

Bainbridge Township, Ohio
Board of Zoning Appeals
December 16, 2021

Pursuant to notice by publication and ordinary mail, the public hearing was called to order at 7:07 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Brent Barr, Alternate; Mr. Ted DeWater; Mr. Ian Friedman, Alternate; Mr. Joseph Gutoskey; Mr. Todd Lewis and Mr. Emeil Soryal. Ms. Karen Endres, Zoning Inspector was absent. Mr. Steven Averill, Assistant Zoning Inspector was present.

Mr. Lamanna welcomed everyone to the regular meeting of the Bainbridge Township Board of Zoning Appeals, explained the public hearing process and stated that anyone who wishes to testify will be sworn in.

Mr. Lamanna presented Mr. Ian Friedman with a proclamation of appreciation for serving as an alternate for the past two years. Mr. Friedman finished his term and is leaving the board at this time. He then departed the meeting.

The Board of Zoning Appeals welcomed new member Mr. Emeil Soryal to the board. Mr. Soryal is filling Mr. Michael Corcoran's unexpired term.

Application 2021-28 by Craig and Noel Hairston for property at 17365 Lookout Drive

The applicants are requesting area variance(s) for the purpose of maintaining pool equipment. The property is located in a R-5A District.

Mr. Craig Hairston testified that it is their pool equipment and essentially what happened is after they put it in then that is when they found out that the pool equipment, although it is at an angle on the property, the closest corner of the pad it is on, encroaches by about 2'7" into the setback, not over the property line, it is still 12' and some odd inches from the property line and it is only, again, it is not even the entire pad that encroaches, it is maybe one-half or one-third that encroaches and so we are looking for a variance and it is in the back corner, it is still roughly 90' from the closest corner of his adjoining neighbor's house and it is shielded by landscaping on both sides, our side and theirs.

Mr. Lewis asked Mr. Hairston if he is the contractor with High Tech Pools.

Mr. Hairston said no he is the homeowner.

Mr. Gutoskey asked if the 12.3' is to the pad itself.

Mr. Hairston said the property line is straight, the pad kind of is off and runs at an angle and then right on almost the corner.

Mr. Gutoskey asked how far is the pool equipment itself.

Mr. Hairston said it is within 6" of the corner of the pad so instead of 12'7" it is 12'2" or it is 12'1".

Mr. Gutoskey said what he is saying from the corner where it is the closest where the pool equipment is it is like 6" or 4" because what he was going to ask can you just cut that little piece out.

Mr. Hairston said unfortunately no, they poured the pad bigger and it is only probably 6", maybe it is 8" more but that isn't going to help. He said where they have the heater and it is not the heater, the heater is on the other side but they've got a lot of equipment on a relatively small pad.

Mr. Gutoskey said you included some pictures in here.

Mr. Hairston identified the pictures.

Mr. Gutoskey said it looks like you've got some high trees around it.

Mr. Hairston said their neighbors have a row of Pine trees and we have several as well and so no matter what time of year it is shielded from the neighbors side, now if they walked up to their fence line at the back corner and looked over of course they could see it.

Mr. Gutoskey asked Mr. Hairston if it was his fence or theirs.

Mr. Hairston said that is our fence.

Mr. Gutoskey asked if it is on the line.

Mr. Hairston said it kind of just wraps around the pool equipment so the back fence is right there, it is not really on the property line.

Mr. Gutoskey asked if there is anybody here that is interested in this application.

There was no response.

Mr. Lewis asked if this is gas or electric.

Mr. Hairston said the pump is electric, the heater is gas, but the gas line actually comes in from the other direction and it is quiet.

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

Motion BZA 2021-28 – 17365 Lookout Drive

Mr. Lamanna moved to grant the applicant the following variance.

1. A variance on the minimum side yard (east side) from 15' to 12.3' for the purposes of maintaining a portion of a concrete pad with pool equipment as shown in the application.

Based on the following findings of fact:

1. The reason for granting this variance is the pad was put in a little too close to the property line but the variance requested is only 2.7'.
2. It is a very small variance which will not adversely affect the character of the neighborhood or the neighboring properties.
3. We are talking about a concrete pad and some equipment that is about 3' or 4' high and will not be very visible from the adjacent property.
4. The board notes that the HOA approved this variance.
5. There is screening around it.

Mr. Lewis seconded the motion.

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

Application 2021-29 by Joyce Taylor for property at 9125 Taylor May Road

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

Ms. Joyce Taylor and Mr. Ken Taylor were present to represent this application.

Mr. Lamanna swore in Ms. Joyce Taylor and Mr. Ken Taylor and he let the record reflect that Ms. Joyce Taylor and Mr. Ken Taylor were duly sworn.

Mr. Lamanna swore in Mr. Steven Averill, Assistant Zoning Inspector and he let the record reflect that Mr. Averill was duly sworn.

Mr. Lamanna asked for a brief description of what they would like to do here.

Ms. Taylor testified that she would like to build a pole barn and the reason that they need to come before the board for a variance is because it is closer to the west side property by 25' than it should be under normal circumstances and the size is a little bit larger than what is permitted.

Mr. Lamanna asked what the structure of this building is going to be on the outside.

Ms. Taylor said a pole barn.

Mr. Taylor said steel.

Mr. Lamanna asked a steel roof also.

Mr. Taylor said yes.

Mr. Lewis said he is seeing a note that back in 2003 there was a variance granted and he wanted to once again go back and review it. He asked if this is located in front of the dwelling.

Mr. Taylor said yes.

Ms. Taylor said adjacent to the garage.

Mr. Lewis said he just wanted to understand. He asked if this is their kit that they provided with the ReaLink information and the drawings.

Ms. Taylor said yes.

Mr. Lewis said so that is structure number three that you are talking about doing.

Ms. Taylor said correct.

Mr. Lewis said it is in front of the dwelling but it is no closer to the front yard setback than this other structure that is already up.

Ms. Taylor said correct.

Mr. Gutoskey asked if there is any reason that you can't rotate this building 90 degrees and put it behind your garage and be at the 50' setback, it would still put one end of the barn about 200' off your house and the west side would be at 50' which would put it about 25' to the west of where your garage is now.

Mr. Taylor said two things, first of all we are going to back in a 36' motorhome and also too right behind the house there is a ravine that drops off quite a ways.

Mr. Gutoskey said but when he looked at it on ReaLink though that top of the bank where you start to go to the ravine is about 100' behind your existing garage so then the question is can you then move it and put it at 25'.

Ms. Taylor said she is not quite sure of the drawing that you are looking at there.

Mr. Gutoskey said basically it is your drawing but he went onto ReaLink and pulled some dimensions off of it.

Ms. Taylor said the well is also a factor for them, their well is between structure one, the house and the first garage, she has a well in there to get her well water so she doesn't know if she can put anything there by it.

Mr. Gutoskey said his well is only 10' off his house. He said you would be far away from the well.

Mr. Taylor asked Mr. Gutoskey if he is talking about turning the building lengthways.

Mr. Gutoskey said yes but since you have to back in that won't work but he is still wondering if you can't put it behind the existing garage and kind of offset it to where, or even angle it a little bit to where you can get the 50'.

Ms. Taylor said she doesn't know if they can do that.

Mr. Lewis said the terrain doesn't fall off for quite a while.

Ms. Taylor said visually she would rather not have three different structures in three different locations, she thinks it makes more sense visually to have them even.

Mr. Lewis said visually from the street you are going to see three structures.

Mr. Taylor said you can't see the garage or the house from the road right now.

Mr. Gutoskey said the problem we have is we are looking at the variance and what is the hardship to give you the variance.

Mr. Taylor said where it comes straight in, back straight up that driveway right into the building, if you move it over there we've got to back in straight off that thing and come around back of the drive and the thing will be sitting over here.

Ms. Taylor said she is not quite sure you can back in that way.

Mr. Gutoskey said if you back that far you can back as far past that garage, that is what he is looking at, there are other members here, he doesn't know what they are thinking but he just thinks you could construct that building without the variance or maybe at 40'.

Mr. Lamanna asked how much is between the existing garage and the new garage.

Mr. Taylor asked how much will there be.

Mr. Lamanna said yes.

Mr. Taylor said 19'.

Mr. Soryal asked if that is necessary.

Mr. Taylor said we talked to the well guy and he needs to be able to get through here if we were going to do something with the well, the well sits right here where the marker is, we wanted space to be able to get through there, there is no way to get around to get back there if they ever had to do something to the well.

Mr. Lamanna said you could come around the outside.

Ms. Taylor said no they can't, we had them come over and look, they can't, they would have to drill a new well.

Mr. Gutoskey asked if they had anything in writing from the well guy.

Ms. Taylor said no.

Mr. Lamanna said if he is talking about coming between the two buildings, if you move one building over why couldn't you then just come around the building.

Ms. Taylor said because you would have to put the driveway all the way around.

Mr. Gutoskey said you don't have a driveway all the way to the one now.

Mr. Lamanna asked how old their well is.

Ms. Taylor said since 1983.

Mr. Lamanna said he is talking about driving between the two buildings to get around.

Ms. Taylor said no he has to go around, he has got to be able to get between the building on the far left and the garage so he was going to go down in between right there.

Mr. Lamanna asked why couldn't he just go around the outside of it, that is not paved in between there.

Mr. Taylor asked what do you mean about coming through.

Mr. Lamanna said with the building over here he can go around the outside.

Ms. Taylor said and drive on the neighbor's property to get to it.

Mr. Lamanna said no because there would be just as much room if the building is moved over.

Mr. Lewis said if you move the building 10' over it is 10' more on the side.

Mr. Taylor asked how far away do you have to be.

Mr. Gutoskey said you could attach them if you want.

Ms. Taylor said she doesn't want to attach them. She said they looked at attaching them.

Mr. Lamanna said your roofline is this way but you could come over and have enough space to walk down in between it and weed whack.

Mr. Lewis said or put a lawn mower through it or whatever, a wheelbarrow.

Mr. Lamanna said it reduces the size of the variance.

Ms. Taylor said got it, okay.

Mr. Gutoskey said when he looked on the GIS he got about 75' to the front corner of the garage.

Mr. Taylor said it is 76'.

Ms. Taylor said he measured it.

Mr. Gutoskey said he was pretty close.

Mr. Lewis said 76' and what is the width of this building.

Mr. Taylor said 32'.

Mr. Lewis asked if that includes the overhangs.

Mr. Taylor said no.

Mr. Lewis said that is the foundation.

Mr. Taylor said there will be a 2' overhang on both sides.

Ms. Taylor said she will have to chop her Apple tree down.

Mr. Lamanna said it looks like the building is going to be right up next to it anyway.

Ms. Taylor said that Apple tree was going to go, the poor thing.

Mr. Lamanna said it is 32' wide and you've got 76' and if it was touching it would be 44' away.

Mr. Taylor said yes.

Mr. Lamanna said that is a 6' variance plus basically whatever you have in between, if it is 4' in between it would only be a 10' variance.

Mr. Gutoskey said yes.

Mr. Lamanna said that still lets you back in with your vehicle.

Ms. Taylor said straight back in, right.

Mr. Lamanna said yes.

Ms. Taylor said okay.

Mr. Lewis said he has some other questions on the building too please. He said this is an all metal building right.

Mr. Taylor said yes.

Mr. Lewis asked if the roof is metal as well.

Mr. Taylor said yes.

Mr. Lewis said we have had some interesting occurrences in Bainbridge with materials. He said he is looking at the APB pole barn.

Mr. Taylor said he pulled that up just so you have some kind of reference.

Mr. Lewis said what he would really like it to do is from your pole barn manufacturer vendor to provide our zoning inspector with a small sample for color purposes of both the roof and the sides.

Mr. Taylor said sure.

Mr. Lewis said from what this looks like right now the roof will be brown and the sides will be stone which are kind of generic words, it doesn't really give you a color chart or a PMS number but if we do that then we've got something in our file that the color as represented are the colors that are being submitted and they will be as built.

Mr. Lamanna said you are trying to match up.

Ms. Taylor said we are trying to match the house.

Mr. Lewis said it is a great idea.

Mr. Gutoskey said so then the other question too is it looks like it is going to be 10' into that 50' buffer, would you have any problems planting a couple of Pine trees there.

Mr. Taylor said actually there are some Pine trees there now but yes, we are going to fill it in with Arborvitae.

Ms. Taylor said she likes Arborvitae because they grow big and tall.

Mr. Gutoskey said when you look at the aerial there, just to kind of shield it from the neighbors. He referred to the aerial and said with that long side and you are going to be 10' closer in that 50' side buffer if you are okay with planting some Arborvitae there.

Ms. Taylor said yes.

Mr. Gutoskey said he sees you've got some windows on the side to help break up the side.

Ms. Taylor said yes.

Mr. DeWater said it will probably save you a little money on your driveway expansion too by moving the building over.

Mr. Gutoskey said you won't have to move so much of your driveway over.

Mr. Lewis asked if they are going to attach it with more concrete or asphalt.

Mr. Taylor said yes.

Mr. Lewis said we are set on the lot coverage.

Mr. Taylor asked how many feet does the board want between the buildings, to the eaves.

Mr. Gutoskey said about 4'. He said with 40' to the property line with 4' between because it looks like the garage is a little askew to the property line so it would probably be a little more than that.

Mr. Taylor said the garage is 76' to the base of the garage but it has a 2' overhang so do you want 10' from the overhang or 10' from the base.

Mr. Gutoskey said it would be 38' from the foundation, 36' for the whole thing.

Ms. Taylor asked if she can get her lawnmower down there.

Mr. Gutoskey said you would have 6' between. He said it will be 38' to the foundation and 36' to the overhang.

Mr. Lamanna asked if anybody had any issues on the size of the building.

The board replied no because of the six acre lot.

Mr. Gutoskey said it just so happens that the shed next door shows 38' to it so it is in the ballpark there.

Mr. Lewis said it is consistent.

Mr. Lamanna asked if there is anybody else interested in this application.

There was no response.

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

Motion BZA 2021-29 – 9125 Taylor May Road

Mr. Lamanna moved to grant the applicant the following variances for the purposes of constructing a pole building as shown in the application (a 32' wide pole building with 2' overhangs).

1. A variance to the minimum side yard on the east side of the property from 50' to 38' to the foundation which will also be 36' with the overhang of the structure.
2. A variance to the maximum accessory building size from 900 sq. ft. to 1,280 sq. ft.
3. In addition, the applicant's steel siding on this structure and the roof are meant to match the house with colors being brown for the roof and stone. The applicant will, when they get a final color selection, submit those to the zoning inspector for determination that they are within those parameters and are consistent with the goal of matching the house and making the building less obtrusive.
4. In addition, the applicant has agreed on that same side of the new structure (west side) to plant some Arborvitae along the building between the front and the window so as to provide some additional screening from the adjacent property.

Based on the following findings of fact:

1. There is a practical difficulty because of the existing structures and the necessity of placing this structure on that side of the property to have access to a large motorhome to be able to get it in and out of the building limits the locations on the property.
2. With respect to the size of the buildings on this six acre lot, and given the size and scope of the existing buildings on there it is reasonable given the size of the lot and will not adversely affect the character of the neighborhood or the adjacent property owner.

Mr. Gutoskey seconded the motion.

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

Application 2020-35 by Dangelo, Ltd. for property at 16965 Park Circle Drive -
Continuance

The applicant is requesting area variance(s) for the purpose of maintaining a pavilion. The property is located in a LIR District.

Mr. Joe Gutoskey recused himself from this application and Mr. Brent Barr, Alternate joined the board for consideration of this application.

Mr. Lamanna noted that this is a continuance of an application requesting area variance(s) for the purpose of maintaining a pavilion.

Ms. Kathleen Dangelo, property owner and Mr. Bruce Rinker, attorney for Ms. Dangelo were present to represent this application.

Mr. Rinker stated that he did not need to be sworn in because he is an officer of the court.

Mr. Lamanna said except in this case you (Mr. Rinker) are actually giving fact testimony.

Mr. Lamanna swore in Mr. Bruce Rinker and he let the record reflect that Mr. Rinker was duly sworn.

Mr. Bruce Rinker testified that he is with the law firm of Mansour Gavin at 1001 Lakeside Avenue, Suite 1400 in Cleveland and we are a land use counsel for Sapphire Creek and first of all he does want to thank you, we were here in July and provided you another copy of the packet that he had presented then thinking that we were going to go forward and understanding that you were short one member and granted continuances until you had a full compliment so we do appreciate that. He said he would like to divide this into two parts, primarily the reason we are here is for an area variance and as you know in your zoning code, an area variance does not challenge the use but it deals with dimensional issues and his understanding here and it is something that he eluded to in the July 15th letter so he will reiterate it again on behalf of Kathleen Dangelo for Sapphire Creek. He said if the board decides that it does not want to grant this area variance for the setback encroachment then Ms. Dangelo is prepared to relocate the pavilion so we want you to understand and his understanding is and he thinks that the zoning inspector would agree that we are not here to deal with a use, it is not an issue and were the pavilion required to be relocated on the site that would be compliant with all of the dimensional requirements it would be a permitted use, is that correct.

Mr. Steve Averill, Assistant Zoning Inspector testified by saying correct.

Mr. Rinker said he understands that a lot of the people that are here from Knolls are very much concerned about the operations and he does want to address those, he provided the information not only in the July 15th packet but also for the packet for you tonight and he would like to go through some of those things but again the focus for right now is on this encroachment and the bottom line is you had indicated we are really asking for forgiveness, inadvertently the pavilion was placed in this 50' setback area. He said if you go to the July 15th packet that he provided as a handout first go to Tab #2, it is a little small, it is an aerial view of the site on Google to give you some orientation and he thinks the Google mark pinpoints where Sapphire Creek is and if you notice the top of the page is actually east so the right hand side of the page would be south, north on the left side and if you look you see the Knolls Subdivision which is about half way up the page on the left side so that is the northern part, then between that is currently the winery itself and then it is on the east boundary line that we are talking about. He said if you go to Tab #3 he took the liberty of framing in yellow the rectangle that you see in this Tab #3, that is the adjacent property, it is owned by the City of Chagrin Falls, it is roughly 23 acres and as noted in the staff report from back in January he believes it is noted as it is vacant, it is landlocked, it is steeped in ravines and heavily wooded and for all intents and purposes we don't anticipate, he doesn't think anyone would, that it is going to be developed, but as we stated up front, in the event that it would be necessary to move the pavilion Ms. Dangelo is prepared to do it and it is not without expense but they understand that that may be a consideration for the board tonight. He said they believe however though it is in keeping with your standards for area variances that in many respects and certainly for people of the Knolls, this location requests or represents really an optimum location in terms of any of the concerns that these people had with the operations. He said the pavilion itself is where the wedding vows are performed, that is the wedding ceremony, it is not for music other than attended to a ceremony which typically is going to be short lived and pretty low key and it is also for dining so it is not an area that should be at all a concern in generating sound but again notwithstanding what we want to point out is this pavilion is as far away and on the other side of the structures away from Knolls and it is next to a vacant property that is not likely to be developed. He said if you look at Tab #4, again this is from July, we took a couple of pictures and it is just to give you a perspective of what the adjacents see, the relationship of the pavilion, the last picture is taken from inside the woods, we trespassed to look back and to show you it is a pretty heavily wooded area so again we appeal that when you look at the factors in your zoning resolution and area variances that this would not be considered substantial, they made a mistake, they sited it in the wrong location but when all things are considered we think it would be less impactful for all adjacent property owners and certainly for people in the Knolls. He said he wrote about this again in the July packet then reiterated in this December 15th packet which he provided to the board as well and he just wants to highlight the number of documents, first of all Ms. Dangelo runs a very, very successful business, she has proposed a Still, a second facility that is going to be closer to the Knolls and when we were here in February we were appealing not simply with this particular setback issue but rather a consideration of parking lot variances related to the proposed Still project.

Mr. Rinker continued by saying we really got a lot of feedback and we asked for a continuance and we said we would go back to the drawing board, literally and figuratively and Ms. Dangelo did just that. He said let's go back to the July packet because he provided this in July, Tab #1 and there are three different site plans used, he color coded them and in Tab #1 this shows the proposed site plan as it was projected when they were here in February and you notice the location in yellow where the Still would have been relative to the Knolls property. He said if you turn the page, and again take a look, and he should point out that again the south of the property is on the right side of the page, north again is on the left side of the page, and he outlined in blue kind of the serrated edge the footprint of what had been proposed and you can see in yellow, this is what has been approved because it is code compliant, there are no setback requirements, the proposed use of the Still is pushed away from the Knolls and this was pointedly done as a response to the concerns, the complaints that Knolls residents had made so step #1 was repositioning the Still. He said Ms. Dangelo had since told him that even since this particular drawing which has been approved, The Still footprint will be a little bit smaller and consequently the parking field will also be a little bit smaller. He said again, permitted use, no variances, no area variances required for the Still location and then the other thing again, this is not per code and he knows there has been a lot of discussion and he anticipates that a number of residents are going to be addressing the board about concerns of this adjacency. He said what Ms. Dangelo has proposed and she has made this commitment, about \$50,000 worth of additional mounding and landscaping and just recently he provided documentation to Mr. Markowitz at his request some engineered drawings that show the proposed mounding will extend and you can see in this third drawing and he has got another updated version in the December 15th packet in green, this will run along the south berm basically of the detention basin and the detention basin by the way is a shared basin, this was something that Soil and Water had to look at to make sure that drainage functionality would not be adversely affected and were advised that it would not be so again these are preliminary drawings but essentially subject to a grading plan approval and ultimately final site work. He said this mound is going to be about 12' high, it is going to run along that south perimeter and should be very effective against the Knolls and the future development of the Sapphire Creek property. He said Ms. Dangelo has also proposed there will be some evergreen trees and some deciduous trees and again that documentation is in the packet provided for tonight's meeting. He said we understand that this has been a concern and one of the things Ms. Dangelo also said back in February is that, bear in mind, that with COVID a lot of the receptions and a lot of events were held outdoors last year and she went back and made sure that all sound generation or bands, DJs, any bands playing music would be contained indoors, inside of the winery, number one, decibel levels are set, there is a maximum and her managers have enforced that, it is part of the contract with them so this is something to be proactive and basically to respond in good faith to what people were complaining about was to control the sound.

Mr. Rinker continued by saying to their knowledge they were made aware of one complaint and that was on August 21st of this year, when after we were prepared to be here he was contacted and learned that about 3:30 on a Saturday morning, the 21st, one of the residents in Knolls heard music being played which was stunning and as it turned out what we found out is the cleaning crew had decided to help themselves and turn on the sound so that they could whistle while they worked, Ms. Dangelo was not pleased, she brought this up to the manager and shut that down immediately so what he was saying, that was an anomalous event, that is unusual. He said they were made aware when they were coming here in November that at the last minute we saw there were a couple of letters from the Knolls, candidly, the first time it seems that we knew there is a problem is when we are ready to come before you and he can't account for that, all he can say is Ms. Dangelo has done what she should do as a responsible business owner to regulate the sound, to control that and the uses are permitted and as a fact sheet as this December 15th packet shows you, this is a significant endeavor, this would be about a \$5 million investment, the property value increases, look at the awards that she has received for the operation, this is not only a popular, it is a very successful business and as we all know part of the agreement when the Knolls went in was that both the Knolls residents and the developer for this industrial park would use their best efforts to promote development so that is a mutual obligation, he thinks it is very safe that Ms. Dangelo has again made a good faith endeavor to meet that requirement, she doesn't have to put in that landscaping, she doesn't have to do those things, specifically you don't have a sound ordinance per your zoning resolution but we all know, in fact we tested it back in February that sound is something that if you are living in your home you don't want to have to deal with it so she has tried to deal with it and he thinks she has proven to deal with it very effectively and for a business it is a fully permitted use so at the end of the day what we are asking you to recognize is this is a very specific issue involving a setback, it is not the functionality and the operation of the site that is part of your decision but we are not naïve, we know that people here are very attuned to the fact that this operation with its expansion is something they are very concerned about. He said we believe that this is being addressed in a very appropriate way and candidly Ms. Dangelo is putting her money where her mouth is so these \$50,000 in improvements in order to make sure and in addition to operational structurally this will be done in a way that is satisfactory. He said we can respond to any questions but he knows these other folks want to speak and we would like the chance to address you following that.

Mr. Lamanna said he would like to give the board a chance to ask any questions.

Mr. Lewis said so you are saying that you believe that the only thing before us is the matter of the area variance on the exact location of the pavilion.

Mr. Rinker said that is correct.

Mr. Lewis said however and thank you, you have elaborated on every single other element involved including the use of that building which in my position leaves the door open for me to have that conversation so he is looking at the consent judgment entry between Knowles Building Company, the developer and Bainbridge Township so while we will get around to talking about that it is in a buffer area that was not permitted to be built in and that the building was built without plans, without engineering, without an architect, without a building certificate, without inspection.

Mr. Rinker said which by the way has all been done since then.

Mr. Lewis said he appreciates that sir but coming from somebody that just built a multi-million dollar building and knew the exact process and requirements it was rather surprising as we do not have a first time builder in the area, this was another structure being put up which pretty much sidesteps every single requirement there is so unfortunately it also got built into an area that with the judgment decree in sections 530 prohibits any structure within 50' in that buffer area so it has intruded in that and it is in Section 530.26 which is part of the M-1 District and all the referrals in the judgment entry. He said secondly, to go with that in that same exhibit Section 530.11 it clearly defines permitted uses which are all required to be in a completely enclosed building so we are talking about the physical attributes of the structure and the placement of it regardless of what uses may occur within that structure so you don't want to talk about uses because you don't think that that is relevant right now.

Mr. Rinker said he doesn't think it is a question for you he thinks it is a question of law. He said he thinks it is a matter of law.

Mr. Lewis said to Mr. Rinker that he is not going to argue law with him.

Mr. Rinker said the determination was made by your zoning administrator and he doesn't think it is the problem of the BZA to make a different determination.

Mr. Lewis said it clearly states that the building needs to be fully enclosed and it can't be in the 50' area, that is right in this legal document.

Mr. Rinker said that is your interpretation.

Mr. Lewis said he doesn't think it is his interpretation. He said you are talking over me sir so he is going ask you to wait your turn, he realizes that you are passionate about representing your client.

Mr. Rinker said okay.

Mr. Lewis said the judgment decree does clearly refer back to M-1 and all of 530 which sets sort of the rules of the agreement. He said in Knowles we don't have any other pre-existing exceptions that intruded on that buffer zone so while he appreciates there is a landlocked parcel adjacent to it the fact of the matter is it is built where it should not be with no permission and the nature of the structure itself does not appear to match what the requirement of the consent was so we can try to argue for months, that is as he is sitting with the document and just reading it verbatim that is what it states. He said he will pass it over to the other fellows on the board if they have any comments.

Mr. Barr stated that he read it the same as Mr. Lewis that it has to be in an enclosed structure and did not create any offensive noise, vibrations, smoke, dust, heat, glare, flame or pollutants or other objectionable influences, he reads the same as you (Mr. Lewis).

Mr. Soryal asked if this structure is seasonal, he is assuming because it is used seasonally, just in the summertime. He asked if there are events that happen in the wintertime or other than that.

Mr. Rinker said to his knowledge, no. He said Ms. Dangelo can probably speak to that.

Mr. Soryal asked if they can give the board a little bit of an idea the effects of having that building for your business.

Ms. Kathleen Dangelo replied yes.

Mr. Lamanna swore in Ms. Kathleen Dangelo and he let the record reflect that Ms. Dangelo was duly sworn.

Ms. Dangelo asked Mr. Soryal if he could repeat his question.

Mr. Soryal asked if she could give the board an idea of the impact of having the pavilion for your business and whether some of these events can be held in your building and you don't need the pavilion.

Ms. Kathleen Dangelo testified that the reason is for two primary operations, it is used as a ceremony location for wedding ceremonies and it is also used for outdoor dining and primarily their weddings are April to mid-November.

Mr. Soryal said and then summer in bad weather will these weddings move to the inside then.

Ms. Dangelo said no the pavilion is for weddings.

Mr. Soryal said but is it big enough to house the whole event.

Ms. Dangelo said we have church style seating for weddings for the ceremony so they can fit about 130 people church style in the pavilion and it is used for generally a 20 minute ceremony.

Mr. Soryal said so without the pavilion your business is cut in half.

Ms. Dangelo said well it would definitely be a hardship for them because most people like this outdoor nature and where we are at in the woods and they want an outdoor ceremony.

Mr. Soryal said but not every wedding is held outdoors.

Ms. Dangelo said just about every wedding is outdoors.

Mr. Soryal said okay.

Mr. Barr asked how many people can you fit in the pavilion.

Ms. Dangelo said church style 120 – 130 people, for dining about 40.

Mr. Barr said okay. He asked if the weddings outdoors are less than 190 people.

Ms. Dangelo said they have weddings that range from 20 people to occasionally we have 250 people, the ceremonies they can fit about 100 to 130 people under the pavilion and if people have more than that they just stand around the perimeter of the building.

Mr. Barr asked if this has been used for weddings already.

Ms. Dangelo said yes.

Mr. Barr asked without a permit.

Ms. Dangelo said they have the building permit they just don't have the zoning permit.

Mr. Barr said but it was used for weddings before there was a building permit or a zoning permit.

Ms. Dangelo said yes.

Mr. DeWater asked back to your building permit, the building department did inspect it and approve the structure.

Ms. Dangelo replied yes.

Mr. DeWater asked if that is in this packet.

Ms. Dangelo said she believes it is in the packet.

Mr. Barr asked if there were any modifications that had to be made.

Ms. Dangelo said yes there were, \$15,000 worth of modifications were made.

Mr. Barr said so you had events in the building that was not up to code.

Ms. Dangelo said they did not realize that at the time.

Mr. Lewis asked why she would put \$15,000 of improvements into a structure with a possibility or probability of having to move it.

Ms. Dangelo said good question, she wanted to make sure they were ensuring the safety of all of their guests and she was not aware modifications had to be made before the building department told her to make the modifications.

Mr. DeWater asked if she continued to use the pavilion before she had approval from the building department and permits after it was brought to her attention you weren't even supposed to have the pavilion.

Ms. Dangelo said yes.

Mr. Barr said safety was not taken into consideration then.

Ms. Dangelo said yes it was, we had the contractor scheduled as soon as we found out what we had to do. She said most of the weddings are not held under the pavilion, it is a rain plan, most of them are held outside.

Mr. Soryal said so after the ceremony the whole party moves inside.

Ms. Dangelo said correct.

Mr. Soryal said that is where the noise and the music and everything is.

Ms. Dangelo said the reception is primarily inside, guests do go outside but the reception is inside.

Mr. Soryal said there are no speakers on the outside to follow what is going on in the inside.

Ms. Dangelo said no, the bands are strictly required to move inside.

Mr. DeWater said during the outside dining there is no music.

Ms. Dangelo said they have some small outside speakers.

Mr. Barr asked at any time if she ever had speakers outdoors for a wedding reception.

Ms. Dangelo said during the reception no, during the ceremony sometimes there are speakers to amplify the ceremony and during COVID they did have one wedding where the DJ did play outside, that was an anomaly and it was during a global pandemic when we were trying to adjust but since that time we have not.

Mr. Barr said so only one occasion the entire time you've been open you've had speakers out on your deck.

Ms. Dangelo said only one time that she can think of, she can't sit here under oath and say there was only one time but generally during the pandemic they have not due to the COVID restrictions.

Mr. Lewis said he thinks in a previous meeting we presented a stack of police report complaints, some of it was the typical stuff, somebody locked their keys in their car and just like goofy stuff, there were several times the police showed up at 10:00 or 11:00 at night because of noise and the sound of a DJ in the pavilion.

Ms. Dangelo said she does recognize that sometimes it has been loud but every single time the police have been called we have not found any objectionable noise.

Mr. Lewis said he thinks he is just trying to build a positive pattern of an attempt of compliance so complaints were early on, noise and lighting late at night, yes we did unveil that the pavilion got built without following procedures and process, the winery went up wonderfully, a great asset to Chagrin Falls and it appears that after we had one of those meetings and we brought to your attention that there was music and light basically people celebrating outside in the pavilion it does appear that you made that adjustment.

Ms. Dangelo said she has tried very hard to accommodate all of the concerns of our neighbors.

Mr. Lewis said yes and he is passing the baton down the table.

Mr. Soryal said that Mr. Lewis was reading us that all of the buildings have to be enclosed and asked Ms. Dangelo if she was aware of that that all of the buildings had to be enclosed.

Ms. Dangelo said she disagrees with your interpretation of that particular code provision.

Mr. Lewis said but you didn't answer the question, he asked you directly were you aware of and provided a copy of the judgment consent.

Ms. Dangelo said she has the judgment consent order, she does not believe that that particular application applies, we have zoning permits for any outdoor spaces that we have, we have a zoning permit for the proposed Still which includes an outdoor pavilion.

Mr. Lewis said okay.

Mr. Rinker said he defers to the zoning administrator because he thinks that is the person that is charged with the responsibility of interpreting the code.

Mr. Lewis said we are not asking for our zoning inspector for interpretation right now, we are just trying to find out if you had the document on file at which point prior to building and having just built another building, the big building, it would have been more than ample opportunity to approach the township for clarification prior to completing or doing a structure, so he is just trying to just kind of get around to it okay.

Ms. Dangelo said she understands.

Mr. Rinker said he wants to clarify something, are you indicating that she has not coordinated anything through the township.

Mr. Lewis said no, he is only talking about the pavilion sir, okay. He said the winery is spectacular, it is wonderful.

Ms. Dangelo said they have gotten approval, they have received, the county gave us approval for the pavilion as it exists, we are standing before you for an area variance, not a use variance and our permit for the Still has been approved and that permit includes outdoor structures.

Mr. Lamanna said his question is we will throw the thing to the zoning inspector and say what is the rationale here and how did we reach this determination.

Mr. Steve Averill, Assistant Zoning Inspector testified that if they want to move this building elsewhere on the premises, on the property he would issue a permit for it.

Mr. Lamanna said okay.

Mr. Averill said accessory uses are permitted per the resolution and if you are going backwards accessory uses are permitted and if you look at multiple permitted uses, principal uses, specifically the best example would be amusement parks, they can actually have an amusement park there, as an accessory structure in an amusement park, he doesn't think anybody has gone into a Dodgem building that was enclosed and there are multiple principal uses listed that you could use as examples that support that. He said if she wanted to move this building, as long as it was within the setbacks, 75' from the front, 25' to the rear, 50' to the south because that is residential and 20' to the north against the Knolls condos because that is still a Light Industrial District and that is his determination, his and Karen Endres' as well.

Mr. Lamanna asked do you have a legal authority on whether the board can still decide to review the determination.

Mr. Rinker said yes it is in your zoning code and it is in the notification for this meeting, it is in your zoning resolution, it is an area variance and we presume that the use is permitted, we are not dealing with the use we are dealing with physical attributes that address the practical difficulties of your consideration. He said this is set up by your zoning department as an area variance request and so your responsibility is very clear, this isn't a conditional use permit, it is not a use variance, it is an area variance and he believes that the interpretation that has been presented by the zoning administrator has been backed up by their legal counsel, we have not been privy to it but his understanding is that is an opinion from the Geauga County Prosecutor's Office.

Mr. Lamanna said other parties wish to comment and asked if there are any more questions.

Mr. Dale Markowitz said he wanted to ask a couple of questions of Ms. Kathleen Dangelo.

Mr. Lamanna said alright.

Mr. Lamanna swore in Mr. Dale Markowitz and he let the record reflect that Mr. Markowitz was duly sworn.

Mr. Markowitz testified that he and Ms. Dangelo have known each other for a long time and they used to work together.

Mr. Lamanna said we are doing this informally.

Mr. Markowitz said he only had a couple of questions.

Mr. Lamanna said you can refer to the board.

Mr. Markowitz said when Mr. Bruce Rinker was giving his presentation he indicated that they don't have to put in the landscaping. He asked Ms. Dangelo if that is her belief that you are not required to put landscaping in along the boundary of Chagrin Knolls Development.

Ms. Dangelo said her belief is according to the consent decree order that the required mounding is already in place, yes.

Mr. Markowitz asked where that mounding ends.

Ms. Dangelo said they did not look at mounding.

Mr. Markowitz asked where does the mounding end.

Mr. Rinker said why don't you look at the exhibits.

Mr. Markowitz said Mr. Rinker, you are not testifying.

Mr. Lamanna said we are going to do this informally.

Ms. Dangelo said she didn't know how she would characterize that in terms and words, those are to the east, almost to the end of their property and it goes to the west, a little bit is in front of the detention basin, she doesn't know the exact yardage.

Mr. Markowitz asked if she would care to say that perhaps half of the common backyard is not subject to the mounding.

Ms. Dangelo said no she would not say that.

Mr. Markowitz asked if she would say it is 40%.

Ms. Dangelo said no she would say 15%.

Mr. Rinker said let him interject because he thinks it is for everyone's benefit as long as he is asking these questions, if you look at Tab #5 of the documentation.

Mr. Markowitz said we don't have any of your tabs and he has the floor and he would prefer that he (Mr. Rinker) not interfere.

Mr. Rinker said you asked me a question and I was referring to the exhibit.

Mr. Markowitz said we were not provided with any of these tabs, all these people sitting here including myself, we have no idea.

Mr. Rinker said that is why he offered to show it to you now.

Mr. Lamanna said one at a time.

Mr. Rinker said he is misleading the board, he provided Mr. Markowitz with this documentation, he gave him documentation that showed physically what was being done, where it is located and what is being planted so for him to do this it is disingenuous.

Mr. Markowitz said that is not what he asked. He asked Ms. Dangelo, if we are looking at the screen where it is a yellow circle there.

Ms. Dangelo said that is the existing mound.

Mr. Markowitz said that is the existing mound and could you tell us where you are proposing to put \$50,000 of landscaping.

Ms. Dangelo said if we put that in it is where the green circle is but it is not required, what was required and that was brought up to us when we purchased the property back in 2004 is the yellow circled area.

Mr. Markowitz asked who made that determination.

Ms. Dangelo said the previous zoning inspector of Bainbridge Township, she forgot his name.

Mr. Markowitz said and when would the consent judgment entry allow him to say that you didn't have to have this buffer drawn across the entire span of the property.

Ms. Dangelo said again, this is what he told her to do and he said to plant that mound, she doesn't know who built it, she assumes maybe you drafted this consent judgment entry.

Mr. Rinker started speaking.

Mr. Markowitz said would you wait until it is your turn. He said Mr. Chairman, he finds this offensive that he keeps interrupting.

Mr. Rinker said my apologies.

Mr. Lamanna said let's let one person speak and then we will move to another for the record.

Ms. Dangelo said when Chagrin Knolls was built she figured that you must have controlled the building of the mound and she always figured that that was what was required.

Mr. Markowitz said first of all he didn't control the building of the mound and secondly his interpretation of what he drafted with Lorrie Sass back in 1997 is that your property is in violation of the consent judgment entry and remains so because the consent judgment entry, and he will point it out in a minute, requires that along that entire boundary you have to have a buffer.

Ms. Dangelo said and if you thought that was true, why wouldn't you have brought it up 16 years ago.

Mr. Markowitz said that is not the question, the question is what does the consent judgment entry require.

Ms. Dangelo said it requires a (inaudible).

Mr. Markowitz said so you think you have no obligation to put that mounding in.

Ms. Dangelo said that's right.

Mr. Markowitz said and if the board were to say that the pavilion cannot stay where it is.

Ms. Dangelo said she would not put the mound in.

Mr. Markowitz said you will not put the mound in.

Ms. Dangelo said that is correct.

Mr. Markowitz said and why not.

Ms. Dangelo said because she would use the money to rebuild the pavilion in the new location closer to Chagrin Knolls and added we only have so many dollars.

Mr. Markowitz said and if the consent judgment entry requires that the mounding go across the common border and this board makes that determination are you going to put that mounding in regardless with what you do with the pavilion.

Mr. Rinker said he objects to that.

Mr. Markowitz said this is not your time.

Mr. Lewis asked you questions all about that and it is clearly in the consent judgment entry, there has to be a buffer across that entire boundary.

Ms. Dangelo said well who does the mound. She said it was there when she bought the land.

Mr. Markowitz said when you wanted to buy the land you contacted me, right.

Ms. Dangelo said she doesn't recall.

Mr. Markowitz said you contacted me and I said go read the consent judgment entry, that sets forth the rights of what you can do with that property, do you recall that conversation.

Ms. Dangelo said she does not.

Mr. Markowitz said so would you agree with me though that that consent judgment entry is the basis upon which you are able to build the Still and your ability to get the winery, that is the only way you are able to do it is the consent judgment entry allows you to use old Section 520.11 to build a restaurant.

Ms. Dangelo said she agrees that the judgment entry is applicable to the land, she doesn't know, the mound was already there, as far as she knows Chagrin Knolls has to build that mound, Chagrin Knolls actually altered the mound so the emergency exit is unusable by Bainbridge Fire.

Mr. Markowitz asked Ms. Dangelo does she know where what he says is correct, the only legal basis for you to have the restaurant, the winery and the Still is because of the consent judgment entry.

Mr. Rinker started to speak.

Mr. Markowitz said you are not in control of this meeting, she is a lawyer and she is a business owner, she knows how to talk.

Ms. Dangelo said she is a lawyer but he is also my legal counsel for this hearing.

Mr. Markowitz asked Mr. Rinker if he is afraid to let her talk.

Mr. Rinker replied no.

Mr. Markowitz said you seem to be.

Mr. Rinker said he objects to the fact that you are reopening issues that have long been decided that are not before this board.

Mr. Markowitz said this board has the jurisdiction.

Mr. Rinker said you can assert it but you are incorrect.

Mr. Markowitz said this board has the authority to determine if the variance should not be granted.

Mr. Riker said correct.

Mr. Markowitz said because we do not believe that that pavilion is permitted to be used in the way it is used. He said it is not an accessory building the way they use it, as Ms. Dangelo testified, almost all weddings.

Mr. Rinker started to speak.

Mr. Markowitz asked Mr. Rinker if he had a problem.

Mr. Lamanna said please, he has the floor.

Mr. Markowitz asked if he can be removed.

Mr. Lamanna said he is not going to remove anybody but please, don't interrupt, let him say his piece, you will be given a chance to respond to it, you wouldn't do this in court interrupting him so please it is really poor behavior.

Mr. Markowitz said it is not an accessory building and she was responding to your questions, she said that virtually all weddings are taking place in that pavilion, it is not an accessory use, it is part of the main use of the property and therefore the argument that Mr. Averill was making that as an accessory use then it could be permitted, he doesn't believe he is correct and he believes that allows you to say that that pavilion is illegal and without a use variance you cannot have it anywhere on that property because by the very nature of that pavilion it has to be an outdoor use because it is not an enclosed building and therefore when it is used for the manor in which they use it, it is an illegal use and they are here not only for a 50' setback issue that because they are using it in an improper fashion.

Ms. Dangelo asked if she can address that.

Mr. Markowitz said sure.

Ms. Dangelo said an accessory use, they have weddings on the lawn, they have weddings inside, they have weddings under the pavilion, how is that not accessory to the main use.

Mr. Markowitz said he thought you told us that almost all of the weddings take place in the pavilion.

Ms. Dangelo said no she didn't, she said almost all weddings take place on the lawn, the ceremonies take place on the lawn.

Mr. Markowitz said let me ask you another question, did you read the old zoning code that is referred to in the consent judgment entry before you built the winery.

Ms. Dangelo replied yes.

Mr. Markowitz said okay. He asked did you see the language in the zoning code and it is Section 530.26 and it is also in Section 520.27. He said the zoning code that applies to your property that gives you the right to have a restaurant, to have the winery says that you must create a buffer along all of your property lines, it doesn't matter whether it is residential or industrial, it says that you have to create this buffer.

Ms. Dangelo said she doesn't have it in front of her.

Mr. Markowitz said the zoning code says you must have a buffer along all of the residential boundary but the consent judgment entry says and it is in Section 2 and Section 3 that you have to create a buffer along all of your boundaries not just residential so the township is also bound by that judgment entry and the board has to follow it and you have to follow it, is that you have to have a buffer everywhere and you didn't do that when you built the winery, you don't show that as part of your plans for the Still and you are saying to this board you are not going to put up that landscaping if you can't keep the pavilion where it is.

Ms. Dangelo said she doesn't have the consent judgment order in front of her, she doesn't have a good memory, she does have zoning approval from the township for the winery and the Still.

Mr. Markowitz said well it could be zoning inspector error, it happens.

Ms. Dangelo said you are the one that is somewhat disingenuous that it wasn't brought up before the winery was built.

Mr. Lamanna said it is not disingenuous, that is not the right term.

Ms. Dangelo said if these are issues why wasn't this brought up when the zoning permit for the winery was issued four years ago, she doesn't understand.

Mr. Markowitz said Section II., I. of the consent judgment entry says "The landscaping set forth on the Site Plan," I don't know if you have the site plan, you should. It says "which provides for the landscape buffer bordering upon the Undeveloped M-1 Industrial Area," which is your land, "shall be constructed with mounds and landscaped with appropriate landscaping to create a visual and auditory buffer between the Undeveloped M-1 Industrial Area and the Cluster Development." and the cluster development is the Chagrin Knolls condominiums.

Mr. Rinker asked isn't it a requirement for the Knolls.

Mr. Markowitz said no.

Mr. Rinker said he thought for Knolls to get the approval for a non-conforming development.

Mr. Markowitz asked if he can get through this without him interfering.

Mr. Rinker said it is historic.

Mr. Markowitz said you will get a chance to resurrect your client.

Mr. Lamanna said he thinks his understanding of the issues you are trying to raise is did they or did they not comply with the terms and if they don't comply with the terms of that do they have any standing or is that an objection to their being granted a variance, that compliance and he thinks that is probably accurate and he doesn't think the zoning inspector has the authority to modify the terms.

Mr. Rinker said he doesn't understand how this board here can collectively interpret this document that the township has already acted upon on numerous occasions has gotten affirmation from its law department as to what is permitted or not permitted and now we are hearing from Mr. Markowitz and evidently the board itself feels.

Mr. Lamanna said that is a second issue.

Mr. Rinker said pardon.

Mr. Lamanna said that is a different issue.

Mr. Rinker said it is a different issue, the only issue is the setback issue.

Mr. Lamanna said there is another issue too as whether or not.

Mr. Rinker said with all due respect there is one issue, that is how the notice went out and that is how the board is charged to look at it. He said if you disagree with him he will say nothing more but to him it is very clear and he disagrees with all this argumentation and reaching back into this consent order.

Mr. Lamanna said here is the question, there are parties here who are interested in it who are objecting and the question is whether they can raise before us the fact that there is an error by the zoning inspector in saying that this is a permitted use for this building that you are seeking an “area variance” for.

Mr. Rinker said the certificate for the Still was issued and there is a period of time in your zoning resolution and that has passed so to raise the issue now is after the fact just from the standpoint of the Still that we are not even talking about.

Mr. Lamanna said we are not talking about the Still.

Mr. Rinker said in a way we are because the mounding and landscaping are something that are proposed when the Still gets constructed if the site is developed further. He said the issue here is dealing in past tense, we admitted a mistake was made in constructing the pavilion in the location of the pavilion, the issue before the board tonight is strictly do you grant an area variance for this setback violation, we have tried to demonstrate that we don't think it is substantial and in terms of Knolls this is probably the best way to obviate the concerns that they have expressed and their attorney is expressing now because it is as far away from the Knolls as one could want. He said if the board decides that the variance should not be granted then Ms. Dangelo has to decide whether she will appeal that decision or simply rebuild the pavilion in a permitted location as the township has indicated would be permitted and he doesn't think it is appropriate for the board to resurrect all of these other issues. He said Mr. Markowitz is representing his clients diligently, he clearly is making an impression upon the board, he thinks it is arrogant.

Mr. Markowitz asked if he can continue.

Mr. Lamanna said okay.

Mr. Markowitz said in the judgment entry it says “prior to commencement construction of any new buildings in the undeveloped M-1 Industrial Area”, which is the Dangelo property, Knowles who is now for the purposes of this the Dangelos, “shall provide a buffer zone between the cluster development and the undeveloped M-1 Industrial Area” so there has to be a buffer zone between but in the entry at the time the assumption was is that the land where the condos are was going to be built first and they were going to put the entire width of the buffer on the condominium land. He said as Mr. Rinker pointed out because of the nature of the storm water basin and it is showing it on both properties they couldn’t put it across all the way onto the condo property so the way he reads the entry is is that once this property got developed and the winery was built they need to finish that mound somewhere on their property because of the modification that was made to the basin, nobody from the township thought about it one way or the other, which is understandable, these things get slipped through the cracks, and obviously the owner, he doesn’t think she intentionally was trying to deceive you he thinks she perhaps didn’t think about it but the reality is this consent judgment entry which is enforceable by my clients, by you, you meaning this township and there is no time limit on it, we can say you must comply to this consent entry because it is the only way you can operate your restaurant, it is the only way you can operate your winery is because you have the right to do so under this document so you can’t get the good parts without the burden so that is why we are here and that is why we are upset, we have a whole room of people here who are going to tell you that these outdoor activities are still going on and are still creating a nuisance for them. He said he does have a couple of things he wants to say if you don’t object.

Mr. Lamanna said okay.

Mr. Markowitz said he did talk about the fact that a use variance was needed and he is not going to belabor that but what he heard being spoken by Mr. Rinker and by Ms. Dangelo was that they have outdoor dining in that pavilion and they have speakers at the pavilion which they keep at a low sound volume, he guesses, for the people dining, there are about 40 people maximum can go there, that is another main use of that property, that is not an incidental accessory use. He said that also has no limitations as to how loud those speakers can be, how long those speakers could go and we are subject to the whimsey of whoever is operating that facility if they are going to have outdoor dining there and they are going to have outdoor speakers, we don’t know when somebody is going to decide well I am going to whistle while I eat, not only does whistle while I work and we are going to somebody who is going to say we are going to crank it up, we really like the sound of this, that is part of why that consent judgment entry says you follow 530 and 520 in the zoning code which says you do not have objectionable uses and objectionable noises and that is where it is being ignored blatantly by the property owner and we think that is probably what you can use as a basis to turn down this variance.

Mr. Markowitz continued by saying in addition to that he thinks you have the ability and should if you and he heard some of you to what you think is pretty clear in the code and he has been doing this for 47-1/2 years and he read that code in 1997 and he read it again today the same way which is you cannot have outdoor uses, yet you want an amusement park, sure but it has got to be indoors, you want to have a restaurant, yes, but it has got to be indoors and he agrees with what Ms. Dangelo said when the permit for the Still and he didn't know it was issued until tonight because he talked with Ms. Karen Endres right before she went on medical leave and she hadn't issued it yet but what that plan said was there was going to be a lot of outdoor dining and he appreciates the fact that it is good for their business and they want to have it but without protecting the Knolls residents and those who live in the new development off of Savage Road that this board should be telling the township you should not be allowing these issues for outdoor because it violates the code in a number of ways, not only is it an outdoor use but it is objectionable because of the amount of noise that you get from it. He said the interesting thing is we have been here for a number of meetings now and if you recall the meeting where Ms. Dangelo said she is coming back on the pavilion, she is tearing it down in the next two weeks.

Ms. Dangelo said she did not say that.

Mr. Markowitz asked you don't remember that.

Ms. Dangelo said she did not say that.

Mr. Lamanna said we are here today, whatever that was said.

Mr. Markowitz said what you are getting is they are saying they are going to put in this landscaping if you don't make me move that pavilion, where is the commitment in writing, how do you determine that they are going to do that, what is there that is going to ensure for all of us that we are going to get that landscaping. He said there is nothing that they have put in writing, they didn't make it a stipulation of their variance, they didn't come in and Mr. Rinker is a good zoning lawyer, he knows how to do it, he could have come and said we will condition our approval on getting that landscaping put in as a part of this presentation and we've got a plan here and its got some nice mounding and some detail on the trees, they are in that business, he is sure they know how to landscape it so that mounding could be put up that would be somewhat effective. He said he wanted to say just a couple of other things here, and he doesn't know if you have the Consent Judgment Entry in evidence so he wants to put it in evidence now, he drafted it, he is familiar with all of these terms, it was approved by Judge Forrest Burt after Lorrie Sass and I negotiated for a long period of time on behalf of our respective clients and this judgment entry could have and should have and does endure and he would say needs to be respected and followed by the property owner as well as township officials so he would ask that that be put into evidence. He submitted it to the zoning secretary.

Mr. Markowitz continued by saying the second thing he wanted to give you is the zoning resolution that we all talked about and he doesn't know if that is in evidence or not but it has been referred to and so that it sounds like Mr. Rinker is threatening to appeal so he wanted to make sure the record is complete so the court will understand what you are all talking about, we are all familiar with 520 and 530 but the court may not be because it is hard to find that code because it is not the current code for the township so he would ask that that be put into evidence. He said that code was given to him by Ms. Karen Endres, confirming that that was the code in effect at that time and he actually went to his library in his office, we keep all of the old zoning codes and he has a little book and that book is exactly word for word, the same as that document that he just gave to you.

Mr. Lamanna asked Mr. Rinker if he has a copy of these items.

Mr. Rinker replied yes.

Mr. Averill said he wants to make sure it includes the definitions.

Mr. Markowitz said he honestly didn't look at it, he assumes it does, it is whatever the code was.

Mr. Averill asked if it has 530.

Mr. Markowitz said it has more but it does have 520 and 530, it has the table of contents in it and Article 1.

Mr. Averill said he wanted to know if the definitions were in it.

Mr. Markowitz said he has talked more than he probably should have. He said he would just ask for you to put us all on the right course here and let the zoning officials understand which you believe is permitted or not permitted and if you deny this variance which he believes you have no choice but to deny the variance for the pavilion that you set the record straight and indicate that there should not be these outdoor uses and he knows there are some residents from Chagrin Knolls that want to talk tonight and he knows that Mr. John O'Brien is here and he would like to speak so unless Mr. Rinker has something else to add.

Mr. Lamanna asked Mr. Markowitz if he could ask him a question.

Mr. Markowitz replied sure.

Mr. Lamanna said so you are asserting that your clients can basically raise an error of the zoning inspector before us.

Mr. Markowitz said before you, yes.

Mr. Lamanna asked in this proceeding.

Mr. Markowitz said yes.

Mr. Lamanna asked do you have any authority for that.

Mr. Markowitz said he doesn't have the case in hand but because the question before you is whether that pavilion should be allowed to exist and if your obligation tonight is to determine whether or not a variance should be allowed. He said one of the criteria and they didn't really present much on the way of practical difficulties, one of the criteria is that it meets the spirit and intent of the zoning code and he thinks that that clearly gives you the authority to determine whether or not this variance meets the spirit and intent of the code, that is one of the seven or eight Duncan factors so that is his authority, Duncan versus Middlefield.

Mr. Lamanna said there are some, he thinks, interesting legal issues here and that is one of them he sees and the other one is what relevance does this judgment entry have in terms of our looking at this case, it certainly creates obligations that go to how it affects the neighboring properties and but also it also is directly enforceable by the adjacent property owners or at least Knolls.

Mr. Markowitz said that is true but it is the zoning upon which you have to make your decision.

Mr. Lamanna said right. He said it creates some rather novel issues that one doesn't normally run across.

Mr. Markowitz said it does and we actually have a lot of consent judgment entries in Bainbridge, he personally has done at least half a dozen or more so it could come up again but the consent judgment entry.

Mr. Lamanna said all of which have been a collective thorn in our side because the problem always is with these consent judgments is he wishes people would spend enough time thinking about what is going to happen in the future and even if you do you can never anticipate all of the things that are going to happen in the future.

Mr. Markowitz said and you can say that about drafting the zoning code, same thing.

Mr. Lamanna said right but he finds some of these questions interesting because in any case assuming somebody makes an application to do something and it comes before us and somebody comes in and raises well we think you can't even do this use even though the zoning inspector may have said X, the question is do you have standing to raise that which is a separate issue from whether the board can raise it because you run into the issues of we are, like the township can't appeal its own board's decision.

Mr. Markowitz said right.

Mr. Lamanna said it is different if a party raises it then it is a question, did they have standing to raise it, just like it is the same standing that the board can raise.

Mr. Markowitz said we have standing to be here and we have standing under the consent judgment entry but what he would say to you is that just for the sake of what Mr. Lewis asked, "how can you have that pavilion within that 50' buffer?", you've got to have that buffer around the whole property and to him it is the same thing, it is inherently a part of your decision making process on the variance, how can you grant a variance for something that you know legally isn't allowed to be there when somebody is only asking for an area variance.

Mr. Lamanna said that provision is an area provision the 50' buffer so we could grant a variance to it if you can demonstrate under the Duncan Factors that we should grant a variance.

Mr. Markowitz said that is another interesting question itself which is can the board of zoning appeals grant a variance to one of the buffer requirements in the consent judgment entry.

Mr. Lamanna said he thinks the consent judgment entry itself says that variances are available.

Mr. Markowitz said it does say that but the question is can you grant a variance to a specific requirement, he doesn't want to get into it because he hopes we never have to go there but it raises an interesting question because the consent judgment entry, to modify it, requires consent of all of the parties.

Mr. Lamanna said yes he knows, he often thought about that issue, who can change what and at what point in time you are doing something that is changing the consent decree as opposed to just granting a variance to something within that. He said he could see you could be going through a point where you effectively are changing it but he is not sure that in this case we are talking about one structure and one boundary of this and there is even a provision in there that deals with buffering along that boundary that is different from the buffer along other boundaries because it is not yet developed or ever likely to be developed.

Mr. Markowitz said well actually, you are talking about the Chagrin Falls property.

Mr. Lamanna replied yes.

Mr. Markowitz said most likely it will just stay a well field but the reason why the consent entry dealt with the buffering on our side is that everybody contemplated that there was going to be some kind of an industrial use there.

Mr. Lamanna said right, that was the whole purpose of the consent agreement.

Mr. Markowitz said we would have been happier with industrial than what they've got because we've got other industrial properties surrounding us and we've never had a problem with any of those because everything is conducted indoors.

Mr. Lamanna said they are 8:00 to 5:00.

Mr. Markowitz said and they are conducting their business indoors.

Mr. Lamanna said right.

Mr. Barr asked Mr. Averill when he brought up the example that an amusement park could be there is that in there or is that just an example you pulled up.

Mr. Averill said that is a permitted use and again he could ask Mr. Markowitz because he has insinuated zoning inspector error. He said if Ms. Dangelo wanted to open an amusement park, she can open an amusement park if she wanted to with a permit.

Mr. Barr said one thing, there are indoor amusement parks, like if you go down to the industrial park in Macedonia, Fun and Stuff is indoors.

Mr. Averill referred to the 1968 zoning resolution and said as far as a tent goes a pavilion is an open structure.

Mr. Lamanna said let's put it this way, with the case of an amusement park it was bad drafting because somebody didn't think about the fact that we've got a requirement for an indoor thing and then we have something that is probably an outdoor situation. He said now part of the problem is because you drag across from 520, they dragged across their permitted uses from another section and drafted them onto this thing and maybe nobody thought about it.

The board discussed indoor race tracks.

Mr. Barr said he thinks that is covered, if you were to build an amusement park and you needed a pavilion for your ticket booth or whatever that would fall back under the variances that you might request.

Mr. Averill said no it would be an accessory use and if you look at the definition of accessory use it falls under that. He said unfortunately it is not that definite, they don't define principal uses, they don't define permitted uses.

Mr. Lamanna said if you have an amusement park, to him, practically everything you put up is a primary use, it is not an accessory, maybe where you store your tools or something like that but even that is doubtful because that is still an inherent part of the use.

Mr. Averill said so are racetracks, you could have multiple uses, it is very gray and because of time things have changed and now we are looking at the judgment entry.

Mr. Lamanna said it is somewhat gray because you took at what probably at the time where they were totally outdoor uses and then you drafted it into a provision where you said you can't have any outdoor uses so you have created at least with respect to those specific uses something of a conflict as to how you could be permitted yet you could only do it in the circumstance that is really not as contemplated but he doesn't know whether you can extend that logic to any other use besides those specific ones and whether somebody can say they can put a racetrack in here because the fact that there might be some exception that allows you to put in something that is even more noxious is not an argument for allowing something else.

Mr. Averill said it is because we are using those uses as examples within the same set of rules that are being applied to this particular project so you have to unfortunately. He referred to judgment entries and said it is a problem in his office when you have to determine.

Mr. Lamanna said this is his fundamental problem with judgment entries is it is an attempt to freeze the zoning code in a lot of cases to a particular point in time and then you end up with these problems that people are adapting along the way.

Mr. Markowitz said the way he read that code section when they were doing the judgment entry back then, you couldn't have an amusement park if that amusement park was going to be wholly outside because the prerequisite in chapter 530 to being able to have those commercial uses from chapter 520 is they have to be in a wholly enclosed building so merely because there are uses listed on there, subsections 2, 3 and 4 that could be by the nature of outdoors doesn't mean that everything can be outdoors, it means those uses can't be done because they are inherently outdoor uses and therefore they are not permitted because they don't meet the very first set of criteria.

Mr. Lamanna said right.

Mr. Averill said again you have racetracks, you have other accessory uses like parking lots and signs, you didn't differentiate those things within the consent judgment entry, that is why we had such a hard time determining that is why it is gray.

Mr. Markowitz said he thinks it is pretty clear because an outdoor use is not going to be permitted.

Mr. Lewis said he would like to hear from Mr. John O'Brien and asked if he is here.

Mr. O'Brien said yes sir.

Mr. Lewis asked Mr. O'Brien if he can be sworn in.

Mr. Lamanna swore in Mr. John O'Brien and he let the record reflect that Mr. O'Brien was duly sworn.

Mr. John O'Brien of 16860 Knolls Way testified that he submitted a letter and he and his wife Margaret have lived in Bainbridge Township for 11 years and prior to that he was living in Chagrin Falls and he was on the zoning board for six years and chairman for three years. He said he heard the chairman say please don't repeat everything that has already been said and he will follow your wishes. He said the letter basically tries to give you reasons why there is so much mistrust between Chagrin Knolls that he talks to his neighbors about and the Dangelo Sapphire Creek project. He said a couple of things tonight, thank you to Vice Chair Mr. Lewis for pointing out that Mr. Rinker said they inadvertently put the pavilion in the setback area but he didn't say they also inadvertently forgot to ask for permits and all of the things that the township would require so thank you, it is in my letter, thank you for bringing that up. He said if you go to the website for Sapphire Creek they show people having fun, he loves fun so he is not against having fun. He said they show outdoor activities where there are crowds, he almost choked when Mrs. Dangelo said there was one instance where there was an objectionable DJ outside. He said he lives about mid-point of their development and they heard it more than one time, there are people here that live at the south end of their development will tell you they have heard it a lot of times so we are not buying, he is not buying that there was one time but it is consistent with the pattern of misinformation that he thinks you have been fed. He said he is glad they hired Mr. Markowitz because he has laid out again, if you read my letter, many of the things that he requested in the letter and he thinks that they have to be a condition of any variance or permitting the township does because otherwise and they have to be enforceable because if they are not a condition of your rulings and if they are not enforceable they won't be followed. He said we have too much of a patterned behavior here where the rules aren't followed despite of what we heard tonight so that is all he really had to add to his letter, if you have any comments or questions on it he would be happy to respond to it.

Mr. Lamanna asked Mr. O'Brien if he himself actually heard the noise coming from there.

Mr. O'Brien said yes, we are about mid-point in the development and we can hear it so what we do is frequently we will walk down to the south end of the property.

Mr. Lamanna said when you say you can hear it, at what level is it.

Mr. O'Brien said if you have a disc jockey trying to get the party whipped into a frenzy it is pretty damn objectionable, it is pretty loud.

Mr. Lamanna said louder than somebody talking in this room at this level, is there anything you can compare it to, the noise of something else.

Mr. O'Brien asked if you have ever been to a CAVS game, it is not quite that loud. He said there has been more than one objectionable instance.

Mr. Soryal said assuming this noise is late into the night.

Mr. O'Brien said they've come home at 11:00 at night and they can hear it.

Mr. Bruce Corson of 16850 Knolls asked to testify.

Mr. Lamanna swore in Mr. Bruce Corson and he let the record reflect that Mr. Corson was duly sworn.

Mr. Corson testified that lives right next to the O'Briens and one of the earlier meetings this year he brought a video, he is not prepared to do that tonight but he played it into the microphone and you can certainly tell it was loud. He said they usually hear it because where they are he hears it when they come home from somewhere and get out in the driveway and there it is playing again and he will frequently whip out his cellphone and just tape that and it just gets tiring to do that over and over again.

A gentleman started to speak.

Mr. Lamanna acknowledged him and stated that he will have to be recognized to speak and he doesn't mean sarcastic comments about what other people are testifying.

Mr. Corson said he would like to answer your question, no it is not inside our house, if we try hard we can hear but we are quite a ways up and outside you can easily hear it and he really worries about their friends the Cathcarts and others, the Consolos down at that end of the development that are exposed to that, so that is all he has to say.

Mr. Lamanna said one thing he will mention, this is a continuing hearing so all of the stuff that has been put into the record going back to when we started this thing a year ago and months ago, that is all still part of the record and we don't need to reiterate.

Mr. David Cathcart requested to testify.

Mr. Lamanna swore in Mr. David Cathcart and he let the record reflect that Mr. Cathcart was duly sworn.

Mr. David Cathcart of 16960 Knolls Way testified that he is on the south side of the property and whoever asked the question, yes, we can hear it inside our house with the windows closed.

Mrs. Cathcart said it is better, it is getting better.

Mr. Lamanna said thank you for your honesty.

Mrs. Cathcart said she would like to clarify that.

Mr. Lamanna swore in Mrs. Martha Cathcart and he let the record reflect that Mrs. Cathcart was duly sworn.

Mrs. Martha Cathcart testified that Ms. Dangelo has offered to measure the decibel levels and try better to keep the noise inside and the noise level has decreased, it doesn't mean we don't hear it but now we don't know the name of everybody there, she said it is a little better but everybody goes outdoors and are on the patios and are whooping it up and it is not necessarily the announcer, it is not as bad for the announcers, it is bad for the music but the noise just the screaming and hollering, she was awakened at 1:30 the other night and for a half an hour it went on and someone said did you call the police, well she called the police so many times in the past two years that and they also say that was nothing. She said a couple of times they asked if she wanted to file a formal complaint and she said yes and she thinks you guys got them.

Mr. Lewis said those are in the record.

Mrs. Cathcart said she doesn't normally call because the guys are working there and she doesn't think that they follow through on this. She said there is potential as she said in her January letter, mounding would be terrific if they were engineered to the proper height. She said the windows in their master bedroom that overlooks all the light and hears all the sound is 12'2" at the windowsill, that is a 5' tall window and it comes right in and so a proposal for a 12' mound, actually 11' above our first floor, she doesn't think it can do it, her trigonometry is a little rusty and considering our topography and our height above sea level she is not sure it is quite enough but if we could mound, it would be amazing.

Mr. Lewis asked Mrs. Cathcart if she observed that the loud sounds late at night were coming from the activity in the pavilion.

Mrs. Cathcart said she doubts it.

Mr. Lewis said or that it was the patio or the catwalk area or the decks around the main winery with the windows open or maybe some patio speakers or something going on. He said he is trying to get a differentiation whether if there was an activity in the winery, it was a summer night and some sliders or windows were open and some of the sound leaked out versus was there a DJ cranking away, running the dance floor in the pavilion.

Mrs. Cathcart said no, as Ms. Dangelo said she doesn't think that they do that but the pavilion is actually quite sheltered from us, she doesn't get any lights from over there she just gets lights from all over.

Mr. Lewis said okay so you weren't able to determine.

Mrs. Cathcart said no.

Ms. Dangelo said she just wanted to say Mrs. Cathcart referenced to a 1:30 in the morning, she doesn't believe that was Sapphire Creek Winery because they have not had any 1:30 AM events she doesn't think the whole summer, she doesn't know what it was but it was not them.

Mr. Soryal asked when the events usually end.

Ms. Dangelo said midnight.

Mr. O'Brien said he should have added he really is impressed and appreciates the thoroughness of the board.

Mr. Mark Consolo requested to speak.

Mr. Lamanna swore in Mr. Mark Consolo and he let the record reflect that Mr. Consolo was duly sworn.

Mr. Mark Consolo testified that he lives at 16940 Knolls Way and he wanted to truly thank all of you for the work you do here, it is appreciated. He said since Mr. Lamanna asked him not to repeat things people have stolen most of the thunder of the things he wanted to mention. He said he is not a lawyer so in his naivety he tries to analyze things sometimes by making an assessment to a similar situation and he guesses he is thinking of today's variance for the pretty simple situation, it sounds like you guys did the right thing but if there was an ordinance that said pool pumps need to be in an enclosed building or an enclosed structure he is not sure you would have granted that variance so in that respect granting a variance for any pavilion whether it is the existing pavilion built in the setback or it is a pavilion that gets moved somewhere else he thinks the usage of it is illegal and we guess we are looking for help from this board to see that those laws get enforced. He said a lot less calls this summer to the police, he would say that part of the reason is that people are tired, when he keeps on saying, well would you call the police, I've called them so many times, their hands are tied, they don't have a noise ordinance and they just tell us there is nothing they can do but again he thanks you for listening and he hopes you make the right decision.

Mr. Lewis asked if there is anybody else.

Mr. Frank Lanza said he has a question.

Mr. Lamanna swore in Mr. Frank Lanza and he let the record reflect that Mr. Lanza was duly sworn.

Mr. Frank Lanza of 7738 E. Washington Street testified that we are talking about the pavilion and we are talking about the noise factor but we should, he thinks, be talking about is the noise coming from the pavilion, he doesn't think the noise actually comes from the pavilion, does it. He asked does the noise come from the pavilion or does it come from another part of Sapphire Creek so what you are talking about is the pavilion is the farthest point in the whole property and there is no music in the pavilion so the pavilion is really not the problem, the problem is the noise factor and it maybe should be in an enclosed building but he doesn't think the pavilion is actually the problem, it is the noise that everybody is objecting to right, isn't everybody objecting to the noise, does the noise come from the pavilion.

Mr. O'Brien said he is objecting to this one building, the building without permits.

Mr. Lanza said he agrees with you.

Mr. Lamanna reminded everyone to direct their comments to the board not between two people here.

Mr. Lanza said clearly they shouldn't have built it without a permit.

Mr. Lamanna said also at this point in time you are kind of veering off into non-testimony, you are making arguments, it is not the position of people to make an argument.

Mr. Lanza said he is sorry and the pavilion is why we are here.

Mr. Lamanna said you just jumped into the issue that he was about to raise actually. He asked Mr. Markowitz if his clients feel that what they propose to do with this mounding would ameliorate noise coming from the pavilion specifically.

Mr. Markowitz said he doesn't have an answer for you because he hasn't polled his clients with that question.

Mr. Lamanna said okay. He asked if he looked at that question at all.

Mr. Markowitz said he talked about it with representatives from the board and what our concern is is that with the pavilion and you have speakers in that pavilion and the history of these facilities there we don't have any assurance that the noise is not going to be able to come from that pavilion in the future and so he can't sit here and say to you that it has not been nor will it be in the future if you were to allow it. He said he also would say to you he doesn't really care how much noise emanates from that facility, that facility is not permitted period, it is a main use and it is an un-enclosed structure that they use as a main use and it cannot exist anywhere on the property so the threat that they will move it closer to our property to him a point that they might want to use to try to leverage us but it doesn't matter, that pavilion doesn't belong anywhere on the property unless they want to use it just to decorate it and not use it.

Mr. Lewis said or enclose it.

Mr. Markowitz said or enclose it. He said if they want to enclose it and it meets all of the setbacks then it would be permitted.

Mr. Lamanna said he wanted to address a question, He said you (Mr. Rinker) and your client, would you be willing to accept limitations on the use of that pavilion, things like no amplified sound or something like that, nothing after a certain time at night, are those feasible in your operation as a way to ameliorate some of these.

Mr. Lewis said people talking is one thing versus people putting things through a sound system. He said how do you measure and how do you enforce.

Mr. Lamanna said if you want to think about this that is fine because the board is not going to decide this tonight because he is going to ask you guys to brief a couple of these issues for us.

Mr. Rinker said he wanted to ask on the record, from the zoning administrator, he believes that the township has been advised by its legal counsel that contrary to Mr. Markowitz's interpretation these are permitted uses.

Mr. Lamanna said we will discuss that in executive session.

Mr. Rinker said as a matter of law at least in terms of the township's position as he indicated before the only issue before this board deals with the physical setback but Ms. Dangelo has indicated what she would do, she agrees to this as a condition and he is authorized to tell you this that she would install a mounding and plantings that she has represented, she is not the engineer, she has been given an estimate, we have been as precise as we can be and what we were told by the engineer is that the height will be at 12' he thinks above the grade of the south berm of the retention basin and the plantings should certainly ameliorate. He said he doesn't think though that she can guarantee that there is no noise and we are not certain that there aren't times that there are noises from other places but assuming right now with what the residents of the Knolls have told you is their experience is that in the summertime they hear the sound and it is better which is encouraging because he thinks that Ms. Dangelo has definitely tried in good faith to manage this situation well but it brings us back to this question of whether or not the use is permitted and he thinks that that is taking us down a rabbit hole that creates real legal issues.

Mr. Lamanna said he understands and that is why he wants to look at it.

Mr. Rinker said what he respectively suggests is that if the township's official legal position is as we understand it should be that the board should be guided by that, that is a separate issue.

Mr. Lamanna said if Mr. Markowitz can raise that issue, if he has standing to raise that issue.

Mr. Rinker said he read the consent judgment, the language about the buffer was on Knowles, Knowles was the one that sued the township, Knowles is the one that entered into the consent decree and Knowles is the one that was told you got to put this buffer on your property and you got to build the mounding on your property to protect against any future development that since you own the balance of the industrial land, before that goes in you make sure that your residential area is buffered. He said now as Mr. Markowitz pointed out what apparently happened subsequently was when the detention basin was put in that modified the physical plan that the Knolls subdivision put in because the Cathcart's house is pretty close to that detention basin so he thinks the consent order refers to the site plan and refers to the industrial area as undeveloped so obviously the site plan is the site plan for the Knolls and the directive is you put the mounding buffer on your property okay, that is for that one period of time. He said as the zoning administrator has pointed out the challenge for all of us as we move forward now into the sixth and seventh decade after that particular code, how do we address it in a way that is feasible.

Mr. Lamanna said he thinks we understand that.

Mr. Rinker said he thinks that it is one, the decision that these are permitted uses and two that in the absence of specific codified language with Ms. Dangelo because anyone can say it is obnoxious but that is not a very effective measure.

Mr. Lamanna said no.

Mr. Rinker said so what Ms. Dangelo is trying to do is put in more contracts with her managers to enforce moderating the sound levels. He said they think that the mounding and the landscaping will ameliorate, we can't ensure it but we can certainly say that as a condition that she would add it, we don't think we have to, we know that is up for debate, it costs money to do that and she said pretty plainly the money that she would not have to spend in relocating the pavilion, that is integral to her operation, she would make sure that it goes into the ground and he thinks that is as much as they can represent other than to say the actual activity in the pavilion is pretty low key but people are dining, and Mr. Markowitz is insisting that that is an outdoor use and that that is unlawful, your zoning administrator has determined otherwise and we believe that the county prosecutor has determined otherwise so all we are asking is that the position of the township, it is as we believe it is.

Mr. Lamanna said we are here to make findings of fact and findings of law irrespective of what the zoning inspector thinks and irrespective of what the county prosecutor thinks, we are not legally bound to follow what they have, we can independently review that.

Mr. Rinker said if that is your position he certainly can't tell you otherwise because that is what you say.

Mr. Lamanna said you can convince me otherwise.

Mr. Rinker said apparently the county prosecutor can't either but.

Mr. Lamanna said believe me, he has seen stuff from the county prosecutor that he has looked at and he doesn't think they are right, they have their legal opinion and ultimately the judge in Chardon will have the final say.

Mr. Rinker said what they are asking for is do we grant this variance, we think that it is in relation to the Knolls a better situation than any alternative and two, we would agree to the mounding and the landscaping as proposed.

Mr. Lamanna said he thinks we understand where you are and at this point he is going to give you guys the opportunity if you want, you don't have to submit a brief on that issue with respect on the impact of the consent judgment and secondly this question of whether that issue is properly before us of whether this is a use because it has been raised by somebody who has standing in this hearing to raise such an issue.

Mr. Markowitz said they will respond to that.

Mr. Lamanna said he has been here as of tonight 30 years and this hasn't come up in his 30 years nor has he seen anything in his practice of law in this area that he has run into, this particular issue either so it is something that is a little bit unusual, this is something that is way out of the normal course and obviously there are a lot of people interested in this thing and he appreciates the effort you and your client have made and try to address the issues that have been brought up. He said he would like to bring this thing to a proper decision here so if you guys would do that for us he thinks it would help us get through those issues and he thinks we've got a lot of information here that we are going to need to digest and look over. He thanked everybody for their patience tonight. He asked if anybody else would like to say something.

Mr. Markowitz said he assumes you are not going to vote tonight.

Mr. Lamanna said no, we are not going to vote, we are going into executive session to discuss it.

Mr. Markowitz asked now or next month.

Mr. Lamanna said right now we are going into executive session.

Mr. Markowitz said so we are done with the public hearing.

Mr. Lamanna said we are done with the public hearing.

Mr. Lewis said we would like to thank everybody for their comments too.

Mr. Markowitz said he wanted to make sure you admit those two exhibits he submitted.

Mr. Lamanna said yes those two exhibits that were offered subject to any objections. He thanked everyone.

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

Executive Session

Mr. Lamanna recessed the public hearing and entered into Executive Session at 9:21 P.M. for the purpose of discussing BZA 2020-35 – Sapphire Creek Winery at 16965 Park Circle Drive.

The board returned from Executive Session after discussing BZA 2020-35 – Sapphire Creek Winery at 16965 Park Circle Drive and the public hearing was reconvened at 10:14 P.M.

Motion BZA 2020-35 – 16965 Park Circle Drive (Sapphire Creek Winery)

Mr. Lamanna moved to postpone this application to the next regularly scheduled meeting to be held January 20, 2022.

Mr. Lewis seconded the motion.

Vote: Mr. Barr, aye; Mr. DeWater, aye. Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Soryal, aye.

Since there was no further testimony, the public hearing was closed at 10:15 P.M.

Respectfully submitted,

Brent Barr, Alternate
Ted DeWater
Ian Friedman, Alternate
Joseph Gutoskey
Michael Lamanna, Chairman
Todd Lewis, Vice Chairman
Emeil Soryal

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

Date: January 20, 2022

AUDIO RECORDING ON FILE

Bainbridge Township, Ohio
Board of Zoning Appeals
December 16, 2021

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 10:15 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Brent Barr, Alternate; Mr. Ted DeWater; Mr. Joseph Gutoskey; Mr. Todd Lewis and Mr. Emeil Soryal. Ms. Karen Endres, Zoning Inspector was absent. Mr. Steven Averill, Assistant Zoning Inspector was present.

MINUTES

Mr. Lamanna moved to adopt the meeting minutes of November 18, 2021 as written with some numerical corrections found by Mr. Gutoskey.

Mr. DeWater seconded the motion.

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

APPLICATIONS FOR NEXT MONTH

Application 2020-35 by Dangelo, Ltd. for property at 16965 Park Circle Drive -
Continuance

The applicant is requesting area variance(s) for the purpose of maintaining a pavilion. The property is located in a LIR District.

The Bainbridge Township Board of Zoning Appeals set a public hearing on the above applications for January 20, 2022 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 10:18 P.M.

Respectfully submitted,

Brent Barr, Alternate
Ted DeWater
Ian Friedman, Alternate
Joseph Gutoskey
Michael Lamanna, Chairman
Todd Lewis, Vice Chairman
Emeil Soryal

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

Date: January 20, 2022