

Bainbridge Township, Ohio  
Board of Zoning Appeals  
February 17, 2022

Pursuant to notice by publication and ordinary mail, the public hearing was called to order at 7:00 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Brent Barr, Alternate; Mr. Ted DeWater; Mr. Joseph Gutoskey; Ms. Lori O'Neill, Alternate and Mr. Emeil Soryal. Mr. Todd Lewis was absent. Ms. Karen Endres, Zoning Inspector and Mr. Steven Averill, Assistant Zoning Inspector were 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 individuals will be sworn in when the application is started. He noted that the order will be changed tonight and the board will start with Application 2022-2.

Application 2022-2 by David Steiner and Katherine Gibbons for property at 17320 Corban Drive

The applicants are alleging error by the Zoning Inspector. The property is located in a R-5A District.

Ms. Mary Bolas-Dietz, Court Reporter from Fincun-Mancini Court Reporters was present for this application.

Mr. Joe Gutoskey recused himself from this application and Ms. Lori O'Neill, Alternate joined the board for consideration of this application.

Mr. David Steiner of 7335 Country Lane was present to represent this application.

Ms. Linda Applebaum, Assistant Geauga County Prosecutor was present to represent Ms. Karen Endres.

Mr. Lamanna said to Mr. Steiner that he submitted with his application a statement of five items.

Mr. Steiner said correct, yes he did.

Mr. Lamanna asked Mr. Steiner, at this point, if there was anything he would like to add to those right now because if he had anything to add he could add to them or if he wanted to clarify them at this point, then he is going to have the zoning inspector respond after that.

Mr. Steiner said okay.

Mr. Lamanna said then you will be given a chance to respond again and he thinks that will be the easiest way to go through it.

Mr. Steiner said they submitted a summary of arguments but he will be happy to respond.

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

Mr. Lamanna swore in Ms. Karen Endres, Zoning Inspector and he let the record reflect that Ms. Endres was duly sworn.

Mr. Lamanna told Ms. Endres that he would like her to respond to the five items that have been raised here in this allegation of error and then we will go forward from there. He said you have that one page that was attached.

Ms. Endres testified by saying right and asked Mr. Lamanna if he wants her to respond to the page that was submitted with the arguments.

Mr. Lamanna said right, there were five allegations of error so we would like to have your comments on that and then get the response from the appellant to that.

Ms. Endres stated right, on the first one, approving the plan now with the house 90' from our property line violated current law both Bainbridge Zoning Resolution 117.13 and 135.04, which requires that all buildings be located at least 100 feet from adjacent property lines for both conditional uses (in general) and specifically for cluster developments as a conditional use. She said regarding the 90' and 100' setback requirement the cluster subdivision was approved under the cluster regulations adopted in Z-1990-1 – Section 135.04 with a perimeter setback of 90', again that was per 135.04. The BZA approved the cluster development as shown on the preliminary plat. She said the general provisions for conditional uses in Chapter 117 did have a 100' setback for buildings however as she understands when there are different provisions for a use the more specific use applies. She said the 100' setback was a general provision for all conditional uses, the 90' perimeter setback was a setback distance specific to cluster subdivisions.

Mr. Lamanna said to the cluster development.

Ms. Endres said the second allegation had to do with a planting buffer. She said the regulations in effect at the time the subdivision was approved just had general language about a plan of a buffer, there was no discussion in the minutes relevant to planting or landscaping. She said the plat does show the 90' perimeter setback buffer. She said buffer and berming were not terms defined in the zoning resolution at that time.

Mr. Lamanna asked Ms. Endres if she has the precise language in front of her from that.

Ms. Endres replied yes.

Mr. Lamanna said the one that was applicable at the time this was approved.

Ms. Endres said she does and she can also put it up on the screen.

Mr. Lamanna said yes, that would be helpful, then everyone can see it easily.

Ms. Endres asked which section he was looking for.

Mr. Lamanna said we are looking at (n).

Ms. Endres said at that point (n) read “A planting buffer, a natural landscape buffer and/or earth berming shall be provided at the perimeter of the cluster development.”

Mr. Lamanna asked if there was anything shown on the original application that met that requirement.

Ms. Endres said she saw nothing in the original, on the plat that was finally approved, she just didn't see anything and she has that on here too if you would like to see that.

Mr. Lamanna said we could ask factually if there is a natural landscape buffer there.

Ms. Endres said he has a 90' setback but there is not planting details, there is not a landscape plan.

Mr. Lamanna said a natural landscape, if there were a stand of trees there that could qualify as a landscape buffer.

Ms. Endres said right, there is 32' of undisturbed vegetation between the property line and the area that was maintained, mowed.

Mr. Lamanna said okay but there is no added planting or earth berming that was done at that location to your knowledge.

Ms. Endres said not to her knowledge, no.

Mr. Lamanna said just so you know the other party in interest will get a chance as well to respond. He asked about number three with respect to the Soil and Water Conservation.

Ms. Endres said the silt fencing has been installed to her knowledge and the property is currently in compliance with the requirements of Soil and Water.

Mr. Lamanna said it is not your obligation to enforce soil and water right, they enforce their own.

Ms. Endres said correct, they routinely enforce those regulations and they will advise the property owner or the builder if there are violations to the sediment control plan and normally the developer will cooperate and fix whatever needs to be fixed. She said once in awhile she has to get involved if the builder is non-responsive to whatever the issue is.

Mr. Lamanna said right, it is his understanding that since they are required he believes to comply with Soil and Water, once they don't comply then he thinks it is also a zoning issue.

Ms. Endres said right.

Mr. Lamanna said but you don't have the primary compliance nor technically the ability to actually make a determination as to whether they are in compliance because ultimately that first has to come from Soil and Water.

Ms. Endres said yes, Soil and Water determines compliance or non-compliance and will attempt to get compliance if there are problems and she will get involved if necessary.

Mr. Lamanna said let's move onto number four.

Ms. Endres said the only plat she has been able to find was the preliminary plat dated July of 1999 and the plan presented by the builder complies with that plat.

Mr. Lamanna said and it was originally approved in 2000.

Ms. Endres said it was originally approved in 1999 then in 2000 there was an amendment to the CUP allowing for a private road and five lots.

Mr. Lamanna said okay but you didn't find any, was a re-plat resubmitted at that time or.

Ms. Endres said the only one she found was one labeled preliminary plat preferred by the Board of Zoning Appeals that showed the 90' setback, it showed building footprints on it, not five buildings but it did show some building footprints on that plat.

Mr. Lamanna said and then number five.

Ms. Endres said number five had some allegations that the development is out of compliance and referencing that they should have had city sewer and water. She said cluster developments are not required to have city sewer and water, Section 135.04(d) requires that "sewage facilities shall meet all Geauga County regulations". She said even the current regulations don't require city sewer and water, simply that the septic systems have to comply with county regulations.

Mr. Lamanna asked if there was anything on this drawing, the plat that said anything about city water service.

Ms. Endres said yes, it was not in the minutes.

Mr. Lamanna said he looked at it and there was nothing referred to in the minutes.

Ms. Endres there was nothing in the minutes, the only thing she could find was on the preliminary plat the statement that “city water service will be provided”. She said she is not sure that there is water lines that go down there that they can tie into.

Mr. Lamanna said he is not aware of any, he looked at the minutes and he certainly doesn't remember that that was ever a discussion or why it wouldn't be a discussion.

Ms. Endres said that was not a condition of the variances for the conditional use. She said the only reference she could find relevant to the septic is on the plat it says individual septic systems, clean water service will be provided, that is on the preliminary plat dated July of 1999 but again that is not one of the conditions for conditional uses.

Mr. Lamanna asked if there was a plat that the board ultimately approved by the County Planning Commission.

Ms. Endres said there was not because this is a condo concept so the County Planning Commission, they don't approve those.

Mr. Lamanna asked Ms. Endres if she believes that the July 1999 would have been submitted at the time of the original application.

Ms. Endres said she doesn't think that was submitted in the 99-35, she thinks it was submitted at the 2000-20 thru 23 hearings and she believes that is the one that the board of zoning appeals ultimately approved, it has got a notation on the back preferred by the BZA.

Mr. Lamanna said his understanding is there were no other issues identified with respect to what was being proposed at that time other than the road issue.

Ms. Endres said correct.

Mr. Lamanna said he thinks there was even something in the minutes that states that all of the other requirements were satisfied.

Ms. Endres said all of the other requirements were met. She said the minutes actually state and she can't say it verbatim right now but the minutes did state that the proposed cluster development meets all of the minimum standards, fully revised with requirements that meets the minimum standards for cluster subdivisions at that time.

Mr. Lamanna said just for the record we will incorporate the minutes from the prior hearing with respect to this application in 1999 and 2000 into the record on the basis that they are public record documents and asked if there is anything else to add.

Ms. Endres said not at this time but she will answer any questions that you may have.

Mr. Lamanna asked if anybody else has any questions they want to ask the zoning inspector at this time.

Mr. DeWater said not at this time.

Mr. Steiner stated that with regard to, he will respond in the order that Ms. Endres responded to our appeal. He said regarding the 90 versus 100 setback requirements, it is true that 135.04 at the time and 117 conflicted, however 117.13 which was the 100' setback that existed at the time that this was approved, that the conditional use that was approved in 99 states that "the following specific criteria and requirements for conditional uses are mandatory" so that would supersede anything that 135.04 said because based upon the language of it being mandatory however even if it was appropriate at the time or even if the appropriate set off was 90' in 99 when this conditional use was approved the law subsequently changed and 135.04 was changed to be consistent with 117 requiring 100' so this wasn't a variance, the variance, it is very clear in the minutes from 2000, the variance was very specific to the issue of the street and the road and whether it is a private drive. He said there was no variance for a 90' set off, the 90' set off was understood as the law at the time it was approved but the law changed and now they are building the house in 2022 and the law is 100'.

Mr. Lamanna said yes but for platted lots of record the requirements in effect when the approval was made continue to apply because these dimensions are set and the design is made based on these dimensions and the subsequent changes to the law don't change that aspect of the initial approval.

Mr. Steiner said even though there was no house.

Mr. Lamanna said even though there was no house there because it is approved as a unitary item, you could easily have a situation where somebody has a design plat, it all works fine under the current law, they change the law and then all of a sudden you have lots that you couldn't build on and things like that so the standard is once it is approved, it is approved.

Mr. Steiner asked is there a law supporting that or that is just how it was done.

Mr. Lamanna said there are decisions supporting that.

Mr. Steiner asked by the courts or by the BZA.

Mr. Lamanna said no by the courts and on the other aspect the general rule of construction is the more specific controls the general so the rule of construction, the statutory construction is a specific provision supersedes a more general provision so if you have a provision that covers a lot of things and then within there is another contrary provision that covers a very smaller part of that, that governs, that is a law of statutory construction.

Mr. Steiner said unless there's a term that says mandatory.

Mr. Lamanna said no mandatory, it is still not going to change, it is still a conflict and the more specific supersedes the general.

Mr. Steiner said so the 1999 plat rules.

Mr. Lamanna said the 90', yes.

Mr. Steiner asked if it also rules with regard to the city water.

Mr. Lamanna said there is no zoning requirement for city water, there was no zoning required for that, it was never considered and it would not be relevant to the question of the private road, that was the only matter that was being there for a variance, that aspect of it. He said in some cases the presence or absence of asking for city water could be a factor that would be considered by the board in doing something but in this case it wasn't, as a matter of fact on the record it wasn't considered and as a matter of law it is not relevant to either what we were considering or even the approval of their right to get, if you go through there are certain conditional uses you can only get if you can provide city water for that use. He said for these types of uses there is no such requirement like that so it is sort of a gratuitous statement, it doesn't really affect the zoning one way or another.

Mr. Steiner said let's skip to the city water since we are on that. He said also just note that the record that Ms. Zimmerman sent notes that the preliminary plat from 1999, the back of the one which states city water will be provided, it says according to Ms. Zimmerman was marked final approved by the Board of Appeals so that was the one that was approved according to the clerk.

Mr. Lamanna said that is the best testimony we have at this point.

Mr. Steiner said okay, it says that city water will be provided so if I submit a plat to the Board of Zoning and it has specifications on how I am going to build a house and what features the house is going to have and he says that he is going to provide city water, but he doesn't do it that is not enforceable, is that the argument.

Mr. Lamanna said it is probably not enforceable, no.

Mr. Steiner asked wouldn't that be something that the Board of Zoning Appeals would take into account when they are going to approve or not approve a cluster given the fact that the houses are so close together and the issue of well water, isn't that something that would be taken into account. He said when we bought our house we had to get city water because our well water was.

Mr. Lamanna said if somebody raised the issue, it might be able to be taken into account but if no issue was raised, the provisions of the Zoning Board minutes in the procedure, we don't conduct an independent inquiry into that because there is no general requirement to do that. He said if somebody came forward and said hey, I don't think there's enough water on the property, we might consider it, the difficulty is all of these cluster developments, it's still the same number of homes on the same amount of property so if you have 25 acres and five acre lots you got five homes it is just that the five homes are closer together. He said it is not like the actual use of the property is going to suck more water out of the aquifer just because the houses are closer together.

Mr. Steiner said so that is not a factor when you are approving how close they are together.

Mr. Lamanna said it is not a factor in a cluster development for that reason.

Mr. Steiner said okay, let's move on then to the issue of the planting buffer. He said somewhere in, he believes Ms. Endres' response, she mentioned something about 32 feet. He said he didn't see that, maybe that was because the map is like condensed in the version that he got that was emailed to him by Ms. Zimmerman. He said he didn't see anything about that, but what he can tell you is that there is no planting buffer as far as he can tell on the plat that was approved in 1999 unless he didn't see it. He said there is no planting buffer in the plans that were submitted that were approved by the zoning inspector on December 23<sup>rd</sup> and he can guarantee you that there are spots on that lot right now where they took down trees way closer than 32 feet to the line. He said on the first day when they started taking down trees, which was October 26<sup>th</sup> he asked the guy, he said how close to the line are you getting and he said about 30' and I asked him if he knew where the line is and he goes no. He said he doesn't find that funny.

Mr. Lamanna said he finds it ironic.

Mr. Steiner said yes, he finds it many things but not funny. He said so that has been sort of the crux of this issue and the crux of why we are here is the fact that the line was never marked, it was finally staked, but it is not staked near the front and he can almost guarantee and he is speaking under oath and he doesn't know where the line is but he can almost guarantee based upon the marker at the corner of the Spiert house which is in front of us that there is no way in heck that there is a 30' buffer up front. He said and he will also say that there is no 30' buffer at the point of the property that comes close to our house, that 90', it's not 32' but regardless, the plan that was submitted and approved by zoning, there was no planting buffer but that is required and once again, it was declared you would have a planting buffer in 1999 which he doesn't see it on there unless he is missing something, he doesn't want to misrepresent.

Mr. Lamanna said no.

Mr. Steiner said he doesn't have access.



Mr. Lamanna said this is why he asked the question, because it is an alternative, there are three possibilities that you put in artificial planting yourself, you add in plantings there that weren't naturally there or in some cases there are buffers around cluster developments that are heavily wooded areas, whether you've got 90' and it is pretty much undisturbed and it is mature trees. He said certainly that would qualify or the other option is that people will put up a berm and then maybe plant something smaller on that to qualify, now that is why he is asking the question here. He said it is clear that there was no planned buffer where plantings were going to be added and it is also clear that there was no earthen berming there so the question is whether or not there was a landscape buffer and he thinks that requirement is there and that requirement has to be met so either it should have been met at the time or it should be met now.

Mr. Barr asked Ms. Endres if she could get a satellite image and could we get an accurate satellite image so we can see what is there.

Ms. Applebaum said that she is here from the prosecutor's office with Ms. Endres. She said Mr. Steve Averill, Assistant Zoning Inspector did measure that area recently and he can testify.

Mr. Lamanna said okay.

Ms. Applebaum asked the board if you would like him now.

Mr. Lamanna said yes.

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

Mr. Steven Averill testified that he was on site the day that they performed the survey and that buffer was a measurement of 32' and it was a natural landscape.

Mr. Lamanna said okay and asked Mr. Averill to describe what the buffer is.

Mr. Averill said it was a natural landscape and what was there was not disturbed within 32'.

Mr. Lamanna said okay and asked what was it, what are we talking about here.

Mr. Averill said just brush.

Mr. Lamanna said it's just brush and asked how tall.

Mr. Averill said trees and brush, trees ranging from maybe 12 to 16 inches to just scrub, 6' tall scrub and tall grass.

Mr. Lamanna asked what were the tallest trees.

Mr. Averill said he didn't know, maybe 30'.

Mr. Lamanna asked deciduous or evergreens or a mix.

Mr. Averill said no pine trees.

Mr. Lamanna said no pine trees, all deciduous, okay.

Mr. Steiner said he doesn't believe the front of the property is marked, the front half of the property, the line isn't marked so he doesn't know how you can say that there is 32' in the front half.

Ms. Endres asked Mr. Averill where he measured.

Mr. Averill said he measured next to your house, next to his house.

Ms. Endres said this isn't the right one.

Mr. Lamanna said no, this isn't the right one here, he could tell it wasn't right.

Mr. Averill said actually he didn't think, if he recalls correctly, the front of the property was not really clear as much as the area in the back of the house was and he thinks the property to the east, the northeast of the parcel at hand was left more undisturbed up front.

Mr. Barr asked when they cut down the trees, how many trees do you think they cut down that you thought were too close, are we talking like a clear-cut or did they take one or two or five.

Mr. Steiner said he honestly thinks it's more brush than trees but he is not sure because it's in the front. He said he is not going to argue with Mr. Averill about the pressure point that is closest to our house, he hasn't gone on that property since they got it staked because there was a dispute about the line, but they got it staked so he didn't go over there so if Mr. Averill is going to testify that there is 32' at the pressure point at our corner, he is not going to dispute that and asked if the board wants him to show it up here.

Mr. Lamanna said sure, yes.

Mr. Steiner referred to the aerial that was displayed and said the pressure point is right there, that is where the house is closest to ours, okay and Mr. Averill he thinks is saying that he measured 32' here which might be true. He said what he (Mr. Steiner) is saying is the requirement of the entire property and based upon what they took out, he is talking about the front, he highly doubts that there is 32' in the front and it is not even marked, he doesn't think the front of the property is even marked, he thinks they only marked it up to about our house and then it was no longer marked, staked he should say but he thinks the bigger point is that it has to be in the plan, like the requirement that was added was in the plan in 1999 that was approved and he doesn't see it in there and then it should have been in the plan that was approved by zoning in December.

Mr. Averill said to Mr. Lamanna, this one corner up here was marked and where this property line comes up, that mark, see where the square is, right there (he referred to the aerial that was displayed).

Mr. Lamanna said okay.

Mr. Averill said right below it right there, that was marked where the intersection is.

Mr. Lamanna asked where is the house going to be.

Mr. Steiner said it is going to be west of our house and a little bit to the south. He said all we are asking is that the law is followed when the house was approved and that the buffer that is required to be in the plan but we are also arguing the buffer was never in the plan that was approved in 1999 unless he is missing it. He said like he said, he doesn't have access to the giant so its hard to see some of these condensed ones but he doesn't see it in there either. He said now he could be mistaken and you know, please correct him if he is wrong but these are all rules that need to be followed.

Mr. Lamanna asked do we have the plan that shows where the house is going to be on the lot.

Mr. Barr said he didn't see that in his.

Mr. Lamanna said he doesn't know if he does, if it is in the packet, he doesn't know.

Mr. Steiner said it is in the packet, yes.

Mr. Lamanna said so it is actually in front of the existing house. He said let's go back to our aerial again, okay, we are looking at the back end of the lot here.

Mr. Barr said yes, that is the south end here.

Mr. Lamanna said so it actually is going to be a little bit behind it, so it is going to be certainly in the area which from this view looks thinnest of.

Mr. Barr said so your (Mr. Steiner) concern is if they go to build, they are going to remove all the brush which takes away the shielding that you would have.

Mr. Steiner said they already have, they have already removed a lot of the brush and like he said if it's 32' at the pressure point closest to our house, if Mr. Averill measured that, he is not going to dispute that, he knows it is darn close, but nonetheless, the front certainly is not even marked. He said the front of the property is not marked other than the stake that he pointed out at the corner of the Spiert's house but he does not believe there is 32' in the front of the lot because when he walked it back from the Spiert's house, from that Spiert's corner house after the destruction of the stuff in late October, it came really close to what he believes was their line. He said like he said they have since marked the line but they did not mark it in the front, they only marked it up to our house.

Mr. Barr said so in the front there where you are talking where the little shed is, where the lot comes to a point, is that a shed there.

Mr. Steiner said yes, correct.

Mr. Barr said and that looks like it is lawn that is mowed by somebody.

Mr. Steiner said well, that is not my property, that is the neighbor's property.

Mr. Lamanna asked that belongs to somebody different, that house up there.

Mr. Steiner said but yes, there also should be a natural buffer for them too.

Mr. Barr said he thought that is what you (Mr. Steiner) were referring to. He asked who is mowing that yard right there, that lawn. He said it looks like the person that is up there that has the shed might be taking care of that grass right there.

Mr. Steiner said no, on the subject property you are talking about.

Mr. Barr said yes.

Mr. Steiner said he thinks it is the people that live on Corban, Seegott, Steven Seegott, he thinks he cuts that or had been cutting that, he is not sure.

Mr. Barr said okay because it almost looks like whoever is using that shed may also want that grass there, it looks like they are using that grassy area.

Mr. Steiner said no, he doesn't use that, he doesn't know who cuts it.

Mr. Lamanna said it is just a shed.

Mr. Steiner said yes but he is talking about south of the red line on our property, they came up to when he walked it, it seemed like the line with tearing down all the brush.

Mr. Lamanna asked Mr. Steiner if he can ask him a question.

Mr. Steiner replied yes.

Mr. Lamanna asked if this house is moved forward would that improve his situation.

Mr. Steiner replied probably.

Mr. Lamanna said so like almost parallel to yours or maybe a little in front of it. He said it looks like a long ways back on a very big lot and maybe he can address this to Mr. Joyce, the question. He asked can this house be moved or Mr. Gutoskey, can this be moved forward.

Mr. Steiner asked if he can say something.

Mr. Lamanna said okay.

Mr. Steiner said he sent Mr. Joyce a letter informing him of this appeal and he received notice from this county and they broke ground on February 8<sup>th</sup>. He said the have already installed a foundation and there are walls up, but he was aware of this, he was aware of this appeal so any type of sympathy regarding it has already started, he has been aware of this appeal and I have asked him to cease until this hearing happened. He said so in summary, there is no buffer on any of the plans that he can see either in the 1999 plan that was approved or in the 2000-21 plan that was approved, it is a violation. He said it should not have been approved and it has to be in the plan.

Mr. Lamanna said he doesn't suppose anybody took any current pictures of what this looks like.

Ms. Endres said they (zoning) didn't take any pictures, no.

Mr. Soryal asked do you have woods on your property right by the property line, are there woods there.

Mr. Lamanna said you can see it there.

Mr. Steiner said he doesn't know how accurate.

Mr. Lamanna asked to have this pushed up a little bit here (he referred to the displayed aerial), it is hard to see but you can see that at least by your house, you've got some trees there on that side.

Mr. Soryal said forward, he (Mr. Steiner) is concerned more about the front.

Mr. Steiner said there are still some trees, yes.

Mr. Soryal asked on your property.

Mr. Steiner said correct, yes.

Mr. Soryal asked what would you say how many feet you think from the property line you have trees.

Mr. Steiner said he is not sure where the line is.

Mr. Lamanna asked Ms. Endres to scroll the aerial up.

Mr. Steiner said because they never marked it.

Mr. Lamanna asked Ms. Endres to scroll it up a little bit, zoom in and get back to the house.

Mr. Barr said head south.

Mr. Lamanna said he wants the existing house up near the top of the frame. He said what we are looking at is basically in this area here (he referred to the displayed aerial) and because it looks like the house is somewhere around here.

Mr. Steiner said right.

Mr. Lamanna said so this is what we are kind of trying to decide what is on the property there.

Mr. Steiner said like he said, he doesn't dispute that if Mr. Averill measured it, where the cursor is now, if he is saying 32' he is not going to dispute that. He said what he is saying is that requirement is for the entire property, not just the part close to our house and its not even marked all the way towards Country Lane and he doesn't believe that there is 32' once you go more north on that property but regardless it needs to be in the plans, that is the point of this, that is why we have these regulations, that these things are required to be in the plans that are submitted to the zoning department and they weren't.

Mr. Soryal asked Mr. Steiner if he can ask him another question.

Mr. Steiner replied yes.

Mr. Soryal asked if the topography there is about the same as your house level the same as the new house.

Mr. Steiner said no, the new house is higher.

Mr. Soryal asked higher.

Mr. Steiner said yes.

Mr. Lamanna asked if what's there is really a buffer, just because there is natural landscaping there doesn't mean it's a buffer, if it is like grasslands it is clearly not a buffer so the question is is there a buffer.

Mr. DeWater said the question is does the buffer have to be a specific thickness too.

Mr. Lamanna said right.

Mr. DeWater asked can it be 8' of trees, can it be 20' of trees, does it have to be 32' of trees. He asked can he cut every tree to the property line and just bring back a whole row of evergreens.

Mr. Lamanna said right, there is a lot of different ways to do it, that is the thing, so if it is wider maybe it can be less.

Mr. DeWater said yes.

Mr. Lamanna said if it gets narrow then maybe it has to be something different. He said kind of what we are exploring here is, is there a way that we can get at this thing by enhancing what is there today maybe with some additional plantings.

Mr. Steiner said that would be helpful.

Mr. DeWater said and it seems that you are concerned with the plantings towards the front of the property, not necessarily where the house is being built.

Mr. Steiner said we are concerned about all of them, if there is 32', as Mr. Averill testified to, then it is what it is. He said in the 32' he didn't make that up and he thinks that was somewhere on that he read in the file, he didn't claim that 32' is, it was somewhere like in the minutes or he thinks it was on Ms. Endres', it was on the zoning inspector's response. He said she said something about 32' of vegetation, but he doesn't know where that number came from, like he said, that number could have come from the plat from 1999 but he didn't see it on there but like he said his version is condensed so he can't see everything that is on that.

Mr. DeWater said but you agree that if he did finish landscaping and planted a buffer up along the property line, that that actually meets the requirement.

Mr. Steiner said if he did that, but that needs to be in the plans though.

Mr. DeWater said right.

Mr. Steiner said that needs to be in the plans before it is approved.

Mr. Lamanna said well that is okay, that can be handled. He said as a practical matter unfortunately with some of these landscaping things, in the practice of improving these things, it is sometimes difficult to figure things exactly what needs to be done unless there are obvious circumstances there because a lot of times it is well, you know, this looks like there is a lot of natural vegetation here, it is going to work out all right, but then find out, well, yes, but there is a specific point where it really doesn't work out. He said unfortunately, nobody goes around and maps every foot of the perimeter of this thing because in actuality, probably 75% of it doesn't matter that much, because there is not somebody else there who is going to cause problems but in this case, as you say, the pressure point is the fact that this house is right back aligned where your house is and it is difficult looking forward from 2000 to today and say "Oh, gee, if somebody builds a house right here, there might be a problem with the buffer that is provided." He said forward looking it is not an easy thing to do but he thinks still the intent is there to have buffers with the neighbors for these types of developments. He said here we are today, how do we solve this problem today, is there a reasonable solution that will satisfy you, will satisfy us, and we can get the protagonist of the builder to think is a reasonable way to resolve this problem, that is kind of what we are looking for here. He said we are kind of down to the practicalities of how we can deal with this thing and there may be a way to deal with it. He said if we are talking about a small area, he thinks there is a way to deal with it.

Mr. Averill said he has some pictures he is sending over to her now.

Mr. Lamanna said alright and asked what kind of pictures.

Mr. Averill said of the 90' with the 30' in it.

Mr. Lamanna said okay, so this is the line here.

Mr. Averill said he pulled the tape from the property line to the corner of the house.

Ms. O'Neill said so that is the 90' distance.

Mr. Averill said the 90' but it is through the 30 or 32. He said he will try to get it up on the big screen so you can see it.



Ms. O'Neill said it seems like part of the contention is too beyond the question of the conservation, the soil and the silt fencing which was not there, which appeared when the permit was issued prior to that occurring even with us not having that responsibility but she thinks it indicates that the builder pushed the line so it appears that.

Mr. Steiner said that is why we are here.

Ms. O'Neill said he is doing the minimum only when forced on the conservation end of it, he is taking down areas or not taking seriously the buffer zone and then additionally even knowing that you made an appeal he continued to build.

Mr. Steiner said that is why we are here, correct.

Ms. O'Neill said it seems like some of the issues are around that.

Mr. Steiner said correct and regarding the silt fencing he doesn't want to take up everyone's time here so regarding the silt fencing he wants to get these dates on the record under oath and he can dispute them if he wants. He said October 26<sup>th</sup> was the first day that they cleared the land in the front half, December 2<sup>nd</sup> and December 3<sup>rd</sup> was when they cleared the land in the back half. He said as he stated in his appeal, he applied for a permit from the Geauga Soil District on December 3<sup>rd</sup> and suggested that the start date of the project would be 12/28. He said he made application after he cleared all the land. He said they granted him the permit within that same week and said he needed to put up a silt fence. He said the silt fence was not up when the Zoning Department issued the building certificate. He said he made it very clear to Ms. Endres that of these apparent misrepresentations to the Geauga Soil and Water and the fact that he was out of compliance, Geauga Soil and Water actually went out there and found that they were out of compliance, there was no silt fence, no nothing so there was actually an out of compliance note, it is in the record he has already submitted, that was outstanding when the Zoning Department issued the zoning certificate on the 23<sup>rd</sup>. He said finally around mid-January, he thinks he put up the silt fence after two and a half months of the first clearing and about a month and a half after the second clearing and he doesn't know if we want to reward builders who make misrepresentations to the Soil and Water District and then ignore the requirements of putting up the silt fence on a property that is significantly higher than ours so all of the water and all the debris ran down into our back yard which we treasure, which we play with our dogs and everything else, and it was a mess. He said now granted, it is the wet season but it seemed worse than usual and all the time there is no silt fence and the Zoning Department still granted the zoning certificate. He said it is his understanding that the Zoning Department can require them to meet the requirements of other, they have to meet the requirements and he was out of compliance after making misrepresentations to the Geauga Soil and Water and they still issued the thing.

Ms. O'Neill said so to her and she is new at this, but it seems like your issue is less with the original issuing of the permit, some of which was not under the control or auspices of this body and more that your issue is with the builder in the way that he is conducting his responsibilities in building the house and meeting the requirements.

Mr. Steiner said yes my issue is with both.

Ms. O'Neill asked if she is understanding that better.

Mr. Steiner said we are opposed to this house being built.

Ms. O'Neill said right.

Mr. Steiner said but there is nothing he can do about it, if it is built within the bounds of the law. He said this whole process is outside the bounds of the law, that is why he made this appeal. He said some of these things we brought to the Zoning Department's attention while we were asking them to not issue it, then when we were pretty much disregarded and they issued a zoning certificate, despite all of this, then we did more research into this and realized that there is a lot going on here and there is a lot of problematic things with the way in which this whole development was approved. He said this is an invalid conditional use which brings me to my next point regarding the conditional use and regarding the fact that ZR 135.04 requires, formerly 135.04(o), now 135.04(n) requires that "Each application shall include a development plan or plat drawn to scale showing acreages, configuration of parcels, existing and proposed structures, main drives, roads, driveways, and landscape buffers." He said none of that was in the 1999 plat that was approved for a conditional use so this is an invalid conditional use and this was an invalid granting of the zoning certificate because the initial conditional use granting was not in compliance with the law. He said there was no house even on the plat that was approved in 1999 let alone driveways, landscape buffers, all of that stuff, there wasn't even a house on that lot when it was approved. He said so the whole development is out of compliance with 135.04 and with regard to this particular house, yes, the granting of the zoning certificate should have never happened. He said if he wants to build a house here, he should go back and ask for a conditional use and go through it the proper way putting the house and the existing proposed structures and the driveways and the configuration of the landscape buffers and do it the right way, the way that 135.04 formerly (o) now (n) has always required it and continues to require it.

Mr. DeWater said he had a question. He asked so you are saying that this would be an unbuildable lot because when the plat map was approved for the development there was not a house drawn or a footprint of a house drawn on that lot so therefore no house can be built on that lot.

Mr. Steiner said unless they go through it the proper way and get the conditional use permit with the house that they want to build on and that is the law, he is just reading to you the law.

Mr. DeWater said so having zoning setbacks that are established in the books, if a building or an architect comes in and presents a plan to the Zoning Department that meets all the setbacks, they are prohibited from issuing that zoning permit.

Mr. Steiner said he is not following.

Mr. DeWater said so if a house is not drawn on that plat map when that development was approved.

Mr. Steiner said as required by law.

Mr. DeWater said so now a builder comes in and he presents a house that meets all the requirements of the zoning setbacks.

Mr. Steiner said yes.

Mr. DeWater said the zoning inspector cannot issue a permit because it was never on the original plat map, that is what you said.

Mr. Steiner said that is what the law says, he is just reading, if you think that these zoning ordinances or resolutions are crazy, then you should change them, but that is what the law says.

Mr. DeWater said he believes that if it meets all the zoning requirements, the zoning inspector is within her rights to issue that permit.

Mr. Steiner said he can read to you the, he can cite to you the law. He said "Each application," this is for cluster developments. He said "Each application shall include a development plan or plat drawn to scale by a registered professional surveyor in the State of Ohio certified by the applicant and his surveyor, showing the dimensions, acreages, and configurations of the parcels, existing and proposed structures, main drives, roads, driveways, recreational facilities, open space, parking areas, and easements, the location and configuration of landscape buffers." He said that is what the law says, the law makes it clear that when you apply for a conditional use permit, that is what you need before you can get your conditional use permit approved.

Mr. DeWater asked Ms. Endres, did the builder provide a plat map to you or a lot map for you with the house on that drawing, right.

Ms. Endres said he showed her a site plan of that setback.

Mr. DeWater said okay, alright.

Mr. Steiner said there is not a house though on the 1999 plat that was presented, there is not even a house, let alone driveways.

Mr. DeWater said but the builder presented one that met the setbacks according to that lot to the zoning inspector.

Mr. Steiner said well, those setbacks is at issue, it is 100 versus 90 but.

Mr. DeWater said that was already determined that it was 90 when the development was approved.

Mr. Lamanna said there is a little bit of a fundamental problem here that exists in a way this cluster development is worded is that almost never does anybody come in with a full scale plot showing where every house is going to be because they don't know where they are going to be.

Mr. DeWater said and they don't know what the design of the house is going to be.

Mr. Lamanna said and they don't know what the design of the house is going to be.

Mr. Steiner said then change the rules.

Mr. Lamanna said they probably should be changed because.

Mr. Steiner said where he comes from the law has to be followed, he is citing the law to you guys he is not making anything up.

Mr. Lamanna said no, we know you are not making anything up.

Ms. Endres said to Mr. Lamanna, she doesn't know if this will help at all but she has got the minutes from 2000 when the proposed cluster subdivision was changed from fee simple lots to the condo style and based on the findings of facts, point number three said, "Since this development fully meets all of the requirements and minimum standards for cluster development and it is only five units, there is no reason to believe that this will have any adverse effect on township services or upon adjacent property owners."

Mr. Lamanna said remember this is all in connection with that variance, that is not in connection with the approval and the conditional use.

Ms. Endres said this is also in connection, "Mr. Lamanna made a motion to grant a conditional use permit for a cluster development on the property and the following variances."

Mr. Lamanna said yes but all of that goes back to the fact that a representation was made by the zoning inspector that all of the requirements had been met.

Ms. Endres said okay.

Mr. Lamanna said so now we have this situation where if we look at the record it is maybe a little bit questionable as to whether technically if you go down one by one whether all of the requirements were met.

Ms. Endres said based on the minutes and based on the plat she had every reason to believe that everything was met.

Mr. Lamanna said yes, zoning inspectors have a certain amount of discretion in administering their office and sometimes practical considerations have to be applied because neither the zoning ordinance nor even the things the Board of Zoning Appeals does can take into account every circumstance or situation that may arise. He said sometimes the actuality of how things happen doesn't always fit the exact idea of how these things are written and so the zoning inspector sometimes has to deal with the real world and not with what the ideal is. He said ultimately yes, let's say we went through this whole proposition again, we could spend a lot of time, somebody would come in, we would look at it, he has shown the house where it is and we would say fine, we approve it because there would be no basis on which not to approve it if he came in now and showed us this particular positioning. He said now he thinks we still have an issue here with, like he said, with the buffering so he is trying to see if we can find some way. He asked Mr. Joyce if he has any or is he willing to do anything.

Mr. Bill Joyce said no and stated that he is Bill Joyce of 7070 Country Lane and he is the President of Joyce Building Company and present owner of the lot.

Mr. Lamanna swore in Mr. Bill Joyce and he let the record reflect that Mr. Joyce was duly sworn.

Mr. Bill Joyce testified that in regards to, we are talking about practicality, but this is a four plus acre lot in a five acre zoning with six acres of common area in the back totally undisturbed. He said the house is sitting about 463' feet back from the culdesac so figure 463' on that easterly property line, it is more like 600'. He asked Ms. Endres if she would mind bringing up the overhead view and asked the board if they would mind if he pointed out a couple of things. He said so the closest distance of clearing is 32' which is the edge of the house is approximately right here, 90' off this property line. He said the closest distance of clearing, natural brush is 32' and as you see the brush actually goes out probably 45' or 50' and then it goes back and reduces. He said that area which is cut has been maintained by, which was mentioned earlier, Steve Seegott, he maintains the lot and he loves to cut grass, he is a great neighbor and he has been in charge of keeping mulch at the entry and the neighbors get along. He said they use that space for walking and ATVing.

Mr. Lamanna said that is not the space that matters.

Mr. Joyce said yes, exactly.

Mr. Lamanna said the only space that matters is right where that says "Distance 41.7", that white area, that is the spot that matters.

Mr. Joyce said so when he was issued a permit, the permit was a 90' setback with a 30' natural buffer and/or if we cleared the property line we would have to mound something and put in landscaping but on a lot this size with this type of side yard setback of a distance of 100', hundreds of feet, 30' of buffer plus is what we are considering as adequate buffer to someone who has held a 100' setback on their property and actually, this, in October, he wanted to clarify a couple of things. He said the October clearing that they are talking about was a de-brushing in order to get septic approval, it was all undercut with a Bobcat. He said there was no chainsaws on the property. He said the clearing later, that second date that was given was the clearing with chain saws and removal of trees. He said this whole front area, there was probably ten good trees left, we saved them, there is Maples up in this corner by the driveway, we had to take out some good trees back here only because of the topography and we had to push this house back and make it fit on the lot so there is some good timber that came down here sadly, but it had to come down to protect the house, 40 to 50 feet from the house, because these trees are 40 to 50 feet plus. He said this brush area here is still very brushy, it is not the prettiest, but it is natural, it is unmolested brush, most of it is about 6' tall and then you have 30' Maples interspersed in a lot of dead Elms and Ashes but we did not want to get into that 30' perimeter at all. He said he would hate and this is a sold house designed for these people set on the lot for these people, it wasn't his decision. He said if Ms. Endres were to bring up this plat map he can show her something too please. He said you saw where that clearing was, it is along here, here is the septic, it takes up that much space, then where this is the old pasture area which Steve Seegott still cuts some area for walking and ATVing, he has had use of this for, because he has lived here for 18 years so he used this as his property, which is fine, but you can see how much of the septic field and we are holding the driveway fairly tight to the property line. He said also if this was amended to a 100' setback, this 50' setback now reduces to 35', everybody else on the interior.

Mr. Lamanna said okay, will you stick to the issue.

Mr. Joyce said thank you.

Mr. Lamanna said we are interested in one point, one area along there.

Mr. Joyce said yes.

Mr. Lamanna said between that house and his house, okay.

Mr. Joyce said and it exceeds 30' of natural buffer.

Mr. Lamanna asked are you listening to me or not listening to me, do you want to be cooperative or not cooperative.

Mr. Joyce said he wants to totally be cooperative, he just wanted to say, telling you what's down there.

Mr. Lamanna said all he is saying is is there something we can do to add some evergreens into what exists there now to improve the buffering in that area between that house and his house where he looks out at that house. He said that is what he is trying to see if there is some willingness on your (Mr. Joyce) part to see if we can come to some resolution that will satisfy everybody here.

Mr. Joyce said and he totally knows where you are coming from but is it three Pines, 30 Pines, does he call his customer and say we have \$5,000 or \$10,000 in Pine trees when they are meeting the standards of a 30' unmolested side yard, that is where he is coming from.

Mr. Lamanna said well yes, give me an idea.

Mr. Joyce said right, there is no answer, right, unless he comes up with an amount of trees, five Pine trees that are eight feet tall, 15' apart, is that something that you are looking for or what.

Mr. Lamanna said he wishes he had a better idea of what was there now, but.

Mr. Steiner asked if there is someone to whom he can send an e-mail of a photograph of the front clearing because there is no 6', it was clear cut except for the trees, he is looking at bare soil. He said he took a photo of it and asked is there someone that he can send this to right now to put up there. He said he wants to make it clear, the front, he doesn't believe it is 32' in the front either although that is not that close to our house, the law needs to be followed here.

Mr. Lamanna said there is not a 32' rule.

Mr. Steiner said whatever it is it is very close to our line in the front which is not marked.

Mr. Lamanna said to some extent a buffer is a little bit of a flexible term and depending on what is there or not there, more or less buffer, we tend to try to have better buffers where the houses are, not where there is long stretches of undeveloped land, it is like nobody is worrying about what the buffer looks like.

Mr. Steiner said we are because we enjoy our privacy and we expect the law to be followed.

Mr. Lamanna said right but it is what he is saying, if we go another 100' back from your house, what the buffer is between the property is a lot less significant than right by your house.

Mr. Steiner said it is significant to us.

Mr. Lamanna said it is not going to change your privacy if there is 28' or 40' of natural growth 200' farther back on your properties.

Mr. Steiner said it is the law.

Mr. Barr asked Mr. Steiner how long he has lived there.

Mr. Steiner replied they have lived here since 2012, all we want is the township to follow the law and not favor a builder coming in and tearing down all the trees over a long time resident. He said that is all we are asking, nothing we asked for today is outside the bounds of law which he just wants you all to remember that. He said he has nothing else to say except that he will formally ask the board to temporarily withdraw the zoning certificate while this matter is on appeal to the Common Pleas Court because as Mr. Lamanna noted, maybe we could have worked something out but Mr. Joyce, with full knowledge of this appeal went ahead and broke ground and started building the house. He said he doesn't want further damage done, we have a lot of good faith disagreements today over the application of the regulations including whether a house can even be built there, whether the conditional use permit was legitimate, whether the granting of this zoning certificate was legitimate and the 90 versus 100. He said we have a good faith disagreement over statutory interpretation and whether or not that 90' from 1999 applies. He said he is asking you on the record to temporarily withdraw the zoning certificate until this is fully litigated and if you have any questions he will be happy to take them.

Mr. Soryal asked what do you think is fair in terms of trees and if Mr. Joyce is to plant some trees for you, what do you think would satisfy you. He said there was a question here about how many trees to plant, how big, how tall, how far apart, what do you (Mr. Steiner) think.

Mr. Steiner said as many as possible and in compliance with the law, something.

Mr. Lamanna said in this case the law, there is not something you can go and say, oh yeah, so here is something that says you need this many trees of this size planted this far apart. He said it is a little more subjective than that, you know.

Mr. Averill stated if he can, to just remind the board that back then the rules that applied don't have a definition of buffer.

Mr. Lamanna said the fact that the rules don't have a definition of buffer doesn't mean the rules don't apply, it means that somebody has to interpret them.

Mr. Averill said the rules do apply and there is no definition of buffer.

Mr. Lamanna said but somebody has to decide what that means in practical terms and he would bring in an expert somewhere and he'll tell me what he thinks the buffer is and somebody else will bring in another expert and he'll tell me what he thinks the buffer is and then some trier of fact will decide based on what those guys say what the buffer should be, that is the way it works if you litigate it out.

Ms. Endres said we have a definition for a buffer but not what the buffer will be.

Mr. Averill said yes.



Ms. Endres said and the picture we have up here, by the way, is when Mr. Averill was out there measuring and this kind of represents the 90' setback where the person standing in the red coat is.

Mr. Averill said 90'.

Ms. Endres said that is at the 90' mark.

Mr. Averill said correct.

Ms. Endres said and the foreground is where the property line will be, just to give the board an idea of what, so we did have a picture in Mr. Averill's phone.

Mr. Lamanna asked if we have an idea of where the point ends.

Mr. Averill said he is standing at the property line.

Mr. Lamanna said you are standing at the property line.

Mr. Averill said yes and that is 90' and that right there is about 32' wherever you see the dirt disturbed with the machines.

Mr. Lamanna said where that little thing is across there, okay.

Mr. Steiner said it is not much of a buffer, there is no, the entire privacy is completely destroyed as if there is little brush, essentially.

Mr. Soryal said also the picture is taken in the fall and there is not really much greenery for us to see.

Mr. Steiner said it's the fall, the leaves are down over half the year in Cleveland, Ohio so that has to be taken into consideration.

Mr. Lamanna asked do you have an idea of what the lateral area is.

Mr. Steiner said I'm sorry, what do you mean by that.

Mr. Lamanna asked if he went out and he is walking on the property line, how much distance to the property line would you say you would want a buffer, is he looking at 25', 40', 50'.

Mr. Steiner said he thinks it depends on what it is, he thinks it should be, it is consistent with the intent of the regulation is to provide privacy on the edge of subdivisions, that is why this regulation was put into place he thinks to provide.

Mr. Lamanna said privacy might be a little bit stronger than what it actually meant, but it was certainly meant to break up what is there, he doesn't think it is meant to be necessarily dense enough that would afford you "privacy" that people wouldn't be able to see or very difficult to see he thinks it is the idea that whatever it is is screened off to a certain extent so it is not staring you right in the face if it is broken up. He said to him it looks like you might have, he doesn't see any dimensions on that house that he can easily read.

Ms. Endres said this is 90' right here.

Mr. Lamanna asked what is the house profile, 50, since it is sort of diagonal its profile is a little narrower.

Mr. Steiner said the other thing to consider is that these laws are not there to just protect us, we have a farm. He said we have eight and one half acres, we engage in the agricultural use of animal husbandry and he doesn't want these people complaining that the dogs are barking or this and that. He said these rules are there to protect the people in these subdivisions just as much as they are to protect us.

Mr. Lamanna said presumably if you don't want to look at them they don't really want to look at you either.

Mr. Steiner said he can't control who they are looking at, that's the problem.

Mr. Lamanna said right, no but generally that interest tends to cut both ways and my guess is that at the end of the day the new house will appreciate additional screening as much as you would, he would think 50 or 60 feet of trees in there would probably do it. He said so what would that be is a staggered row, a couple of staggered rows, you'll need a dozen trees.

Ms. O'Neill said twelve.

Mr. Soryal said he was just saying that there's 190' now between the houses, the new house and where Mr. Steiner lives and there is an elevation difference too in the home so in terms of site of line or privacy, it is not quite as.

Mr. Steiner said it's actually a little less than 190'.

Mr. Soryal said it's 100 from your house to the property line.

Mr. Steiner said it's not.

Mr. Soryal asked it's not.

Mr. Steiner said no, the survey that he had said it was, but the survey that he got said it wasn't so.

Mr. Soryal said we are going by one of them.

Mr. Steiner said if we are going by what is marked, it is about 70' from the end of our house to the property line, yes, and that is very true. He said the house is significantly higher in elevation and he doesn't know how high it is going to be, he is not good at reading blueprints or whatever so he doesn't know how tall the house is going to be either.

Mr. Soryal said it is a two-story house, right Mr. Joyce.

Mr. Joyce replied yes.

Mr. Steiner said where the highest window is going to be he guesses is the most important.

Mr. Soryal said it is probably about 14, 15 feet off the ground.

Mr. Barr asked did you take any pictures from your house towards to where the building is so we can get an angle as to what it is that is your biggest concern as well.

Mr. Steiner asked if he can e-mail them to someone right now.

Ms. Endres said the e-mail doesn't seem to be working very well, we tried that already.

Mr. Steiner said the photo that they put up just before, the house wasn't there yet but that is where the house is.

Mr. Barr said that is from the property line to the house and he wants to see from your house.

Mr. Steiner said we haven't taken any photos of the house since it has been started, since they started to build it.

Mr. Soryal asked if the house is framed yet.

Mr. Joyce said no, it's just the foundation or partial foundation.

Mr. Soryal said so we'll not be able to see that, the height.

Mr. Barr said and there is trees and buffers up on your side as well, you haven't touched yours.

Mr. Steiner said no.

Mr. Barr asked how far back does that go roughly.

Mr. Lamanna said that comes back to near the end of his house.

Mr. Steiner said the tree line is weird so the tree line kind of.

Mr. Lamanna said if you remember from the aerial.

Mr. Steiner said it is the smallest at the pressure point that he was looking at but we have nothing essentially, very little at that pressure point and it backs up to like, it is very close to our fence. He said it is not that far from our fence, not the property line fence, but we have a fence, we have a fenced in yard.

Mr. Barr said you said you do animal husbandry.

Mr. Steiner said yes, we have a bunch of dogs, we raise dogs and stuff, yes.

Mr. Lamanna said let me ask Mr. Steiner, how about 12 trees so two rows staggered, 12 trees over a 60' line, strategically placed, so it is between the houses, so you have 12 trees, six and six staggered so 12' intervals staggered, that way.

Mr. Joyce said yes.

Mr. Lamanna said Pine trees and asked if that is feasible.

Mr. Joyce said makes sense, yes, it is feasible.

Mr. Lamanna asked Mr. Steiner how does that sound.

Mr. Steiner said he has to talk to Ms. Gibbons about that, he is not going to agree to anything right now.

Mr. Lamanna said okay.

Mr. Steiner said we feel that this whole thing, this isn't just, all of the arguments are based upon the letter of the law, that is what we want followed.

Mr. Lamanna said he understands.

Ms. Applebaum asked if she can talk for a moment.

Mr. Lamanna said yes.

Ms. Applebaum said she is actually here to represent Ms. Endres.

Mr. Lamanna said yes, sure.

Ms. Applebaum stated her name, Linda Applebaum and said she thinks we are kind of losing sight of why we are here because it is basically 135.04(d) and it is interesting that if Ms. Endres sided against the builder and said she is not going to issue a zoning certificate, if you look at the appeal process there the builder can go in front of the board and it says substantial compliance and that is over there in (p) (1) is it so strict compliance isn't really even contemplated here and she doesn't think it is right to say the rules, rules, rules while the plat was approved way back in the day and she doesn't think we can relitigate that. She said this is almost like a sort of a taking, she is just saying. She said we don't want to lose sight.

Mr. Lamanna said yes, there is also a real issue that if somebody approves something that didn't comply, the question is how valid is that approval.

Ms. Applebaum said but we are not here to relitigate the 1999 approval, we are here on the zoning inspector error case, did she err in saying was it in compliance.

Mr. Lamanna said the question is.

Ms. Applebaum asked the plat.

Mr. Lamanna said if you had a plat and you weren't in compliance, so obviously there has been other houses built in the meantime he doesn't think you can relitigate those but when you come in on another lot in the plat and somebody says hey, by the way this thing was never properly approved in the first place, you can make some arguments about laches and things like that perhaps but you are making equitable arguments.

Mr. Steiner said and the 90 versus 100 issue, he believes is extremely in play here, you may not but.

Mr. Lamanna said no, he doesn't think 90 versus the 100 issue is in play, he doesn't think that is in play at all and not to mention we all know what happens if this ever did get before the Common Pleas Court, it is just going to get, we will be having the same discussion in a smaller room because they aren't going to want to end up ruling on this, this is silly.

Mr. Steiner said we don't think this is silly, this is our life. He said this is our life, we are a long time resident.

Mr. Lamanna said no, we understand that.

Mr. Steiner said let me finish sir, the taxpayers of Bainbridge and I take offense to you claiming that this is silly because this isn't silly, all we want is you guys to follow the law.

Mr. Lamanna said it is silly if you cannot come to an agreement as to how to solve this thing, that we're tying up the administration of the courts, the government, whatever else on something that we should be able to figure out an agreement that works for everybody on it.

Mr. Steiner said he wants to say.

Mr. Lamanna said that is part of what we are trying to do here is we try to come to practical solutions to difficult problems that don't fit squarely within the letter of the law of the zoning. He said that is the whole purpose of what this board does.

Mr. Steiner said he agrees but he will say this, some of the arguments we didn't bring up in writing to Ms. Endres before she issued this. He said we did bring up though the 135.04 argument verbally but in writing we implored Ms. Endres to not issue that zoning certificate so we could address some of these other issues including the 100 versus 90, we said please, have the prosecutor's office reach out to us, we'll talk about this. He said he has the emails if you want to see them, he said please just don't issue it, let's talk about this, you don't, have the prosecutor call us, have your lawyer call us, let's talk about these issues. He said he was ignored and he got an email on the 23<sup>rd</sup> saying we issued the zoning certificate. He said so we were sort of jaded as nuisances and now we are here and now we are going to be in Common Pleas Court. He said they have done everything they should, they have asked to talk to people and he reached out to the trustees, everyone ignored us. He said that is how long-time residents have been treated of this township. He said he appreciates your time though, you are obviously taking this very seriously and we do, this is the first time someone has taken us seriously and he appreciates that.

Mr. Lamanna said our job here is we are going to listen to people and we are going to take them seriously.

Mr. Steiner said he honestly appreciates that.

Mr. Lamanna said and at no point are we not taking you seriously.

Mr. Steiner said okay.

Mr. Lamanna said and we understand what the problems are, we have dealt with lots of situations like this before and what we try to do is we try to find practical solutions, it is not in your interest to be having to go up and argue in Common Pleas Court and it is not in Mr. Joyce's interest to go up and be arguing in Common Pleas Court, it is a lot better if we can figure out a way to resolve this right here. He said it is in everybody's best interest, it is the least expense and the least amount of time and the least amount of bother and then at least people go away saying well, okay that is what I agreed to, okay, instead of coming back and saying oh boy, I really got screwed by the judge up in Chardon. He said so that is what we are trying to do here, we are trying to find a way to resolve this situation, none of these things are perfect, they are difficult to administer a lot of times.

Mr. Lamanna continued by saying the zoning inspectors are trying to do the best job they can to handle their flow of work and they have to administer these things with some kind of practical aspect of it and that is why there is a lot of things about well does this substantially comply. He said nothing ever complies to the letter, if things had to comply to the letter, we'd never get anything built. He said it wouldn't work, so we are trying to figure out okay, what is substantial compliance here, how we can solve the issues. He said you have an issue and he thinks it is a legitimate issue and we are trying to find a solution for it that works. He said he thinks you've got at least something out here on a proposal that will provide a measure of compliance with what that requirement is that may not be perfect right away but over time it will make the situation a lot better. He asked Mr. Steiner, do you think that is possibly something you can live with.

Mr. Steiner said he will have to talk with Ms. Gibbons.

Mr. Lamanna asked Mr. Steiner if he had any feelings.

Mr. Steiner said he is not optimistic, personally he would need to think about this so he doesn't want to take up anymore time there is a bunch of people who have things that need to be heard and they probably don't want to be here until 11:00 so.

Mr. Barr said again, you get your time, you are a taxpayer, we are giving you your time, and another thing too you put a lot of time and effort into this and asked correct.

Mr. Steiner said yes.

Mr. Barr said we came and we put a question to you, what would appease you and your response was as many as possible. He said we are trying to come up with a solution and your response was as many as possible, that is not something we can measure.

Mr. Steiner said well, honestly the house shouldn't be built and if it is, it should be built at 100'.

Mr. Barr said that is your opinion.

Mr. Lamanna said the trouble is the difference between 90' and 100' it is not material, it is just not material. He said even if it was 100' and somebody said well, gee, we would really like to build this at 90' we might be inclined to grant them a variance because you are 100' off of your property line, he is 90' off his, he can tell you there are a lot closer houses on lots this big in Bainbridge Township so that is a dead horse, okay, that aspect is a dead horse. He said he thinks the aspect is not a dead horse, it is a question of the buffering that is why we proposed this as a solution so that then this problem goes away and we can say yes, okay, with that in there we find that there is an adequate buffer and this whole thing goes away and we don't have to do this.

Mr. Steiner said no, he won't agree to that, no, but he will think about it, but right now he is not agreeing to that.

Mr. Lamanna asked Mr. Steiner if he can have an answer by our next meeting.

Mr. Steiner said yes and asked how far off is that.

Mr. Lamanna said that is March.

Mr. Barr said March 17<sup>th</sup>.

Mr. Steiner said he can have an answer well before that.

Mr. Lamanna said okay, he is just trying to decide if he wants to do a conditional. He said we will close the public hearing part of this meeting and move to the business part of the meeting. He said two things we can do, we can either just kick this to our next meeting or the other possibility is we could make a motion that if he agrees to it, so it would be like a conditional motion. He said only so that the case then, if he comes in and agrees to it, then the case is disposed of, he is not greatly fond of that because of the nuance that happens.

Mr. DeWater said not only do you resolve their issue, you are also helping, he hates to say, you are helping the builder keep his project on course too, as we know they are not moving that foundation.

Mr. Lamanna said right.

Mr. Steiner said that should not be part of this consideration because he was made aware of this issue before he broke ground so that is offensive, the fact that you are taking that into consideration is.

Mr. Lamanna said no, no it is not.

Mr. Steiner said no he understands, its fine, he understands, its fine.

Mr. Lamanna said if they hadn't started the house one sort of feasible alternative would have been to move the house forward.

Mr. Steiner said of course, but he knew exactly what he was doing and now that is off the table.

Mr. Lamanna said that is a practical matter that we can't do right no.



Mr. Steiner said he will say no. He said given the fact that you said the client card out loud about, we will not be, we won't agree to that. He said he implored Ms. Endres to stop him from building so that exact thing didn't happen today and here we are saying that is off the table. He said he knew exactly what he was doing when he started building that on February 8<sup>th</sup> after receiving notice of this hearing and our appeal and it worked.

Mr. Lamanna said well, it's not that it is off the table, it is that if whatever we rule, if we ruled in your favor then he would take an appeal, right, so he can take an appeal anyway and that would ensure if you said the only thing we insist upon is you dig up the foundation and move the house. He said as a practical matter, there is no way this thing is going to go anywhere but up on appeal either way.

Mr. Steiner said neither do I.

Mr. Lamanna said so that is why he says, just as a practical matter that is really not on the table because the other side is not going to agree to it, okay. He said and all we could do is rule in your favor and if we ruled in your favor, then he is going to appeal it.

Mr. Steiner said give me, he'll take that, now he is far less optimistic but give us until the next meeting to give you a response but the fact that the moving is off the table as a result of him blatantly starting with the knowledge of this hearing is sickening to him.

Mr. Lamanna said he understands believe him, we don't like it either.

Mr. Steiner said well, Ms. Endres could have stopped it, I informed her the day he began. He said this appeal was already, he already got notice and I pleaded with Ms. Endres, I said please have him stop building, we have an active appeal, I will send you the emails and I was ignored twice.

Ms. Applebaum said there is no grounds for that, I just want to point that out, she does not have the power to any kind of injunction, she approved the application and so we are here on did she err, that is it.

Mr. Lamanna said he hasn't looked into this, what happens if she issues a certificate and an appeal is filed, does that stay that.

Ms. Applebaum said he can ask the court to stay if he wants to but that doesn't mean that that is going to be granted but the builder could also.

Mr. Lamanna said so what effect does it have, the builder has just gone ahead at his own risk now, the risk that he prevails on his appeal and the builder is.

Ms. Applebaum said that is with any matter, but the bigger risk she sees is if we don't follow the law here, what was the criteria for the zoning inspector. He arguably may have a takings case, he has this plat that was approved long ago and he has the houses going in, does it substantially comply, that is the issue.

Mr. Lamanna said yes.

Ms. Applebaum said and now you are holding him up and his damages.

Mr. Barr said and you could run into the case where you take this to Chardon and they might say that the buffer they think is good enough and everything else complies.

Mr. Lamanna said yes.

Mr. Barr said you wouldn't even get the trees that were offered here tonight, that is the other offer that is there.

Mr. Lamanna said right.

Mr. Barr said that is the risk you take, he is just saying.

Mr. Steiner said yes he understands and he could also take it up to the 11<sup>th</sup> District.

Mr. Barr said he just wanted to make you aware of everything.

Mr. Lamanna said okay.

Mr. Steiner said he has got time and conviction but he will if you want to give him the opportunity.

Mr. Lamanna said yes, we are going to continue it to our next meeting.

Mr. Steiner said thank you for your time.

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

#### Motion BZA 2022-2 – 17230 Corban Drive

Mr. Lamanna moved to continue this application to the next regularly scheduled meeting to be held March 17, 2022.

Mr. Barr seconded the motion.

Vote: Mr. Barr, aye; Mr. DeWater, aye; Mr. Lamanna, aye; Ms. O'Neill, aye; Mr. Soryal, aye.

Mr. Gutoskey returned to the meeting.

Application 2022-1 by Myers Architects on Behalf of William Oliver for property at 8605 Lake in the Woods Trail

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

Mr. Joe Myers of Myers Architects was present to represent this application.

Mr. Lamanna swore in Mr. Joe Myers and he let the record reflect that Mr. Myers was duly sworn.

Mr. Joe Myers testified that he is the architect for the project. He said this is an existing house, the owners recently purchased it and they have asked us to come up with many improvements to the exterior of the house, the one thing that is an issue for them is that the front of the house has a front door with just a concrete stoop with no roof or any protection at the front door and we are proposing to do a new front porch with metal panels and columns, supporting it as well as many other things to the house but the thing we are here to talk about tonight is that this new front porch will project 3'4" over the 75' setback in the front and currently they have a 4' uncovered porch which projects over the line but it doesn't have a roof over it and now that they would like to put a roof over that porch they would need a variance.

Mr. Lamanna asked how wide is the porch.

Mr. Myers said the new porch is 6'. He said it is in a neighborhood where it is a curving street, the lots are all pretty heavily wooded so it is not like all of the houses are all lined up in a straight row so it would be hard to detect that.

Mr. Lamanna asked how high is the porch raised.

Mr. Myers said it is 16" and the only thing that would project over the front setback is the 4 columns and open air.

Mr. Lamanna asked if there was anyone else here interested in this application and asked Mr. Meyers if he any questions for the board.

Mr. Myers replied no.

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

Motion BZA 2022-1 – 8605 Lake in the Woods Trail

Mr. Lamanna moved to grant the applicant the following variance to the minimum front yard setback requirements for the purposes of constructing a covered porch as shown on the plans submitted by the applicant.

1. A variance from 75' to 71'8" for a variance of 3'4".

Based on the following findings of fact:

1. A practical difficulty exists because there is an existing house and the applicant would like to add a porch onto it and there is no way to add the porch without slightly encroaching into the 75' right-of-way.
2. This is a de minimis amount of variance.
3. Given where the houses are located and the large lots there will be no adverse impact upon any of the neighboring properties nor will the addition of this porch adversely affect the character of the neighborhood.

Mr. DeWater seconded the motion.

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

Application 2022-3 by Timothy Bollinger for property at 17490 Lansmark Court

The applicant is requesting area variance(s) for the purpose of additional lot coverage for a driveway and parking. The property is located in a R-3A District.

Mr. Timothy Bollinger, property owner was present to represent this application.

Mr. Lamanna swore in Mr. Timothy Bollinger and he let the record reflect that Mr. Bollinger was duly sworn.

Mr. Timothy Bollinger testified that what happened is he got a site plan to build a garage to put a camper in and what so happened is the builder, once he got everything staked out on the garage, which you guys approved the site plan, to get his camper in and be able to turn around he had a circle driveway that was in the plans as well so he suggested moving the garage back 10' and taking the circle out because of not being able to get the camper turned around and get it into the garage.

Mr. Bollinger continued by saying being that said he had a surveyor come out and make sure that the building was okay with the setbacks by moving it 10' which he didn't think that would be a problem but then he ended up tearing out the asphalt driveway and if you notice on the site plan that his driveway is over 300' long just to get to the house so Mr. Averill contacted him and let him know that he had to get a new site plan because the garage was moved and he took out the circle driveway and then he informed him that he was over on his lot coverage so he hired a surveyor, had him come back in, re-do the site plan and get to the lot coverage and it is showing he is 1% over the 10% so he is asking the board to take into consideration of trying to back a fifth-wheel down that driveway would be pretty tough to do.

Mr. Gutoskey said he is kind of familiar with this too, part of the problem he has is, if you look at the original subdivision plat there is a riparian area in front of the house so if you see where the 100' setback is and you see where the riparian area is the house is behind that riparian area so he has a longer driveway.

Mr. Lamanna said he is way back away from anybody.

Mr. Gutoskey said you can see the riparian, there is a stream in front of the house there.

Mr. Lamanna asked what is down below us here (he referred to the aerial that was displayed).

Mr. Bollinger said he has trees between the neighbor and his house.

Mr. Gutoskey said it looks like you have some Pine trees.

Mr. Bollinger said when he bought the property the house wasn't really what he was wanting but he loved the location and where he could put that garage is really why he purchased that home and there are only four homes in there and he has got great neighbors.

Mr. Lamanna asked if there is anybody else here for this application or if anybody has any questions or issues.

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

Motion BZA 2022-3 – 17490 Lansmark Court

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

1. A variance to the lot coverage of 1,730 sq. ft., basically 11.14% over 10%.

Based on the following findings of fact:

1. A practical difficulty exists because the applicant has a lot that has a riparian in it and it requires the house to be located a substantial distance from the street.
2. The necessity of a long driveway has increased his lot coverage to slightly over the permitted 10%.
3. This small increase will neither adversely affect the neighboring properties nor will it change the character of the neighborhood.

Mr. Gutoskey seconded the motion.

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

Application 2022-4 by Ted A. Batchelor for property at 16434 Snyder Road

The applicant is requesting area variance(s) for the purpose of replacing two front porches. The property is located in a R-5A District.

Mr. Ted Batchelor, property owner was present to represent this application.

Mr. Lamanna swore in Mr. Ted Batchelor and he let the record reflect that Mr. Batchelor was duly sworn.

Mr. Ted A. Batchelor testified that he is representing himself and his wife Deborah concerning one of the oldest homes in Bainbridge, the 1800s. He said they are replacing the two front porches that were there and rotted away and it still has the portico over the front porch but what they want to do is just put the porches back where they were because right now to get in the front door is pretty difficult without a porch. He showed the board a picture and said it really shows where the porches will go back.

Mr. Barr said you took part of the house off, correct.

Mr. Batchelor said there was a garage and he had to take the garage off to the south there because it was dilapidated, it had six motorcycles in there and all sorts of stuff so he is cleaning up that property and it has taken a lot but what they are trying to do is basically save historical homes. He said they live 1,000 feet from it.

Mr. Barr asked Ms. Endres to provide the board with the zoning from when this house was built.

Mr. Lamanna said you already have sort of an existing overhang here and you are turning that into a real porch.

Mr. Batchelor said yes what they are going to do is put a couple columns like there were and a porch that you can step up on.

Mr. Lamanna said and then the other one doesn't stick out any farther than the existing.

Mr. Batchelor said correct it is 5' to meet that little sunroom they have there, there was always a porch there, like that barn.

Mr. Barr said thank you, he used to live on that road and drive by that place and he couldn't believe people lived there.

Mr. Batchelor said she sat on the porch with a shotgun but she was there and she was still burning coal so he just put a new furnace in.

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

#### Motion BZA 2022-4 – 16434 Snyder Road

Mr. Lamanna moved to grant the applicant the following variance to the minimum front yard for the purposes of modifying the dwelling with two front porches.

1. A variance to the minimum front yard setback from 75' to 11.5' for a variance of 63.5'.

Based on the following findings of fact:

1. The board notes that the one that will be moving closer than the existing front of the house is already partially there and is a rebuild of a porch that was originally existing on the house from prior history.
2. The second porch will not increase the encroachment in the front of the house so in fact as completed these alterations will not increase the existing encroachment of the house beyond that which originally existed.
3. This is a pre-existing property so in fact they would have to remove the entire house to get rid of the non-conformity and it already is not actually being increased by these alterations and given this location it will not adversely affect the neighboring properties or change the character of the neighborhood.

Mr. Gutoskey seconded the motion.

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

Application 2022-5 by VOH-Bainbridge Township, LLC for property at 8378 East Washington Street (Citizens Bank)

The applicant is requesting area variance(s) for side lot line setbacks to allow two driveway accesses to cross and allow a 0' driveway setback. The property is located in a CB District.

Application 2022-6 by VOH-Bainbridge Township, LLC for property at PP#02-292860 East Washington Street (Aldi's Grocery Store)

The applicant is requesting area variance(s) to allow two driveway accesses to cross side lot line and allow a shared driveway. The property is located in a CB District.

Mr. Joe Gutoskey recused himself from these applications and Ms. Lori O'Neill, Alternate joined the board for consideration of these applications.

Ms. Bridey Matheney, Attorney for the applicant VOH-Bainbridge LLC; Mr. Jeffrey Deeds of Visconsi Companies, Ltd., Mr. Dan Barcikoski, Civil Engineer for Citizens Bank and Mr. Ted Gauss, Architect for Aldi were present to represent this application.

Mr. Lamanna swore in Ms. Bridey Matheney, Mr. Jeffrey Deeds, Mr. Dan Barcikoski and Mr. Ted Gauss and he let the record reflect that Ms. Matheney, Mr. Deeds, Mr. Barcikoski and Mr. Gauss were duly sworn.

The board was in agreement to hear both applications together.

Ms. Bridey Matheney testified that this is for a variance, actually two variances, one is to allow the two driveway accesses that cross the property line and the other is to allow a 0' side yard setback between the two parcels. She said the reason is actually to provide a safe and practical loading and unloading for Aldis Grocery Store which is the proposed use of that westerly parcel and the other reason is really for the flow of traffic through Citizens Bank and then to Aldis and vice versa. She said the variance they are requesting is not substantial comparatively speaking.

Mr. Jeff Deeds testified that he would like to point out a couple of things and explain the story behind this. He said they are a developer for Citizens Bank and he thinks this is the fourth Citizens Bank location that they have built in the last couple of years and they first purchased Mr. Frank Lanza's property, he thinks Mr. Lanza knows everybody, so they purchased his property first to put the bank on and the property line, see this back line right here, (he referred to the aerial) everything from the right of that was the Lanza property so they had a lot of excess land in the back but they wanted to see if they could purchase the Lombardo piece just to the left of it and enlarge the project here so the bank actually came first, they had that completely approved and it complies with everything 100%.



Mr. Deeds continued by saying then they were lucky enough to work out a deal for Aldi and bring their site plan into play also however as you see the property line was split right through the Aldi's building so they had to find a proper place to shift the property line where, and they have two separate parcels and it was a challenge going back and forth trying to figure out exactly where that new proposed property line would be and they determined as a group that the best place to place that would be, if you follow my finger here (he referred to the displayed aerial), it goes along back of this curb at a little bit of an angle and then straight up. He said there are two variances, the first variance is to have a driveway shared, there is going to be an easement here, and the driveways shared and it requires a variance because it is just the way that the code reads, it requires a variance. He said the second variance is for a 2' setback variance, we are actually supposed to be, the property line is 2' off this curb line, but if we shift it over 2' then it creates another problem with the variance over here where the parking wouldn't be 20' back it would only be 18' back so we went back and forth a lot of different ways and we figured since we are asking for this variance here which is really a safety thing, we thought the best place to put this property line would be back of the curb that way it makes perfect sense for Aldi when they are cutting the grass and the bank is taking care of their property, everything on that side of driveway is Aldi's to deal with and everything to the right side is the bank's to deal with. He said when you take a look at the variance here the only people it really affects is Citizens Bank and Aldi, it really doesn't affect anyone else, he guesses the next person it would affect would be the property owner to the west and we have a letter in favor of the project from Michael Eisner of Daydaboo Holdings so he is in favor of it and the last thing he would like to say is the rear setback, he referred to the displayed aerial, from the people who live on West Craig, that minimum setback is 60', we are at 159' from that property line so we are 99' in excess of what the code calls for so he thinks Aldi has done a great job in siting their building and the fact that it is 99' further he thinks the project really works well for everybody. He said thanks and he would be more than happy to answer any questions. He introduced Mr. Ted Gauss and Mr. Dan Barcikoski.

Mr. Barr asked Ms. Endres if she has a satellite that will show him both sides of the road here.

Ms. Endres displayed the aerial.

Ms. O'Neill asked Mr. Deeds if he has broken ground yet on Aldi.

Mr. Deeds replied no, they have not purchased that land yet.

Ms. O'Neill asked if he had it under option.

Mr. Deeds said yes.

Mr. Barr said you said the closest obstruction might be Mr. Eisner's property but what with all of the extra traffic right there, that is a pretty busy road. He said try to make a left anytime before 4:00 and 6:00, actually he thinks somebody lets out at 3:30 because at 3:30 it just packs right up. He asked if they have done any traffic studies of what the impact may be of bringing another grocery store and a bank with the entrances that are already going on to that.

Mr. Deeds said they have not because really it is just for a shared entrance, it wasn't for the right to have those there, they meet all of the other, they comply everywhere else, they are just looking to share that little driveway there and then with both Aldi and the bank so it has actually less traffic out on the street because if someone is going to go into the bank and then go to Aldi they can go back and forth versus having to come back out onto the street and then go into the Aldi or vice versa.

Ms. Matheney said and there is going to be another access, correct into Aldi.

Mr. Barr asked another access, where does that fall.

Mr. Deeds referred to the displayed aerial and said this is the one that is actually being built and the other one will be over here.

Mr. DeWater said so that driveway might line up with the PNC Bank driveway.

Mr. Deeds said it might be offset a little bit.

Mr. Barr said that is not PNC, that is the other bank on down, Fifth Third.

Mr. Deeds said actually just combining the driveways between them.

Mr. Barr said right but if we were to turn that down then that would bring in a different aspect, if we were to deny that he just wanted to know if there was a back-up or anything that we could show. He said we face a lot of questions and a lot of strife from traffic mainly on this corner from here down and then of course when you turn a corner to Duncan Donuts which is its own parade every morning so he is just trying to look in the future that we have done our due diligence so that we don't face that again.

Mr. Deeds said by combining the driveway they are trying to keep more traffic off of the street and keep it between the two parcels without having cars drive out of one and into the other.

Mr. Lamanna said if you have two parcels you are going to have two curb cuts.

Mr. Deeds said the bank has their curb cut and Aldi has their curb cut.

Ms. O'Neill asked if Eisner's property is the house that is sort of behind where your triangle is.

Mr. Deeds said yes, to the west. He said the bank has their own parcel and then their driveway.

Mr. Lamanna said right.

Mr. Deeds said they were giving an easement to Aldi because it makes it easier for Aldi's deliveries. He referred to the aerial and said it is kind of hard to pull in this way, turn in and then back a truck around at a 90° angle, you have trucks coming this way down and back straight up.

Mr. Barr said that would be his next question whether or not the trucks, semis can make that corner.

Mr. Deeds said by linking these it just makes it a lot easier and a lot safer for the drivers to come in, pull down this way and then back straight up versus trying to back 90° at the corner.

Mr. Barr said the only thing he didn't want them to do was to pull up and back all the way down to E. Washington.

Ms. Matheney said it also allows for large fire trucks to come in.

Mr. Deeds said at one point we even showed a driveway that loops all the way around the building but then we didn't hit our 40% lot coverage compliance so these meet and this 2' difference we meet every other setback and requirements.

Mr. Lamanna asked about the parking.

Mr. Deeds said we meet that, right.

Mr. Lamanna said there is a good amount of parking for Aldi.

Mr. DeWater said going back in history Suzy's Backyard Restaurant had two curb cuts.

Mr. Lamanna said yes.

Mr. DeWater said and Kredon Hardware had two curb cuts so you are going from four to two in reality.

Mr. Lamanna said there is a left-hand turn lane too.

Ms. O'Neill asked how many square feet is Aldi.

Mr. Gauss testified by saying just above 19,000 sq. ft. he thinks.

Ms. O'Neill said they are pretty small stores but they get a lot done in that small space.

Mr. Barr said the way that people shop in Aldi is quick and in and out and added that the parking spots closest to the road will probably never get used, it will be the first two rows and that is it.

Mr. Lamanna said he doesn't know what you are going to get that is better, the fact that they are working together it is helpful. He said some people can go from one business to another without having to go back out onto E. Washington Street so it is a practical matter.

Ms. O'Neill said so you have everything obviously signed and you have an option on the land and you have the signed lease with Aldi so that is why you are going ahead.

Mr. Deeds said yes and if we get this approved tonight they will complete their drawings and get their permits and they will probably break ground in April or May.

Mr. Karl Bruhn of 8431 Craig asked in regards to truck deliveries, are there specific times that they can or cannot, he is not sure the zoning board handles that, if it is in your jurisdiction.

Mr. Lamanna said nobody can really regulate that.

Mr. Bruhn said okay.

Mr. Lamanna said that one of the difficulties is, we have asked people to not have, but this is quite a ways away but we have asked people to not have garbage pick up at 6:00 AM in the morning or 7:00 AM in the morning. He said he doesn't know typically if they would be taking deliveries that early and asked if that is a usual thing.

Mr. Gauss testified that typically it is during normal store hours.

Mr. Lamanna said because you have to have people to take it.

Mr. Gauss said they are not coming in at 6:00 in the morning.

Mr. DeWater said that does bring up another question, where is your trash going to be located on your lot.

Mr. Gauss said the dumpster is in the truck dock well so it is actually a single bay.

Mr. Lamanna said so it is in the same spot. He said so it goes down and that is going to help and the biggest aggravation is the back-up signal.

Mr. Bruhn said if he could ask, Frank Lanza was mentioned before, we are on the large mound that was put in years ago which was terrific, we are on the good side of that. He asked if there are any plans of continuing that berm at least in some partial type of whatever that is backing up to West Craig.

Mr. Gauss said he doesn't know of any plans to do anything different than what is there.

Mr. Bruhn said okay so there is no official berm.

Mr. Lamanna said he thinks the development with the berm is they are a lot closer to the property line there.

Mr. Deeds said at a risk of saying this, there is a landscape buffer requirement and when we were showing just the bank on Frank Lanza's property we did have evergreens that were staggered that went all the way across that so when Aldi goes to get the balance of this, we are not at level of review with the drawings yet but when they submit their site plan Aldi is going to have to have some kind of buffer for the balance of it.

Mr. DeWater said you are going to have some excavation spoils that they could make a mound across the property with.

Mr. Deeds said he doesn't know yet, he doesn't want to speak to that because he really doesn't know.

Mr. Lamanna asked if there are any other comments or issues.

Mr. DeWater said he is glad to see something done with that property finally.

Mr. Barr asked if they are going to do anything with water retention, he didn't see it on the site plan.

Ms. Endres said they haven't done the civils yet, this is to see if the lot would be approved with those variances, the driveway crossing lot lines and the 0' setback for the bank.

Mr. Deeds said the detention for the bank does all come south and after the street so the detention pond is already constructed now. He said his guess is if they get approval they will start their civil plans and design the ponds and the grading.

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

BZA Motion 2022-5 – 8378 East Washington Street (Citizens Bank Lot)

BZA Motion 2022-6 – PP# 02-292800 East Washington Street (Aldi's Lot)

Mr. Lamanna moved to approve the following variances.

1. The lot consolidations/splits on these two properties as shown in the drawings submitted by the applicants.
2. With respect to application 2022-5 for property at 8378 East Washington Street the board will grant the variance with respect to the minimum side yard (west) of the required 2' to 0' and it can be adjacent to and cross the property line for a variance from the 20' required.
3. With respect to application 2022-6 for property at PP# 02-292800 East Washington Street that again the minimum side yard (east) the board will grant a variance with respect to the drive to 0' setback from the requirement.

Based on the following findings of fact:

1. By providing dual access between these two properties it will improve the traffic flow in and out of the two properties, allow better access for delivery vehicles to the property covered by 2022-6 and by line cross circulation between the two businesses will reduce some traffic having to go out onto East Washington Street and then return back into an adjacent business.
2. Otherwise these changes should have no adverse impact on either of the adjacent properties to them.
3. This proposed commercial development will certainly consist of what that is already located in the CB District.

Mr. DeWater seconded the motion.

Vote: Mr. Barr, aye; Mr. DeWater, aye; Mr. Lamanna, aye; Ms. O'Neill, aye. Mr. Soryal, aye.

Since there was no further testimony, the public hearing was closed at 9:27 P.M.

Respectfully submitted,

Brent Barr, Alternate  
Ted DeWater  
Joseph Gutoskey  
Michael Lamanna, Chairman  
Todd Lewis, Vice Chairman  
Lori O'Neill, Alternate  
Emeil Soryal

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

Date: March 17, 2022

AUDIO RECORDING ON FILE

Bainbridge Township, Ohio  
Board of Zoning Appeals  
February 17, 2022

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 9:27 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Brent Barr, Alternate; Mr. Ted DeWater; Mr. Joseph Gutoskey; Ms. Lori O'Neill, Alternate and Mr. Emeil Soryal. Mr. Todd Lewis was absent. Ms. Karen Endres, Zoning Inspector and Mr. Steven Averill, Assistant Zoning Inspector were present.

MINUTES

Mr. Gutoskey moved to adopt the meeting minutes of January 20, 2022 as written.

Mr. Barr seconded the motion.

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

APPLICATIONS FOR NEXT MONTH

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

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

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.

Application 2022-2 by David Steiner and Katherine Gibbons for property at 17320 Corban Drive - Continuation

The applicants are alleging error by the Zoning Inspector. The property is located in a R-5A District.

Application 2022-7 by Steven Huckabee for property at 16716 Geneva Street

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



Application 2022-8 by David Jansen, Architect for Patrick and Aubrey Joyce for property at 7021 South Street

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

Application 2022-9 by David Jansen Architect for Patrick and Aubrey Joyce for property at 7021 South Street

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

Application 2022-10 by Stephen Keary/Keary Contracting for Thomas and Kathleen Supan for property at 8346 Summit Drive

The applicant is requesting area variances for the purpose of constructing additions to the existing house and hardscaping. The property is located in a R-3A District.

Application 2022-11 by Timothy Alder, Jr. for property at 8686 N. Spring Valley Park Drive

The applicant is requesting area variances for the purpose of constructing an accessory building. The property is located in a R-3A District.

The Bainbridge Township Board of Zoning Appeals set a public hearing on the above applications for March 17, 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 10:02 P.M.

Respectfully submitted,

Brent Barr, Alternate  
Ted DeWater  
Joseph Gutoskey  
Michael Lamanna, Chairman  
Todd Lewis, Vice Chairman  
Lori O'Neill, Alternate  
Emeil Soryal

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

Date: March 17, 2022