewis said yes as Highway Garage.

Mr. Lamanna said the board likes to be consistent.

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

Motion BZA 2011-8 – 17747 Chillicothe Road

Mr. Lamanna made a motion to grant the applicant a variance for the purposes of replacing an existing ground sign that incorporates changeable electronic portions.

Based on the following findings of fact:

1. The sign will be in compliance with the size limitations.

The following conditions apply which the board has applied to other similar signs and are necessary in order to permit the granting of this variance and obviate any adverse consequences that could otherwise arrive from such a sign.

1. With respect to the electronic sign, in order to not be in contravention of the provisions of Chapter 173.07 the image on the sign cannot change more than one time per hour.
2. There may be no moving background image behind any lettering on the electronic sign.
3. The light intensity from the electronic sign must be similar in intensity to that light intensity from the non-electronic part of the sign.
4. The electronic sign shall be only used as a business sign and that is for purposes of identifying the businesses actually located on the premises where the sign is located and not for other purposes.

Mr. Lewis seconded the motion.

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

Application 2011-7 by Geauga Lake Flea Market LLP for property at PP# 02-126400; PP# 02-126500; and PP# 02-126600 - Parking Lot of Former Geauga Lake Amusement Park

The applicant is requesting a use variance for the purpose of holding seasonal outdoor sales of merchandise, craft shows and related events from April through October annually. The property is located in a CR District.

The zoning inspector's letter dated February 17, 2011 was read.

Mr. Bob Slanina, Mr. Tom Deitrick and Mr. Dennis Nevar were present to represent this application.

Mr. Dennis Nevar testified that he is here on behalf of Geauga Lake Flea Market LLP and added that Mr. Bob Slanina and Mr. Tom Deitrick are here as well this evening. He thanked the board for the opportunity to present this tonight. He said the properties they are talking about here for the proposed use variance are located on Aurora Road and are owned by Cedar Fair LP. He said included in the application is correspondence dated January 6 of this year from Cedar Fair LP which recognizes that this application is being filed. He said the properties themselves were previously utilized as parking lots for the former Geauga Lake Amusement Park and they are located in the township's CR Commercial Recreation District. He said the applicant proposes to utilize the properties for seasonal outdoor sales and merchandise, craft shows and related events from April to October annually. He said the proposed use is not a permitted nor a conditionally permitted use in the CR Commercial Recreation District or any other zoning district in the township for that matter nor is such proposed use prohibited by Chapter 177 of the zoning resolution as such that is why they are before the board this evening requesting a use variance pursuant to Section 117.10 of the Zoning Resolution. He said at this point he would like to turn it over to Mr. Bob Slanina.

Mr. Bob Slanina testified that he would like to give a little background as far as how this whole thing came about. He said there are three partners in the Geauga Lake Flea Market LLP and each owner owns a successful business and two or three times a week they have breakfast together at Jim's Open Kitchen in Solon. He said Mr. Deitrick is a contractor, he (Mr. Slanina) has a company that does asbestos, lead and mold remediation and Mr. Mike DiDomenico is a landscape contractor but he is out of town this weekend. He said Mr. Mike DiDomenico lives in Aurora and he lives in Solon and they talked about going past the site there and how sad it looked and if there was anything that could be done with it and Mr. DiDomenico does the landscaping for the center across the street from this property and he said what if we could take that property and use it for a place for people to bring their crafts and have a flea market kind of event and he thought that was a good idea but a little bit complicated and added that this was a year ago or so. He said the last time they went out to Sandusky and met with Cedar Fair and the executive there they have full intentions to sell this property and make some money selling it so we had two things to go for, they gave us permission to use their name Geauga Lake and they gave us permission to use the property which we have to pay for the use of it up until the time the property is sold and at that point in time, whatever operation we have here is over completely. He said Mr. Deitrick will get into the conversations they had with the Police and Fire Departments as far as concerns they had or have.

Mr. Tom Deitrick testified that during this whole process they understand that the Fire Department and Police Department provided some information and some questions and Mr. Slanina and himself scheduled a meeting but did not have an opportunity to meet with the Fire Department but they did meet with the Police Chief and they pretty much addressed every question he had with regard to parking, the accessibility, he was concerned about security so they made a commitment to him and he thinks it was put in a letter to the board dated February 7, 2011. He said they will actually have an off-duty Bainbridge officer and to start off with at least one and based on the needs and the volumes they would be amenable to do whatever they feel or he feels is required for a safe and secure event.

Mr. Deitrick continued by saying he also pointed out to them that each of the officers are CPR trained with first aid knowledge and it is up to speed. He said his feelings as a result of that were they answered any questions that he had to his satisfaction and it is indicative to the letter here. He said with regards to the Fire Department they actually had some concerns that for the most part were of non-applicable because they do not intend to put up any structures or tents but if they did they are obviously in a position to comply with whatever departments there are. He referred to the self-contained vendors and if there is any cooking it is going to be a situation that will meet the health code, they have no problem with any of that and they are also interested in ingress and egress of the Fire Department's safety equipment and are working on a layout and want to work with them to make sure all of the radiuses that are required to get their equipment in, in the event they actually have to access the area, will be conforming and regards to the first aid station, they will have the officers on site, and will also have whatever they require and they are not exactly sure at this particular point in time what would be required but certainly they understand that they have to have safety and provide some sort of first aid in the event there is a need. He said there was a third concern from the Building Commissioner and his concerns that he wrote to Mr. Wrench are kind of not necessary because they are not going to have any service, they are not going to have electrical service, this is a daytime operation so his concerns, although he understands them and if they ever did move into that environment they would have to have licensed people do any work like that but there is nothing in their proposal at this point in time that would necessitate the need to have any of these issues addressed but clearly he wants the board to know if something comes up in the future, because this is not cast in stone, they would be willing to work with the Building Department or any of the Health Officials or any requirements that need to be met.

Mr. Slanina said one question could come up regarding what are the benefits from this proposed use. He said there are several benefits and one thing is we have a weed littered, covered lot and there is some landscaping that is completely overgrown and doesn't look very well and their program would improve the landscaping and replace signs that Geauga Lake had there and keep the lot clean. He said it would also give an outlet for crafters and residents of Bainbridge and Geauga County and the surrounding area an outlet to sell their products that have a home business or craft and it would give them a place nearby to do that. He said he has been in touch with Kenston High School and they are very excited, they want to put them on their website as soon as they have a day they are going to open as far as job opportunities for the students and they need service hours and they would have a place where they could get some service hours. He said also their intention is to have a nominal charge for parking and if that doesn't work they will take a portion of their revenue and they would donate it to a Kenston High School charity or another charity that is appropriate in Bainbridge.

Mr. Nevar said to sum up here in terms of their proposal and the requirement for a use variance in the zoning resolution, the unnecessary hardship standard as it were he believes that the proposed use variance should be granted for the following reasons: 1. The proposed use is consistent with the public interest, the applicant will make significant improvements to the property including signage and landscape; they will take all of the necessary steps to coordinate with the township and health department on traffic, safety and health issues and further the proposed use will provide an economic benefit to local merchants and increase business and visitors to the township. 2. The proposed use does not deviate from the purposes of Section 101.02 of the zoning resolution and the purpose of the CR Commercial Recreation District as provided in Section 131.04(d) which is to primarily provide for uses for commercial recreation enterprises where large crowds are reasonably expected to congregate. 3. Literal enforcement of the zoning resolution will further the economic outcome of the property and preclude local merchants whether participating in events or benefiting from additional business visitors from realizing economic opportunities. He said the standard of unnecessary hardship and/or practical difficulty they believe had been met and the proposed use is specifically prohibited in the zoning resolution but it is also not specifically permitted in any zoning district in the township. He said as such the proposed use we believe would most seamlessly mesh into the commercial recreation district and for that reason again, we believe that rezoning is not a proper measure as there is no zoning district that allows the use as proposed. He said they also believe the proposed use is in harmony with the zoning resolution as the proposed use is in harmony with the stated purpose of the CR Commercial Recreation District and would not adversely affect the use or value of the neighborhood nor alter its essential character. He said finally they believe that substantial justice will be done if the use variance is granted and the proposed use will allow for an economically beneficial use of the property and for local merchants themselves. He thanked the board.

Mr. Jim Vaca of 1101 Moneta Drive, Aurora, Ohio testified that he thinks this is a great idea and they used to have one of these when he was a kid called Aurora Farms but there were not any livestock or horses but one of the issues that was brought up and came to his attention about a year ago was traffic and he does not think it is going to be a problem because they are now investing 3 million dollars into a 9 million dollar project to widen Rt. 43 and it should have been done 30 years ago, we are only 30 years behind. He said it should not be a problem for traffic to Aurora and this will benefit Bainbridge because of the schools and taxes etc. and he thinks it is a good use and it is a recreational area, we still have Wildwater Kingdom and the property itself needs to be fixed up and when he was a kid there were three baseball diamonds on that property and was also the Rod & Gun Club set up back there to skeet shoot so it has transformed quite a bit to what it is today and he thinks they will do a good job and he thinks it is a great idea and he is hoping to visit it every Sunday. He said the last couple of summers they have been listening to racing cars which didn't bother him but he could hear them which is still a use of the property but he thinks this is a good venture and should be expedited as soon as possible.

Mr. Bob Galaska, Jr. of 51 Townline Road, Aurora, Ohio testified that he is a councilman for the City of Aurora and he also thinks it is a good idea to bring this in and he thinks it is going to benefit Bainbridge Township in a lot of ways, you are going to have people coming, hopefully if they are successful in what they're doing, it is going to benefit you, it is going to clean that up, when people are driving by they are not going to see nine foot high weeds and garbage rolling around but on a financial note, people are going to come and go to the flea market and they may be hungry so they will go to the restaurants and maybe Home Depot and it may boost business in the area over there and people now days are concerned with their children and Bainbridge Township schools are right there at the top, they just put up a nice big high school and that is going to be attractive to parents, they are going to come here and if they like what they see when they are over here visiting, they may come into the community and buy a house in Bainbridge or Aurora too. He said he thinks it is going to be a benefit and also eventually down the road, Cedar Fair, when times get better they are going to move to sell that property and if more people see it, it may sell and Bainbridge will benefit from the taxes from it maybe sooner than later.

Mrs. Cindy Rosenberger asked how often the flea market will take place.

Mr. Slanina said initially once a week but maybe twice a week on Saturdays and Sundays, it is a weekend event.

Mr. Horn asked if they are sure there will be no tents there at the sale.

Mr. Slanina said there will be no tents but each individual vendor may put up a sun shade or canopies for their tables but we will have no tents.

Mr. Horn said according to the letter you sent to the zoning department it indicated that you believe there will be 10 – 15 self-contained food and drink vendors and some will set up tents and others just tables.

Mr. Slanina said the tents are the sun shades.

Mr. Murphy said also on that same letter there are to be two to three off duty police officers and he believes today it is one.

Mr. Slanina said we said one because the Police Chief said initially one and then see how it was but to have a uniformed presence there.

Mr. Deitrick said they are good to have whatever the Chief wants them to have.

Mr. Lewis asked them what they see their demographic or geographic draw will be.

Mr. Slanina said they see it being initially Aurora, Bainbridge, Geauga County and into Solon.

Mr. Lewis asked if they are talking about western Geauga County.

Mr. Slanina yes and going into Solon and Twinsburg as far as the draw and the people who come to shop.

Mr. Lewis asked how it is going to be advertised.

Mr. Slanina said that is when they will start to spend some additional money, they are developing a website and they have the name already reserved, they need to develop an interactive website and they need to get signage up and advertise, there are papers, the Farm & Dairy is one but it will be multimedia.

Mr. Lewis said so you are going to use the electronic and print ad.

Mr. Slanina replied yes and at Geauga Lake there are stanchions for signs that are existing and they can put the signs back there to advertise the flea market with the phone number.

Mr. Lewis said which gets you the local commuters.

Mr. Deitrick said there are trade publications also.

Mr. Lewis said he wants to talk a little about the days of operation and the hours of operation. He said he is hearing Sundays, he is hearing maybe Saturdays.

Mr. Deitrick said Saturdays and Sundays.

Mr. Lewis said his question is what are the hours of operation.

Mr. Slanina said daylight hours.

Mr. Lewis said so what that means is in July when sunrise is 5:45 AM you have 400 vendors coming in and maybe some food trucks coming in with funnel cakes or onion rings or whatever and this is all going to be arriving at daybreak.

Mr. Slanina said with their conversation with the Police Chief, his wife likes flea markets and they learned a lot from him about flea markets and he said the flow of flea markets is very different from an event like an amusement park, it will be staggered, the vendors are going to come at the beginning of the day.

Mr. Lewis said we will get to the customers in a minute. He said you (Mr. Slanina) are in the business to make money by selling space and we know that space is not pre-reserved, it is on a first come basis.

Mr. Slanina said no, that is the intention of their interactive website, they can go on there with their credit cards so it is going to be pre-reserved.

Mr. Lewis said he is still expecting that the early bird is going to be getting up early for placement.

Mr. Deitrick said placement no but perhaps he needs time for whatever he is preparing.

Mr. Lewis asked what time the gates will be opened.

Mr. Deitrick said that has not been determined yet.

Mr. Lewis said we need to know that because surrounding this park are other residential neighborhoods.

Mr. Deitrick asked if 8:00 AM is a good number.

Mr. Lewis said he hasn't had a chance to think about that. He said there has not been a meaningful talk about the impact on the adjacent properties, there are commercial properties there but behind that are all residential neighborhoods. He said he has an interest about that from anybody wandering in the woods to think that is the men's room.

Mr. Slanina said they have a vendor for portable toilets.

Mr. Lewis said that doesn't mean people will use them either.

Mr. Deitrick said that is why we are going to have a police officer.

Mr. Lewis said it is not really gated with a fence, it is an open parking lot.

Mr. Deitrick asked what Geauga Lake did.

Mr. Slanina said the property is fenced.

Mr. Lewis said there were police cruisers heavily in the parking lot but the Geauga Lake Park itself was loaded with restroom facilities so if you have 400 exhibitors at two per with 800 people there and 1,000 guests, you may have 2,000 people out on this parking lot with 20% of them needing the restroom at any given time.

Mr. Slanina said their vendor for the restrooms is Rainbow and they are in touch with them because they know all about how many units will be needed at different types of events and we are going to rely on them to give us the right number and they recommended ten.

Mr. Lewis said ten wouldn't cover the exhibitors.

Mr. Slanina said they will put in as many as they need.

Mr. Lewis said he wanted to talk about the Saturday and Sunday events and there is no permanence here so if he is an exhibitor and he buys a Saturday space but he is also doing Sunday, it is sundown or whatever is agreed upon as the end of business operation and he cleans up all of his stuff and he is clearing out so at the end of the day we are going to see three acres of asphalt and not a single trace of an exhibitor.

Mr. Deitrick said correct.

Mr. Slanina said you will be seeing a lot more than three acres of asphalt.

Mr. Lewis said what he is trying to establish is there is no overnight occupancy, camping, staking out your space, nothing.

Mr. Slanina said no and that is where the students come in to police the grounds and to make sure everything is cleaned up.

Mr. Lewis said the students are not going to be talking to adults other than the people they are hired by, you are not going to have a 14 year old kid talk to a gentleman because he didn't pick up his stuff and put the kid in a situation.

Mr. Slanina said they will clean up the trash after everyone is gone.

Mr. Lewis said he has to ask all of these questions and now he has to talk about the vendor protocols. He asked if this is a craft based show.

Mr. Slanina said what they are hoping to do is attract craft people from around here but we can't tell who the vendors will be or what they are going to sell.

Mr. Lewis said so you will sell space to any vendor who will swipe his VISA.

Mr. Slanina said absolutely not and there won't be anything illegal and no firearms.

Mr. Lewis said he was talking about the tee-shirt vendor, the tattoo guy there.

Mr. Slanina said he has a problem with the tattoo guy.

Mr. Lewis said the type of vendor you have has a direct relationship to the type of person that is going to be attracted to come here and these people are coming into Bainbridge. He asked them what they think of the Sea World parking lot and doing it in Aurora.

Mr. Galaska said he would have no problem with it.

Mr. Lewis said he has a concern about the nature and impact on the attendees in our community.

Mr. Slanina said they had a discussion with the Police Chief and that is the presence of a uniformed officer that will be there.

Mr. Lewis said he can also make some observations about an impact or benefit to our township. He said from your event we will get no property taxes, we will get no income taxes from your payroll nor from your profit, our Bainbridge PD even though you hire one for the grounds the off-duty must defer to an on-duty so that the burden will be on the Bainbridge Police Department so you do have that impact on it. He said he does not see a direct benefit to Bainbridge Township in these areas and should our trustees be talking to Solon about the JEDD.

Mr. Deitrick said absolutely.

Mr. Lewis said because it is great for you guys and it may get a few other folks to go over to McDonalds or it may flood the Kohl's store or the Walmart store.

Mr. Deitrick said it will clean up the street and make the property look better.

Mr. Lewis said it may do that but maybe Cedar Fair runs their lawn mowers two or three times a year.

Mr. Deitrick said he drives by it everyday and they do not do a whole lot.

Mr. Lewis said he is just trying to get an understanding and he can also go back and cite the Police Chief's memo and his opinion is he does not agree with having a flea market in the township.

Mr. Slanina said the Chief does not like flea markets but his wife loves them, he made that very clear.

Mr. Lewis said his wife is not employed by the township.

Mr. Slanina said the point that was made about us making money, we have no idea, the first year is a huge risk, they have to put up all of the up-front money for the advertising, the website and we have no idea if we will get 40 vendors or 400.

Mr. Lewis said that is the choice you make. He said Mr. Lamanna has always used the analogy that we don't need to consider if you are the 38th pizza store coming into town, if you think you can make a go if it, knock yourself out. He asked about the food vendors and if they will be the big portable pop-up trucks.

Mr. Slanina said the food vendors will have to be totally self-contained and inspected by the health department.

Mr. Lewis said they typically need electricity and/or water.

Mr. Galaska said they have generators.

Mr. Deitrick said if somebody approaches us and wants to sell food they are going to know that we are going to provide them with nothing, not water, not electricity, not anything, whatever they are doing whether it is perogies or hotdogs.

Mr. Lewis asked if it will be managed or permitted with the Geauga County Health Department.

Mr. Deitrick said it has to be.

Mr. Lewis said the gentleman from Aurora said the road will be widened but he hasn't heard a spokesperson from the City of Solon's government body. He said you (applicant) do not have a traffic study but can it be estimated with the 400 and asked if the Police Chief's opinion is that you can get cars in and out.

Mr. Slanina said they got a lot of comfort in their conversation with the Chief and he is very familiar with that property and he is very familiar with the problems that existed when the park was there. He said it was a huge influx at the beginning of the day and a huge out flux at the end of the day which created a nightmare. The Police Chief said he does a lot of flea markets with his wife and it is coming and going all day long.

Mr. Lewis said as opposed to everybody leaving at once and it lasts for 30 minutes.

Mr. Galaska said Mr. Lewis brought up a good topic with emergency services and if these gentlemen are going to put money out to get money in and with no direct benefit to Bainbridge Township as far as taxes but yet your emergency services are going to get called when something goes on and that is paid for by the Bainbridge taxpayers. He said as well, Aurora services will be going there because there is a fire station and paramedic station right there and before Bainbridge goes ours will roll out first because they are right there. He said what he is trying to get at there is a concern financially too about their (Aurora) emergency services flying over there at no real benefit to the City of Aurora.

Mr. Lewis said you are right on the economics but he was also looking at if we have two EMT trucks and two calls come in and one is a resident and one is at the flea market, if the truck goes to the flea market and not to our resident, that could be troublesome and when you have that many people in one place you hope that nothing is happening.

Mr. Galaska said he does not know these gentlemen but on an economic basis with Bainbridge and Aurora and if it becomes a problem they could be shut down.

Mr. Lamanna said this is a use variance.

Mr. Deitrick said a temporary use variance.

Mr. Lamanna said there is no such thing as temporary variances, once a variance is granted it is variance, it runs with the land, it is forever, he can't come back and say never mind, we are taking it back. He said he is not sure it can be structured in a way that it can be temporary, he would be charting into unknown legal waters and it would be high risk. He said the usual rule is once you grant a variance, you grant the variance and the second problem is from a regulatory standpoint the board can set conditions but setting conditions with respect to variances there is varying legal opinions on the extent of the board's authority to do that in any event at all. He said he believes that properly structured the board can but its jurisdiction is probably limited only to conditions that go directly to zoning matters or matters that are relevant to the standards in granting the variance. He said getting into regulating hours and all kinds of other stuff on our own could prove to be futile and the problem is if you grant somebody a variance and you put conditions on it and the court finds the conditions to be invalid, the person still has their variance but now they don't have any of the conditions so it is a high risk business for the board to do that. He said getting back to the standards, this is a commercial recreation district and there are a vast number of things this property can be put to permitted specifically in this district and generally the standard on use variances is if the property cannot return an economic value absent the variance. He said nobody has explored the possibilities that this property can be put to for an economic use. He said there are thousands of uses that are permitted in this CR district and true, this is not one of the specifically prohibited items although those items are fairly limited, there is however a very specific prohibition of outside sales of equipment and merchandise and that is in 143.04 and this thing kind of fits right into that, it talks about tents or stands erected, no equipment merchandise or food except for a charitable event. He said we have a never ending problem with people who on commercial establishments want to put up a temporary facility to conduct sales and if we go down the line to try to grant variances for people to do that, he does not know about the next person who comes in here, what is unique about this property and the concerns you have raised, every single commercial property in this township can come in with the exact same argument because they want to set up tents to sell flowers etc., everybody down E. Washington Street will want to do that and sell food, we have no principal way to deal with that.

Mr. Slanina said they heard that from the zoning commission because they thought they needed to go there first.

Mr. Lamanna said that was his suggestion first and one of the problems is when somebody comes in with a request for a specific piece of property especially for a use variance, the question is why is this question unique to this piece of property and if it is not unique to the piece of property that is in fact the same issue would apply to every piece of property within that district. He said the relief is re-zoning, this board is not here to spot zone.

Mr. Slanina said the thing that they heard from the zoning commission is that this is truly a unique piece of property, there is no other property that has this much pavement on it in one spot.

Mr. Murphy said Parkside Church.

Mr. Lamanna said the two shopping centers have big huge swaths of property that they could isolate off and use.

Mr. Lewis said the Flower Factory is going out and it is a 30,000 sq. ft. building.

Mr. Slanina said they approached us to put the flea market in that building.

Mr. Lamanna said department stores sell out little pieces inside to independent contractors, it is a permitted use in that district and if it is located permanently within a building there probably is no issue with it.

Mr. Slanina said what they heard from the zoning commission is the uniqueness of the property.

Mr. Olivier said it is zoned commercial recreation because of its uniqueness therefore they could put conditions in there to allow it, it would then go in front of the trustees with public hearings and the whole township could comment on it but you are asking us.

Mr. Lamanna said if there was something that said you can have flea markets if you have 47 acres.

Mr. Horn said what about Kenston Schools, they have a big parking lot, maybe they could have something too, maybe not on the same scale but they could do that or Parkside Church could have flea markets.

Mr. Deitrick said they could do it now.

Mr. Lamanna said yes because they are a charitable organization.

Mr. Slanina said at least Cedar Fair pays taxes.

Mr. Lamanna said if they were getting out of hand, you can go to those bodies (school and church).

Mr. Vaca said he wants to correct one thing in reference to the fire department. He said he happens to be a member of the fire department in Aurora and he is a councilman and Aurora will not go to your facilities unless we are called.

Mr. Lamanna said yes for mutual aid.

Mr. Vaca said your question about one over the other, your people will be handling it first by your department, if you have a call at a residence and then you have a call there, if you have a squad they will send it, if you have two resident calls and don't have a squad, chances are they will call Aurora or Solon but your residents will be covered first. He said we have gone to Market Square five or six times last year and we are just right down the street, we are not even one-half a mile. He said it takes Bainbridge seven to eight minutes to get from their station to here but it is their call. He said another thing on the vendors that probably could be written into code when this gets off the ground on what can be sold there, in other words, no firearms, no knives or whatever they can probably think is objectionable.

Mr. Lamanna said that is the problem this board has, legally he does not know if the board can regulate what can be sold.

Mr. Vaca said that would be up to these guys, they can provide a list of items that can't be sold and if they are on that list and a patrolman walking by sees it, move them out.

Mr. Lamanna said this board does not have the authority to give it conditional zoning. He said that is his problem, when the board tries to do this as a use variance the board is circumscribed on what we can do, our authority is limited, we don't have the same authority we would have if it was a conditional use.

Mr. Deitrick asked if this body grants the variance does this go to the trustees or is it a done deal.

Mr. Lamanna said no if this board grants a variance, we grant the variance.

Mr. Horn said if the zoning commission creates a new zoning provision then it goes before the trustees.

Mr. Lamanna said the only person who could appeal the granting of a variance is another interested property owner or someone who could at least allege an adverse impact from the zoning and they would have to appear at the hearing to raise the issue. He said let's assume that an adjacent property owner came in and said this is going to adversely affect me, they would have the right to appeal the decision to the Court of Common Pleas.

Mr. Vaca said that somebody mentioned something about a fence and there is a fence that goes east/west on the edge of that property and it is between there and Depot Road and there is a fenced in parking lot. He said it was mentioned about the neighbors, let's talk about neighbors, Geauga Lake Park when it was in full swing with rides out there by the road. He said nobody has ever thought twice about the neighbors in Geauga Lake when the Superman ride, whatever was out there by the road. He said he remembers when Geauga Lake wanted to put in an amphitheater.

Mr. Lamanna said they were there before zoning came into effect.

Mr. Vaca said this particular function here, if there is no loud music, it will be a lot quieter than those sports cars they had running last summer.

Mr. Lewis said that was on his list, he didn't get to music and loud noise yet.

Mr. Vaca said there won't be any electricity so there won't be loud music but this sounds like it is going to be a quiet thing and he does not think the residents in the Geauga Lake area will object to it. He said nobody objected to the sports cars last year that he is aware of and that was an all day thing but it wasn't that bad and the shopping center kind of blocked all of that out and he doesn't know if a resident in Solon or Bainbridge would care but he doesn't think it will be that intrusive when it comes to the noise. He said he doesn't think Bainbridge will get a JEDD unless Geauga Lake Park decides to go with a JEDD and we (Aurora) tried to get Bainbridge into a JEDD for Market Square but that went out the window. He said we would be more than happy to do that, we have the water system and the sanitary system in those areas, that is our district so therefore at this point we are amenable to a JEDD. He said with the zoning itself, this he believes could be made a temporary use, it would go when they go and it would be free and clear again if you write it in.

Mr. Lamanna said this board cannot do what we don't have authority to do, we have limited statutory authority, we cannot go beyond that authority.

Mr. Vaca said Aurora is a city.

Mr. Lamanna said the rule is when a variance is granted it runs with the land, it belongs to the landowner forever, it doesn't go away.

Mr. Galaska said it doesn't go with the tenant.

Mr. Lamanna said it is a variance that applies to the property and stays with the property.

Mr. Slanina asked if the landowner can give the variance back.

Mr. Lamanna said it does happen from time to time because if a property owner comes in and wants some other consideration or another variance, before that is granted, they may be required to give up something and yes they could voluntarily surrender it.

Mr. Slanina said he is sure Cedar Fair would be amenable to legally say they would give it back.

Mr. Lewis said they are the property owner, you are a potential tenant in their property so while you are petitioning your needs, the property owner is not here and the property owner has the authority not the tenant.

Mr. Slanina said correct, that is why they had to get the letter from Cedar Fair.

Mr. Lewis said that is where it gets to be interesting also and as much as Mr. Lamanna is talking about beyond the scope of the board's authority because the variance is really issued to the property owner.

Mr. Nevar said he understands the board's issue with potential jurisdiction on this issue but he would contend however that as this proposed use is not prohibited it is a use variance that this board would have jurisdiction to grant pursuant to 117.14, the board would be able to prescribe such supplementary limitations or safeguards which are not in conflict with the zoning resolution deemed necessary to protect the public interest.

Mr. Lamanna said there is some question as to how far that extends and it is a matter of continuous and vigorous debate amongst the board and the county prosecutor's office and the Common Pleas Court judge who ultimately would be the next to the last word on that issue as well.

Mr. Nevar said the only limitation on the use variance is this board is able to consider are those specifically prohibited by Section 177.01 of this zoning resolution in 117.10.

Mr. Lamanna said he is not saying the board doesn't have the authority to grant a use variance, we certainly have the authority to grant a use variance if the appropriate findings are made.

Mr. Slanina asked if it is possible to get the variance for two years or a limited time.

Mr. Lamanna said there is no real provision that authorizes that, when you grant a variance, you grant a variance. He said that is an interesting question, he has not looked at that particular question.

Mr. Nevar asked if it is reasonable to think it could be done contractually.

Mr. Lamanna said he does not know but he thinks there are fundamental issues.

Mr. Horn said it is not just applicable to this property, if there is another area in the township.

Mr. Lamanna said although this may be a big property there is nothing that says you have to do this on this scale.

Mr. Slanina asked if any other people have come forward with a request like this before.

Mr. Lamanna said no.

Mr. Slanina said not for this property, anywhere for a flea market.

Mr. Lamanna said no, he doesn't think so.

Mr. Murphy said if they did then 143.04 says it is basically not permitted.

Mr. Lamanna said there have been lots of people coming forward to do outdoor tent sales, etc., maybe not on a flea market scale but he doesn't think the board has had anybody come forward for that.

Mr. Nevar said in a Commercial Recreation District conditional uses and permitted uses are recreation, outdoor theater and that is really outdoor sales is it not to some extent.

Mr. Lewis said that is stretching.

Mr. Nevar said it is certainly an argument and he does not think you can automatically say 143.04 applies to the Commercial Recreation District.

Mr. Murphy said we are not saying that.

Mr. Nevar asked if there is any other property in the township zoned Commercial Recreation District.

Mr. Lamanna said there are other properties within that district.

Mr. Lewis said one of the fundamental issues is the fact that this is commercial recreational property and is in fact usable and viable as it is zoned for and that is the underlying struggle.

Mr. Deitrick asked Mr. Lewis what he means by that, usable as it is, an amusement park.

Mr. Lamanna said typically a use variance is for a person who comes in with a property and there is no way it can be used for another purpose, they can't get an economically viable return on it or there is some other limitation but in this case there are 20,000 different uses this property can be used for.

Mr. Slanina said there is really no use and with the conversation with Cedar Fair they are selling that whole property and the key is the lake.

Mr. Lewis said that may be their perception.

Mr. Lamanna said they are trying to figure out how to make the most money from it.

Mr. Lewis said they as the seller and owner of the property have not been to the township suggesting any change in anyway from what it is in their desire to sell the property. He said they know what it is zoned at, they bought it and their dilemma is to find a suitor that is interested in the use of the property.

Mr. Slanina said they had one but the financing fell through.

Mr. Lamanna said some day the financing may come back.

Mr. Slanina said that is why their use is very limited because of that.

Mr. Horn said he can see regulation issues about this, we have gone through a litany of questions and answers and they (Mr. Slanina and Mr. Deitrick) said they don't know what is going to happen and it may change as they go through this so it will be difficult to regulate, issues could come up and the impact on the other properties and also 143.04 which is not commercial recreation but he thinks it indicates an intent in terms of the zoning resolution to prohibit this sort of activity.

Mr. Slanina said he thinks the board's concerns as far as the uses can be contractually dealt with.

Mr. Horn said he does not know if the board has the ability to do that but even so, who is going to follow up on that from the township standpoint and to monitor that to make sure they comply and it will take a lot of man-hours of our personnel.

Mr. Slanina said they will have on-site police officers.

Mr. Horn said the police officers can't enforce zoning.

Mr. Slanina said you did have that issue with the race cars over there, Cedar Fair did not give them permission to be there.

Mr. Horn said if it is trespassing it is a different story.

Mr. Nevar said certainly enforcement to ensure compliance with any potential conditions imposed by this board would not be something that policemen would be able to handle but in terms of the changing dynamics of this flea market event that would be something that the applicant would be more than willing to continually work with the police department, fire department and that could be a condition.

Mr. Lamanna said when we look at conditions we also have to look at the viability of being able to deal with the enforcement of them, are they kinds of things that can be detected, how much manpower would be involved to actually deal with that, it is always an issue. He said too many conditions create problems and referred to the turning lane at the Weils, six years ago, and now we are trying to figure out what happened.

Mr. Slanina said the difference with this is, the turning lane is going to be there.

Mr. Lamanna said it might be worth exploring this application a little more, look at the control issues and to see if there is a feasible way to do it and have them come back next month.

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

Motion BZA – 2011-7 – PP #02-126400, PP #02-126500 and PP #02-126600 (Parking Lot of Former Geauga Lake Amusement Park)

Mr. Lamanna made a motion to table this application to the next regularly scheduled meeting to be held March 17, 2011.

Mr. Lewis seconded the motion.

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

Since there was no further testimony, the public hearing was closed at 10:55 P.M.

Respectfully submitted,

Christopher Horn
Michael Lamanna, Chairman
Todd Lewis, Vice Chairman
Mark Murphy
Mark Olivier

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

Date: March 17, 2011

AUDIO RECORDING ON FILE

BZA PH 2/17/2011

-52-

Bainbridge Township, Ohio
Board of Zoning Appeals
February 17, 2011

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 10:55 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Christopher Horn, Mr. Todd Lewis, Mr. Mark Murphy and Mr. Mark Olivier.

Minutes

Mr. Lamanna made a motion to adopt the minutes of the January 20, 2011 meeting as written.

Mr. Murphy seconded the motion.

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

Applications for March 17, 2011

Application 2011-3 by Bainbridge Shopping Center II, LLC for property at 7205 Aurora Road - Continuance

The applicant is requesting a modification to a conditional use permit. The property is located in a CR District.

Application 2011-4 by Paul Willson for property at 18760 Snyder Road - Continuance

The applicant is requesting area variances for the purpose of a lot split. The property is located in a R-5A District.

Application 2011-6 by A. & E. Real Estate LLC for property at 17800 Chillicothe Road - Continuance

The applicant is requesting area variances for the purpose of constructing a stand-alone building in a strip shopping center for animal daycare. The property is located in a CB District.

Application 2011-7 by Geauga Lake Flea Market LLP for property at PP# 02-126400; PP# 02-126500; and PP# 02-126600 - Parking Lot of Former Geauga Lake Amusement Park - Continuance

The applicant is requesting a use variance for the purpose of holding seasonal outdoor sales of merchandise, craft shows and related events from April through October annually. The property is located in a CR District.

Application 2011-9 by Robert F. Redmond for Suzanne Y. Woodward for property at 16832 and 16850 Chillicothe Road

The applicant is requesting area variance(s) for the purpose of installing a real estate for-sale sign. The property is located in a R-3A District.

The Bainbridge Township Board of Zoning Appeals set a public hearing on the above applications for March 17, 2011 at 7:00 P.M. at the Bainbridge Township Community Hall, 17826 Chillicothe Road, Bainbridge Township, Ohio and unanimously resolved to request the Bainbridge Township Board of Trustees to issue a purchase order for legal advertising.

Since there was no further business, the meeting was adjourned at 11:10 P.M.

Respectfully submitted,

Christopher Horn
Michael Lamanna, Chairman
Todd Lewis, Vice Chairman
Mark Murphy
Mark Olivier

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

Date: March 17, 2011