

Bainbridge Township, Ohio
Board of Zoning Appeals
February 18, 2010

Pursuant to notice by publication and certified mail, the public hearing was called to order at 7:05 P.M. by Mr. Michael Lamanna, Chairman. Members present were Ms. Joyce Hannum, Alternate, 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 2010-1 by Waterway Gas & Wash for property at 7010 N. Aurora Road -
Continuance

The applicant is requesting an area variance for the purpose of installing a third ground mounted menu sign. The property is located in a CR District.

The zoning inspector's letter dated January 21, 2010 was read.

Mr. Michael Goldman from Waterway Gas and Wash was present to represent this application.

Mr. Goldman testified that what they are looking for is like a menu board as you see at the drive-thru at the Steak 'n Shake across the street and it is pulled in towards the entry of the car wash. He said it is about 19 sq. ft. and it is just going to give the carwash option because they found that a lot of their customers here and in talking to their sales people under the canopy, they want to pull right into line and that is what they are offering and it will become a nice thing for them and for us.

Mr. Murphy asked if it is stacked on top of each other like 2 x 10.

Mr. Goldman said it is side by side.

Mr. Olivier asked if it will be illuminated and just black and white.

Mr. Goldman said it will be interior lighting and will match the blue signs on the canopy column, blue with white cut-outs.

Mr. Olivier asked if there is an issue here with them not pulling up to the service bay area.

Mr. Goldman said most of them do but a much larger percentage than most places and he would say in five years from now they won't still be teaching people but a lot of people just pull straight up and want to get in line for their carwash and they don't want to wait behind other people under the canopy.

Mr. Olivier asked if there is an attendant there and are they paying there.

Mr. Goldman said they have a full-time person who works under the canopy.

Mr. Olivier asked where the sign is going to be, at least at that point is there some point where they are going to then transact business or tell them what they want.

Mr. Goldman said there is a person that will meet you at the entrance also if they have not met you, this person pulls your car in and they will have a note pad to see what you want, give you a receipt and take you inside to pay.

Mr. Lewis referred to the site plan and asked if this is where the attendant is that does the money transaction.

Mr. Goldman said there is no money there, they pay inside the store.

Mr. Lewis asked if it is before they go down here (he referred to the site plan).

Mr. Goldman said no they get out of the car, the customer doesn't drive through the tunnel, they get out of the car right about there (he referred to the site plan) and walk into the store.

Mr. Lewis asked if they stay there.

Mr. Goldman replied yes.

Mr. Murphy asked about the square boxes with Xs there.

Mr. Goldman said they are not signs.

Mr. Murphy said if somebody pulls in and people are getting gas and he sees nobody in line for the carwash and they just want to jump in the carwash, they may or may not stop to read it and pull right up over here (he referred to the site plan) and somebody is going to stop him there and ask him to get out of the car.

Mr. Goldman said they will give him a receipt and have them run inside.

Mr. Murphy asked if there is another sign that helps him pick out what he is getting on the building.

Mr. Goldman said there is a deli sign up above and an entrance sign but there are no more signs once you get to the tunnel entrance.

Mr. Murphy asked Mr. Goldman if he has this exact same sign somewhere else on the property.

Mr. Goldman said on the canopy column, they have menu boards on the canopy columns.

Mr. Murphy said there are five of those already and asked if they are 2 x 10.

Mr. Goldman said no, the ones on the canopy columns he believes are 2-1/2 by about 4 and added that they are not their standard size.

Mr. Lewis said unless you have traffic stacked into your entry ramp there, nobody is going to stop and look at this thing and he does not really think you want somebody stopping their car before they even go into this access area to read this because if you have one guy stopped here reading and potentially another one behind then what that is doing is you just changed your whole traffic flow and you have brought everything to a screeching halt as well as who is at your pumps. He said the first thing he was kind of implying to is that it would just be the placement location, if you bring it back and around where the car has to stop anyway because your folks are going to take over the car anyway and if you only have one guy in line there is no traffic behind pressuring him to hurry up, you read the sign that is in front of you.

Mr. Lamanna said that is why the sign is where it is because that is the point of no return and at that point they can still turn.

Mr. Murphy said if they are there reading that sign they have some people backed up behind them.

Mr. Goldman said the other reason they have it pulled out was the guy or woman who works under the canopy and is writing up people for their carwash, this is a lot easier place for them to run to and they would rather that the service consultant is the one who actually does it, the person at the entrance can, they know how to, but it is their system, they want their service consultants to get to know them so that is an easy place for him or her to run and grab them and help them with what is best for them.

Mr. Lewis asked how most of the people approach the carwash, are they cutting through.

Mr. Goldman replied no.

Mr. Lewis asked if they are taking the loop around when they come in or if they are going right to the carwash.

Mr. Murphy said you pay for the gas and then you go inside and pay to get the discount. He said you have to get out of your car and walk inside to pay and get the discount on the gas and then if you want the carwash you can tell them there or come back out at that point so if somebody approaches you and asks underneath the canopy, you have to pump your gas and go inside and pay and he is not sure why the people have to walk in.

Mr. Goldman said you don't have to, a lot of people do but you can just push "pay inside" and go and get in the line and then go and pay.

Mr. Murphy said if you use the carwash.

Mr. Goldman said they wish they could do it at the pumps but they do not have that technology at this point.

Mr. Lewis said he was just looking at the flow.

Mr. Olivier said the menu boards are 2 x 6.

Mr. Goldman said he knew they were very different.

Mr. Olivier said the people are just missing the menu boards on the pumps, they are just in a hurry to get through the carwash and at that point they don't have information on what it is going to cost them.

Mr. Murphy asked if this is only for the carwash, only for people who aren't buying gas.

Mr. Goldman said yes.

Mr. Murphy asked if there is another one of those signs like that out by the entrance.

Mr. Goldman said no.

Mr. Olivier said it is facing to the interior of the lot, right, there is nothing behind it, signs on the rear.

Mr. Goldman said it is one sign.

Mr. Murphy said it was said that it is illuminated from the inside and turns off when you are not open.

Mr. Goldman said yes and he is sure it would but he would be more than happy to do that.

Mr. Murphy said he is not sure the real need for it.

Mr. Goldman said it really comes down to them just trying to grab that customer and get ones who are avoiding the pumps and getting an idea of what they have to offer so they can move them through more quickly and avoid lines which is not good for the customer or for them.

Mr. Lewis said he is hoping this is the last sign.

Mr. Goldman said the board has seen him enough.

Mr. Lewis said there is a lot of signage here that is not the name of the company but it is specific to the service and price and it is not the company name and he is starting to get inclined to say you have got a lot of square footage of signage and if you want more take away something. He said if he is driving in, all of the menu boards are facing away from the store, so as he is driving in because once the guy is at the gas pump and he isn't necessarily going to have visibility of that menu sign unless he gets out of his car and goes around and looks, so as he is driving in, he has five shots to look at the menu board so he is hoping this is the last sign request.

Mr. Lamanna said he thinks this will be the limit here and in the future the signs will have to be shuffled around or if you want to do anything in the future, shrink them down.

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

Motion BZA 2010-1 - 7010 N. Aurora Road (Waterway Gas & Wash)

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

1. A variance to the requirements in Chapter 173.11 (a)(3) & (b)(3) to allow a third ground sign.
2. A variance to the total signage area in (b)(1) to increase it from the current 165 sq. ft. to 185 sq. ft. for a total variance of 51 sq. ft. of total signage allowed.

Based on the following findings of fact:

1. The additional sign requested is the sign providing prices for a drive-thru carwash.
2. Due to all of the activity that is taking place on the outside of this business and its different nature, it is appropriate to allow another sign in order to inform customers who otherwise might then be put into the position without this information that they would be trying to back out against traffic in a driveway.
3. The increase in signage is not unreasonable given the other signage in the immediate area and also due to the unusual nature of this particular business.

Mr. Lewis seconded the motion.

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

Application 2010-3 by Highway Garage Inc. for property at 8410 E. Washington Street

The applicant is requesting an area variance for the purpose of installing an electronic sign. The property is located in a CB District.

The zoning inspector's letter dated February 18, 2010 was read.

Mr. Frank Lanza was present to represent this application.

Mr. Lamanna swore in Mr. Lanza.

Mr. Lanza presented the board with renderings of his existing and proposed sign and testified that he wanted to give the board an idea of what he has and what he is looking for, what he is trying to do and why he wants to do it. He referred to the existing sign and showed the board a site plan of where the sign sits. He said the sign is by the road in front of cars and referred to the rendering showing the new sign of what he wants to do. He said it isn't any bigger than the sign that is there and actually it is the same size, it is a matter of just removing some of the panels and replacing it with this other sign that you can change to say whatever you want it to say and because they have so many businesses in there now and when he first had the garage it was all him, it was just Highway Garage and that was it so now he has Enterprise Rent-a-Car, he has a used car department, tires, towing, collision/body shop, a service department and what happens is because of the appearance of his building, he does not know why but people just don't see that sign and they don't think of it as an auto repair center and that is his biggest problem and everybody says that they never would have believed this is an auto repair center and one of the reasons that it is is because of its appearance, it doesn't look like an auto repair center and he is very particular about the way that building looks and the reason he did that is for the people of the community and just because it is an auto repair center, it doesn't mean it has to look like one and because the people of this community went to bat for him and he wanted to make them proud about something that he did. He said there is no signage actually on the building and to him it would take away from the building if he actually had signs on there of everybody who was in there so it is a very professional looking building and people in this community love it that way, he likes it that way and this sign is made to change if they want to change it and he is sure there may be a time limit that the board might say they don't want it to change every two seconds or every five seconds.

Mr. Murphy said it is not about the board, there is a zoning code about that.

Mr. Lamanna said no flashing or moving lights.

Mr. Lanza said this isn't flashing.

Mr. Lamanna asked if the pillars will be made shorter.

Mr. Murphy said or add more brick and make it higher off of the ground.

Mr. Lanza said no, they are not adding anything.

Mr. Lamanna asked if it is going to be the same.

Mr. Lanza said yes and he thinks he has a rendering with the dimensions, he said it is just the way they drew it when the sign company did the sign, it is just deceiving, but these panels are 12" and they are removing this (he referred to the rendering) and they are putting it in here.

Mr. Murphy said it is a big LCD TV basically.

Mr. Lanza said it is very similar to what they have out in front here, it is not like an LCD it is an LED, it is just in color.

Mr. Lamanna asked if it is just letters.

Mr. Lanza said no it can actually do photographs because it is in color, and the township has one in the front out there and it is just letters and all one color, but if you fill that up and if it was in color you can change the colors.

Mr. Lamanna said there are some that are just monotone and you can just put letters on there but these are like the billboards on the highway, you can change the whole thing.

Mr. Lanza said there is a sign guy that does it and that is what it would be as for a certain time and they have one similar to that at Dunkin Donuts.

Mr. Murphy said with Dunkin Donuts, the sign is part of the corporate thing that they do and it is red lights only and they were flashing for the first day or two that they were in business and they were not allowed to do that and it is unfortunate that they got it because the whole intent of the zoning is we don't want that kind of shining, glaring, flashing sort of sign.

Mr. Lanza said this doesn't flash.

Mr. Murphy said if you change it every thirty seconds it is going to flash.

Mr. Lanza said he does not have a bit of problem with the board saying it can be changed every hour or two hours or whatever the limit is, he is not saying he wants this thing to change every five seconds or every ten seconds, he is sure there will be a time limit because he can understand where it would be very distracting if it constantly changed, he is not asking for that, this sign doesn't do that, it doesn't flash and he imagines he could make it flash if he wanted to but he is sure that there is an ordinance against flashing lights and he does not have a problem with that.

Mr. Lewis said changing the images would give the appearance of flashing.

Mr. Lanza said it isn't like there is something running across it, it is just a sign that is lit and then it changes and changes again and obviously there is a time you can set anywhere from two seconds to eight hours.

Mr. Lamanna asked if there will just be descriptive things.

Mr. Lanza said it isn't a script running across there, this doesn't do that.

Mr. Murphy said it does, it is intermittent, it changes and you are planning on changing an image whether it is a minute or five minutes or twenty minutes all day long and that is a different thing and what it says in the zoning code which is intermittent, rotating, moving, any kind of flashing intermittent and intermittent is changing.

Mr. Lanza said first of all it isn't constantly moving.

Mr. Lamanna said whatever comes on has to be a fixed image.

Mr. Lanza said some signs go across there.

Mr. Lamanna said right, they will scroll but the background can't be moving, you can't have a little movie playing in the background.

Mr. Lanza said in all honesty it is very possible that it does, he can't say that it does or doesn't but that is something that the board can simply say that it can't be moving and he can understand that you don't want it to move.

Mr. Lamanna said he thinks what the board is looking at is there is not a moving image on there, the image is only changed at a pretty significant interval and if it changes once per hour he wouldn't care but he wouldn't want to see it change every minute or every ten minutes.

Mr. Lanza said he doesn't have a problem with that, he agrees with that.

Mr. Lamanna said and what is on that sign has to relate to the businesses in the building, no advertising of other things.

Mr. Lanza said no political statements or anything like that and he can understand that and he would understand that the board would put that as a restriction.

Mr. Lamanna said it is a uniform restriction it is not intended to limit somebody's right to put up a political sign, but if you are going to have a permanent sign for the purpose of advertising a business, it would be only used for advertising the business and nothing else.

Mr. Lewis said you could apply intermittent to the gas station business because they change the price per gallon sometimes multiple times during the day, therefore that sign is intermittent.

Mr. Lanza said he does not know what the definition of intermittent is, how often it would change and added that some signs are just moving so that is kind of a distraction.

Mr. Lamanna said if the sign is changing every thirty seconds that would be a problem but once every hour is pretty clearly not.

Mr. Lewis asked Mr. Lanza what the quantity of image rotations is that he sees.

Mr. Lanza said if he has six businesses in there then they would put one business up there for maybe an hour and then after that it would change and the next one would sit up there for an hour and then the next one would be up for an hour. He said it has to be rotated and they may leave each one up for three or four hours, or during rush hour and then change it.

Mr. Lewis said some limits could be set as far as the minimum duration of rotation so there is no rotation occurring less than the frequency of one hour and a parameter could be set that way.

Mr. Murphy said he is not sure it is up to the board to set that whether it is intermittent or not.

Mr. Lamanna said the board is interpreting it and saying it is not and if it is more than an hour we are finding it not to be intermittent.

Mr. Murphy said he is going to ask for a clarification on the sign itself and asked Mr. Lanza if he is not changing the sign height from the stone column so the stone column will stay so you are going to get rid of the Carstar, Fidelity and Enterprise and you are still going to have Highway Auto Repair on the top and then below that will be the big LED or something like that.

Mr. Lanza said yes and the LED and the sign will not be any bigger.

Mr. Murphy asked Mr. Lanza if they are not actually doing what they showed the first time by taking it up and adding a lot above the height.

Mr. Lewis asked if the sign is illuminated throughout the night.

Mr. Lanza said yes it is on all night but he does not know if that would run all night, he hasn't looked into that but his sign is on all night, it does light up the front and they have lights shining on the used cars that are in the front there, it comes on when it gets dark and goes off when it gets light, the same as the building, it is all lit up at night.

Mr. Murphy said it is a handsome, absolutely gorgeous building for an auto repair, it is nice looking.

Mr. Lanza said they won a lot of awards for that style and it is part of their image now.

Mr. Murphy said and to think of what you had when you started, what it used to look like and what you had made happen for you.

Mr. Lanza said he is very proud of that building and they thought about putting signs on the building but he just doesn't allow it and he doesn't allow certain things in the lobby and he doesn't allow certain things on the building because he thinks it distracts from the décor. He said he has had that sign up front and it is a pretty good size sign but everybody just rides right by that sign and he doesn't know if it just fits in with the landscaping or the mere fact that he landscaped all around it and they did that because at one time the township decided they wanted to do landscaping up and down Washington Street so he did it and unfortunately nobody else seemed to follow.

Mr. Lamanna said the problem is there is just so much going on in that area there.

Mr. Lanza said that is right and it is a little bit of a problem with the bank and their drive-thru but his customers like it and the people in the community like the appearance of it and would rather keep it that way, he doesn't want to change too much of it and that is what that sign is about.

Mr. Murphy said he thinks Mr. Lanza has a great building and a great service to this community but he just does not like personally driving down the freeway and seeing big screen TVs that have the big pictures changing every thirty seconds or whatever they do up there and he does not think this makes Bainbridge any nicer place, it may give him a little more business but it may not and if it doesn't do any better for his business then we just allowed another LED sign, they did not come to this board and ask us if we like the sign in front of the fire station so what this board is trying to uphold is the zoning and we are trying to not make this look like Solon, Bedford or Maple Heights.

Mr. Lanza said he would like to think that his facility doesn't look like it does in Solon.

Mr. Murphy said it does not look like Solon at all but he is not sure what this does with the all night long in terms of lighting etc.

Mr. Lewis said he doesn't know much about LED and asked if anybody has any idea what the light throw is on it.

Mr. Lanza said he doesn't think it is any more than he has there now.

Mr. Lamanna said it is going to be less.

Mr. Lanza said he would think it would be more secluded especially in color.

Mr. Murphy said when you drive across the valley on 480 and it is gray and cloudy and all of those road signs look kind of gray and cloudy and then you see that big LED sign up there and it looks like a big screen TV.

Mr. Lanza said this one, in all defense of it, is not standing up in the air, it is down pretty low and it isn't going to jump up there like a big sign would be, up high.

Mr. Murphy said depending on what your image is on that TV you could be ten times brighter than the whites and reds above it.

Mr. Lanza said he does not know if that is the case and if it was all white he does not think it would be brighter, it would be less bright but he does not know because he doesn't have it up there to measure the light etc. and that is why it is on the lower part instead of the upper part. He said he has all of these businesses and each one of those businesses is entitled to at least have their name somewhere and he supposes he could hang it on the building if all else failed but he did not want to do that.

Mr. Lamanna said there is not a limit on the sign saying that it has to be only letters so in theory you could take this same picture that is on here now and put it in plastic and illuminate it from the back.

Mr. Murphy said absolutely you could.

Mr. Lamanna said it could be changed every hour manually and in theory you could do that and it would be perfectly permitted.

Mr. Olivier said the board is trying to regulate it from being a safety hazard and a distraction with intermittent minimum per hour, you eliminate the person's gaze constantly being pulled off the road.

Mr. Lewis asked if this is two-sided and will it be displaying the same image on both sides at the same time simultaneously.

Mr. Lanza said yes and added that he would like to think the people in this community think he has some taste in what he does and he would like to think he put up a great facility and whatever he does there really enhances this township so if he puts it up there it will not be gaudy looking.

Mr. Lamanna said the lighting on the electronic part of it should be of similar intensity with the lighting on the other part of it and he does not think you would want that because it would be detracting from the rest of the sign.

Mr. Lanza said the building sits back so far, people don't see it and they drive by the shopping center and the first thing people say is they didn't know this facility was for cars and he has this big sign out front but people don't see it and it is a problem for them and he has all of the tenants now because he can't run the whole thing himself. He referred to the sign renderings and said this is what it was and this is what we are looking for but the board has to decide if this is something that is fair or not.

Mr. Murphy said if this should be allowed the board should make note that the submittal is not going to happen that it is just going to duplicate the square footage of the existing sign.

Mr. Lamanna said the board will note that the square footage will not be changing.

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

Motion BZA 2010-3 – 8410 E. Washington Street (Highway Garage)

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

1. A variance to allow the applicant to install, in his existing sign, a lower portion which will be an electronic sign.

Based on the following findings of fact:

1. The overall size of the sign construction is not going to change.

With the following conditions:

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: Ms. Hannum, aye; Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye.

Application 2010-2 by Paul Voinovich for property at 17110 Hidden Point Drive

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

The zoning inspector's letter dated January 21, 2010 was read.

Mr. Paul Voinovich was present to represent this application.

Mr. Voinovich testified that they bought the house four years ago in August and since they bought it they have been making improvements to the house and they put in a U-shaped drive in 2008 and said they are the first house on the left and his neighbors drive is before the stop sign. He explained the location of his house, driveway and neighbor's house per the GIS aerial photo and said the backyards come together. He said at the same time they did their driveway to get better circulation because it was virtually impossible to get a car in and out, it was the year when they had four or five days without power, so he had a generator sited on the property and the issue is where he put the generator is because, in the backyard and if you have seen the drawings, when they bought the house there was a pond and patio area with a walkout basement and as you can see there is an elevation change that occurs that goes down the steps and there was an existing pond area. He said because of where the gas line comes into the house which is in the corner in the front, he couldn't put the generator under his deck and locate it getting right in front of where the gas meter is which is actually in the front of his house so he went to his neighbor and talked to her and told her what he was doing with his driveway and where he was going to put his generator and he went outside and put a big X there and said he was not doing the landscaping this year until the generator was installed, covered up and fixed the grass and the following summer which was last summer he came in and went crazy with the landscaping around the generator, around the driveway and they had no issues until his wife picked up the phone and asked the neighbor to stop telling their landscapers where to plant their trees. He told the board as they can see in the photos, this is the first year for the bushes they have in there and he tried to give the board photos of what you would see behind the generator up to her window, her site lines and since they have had this problem, the neighbor has probably planted 15 pines in between his property and her property and they are fabulous. He said her generator from his window from his bathroom is unscreened, sitting right next to her house and is a behemoth of a generator. He said their generators go on at the same time on Tuesdays every week so when he heard her generator he went out and set his button so they go off at the same time and there is no other place to put this generator but it was very important to the house it is an 18 kva generator and she has a 24 or 25. He said he is asking the board for a variance so he doesn't have to move this thing and as you see in the pictures, all of the landscaping was planned around where the generator location is, the stone path that goes from the driveway down to the pond and he really doesn't feel that she sees this generator, hers is white and his is green and gray and it blends in and you can't see it from the street, you can't see it from her house and he has tried to go above and beyond to be a good neighbor here.

Mr. Lamanna said the first question is why are we here with the generator in place and not here before the generator was installed.

Mr. Voinovich said we are here after the generator was installed because as he read the code it doesn't really specifically say generator, it says air conditioning unit. He said he runs an architectural business and a friend of his came out and said he could do the generator so he did and that is why he is here now, subsequent to asking for a variance because he did not know there was a 15 ft. setback on his side yard and he tried to locate it in a way that it would not be seen from the street and not be seen from his neighbor and would be completely hidden by landscaping. He said there is probably eight steps that go down that hill into the pond area and so trying to get it down that hill would be pretty tough and when he bought the house, the pond was pretty much a cesspool of non-movement and we went up the hill and had the water pumped up there and tried to really make it nice.

Mr. Lamanna asked Mr. Voinovich if he understands what the board's predicament is with people just doing things and coming into the board when somebody catches up to them, it discourages people from following the proper procedures and it puts the board in a difficult position because people come through and say that they spent all this money doing this and they want the board to say that is okay but if they had come in here beforehand, the board may have said no you can't put it there, move it over here and maybe you wouldn't have liked it as much but you wouldn't have spent any extra money doing it and now we are in the position where the board could say move it twenty feet and it would cost a lot of money to move it twenty feet.

Mr. Voinovich said unless he went to the other side which is not where his gas line comes into the house, the gas line comes into the home basically right there (he referred to the GIS aerial photo) and he basically came straight across here and at this point it drops down about 8' and this is all hard surface in here and basically at this point, this is all deck all the way along the back of his house and right now the air conditioning unit and things are under the deck but you can't put a generator under a deck so the only place he could throw it would be here or maybe here and at this point there is a walkway that goes this way and to put it here, it would be in the front of the house. He said he understands exactly what Mr. Lamanna is saying about after the fact.

Mr. Murphy asked if the neighbor's generator is the big white one and it is an outdoor patio that she can't enjoy, and asked Mr. Voinovich to show the board where her outdoor patio is, and asked Mr. Voinovich if he has seen the neighbor's letter.

Mr. Lamanna said it is not part of the record.

Mr. Murphy asked if the board cannot take the letter as part of the record.

Mr. Lamanna said it is not officially part of the record but it can give the board ideas for questions to ask so it in itself is not proof of facts but the board can use it to cross-examine the witnesses.

Mr. Voinovich continued by explaining his property by referring to the GIS aerial photo and said her generator is right in front of her patio and she is worried about his generator.

Mr. Lewis said the neighbor is not here so the board can't be speaking to what her opinion is. He asked Mr. Wrench if the neighbor's generator is within 15' of the property line.

Mr. Shane Wrench, Zoning Inspector testified that it is right at 15'.

Mr. Lewis said that is not in violation so there is no requirement for screening or noise or anything else because there is no violation associated with that.

Mr. Lamanna said that is assuming that you believe that it falls within the free standing air conditioning or heating unit.

Mr. Voinovich said it doesn't really talk about generators.

Mr. Lamanna said an outdoor compressor is one of the biggest air conditioner units you are going to have and it is nowhere near an 18 or 24 kva generator.

Mr. Voinovich said this generator is no higher than this off the ground (he referred to the distance from the floor) and it is not a big generator, it runs his whole house.

Mr. Lamanna said what he means is the amount of power being generated by it as compared to the power being used in a compressor motor.

Mr. Murphy said their sound levels will be different.

Mr. Lamanna said the natural gas one would be a little quiet.

Mr. Olivier asked if they are fired up once a day.

Mr. Voinovich said actually they are fired up once a week just to test them.

Ms. Hannum asked if it runs about ten minutes.

Mr. Voinovich said yes ten minutes and he purposely made his go off the same time as hers.

Mr. Murphy said maybe she thinks it is just yours that is making all of that noise out there.

Mr. Lamanna asked if it is not running under load, it runs free.

Mr. Murphy said they are just as loud.

Ms. Hannum said when her air conditioning units are under load in the summer it makes a lot more noise than the test run and unless she is outside she does not even here the test run.

Mr. Lewis said the way he reads the intent of the zoning code is these types of machines, they don't want them within 15' of the lot line because they don't want the noise to bleed over to the neighbor so whether it is an AC compressor or a supplemental power unit, the intent seems to be pretty clear.

Mr. Lamanna said the reason this is in there is a lot of people end up with their units on the side of their house so what happens is the side of the house is already up on the setback line, then the unit is on the side of the house but it still has to be 15' away so what this is basically saying within the normal 50' or whatever side yard setback, this could be between 50' and 15' and he thinks it was done with these units because typically you get these sited on the side of houses a lot of the times just because it is the best place to put it, a lot of times there are not a lot of windows on the side and just because it is the best place to put it.

Mr. Voinovich said he was just trying to hide it.

Mr. Lamanna said it is generally better there because obviously they are running a lot more.

Mr. Murphy said if he were to move it closer to the house he would not have to extend the gas line, some of the gas line could be eliminated.

Mr. Lamanna said if it is 15' away is it really going to be any quieter than 50' away and the answer is probably not.

Mr. Murphy said we would be asking him to move it 6-1/2 ft. because it is 8-3/4 ft. now off the line.

Mr. Lamanna asked if it is moved in 15', how is it going to make it any quieter.

Mr. Voinovich referred to the GIS aerial photo and said this area right here is lower where he had it and as he comes up this way it comes up higher so if he moves this 6' to get it 15' away from the line, it is coming up higher and it is more in her sightline than where it is now and it is down lower now.

Mr. Lamanna asked how the property is sloping there.

Mr. Voinovich referred to the GIS aerial photo and said the slope on his property starts right here.

Mr. Lewis asked about the screening/plantings around the unit and said because it appears it is serving two purposes and one is to disguise its presence.

Mr. Voinovich explained per the photos what he planted and said all of it is new plantings and he has those giant grasses on her side and he has pine trees.

Mr. Lamanna said you can't plant anything too close and referred to the transformers on streets where people have planted things too close to them and the power company has to remove the bushes to get to them.

Mr. Lewis said to make this comply it would have to be moved 6-1/4' at which point there would be no requirements to put screening on it at all because no variance would be required.

Mr. Voinovich said he took a picture from behind his generator looking at her window and her sightlines and she told his wife that they were ruining her morning coffee just because it is there. He said she has no complaints about sound, it is visual, this is a visual issue.

Mr. Lamanna said it is hard to imagine it is about sound when the person has her own generator and the only time they come on is when the power is out and the power is probably going to be out for everybody.

Mr. Lewis asked Mr. Voinovich if he can see her generator from any of his windows.

Mr. Voinovich said he has a great picture right here.

Mr. Lewis asked if he has morning coffee when he is viewing it.

Mr. Voinovich said no he has five kids and he is going to work and he showed the board a photo from his bedroom window. He said his point is this is the only place he really could have put this and he read the code and he didn't see generators mentioned. He said the issue started because she was kind of conducting the landscapers.

Mr. Lewis asked Mr. Voinovich if they were his landscapers.

Mr. Voinovich said yes.

Mr. Lewis asked Mr. Voinovich if she is paying for his landscaping.

Mr. Voinovich said no and added that it was fine until his wife picked up the phone and it got ugly after that. He showed a photo of the side showing his deck and hard surface.

Mr. Lamanna asked Mr. Voinovich if there is anything else that can be done with the landscaping.

Mr. Voinovich said the photo doesn't show the pine trees and she planted significant pines that literally stripe their property line starting at his driveway with little ones and it goes to bigger ones and she has probably planted about 15 pines at least, she has been planting them all summer on top of the ones he planted so she is trying to create separation or something.

Mr. Lamanna asked what the color is of the top of his generator.

Mr. Voinovich said the top of his is gray and hers is cream.

Mr. Lamanna asked Mr. Voinovich if he can paint it green.

Mr. Voinovich said he can paint it whatever color the board wants.

Mr. Lamanna said he is just trying to figure out a way such as planting another pine tree in front of it, painting it brown or something so that it blends in.

Mr. Voinovich said he will do whatever he can and thinks it is a great spot for it, he can build a fence around it, he will do whatever it takes to make her happy.

Mr. Lamanna said the really light color makes it stand out but if it is painted a deep green like the evergreens it would be better.

Mr. Voinovich said his neighbor can pick out the color.

Mr. Lamanna said it is not going to make a difference from a sound standpoint if it is moved 10' to 20' away.

Mr. Lewis said to make code he is only going to have to move it 6-1/4 ft. anyway and once it is up hill, the noise will carry.

Mr. Lamanna said he does not know if moving it 6' will make a difference.

Mr. Murphy said he is not sure having it exercise at the same time as hers is a good idea because it is reinforcing the sound and if she thinks it is all yours (Mr. Voinovich) instead of realizing that hers is on at the same time.

Mr. Lamanna said sometimes when two pieces of machinery are running together, you get harmonics of some kind and it can make it appear louder than it is.

Mr. Murphy said it is quite possible that she doesn't even realize hers is on.

Mr. Voinovich said it is not loudness for her, it is all visual and he does not know if she ever mentioned loudness.

Mr. Murphy said it is in her letter, noise and unpleasant view.

Mr. Lamanna said he would like to see another evergreen in there and paint it a darker color to blend it in with the rest of the landscaping because moving it 10' – 15' away is not going to change the visual on something that is this size.

Mr. Lewis said if Mr. Voinovich moves it 6-1/4 ft. he is also going to be compliant and there will be no requirement with conditions of screening or color so now this thing will be standing alone with a white top and no screening so he thinks the board has a practical solution that also shows that the board has acted on this.

Mr. Lamanna said and the board carefully considered the impact on the neighbors.

Mr. Lewis said and the alternative of moving it.

Ms. Hannum asked Mr. Voinovich how long it was there before it started to disturb the neighbor's view.

Mr. Voinovich said about a 1-1/2 years and when it was installed there was nothing around it, it was just sitting there for eight months.

Ms. Hannum asked what time of the day the testing is done.

Mr. Voinovich said it is 5:00 P.M. on Tuesdays. He said all you have to do is open it up and hit the button and it will automatically run the same time each week.

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

Motion BZA 2010-2 – 17110 Hidden Point Drive

Mr. Lamanna made a motion to grant the applicant the following variance for the purpose of installing a generator.

1. A variance from the minimum required side yard setback of 15 ft. to 8-3/4 ft. for a variance of 6-1/4 ft.

Based on the following findings of fact:

1. Due to the slope of the land away from the house, putting it in this location screens it better from site than it would be if it was in closer to the house.
2. If it is closer to the house it could also interfere with the walkway around the house.

Motion BZA 2010-2 – 17110 Hidden Point Drive - Continued

3. The board notes that it has considered the potential sound from this generator and does not believe it would improve the situation by moving it slightly farther away from the property line to make it comply.
4. The additional distance would not have any significant effect upon the sound as it would be heard from the adjacent property.
5. This is not a continuous running device and generally only runs when there is a power need.
6. The adjacent property owner also has a generator so the additional impact from this generator is unlikely to be significant.

With the following conditions:

1. Since this will be closer to the side line and therefore could adversely affect the neighboring properties, a condition will be placed that the applicant maintain the plantings he has around it which currently screens it and will add one additional evergreen tree to further provide screening from the adjacent property.
2. The applicant will also paint the generator a darker color so that it blends in with the surrounding landscape and is left visible.
3. The board finds that if these changes are made it will reduce the adverse impact on the adjoining property owner and will therefore satisfy the requirements for granting this area variance.

Mr. Lewis seconded the motion.

Vote: Ms. Hannum, 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 8:15 P.M.

Respectfully submitted,

Joyce Hannum, Alternate
Michael Lamanna, Chairman
Todd Lewis, Vice Chairman
Mark Murphy
Mark Olivier

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

Date: March 18, 2010

AUDIO RECORDING ON FILE

BZA PH 2/18/2010

-21-

Bainbridge Township, Ohio
Board of Zoning Appeals
February 18, 2010

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 8:15 P.M. by Mr. Michael Lamanna, Chairman. Members present were Ms. Joyce Hannum, Alternate, Mr. Todd Lewis, Mr. Mark Murphy, and Mr. Mark Olivier.

Minutes

The board reviewed the minutes from the January 21, 2010 meeting regarding BZA 2009-32 – 7100 Pettibone Road (Parkside Church) – Section 3 of the previously stated conditions. Section 3 of the motion was modified as follows:

3. ~~With respect to the riparian situation on the site the applicant plans to eliminate a section of drainage that would potentially be considered a riparian way in the township zoning under the Federal rules applicable to this. The applicant would be permitted to remove this stream area and replace it with piping therefore there would not technically be an impact on the riparian after that occurred but as a further condition being applied, the applicant will conduct a mitigation project.~~ ***The site contains a location which is potentially a riparian area that would be affected by the project covered by this conditional use. Whether this location qualifies as a riparian is disputed. Also, the applicant intends to remove a section of stream and replace it with piping which is permitted by applicable federal regulations, however it is not certain that this would be permitted by applicable Bainbridge Zoning. Once the piping is completed, the project will not then affect a riparian area and the project will not substantially affect any upstream drainage. Since the applicant has agreed to perform a mitigation project, the board without determining whether the subject location is a riparian or can be placed in piping, will permit the modification to the riparian as a variance. As a condition under the conditional use (and as a condition necessary to make the findings in support of the variance) the applicant will complete a mitigation project.*** The planned project is the removal of the large pond to the east of Root Road and returning it to its original stream condition or if that subsequently proves not to be feasible after final engineering another mitigation project on another location satisfactory to the Zoning Inspector with advice from the Chagrin River Watershed Partners. ***Unless the mitigation project is completed the board finds that the factors necessary to support the variance would not have been proved.***

Mr. Lamanna made a motion with respect to BZA 2009-32 to modify Section 3 of the board's decision as previously discussed and set forth in the typed version that has been delivered to the secretary.

Mr. Murphy seconded the motion.

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

Mr. Lamanna made a motion to accept the minutes of the January 21, 2010 meeting as modified by the change to BZA 2009-32 just adopted by the board.

Mr. Murphy seconded the motion.

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

Applications for Next Month

Application 2010-4 by Terry Boettcher for property at 8270 Bainbridge Road

The applicant is requesting an area variance for the purpose of constructing a pole barn. The property is located in a R-3A District.

The Bainbridge Township Board of Zoning Appeals set a public hearing on the above application for March 18, 2010 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 8:32 P.M.

Respectfully submitted,

Joyce Hannum, Alternate
Michael Lamanna, Chairman
Todd Lewis, Vice Chairman
Mark Murphy
Mark Olivier

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

Date: March 18, 2010