

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

Pursuant to notice by publication and ordinary mail, the public hearing was called to order at 7:02 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Brent Barr, Alternate; Mr. Ted DeWater; Mr. Joseph Gutoskey; Mr. Todd Lewis; Ms. Lori O'Neill, Alternate and Mr. Emeil Soryal. 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 hearing will start with Applications 2020-35 and 2022-2.

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

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

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

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

Mr. Lamanna noted that this application is a continuance and the applicant submitted briefs to the board and the board is going to move to the business meeting to consider that application.

Mr. Lamanna moved that the board enter into Executive Session for the purposes of considering this application. The meeting was recessed at 7:05 P.M.

Mr. Barr seconded the motion.

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

The board returned from Executive Session for the purposes of considering this application at 7:44 P.M.

Mr. Lamanna noted that the board will back on the record at 7:46 P.M.

Mr. Lamanna stated that the board has been considering this application and after looking at the situation and information that has been submitted to them, he is going to summarize first where we are going and then we will actually have a motion to that. He said the first thing he wants to note is that any of the issues regarding the mounding and the other buffering between this property and the condominium property are matters for that agreement that we don't need to get into at this time, he thinks they were being discussed earlier mainly as a matter of trying to ameliorate some of the considerations but they do not pose a problem. He said secondly, we believe that the matter regarding the question of whether or not what accessory uses may or may not be appropriate is appropriately before this board he believes has been raised by the neighbors in the course of this proceeding that we have the ability to hear that because it has been raised by them but we also have a situation with an area variance before us could not go forward and consider that as an isolation of the use for which it is going to be permitted so actually employed. He said we also view that the requirements of the agreed judgment entry as it incorporated the portions of the existing zoning code at the time clearly states that the uses in this area have to be in a totally enclosed building and that this applies to accessory uses if this even is an accessory use and is not actually just part of the primary use being conducted in another location. He said with respect to the actual structure itself, in terms of its location and it is on the thicker side of the property and under isolated circumstances with respect just to its positioning the board would allow it to stay certainly in its current condition as an ornamental structure but any uses have to conform with the requirements of Section 530.11 that they be within totally an enclosed building, the building would have to be enclosed to do that. He said additionally it is the board's understanding that the Geauga County Building Department has not inspected this building but that the applicant has had somebody come in to look at it, an architectural firm, no.

Ms. Dangelo stated that they had someone from the building department.

Mr. Lamanna said so it was inspected.

Ms. Dangelo said yes.

Mr. Lamanna said that wasn't the case a while ago.

Ms. Dangelo said it was the last time we were before the board.

Mr. Lamanna said so it has been inspected.

Ms. Dangelo said it has been inspected after.

Mr. Lamanna said after the fact, okay, then you won't have to worry about that.

Mr. DeWater said they should provide all of those inspections to Ms. Endres.

Mr. Lamanna asked if they were submitted.

Ms. Dangelo said she does believe they were provided.

Mr. Lamanna asked Ms. Endres if she has them.

Ms. Endres said not here but she believes we have them.

Mr. Lamanna said so you received them, okay good.

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

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

Mr. Lamanna made the following motion with respect to the disposition of this case.

1. The board finds that the matter regarding whether or not the board can consider and the question of zoning inspector error raised with respect to the application of Section 530.11 as incorporated in the Agreed Judgment Entry has been properly raised before this board and is properly before the board for consideration. None of this, certainly an issue has been raised about whether the board has some authority under the judgment entry and he thinks the board finds that it is clear that under the terms of the judgment entry the board can interpret and review the provisions of the judgment entry in the course of hearing any applications for variances or for allegations of error by the zoning inspector with respect to the interpretation of the Agreed Judgment Entry.
2. With respect to the location of the building, with respect to the distance from the property side line the board will grant the variance for the position of the building at that location based upon the fact that it abuts a landlocked piece of property and it is unlikely to cause, as a building, any adverse impact upon that property or change the character of the neighborhood.
3. With respect to any use of the building the board finds that the provisions of 530.11 applies to uses of the building including all accessory uses as the provisions of that are clear that they will be conducted within a totally enclosed structure therefore any use of the building for the permitted activities or accessory activities must meet that requirement. It is fairly apparent that accessory uses are an extension of part and parcel of a permitted use therefore even though it is an accessory use it still requires to meet the requirement of a permitted use and be within a totally enclosed building.
4. Part of the decision is representation that there has been an inspection by the Geauga County Building Department of this building, that they have approved that building even though it was built without obtaining the proper permits and that that completed inspection is a substantial basis for the board's decision.

5. The board also notes that given that there are a number of other collateral issues that have been raised and we may not have addressed every single one of them in the course of this and also it is difficult to try to draft in a complicated matter like this extemporaneously to complete the final determination of the board, this motion is subject to being elaborated on before it is finally adopted by the board to assure that it includes all of the proper references and covers all of the items that need to be addressed.

Mr. Lewis seconded the motion.

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

Revised motion is attached at the end of these minutes.

Mr. Bruce Rinker asked if the board is going to issue written conclusions and findings.

Mr. Lamanna replied yes.

Mr. Rinker asked when can we expect those.

Mr. Lamanna said hopefully in the next couple of weeks.

Mr. Rinker said but the decision is effective tonight.

Mr. Lamanna said no, the decision will not be effective until we adopt the minutes.

Mr. Rinker said that is on the record, so this is not a final appealable order.

Mr. Lamanna said no it is not a final appealable order until we adopt the minutes at the next meeting or the meeting after that but we will try to have a draft, the final minutes will be in two or three weeks before the next meeting but at the next meeting we will adopt the final minutes.

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

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

Ms. Constance Versagi, Court Reporter from Fincun-Mancini Court Reporters was present for this application.

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

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

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

Mr. Steiner testified that his first question is last month and he forgot your name but Mr. Lewis wasn't on the board.

Mr. Lamanna said right.

Mr. Steiner said it was Lori O'Neill so who will be voting on this particular issue.

Mr. Lewis said right here.

Mr. Steiner said okay, so he sent some additional materials to the BZA since the last meeting, briefly he just wanted to go over them and there was some, at last month's meeting they addressed whether the zoning department could revoke a building certificate and he sent you 109.07 that states that the zoning department can in fact revoke a building certificate. He said we reiterate all of our arguments from the last hearing, we believe that the approval of the conditional use back in 99 was invalid, it did not have the drawings of the houses.

Mr. Lamanna said let's not go back over that again.

Mr. Steiner said well Mr. Lewis wasn't here for the hearing last month sir.

Mr. Lewis said he read the minutes, he has been doing this 17 years, he is very experienced with this so yes, he is very familiar with what you've presented.

Mr. Steiner said he just wants to say that the BZA expressed their disappointment with Mr. Joyce and the fact that he broke ground knowing that the appeal was pending while he has going full bore with building this house since the last meeting. He said he has, this is obviously a joke to him, he doesn't take this seriously so we will not be engaging with any discussions with him or anything else alike. He said there is some talk of trees and evergreens, to do some trees, no one, he didn't reach out to us he just continued building so we are not negotiating with someone who is operating like that in bad faith. He said he also wants that last month Mr. Joyce indicated that what is he going to tell his client if he has to build trees, that is not our concern, this is his development, he decided to clear cut a bunch of acres 20 years ago and to build a bunch of big old houses. He said the zoning resolution has binding language, he has to put in a landscape buffer, he has been out of compliance for the last 20 years with the landscape buffer with regards to the northwest corner of our property and all of the property of the Spiert's who he can't speak for so no we will not accept a promise for him to put up some trees to plant some trees when his obligation is the law, that is not something that his clients pay for, that is him, this is his development, he represented to the BZA 20 years ago that he was going to build a development that complies with the law, it is your job, every single one of you to ensure that the law is complied with. He said this isn't about practicalities, this isn't about oh he's a good guy, this is about your obligation to enforce the law.

Mr. Steiner continued by saying if we are not going to enforce the law then why do we even have these zoning resolutions, why don't we just go back to the 1970s when Bainbridge didn't have zoning resolutions. He said also as this house has continued to be built there, right there, that is the part that our property, where it is out of compliance for the last 20 years, there is no landscape buffer whatsoever between our property and the development at issue, nothing, there is nothing there and you may say that is not your house but we use every single inch of our property, we treasure our privacy, he has running trails, hiking trails, snowshoe trails, cycling trails, we purchased this property for the privacy and we purchased this property not knowing the zoning laws but assuming that Bainbridge would follow the zoning laws. He said throughout this entire process we have seen that that hasn't been the case, he said that is not ours (he referred to the displayed aerial) and that is not ours either. He said he submitted to Ms. Zimmerman today a photo of the progress of the property, that is not it.

Mr. DeWater asked is this it.

Mr. Steiner said yes. He said so after looking at the application another way in which the zoning inspector erred is that she did not require a plan or map drawn to scale of the dimensions and elevations in feet applicable to buildings and structures on the lot, a copy of the floor plan for each floor or building of the structure. He said now that photo right there was taken today from our property line and there has been more progress on it since but how high is this going to be, he represented in his application that there was going to be 33 or 34 feet, well that he believes is from the existing grade, is he going to build up the grade by 10 or 15 feet and claim that it is 35' from that, he doesn't know, we don't know because the application is improper. He said the application does not include a plan or map drawn to scale with the dimensions and elevations and feet of the proposed buildings and structures on the lot so here we are again, we don't know how high this is going to be lording over our property, it shouldn't have been granted without the information, there is a reason that the information is required in the application. He said if you are not going to require it in the application then take it out of the application, but it is in there so that is another reason why it was an improper granting of this application. He said he has no idea where that is being measured from, how high it is going to be on our side, does anyone care about any of this stuff or is this all just a matter of practicality.

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

Mr. Lamanna asked if she calculated the height.

Ms. Karen Endres, Zoning Inspector testified that the height is calculated to the top of the house so it is from the front finished grade, not the back or side view so the 35' height max is from the front of the house per the definitions in the zoning resolution.

Mr. Steiner asked can you cite where that is defined.

Mr. Steven Averill, Assistant Zoning Inspector read the definition of Building Height. He said “Building Height means the vertical distance measured from the average finished grade at the front (street facing) of the building to the highest point of a gable, hip or gambrel roof or the coping of a flat roof

Ms. Endres said it is very usual for people to have walk-out basements.

Mr. Averill said average finished grade and there is a definition for average finished grade as well.

Ms. Endres said “Average Finished Grade” means the mean elevation of the finished grade around the perimeter of any building or structure.”

Mr. Barr asked, are you sure that is over 35’.

Mr. Steiner said no, he is not going on the property and measuring it.

Mr. Barr said he doesn’t think it is 35’.

Ms. Endres said the front.

Mr. Steiner said we would know if he had a proper application as required in the zoning laws we would know what the height was for all portions of the house but we don’t.

Mr. DeWater asked Ms. Endres if the board could have that drawing provided.

Ms. Endres said these are the building plans for review.

Mr. Steiner asked if he is allowed to build up the grade in the front from the grade at which he applied to start counting, so he can build a mountain as long as it is 35’, let me finish my question, can he build.

Mr. Barr said you did finish your question, you asked if he can build a mountain.

Mr. Steiner said yes.

Mr. Barr said he doesn’t think humans can build mountains, let’s stick to things we can physically do here.

Mr. Steiner asked can he build up the grade 50’ and then build a house on top of 50’ that is 35’ without his house.

Mr. Lamanna said the definition is from whatever the grade ends up being.

Mr. Steiner said ends of up being or was at the time of the approval.

Mr. Lamanna said there is no prohibition against it, it is what it is.

Mr. Averill said it is what he proposed.

Mr. Lamanna said proposed right, if he says he is going to mound this up 5'.

Mr. Averill said if he shows, if he has six courses of block in front of his house.

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

Mr. Lamanna said if he can adjust the record.

Mr. Steiner said he can by how much, 10, 20, 30 feet, he can increase the base by 40'.

Mr. Soryal said he has got a driveway and other things he has to deal with, soil and water run-off.

Mr. Lamanna said in theory if somebody had a piece of land and they decided they wanted to build a 30' high mound on this land and build their house on it there is nothing we can do about it, as long as he, at the end of the day it was what he said it was going to be, if he says he is going to build this 30' mound of dirt and then put his house on top of it and then the average grade in the front of the house is going to be still within what is permitted, there is no zoning control on building up the property.

Mr. Averill said we have a site plan so when you look at the site plan it shows the footprint of the house on a contour parcel and he needs to get the proper paperwork to do that.

Mr. Steiner asked is there something in the plans, is there something in the record, a plan or map drawn to scale with the dimensions and elevations and feet of the proposed building or structure and a copy of the floor plan because he doesn't believe that was in the record.

Mr. Lewis said we just haven't seen it but it is here.

Mr. Steiner said so the record wasn't complete when it was shared with us.

Mr. Averill said when you filed your zoning inspector error application there is a section number 4 through 10 that you referred to his plans, you didn't have the plans, you only referred to his plans which are not a part of this hearing but you just referred to them, that is all you did, you never really had them submitted because you didn't have them.

Mr. Steiner asked when were these plans approved, he asked Ms. Endres for the plans on when they were approved and she sent him what was approved, she sent him the application but.

Ms. Endres said she sent you (Mr. Steiner) the application form, did it ask for all of the associated documentation.

Mr. Steiner said he asked for the application, he didn't realize that they were going to be playing games with language but he is sorry he didn't adhere to your games.

Mr. Averill said you acknowledged them in your application, that is his point, 4 through 10.

Mr. Steiner said the only thing that he had asked was a map with the footprint, that is the only thing that he had, that she sent me, that was the only thing in the record.

Mr. Lewis said so if it complied with the side yard and the rear yard setback and it is not exceeding 35' and there is no lot coverage issues, there is no reason that this would have been held up with a regular zoning permit to build.

Mr. Steiner said that is incorrect.

Mr. Lewis said it depends on your point of view sir.

Mr. Steiner asked Mr. Lewis, are you telling me that in 1999 when they approved this conditional use that did not have a house on this lot, it did not have a landscape buffer nor did it have a driveway, are you telling me Mr. Lewis if that was a valid approval in 1999 even though it violated the law at the time.

Mr. Lewis said he is going to have an attorney answer that for you because you are going down a different path than what he is going down.

Mr. Steiner said he is going down a path of following the law, this whole situation is lawlessness, that is all it is, in 99 they approved this conditional use in violation of the law, it has been like that for 20 years, they have refused to enforce the landscape buffer for 20 years and to just approve this.

Mr. Lewis asked Mr. Steiner how long he has been there.

Mr. Steiner replied 10.

Mr. Barr said so how do you know the previous 10 years there wasn't a landscape buffer there and how do you know that somebody else didn't remove it.

Mr. Steiner said ask Mr. Joyce, he is here.

Mr. Lewis said okay, so, what prompted this now all of a sudden after 10 years, it is a concern, as a buildable lot, it is getting a home built on it and you don't want it there.

Mr. Steiner said Mr. Lewis, the law requires his application to have a landscape buffer.

Mr. Lewis said we are saying the same thing.

Mr. Steiner said no this is a new thing Mr. Lewis, he is not talking about 20 years ago, he is talking about in December of 2021.

Mr. Lewis said a lot of this is in the minutes because we have already talked about it.

Mr. Steiner said well obviously you haven't listened to it or you made your mind up.

Mr. Lewis asked are you insulting me sir.

Mr. Steiner said he is not insulting you.

Mr. Lewis said careful.

Mr. Steiner said you are insulting my case, in fact is that a threat from the person who is going to be making a decision on behalf of the Bainbridge BZA.

Mr. Lamanna said let's just focus on the issues we need to address here. He said he doesn't know why you didn't end up with a copy of these plans but obviously they had been submitted, this is what was considered in granting the certificate, it was granted off these plans, right.

Ms. Endres said you will see the zoning stamp on yours.

Mr. Lamanna said right, and asked Ms. Endres if these plans fully show all of the requirements that are necessary under the cluster zoning with respect to an individual house, all of the information.

Ms. Endres said that is all of the information required for a single family home, the floor plans are there, the height.

Mr. Lamanna said the floor plans, the height.

Ms. Endres said and then the site plan is right here too and she apologizes for any misunderstanding of what was requested, she thought you (Mr. Steiner) were looking for the cluster regulations and she sent also you the application for zoning certificate.

Mr. Steiner said the application for zoning certificate requires a map which you didn't send according to Section J. (4) of the zoning certificate requires that map so that is a requirement of the application for the zoning certificate.

Mr. Averill said he would argue that he clearly knew about it because he referred to his plans when he answered the questions for his application 4 through 10 if you look at that page for zoning inspector error, it clearly requests plans so he knew they were there, he knew about them and he didn't ask for them, that's the difference.

Mr. Steiner said he saw the footprint plan, that is what he was referring to because that is the only thing that has been provided to him. He said this is what he is asking, can he tell you what he is asking.

Mr. Lamanna said okay.

Mr. Steiner said his request is that the zoning certificate is revoked, that Mr. Joyce before it is to get an appropriate and legally enforceable conditional use permit which did not happen in 1999 because the house, the driveway and the landscape buffer was not on the plans for this particular lot. He said at that point you can hold a hearing as to whether or not he should get that and we can discuss the 90 versus 100 foot set off and we can deal with that issue at the time. He said if you rule against me now, he will immediately appeal to the Common Pleas Court, if you revoke the zoning certificate and allow them to redo or make a proper application, then that is fine, there is no appeal order, if there is an appeal order he would have to appeal, he is not interested in rushing to court but he has to protect his interests, like he said the whole thing is invalid, there isn't even a landscape buffer required and for all of the other reasons that we talked about.

Mr. DeWater asked Ms. Endres, every lot in that development when the development was approved did every lot show the position of a driveway and structure on those plans.

Ms. Endres said not on the documentation she found in the historical files, there was a preliminary plan that showed some structures and it showed the setback, it showed the 90' buffer.

Mr. DeWater said so your position is that when they approved this development, every lot in that development should have had the house positions and driveway plans drawn on those plats.

Mr. Steiner said that is not his position, that is the law. He said he could read it back to you, he read it back to you last month, that is literally what the law says, this isn't his law, this isn't his request, this is your law that you are bound to enforce. He said he could read it back to you again if you would like, it was the law then and it continues to be the law. He said "certified by the applicant and his surveyor, showing the dimensions, acreages and configuration of the parcels, existing and proposed structures ..., driveways..., the location and configuration of landscape buffers", this is 135.04. He said sir, you are making it sound like this is like something that he is making up, he is literally reading your law back to you. He said this was an invalid approval in 99 and Ms. Endres did not have the authority to approve this application in December based upon the fact that in 99 it was invalid but the fact that the township has been approving invalid zoning certificates for the past 20 years does not make it okay to do it now. He said he will also say that if you look back at the minutes when Mr. Joyce came and tried and successfully got the BZA in the early 2000s to allow this to be a condo to allow to build 25 plus hundred square feet houses on a cul-de-sac and call it a condo, he actually asked for four houses and the BZA gave him five. He said for the past 20 some years this township has been bending over backwards to accommodate Mr. Joyce at the expense of long time residents who are just asking you to follow the law.

Mr. Barr asked Mr. Steiner to give some other examples of how we bend over backwards for Mr. Joyce.

Mr. Steiner said the zoning.

Mr. Barr said for over 25 years the township has been bending over backwards for Mr. Joyce, can you give him more than one example.

Mr. Steiner said number one, the conditional use granting that was invalid, he didn't provide the appropriate plans. He said number two, in 2002 he believes it was, when he applied to make them condos he only applied for four houses, the BZA said no, we will give you five houses. He said that is how the meeting minutes went, yes, it is documented in the meeting minutes from 2001 or 2002. He said you as the BZA, not you personally, gave him five, that is example number two. He said example number three they have failed to report the landscape buffer for the last 20 years on the northeast side of that development, now he applies for his application, it is not complete, there is no landscape buffer on the application and there is a dispute, a good faith dispute regarding 90 and 100 feet which he pleaded with the zoning inspector to hold off on ruling, he pleaded with the trustees to have a lawyer contact us so we could talk about this and they refused so yes, those are five examples of how this township has bent over backwards for Mr. Joyce over the past 20 some years.

Mr. DeWater said so prior to the current homeowner that is building there, purchasing the land, currently you like the vacant land there, did you try to approach Mr. Joyce to purchase that land.

Mr. Steiner said he did.

Mr. DeWater said okay.

Mr. Averill said the zoning application you are referring to that doesn't have all of the information that is required, it is cited under 109.04 (22) which is under the Zoning Inspector application section, it is not under CUP, with that said, those are requirements for each application submitted so he is referring to the CUP application he believes and what we are looking at here is an application for each.

Mr. Lamanna said individual houses.

Ms. Endres said individual houses.

Mr. Averill said and he would like to also say that there are provisions for the zoning inspector to supplement what information is necessary and it is in the old resolution as well.

Ms. Endres said "Zoning certificate applications shall be obtained from and filed with the Zoning Inspector who may waive the requirement for any information he/she deems unnecessary, and/or request additional information he/she deems necessary to the filing and approval thereof. "

Mr. Averill said so with that said his point is you have a single application, both applications for zoning on the opposite side of the development.

Mr. Lamanna said right.

Mr. Averill said when you are closer to that side of the development for a single application and you start applying more information that is when we want it.

Mr. Lamanna said right, you want the information with respect to that particular buffer on that side.

Mr. Averill said correct but the zoning inspector back in the day had the same provision but it was 500' so we don't need to worry about a buffer.

Ms. Endres said he could waive it at that time.

Mr. Averill said because it wasn't necessary.

Mr. Steiner said but there was no house on the lot as required by the law in 99, there was no driveway on the lot as required in 99.

Mr. Lamanna said there was no plan that showed the applicable location of the houses, he doesn't have the applications.

Mr. Steiner said there were some generic houses on some of the other lots in the plans that were approved in 99, they didn't comply with the specific requirements but there was nothing on this particular lot, none of them complied with the requirements.

Mr. Lamanna said we still have this question of whether the authority of the zoning inspector to waive this information at a time when they deem it is not necessary because having a bunch of, submitting a plan for a development and then putting a bunch of proposed driveways and houses on it is frankly not very useful to anyone because in the end in a situation like this, there is not going to be, that is not where the houses are going to actually end up, they are going to end up somewhere else, people are going to go out on the lot and they are going to look and say they don't want it here, this topological feature we hadn't considered so it is going to end up somewhere anyway.

Mr. Steiner said and change the walk. He said you had followed up, you need to follow up.

Mr. Lamanna said there is a certain amount of discretion in the zoning inspector to decide what information is necessary and he thinks at that point in time to meet the intent of the law.

Mr. DeWater asked Ms. Endres, when that development was approved could have some of those buildings drawn on the lots been existing structures that were previously there.

Ms. Endres said she doesn't know, she was not here in 1999 so she doesn't know, it is possible, anything is possible.

Mr. DeWater said okay.

Mr. Lamanna said the other thing is to the extent that there was a requirement by submitting these specific plans detailing where this house is going to be and what it is going to be it satisfies the requirements at least as far as showing where it is going to be in the development so he thinks that is kind of a moot issue at this point in time.

Mr. Steiner said that is your view of it, we still have the 90 versus 100 foot issue and you just didn't follow through with building this lot, he doesn't know if he doesn't think we are going to appeal this in court because we are going to and we are going to ask that the house be moved and this is all on him for just plowing through this while this appeal is active. He said last week or last month the prosecutor said well we can have a, we can file an injunction or whatever, well he doesn't know, it is irreparable harm, it is no irreparable harm to him when he has to move his house, it is not on my property, if he had any inclination to engage in this process or take this seriously he would have stopped building and at least reached out or something but instead just plows away and this is, there is a 90 versus 100 foot issue, number one is a valid issue even if the 99 decision was valid because the one law was always 100' and the other one went from 90 to 100 after that point so that is still a live issue but it is also really back to him needing to go through the conditional use process again because then they would be 100 which is indisputably the law at this point of the setback. He said throughout this whole process are our laws, are they laws or are they suggestions, they are called zoning resolutions but are they, do they have the effective law or can he just.

Mr. Lamanna said but they are administered in a practical way to accomplish the intent and spirit of the zoning ordinance.

Mr. Steiner said then he would argue.

Mr. Lamanna said the intent and spirit of the zoning ordinance is that in some cases certain information is not needed until later because otherwise what you have is people will lay down a plan and then they will just lay down a plan and knowing that full well that that is not where anything is going to end up and then they will be back in saying well we want to put it in this location instead and they will look at it and say okay, that is a good location or a bad location, it is the same thing here. He said specific applications now have been filed so whatever issues there were in the past he thinks are moot at this point in time because this application deals with all of these issues.

Mr. Steiner referred to 134.04 (n) and said each application shall it doesn't say should, might be a good idea, shall.

Mr. Barr said read the rest of it.

Mr. Steiner said this is in reference to the.

Mr. Barr said read the rest of it.

Mr. Steiner 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 configuration of the parcels, existing and proposed structures, main drives, roads, driveways, recreational facilities, open space, parking areas, and easements".

Mr. Barr said okay.

Mr. Steiner said and “the location and configuration of landscape buffers.”

Mr. Barr said so you read that and you hear that there needs to be driveways and houses, he hears that as ones that are proposed at the time it was sent, if there were none proposed, therefore there were none drawn in, when they are proposed then those would be drawn in, there are two different ways to read that.

Mr. Steiner said this is an application for a conditional use permit, this isn't an application for a house.

Mr. Barr said you were just saying that there was no drawings for the house or the driveway in that and he is saying that when that was turned in it was not proposed yet nor was it existing, there are two different ways to read this, there is the way you want to it read and there is the way other people want it to read and that is our job to decipher where we are at.

Mr. Steiner said he guesses we will have to take all of these arguments up to the Common Pleas Court.

Mr. Lamanna said good luck because, let me tell you something, the courts look at these things with a certain element of practicality that the point of these things is to get information and to make sure that the intent and the spirit of the zoning laws apply. He said cluster developments can run the gamut from a 200 house development with the lots on one acre and 100 acres of undeveloped common area to something like this which is five units where most of the houses are on something close to the required acreage anyway so the difference in the two is dramatic, obviously when you have a high density development knowing where the things are makes a lot more impact than in a development like this where there is so much land here that we don't have to worry about having this information at the beginning of the approval process because we can make sure that we meet the intent of the cluster later on and with that much land available for each location, pinpointing where the house is going to be is not necessary at that time.

Mr. Steiner said then change the law.

Mr. Lamanna said fine, you can talk to the Zoning Commission about changing the law.

Mr. Steiner said he just wants to say that since the Zoning Department never shared the building plans with us, is there a deck because it looks like there might be a deck, has that been approved, he doesn't even know, he just wants to get it on the record in case it is an issue, it looks like there might be a deck, he has never seen the plans even though he requested them so he doesn't know if the deck is on the plans or not, he doesn't think it was on the footprint.

Mr. Lamanna said you know what we can do, if you would like, we could just adjourn this until next month.

Mr. Steiner said no, he wants a ruling.

Mr. Lamanna said then you can look at the plans.

Mr. Steiner said no he wants a ruling and he also wants to object to Mr. Lewis being the decision maker because Lori O'Neill was here for the argument the entire time and he thinks it is unfair that she is here today and she is not going to be the one making the decision.

Mr. Vincent Spiert asked if he can go on the record.

Mr. Lamanna swore in Mr. Vincent Spiert and he let the record reflect that Mr. Spiert was duly sworn.

Mr. Vincent Spiert of 7333 Country Lane testified that he owns the small property adjacent to where Mr. Joyce is building and he just wants the board to know that Mr. Steiner is not alone in this, that is where his three very young children play, in the backyard. He said Mr. Joyce cleared a row of trees with no landscape buffer and misrepresented on his application about the soil, he was supposed to install some kind of silt screen, that happened a good month after he had already broken ground so he is running roughshod over all of these rules so that is a philosophical concern but the very practical concern is the lack of a landscape buffer, that is one he shares with Mr. Steiner. He said this monstrosity of a house has a direct line of site to where my three young children, two age four and one age seven that play in that backyard. He said whatever privacy we had has been totally trashed and he would respectfully ask we enforce the requirement of the landscape buffer for that property at minimum.

Mr. Lamanna asked him if he is in the triangle there, the trapezoid.

Mr. Spiert said he is, that is right.

Mr. Lamanna asked where does his driveway go.

Mr. Spiert referred to the aerial displayed.

Mr. Lamanna said and the house being built is.

Mr. Spiert showed the board on the aerial displayed.

Mr. Barr said the house being built is down between the two houses at the bottom of the screen.

Mr. Lamanna asked in the corner down here.

Mr. Barr said it is down farther, almost off the screen.

Mr. Lamanna said it is not on the lot over here.

Mr. Barr said it is behind that house, beyond that house going south

Mr. Steiner said it is going next to his house so the giant windows and the giant however tall it is going to be from the walkout basement looks right out over our yard and onto all of our windows, that is where it is located, squat between the two properties, yes.

Mr. Spiert said because it is on a hill.

Mr. Steiner said because it is on a hill because it has been graded by Mr. Joyce building up the grade.

Mr. Soryal said you wanted this piece of property and you requested to buy it from Mr. Joyce.

Mr. Steiner said yes.

Mr. Soryal asked what happened there, was it just an argument of price cost or why didn't you buy it.

Mr. Steiner said he never responded, his real estate agent responded to my real estate agent and said he wasn't interested. He said there was another comment that was made but it was just hearsay so he is not going to even say it.

Mr. Soryal said so there was never entered into a negotiation or anything.

Mr. Steiner said they made an offer and he explained to Mr. Joyce or at least to his realtor all of the problems with this property, the set offs and everything else and there was no counter offer, there was no counter connected to their offer.

Mr. Soryal said but the property was for sale.

Mr. Steiner said it was.

Mr. Lamanna said this gentleman here is 360' away.

The board was discussing the trees.

Mr. Steiner asked where that is Mr. Soryal.

Mr. Soryal said the board was saying that there were never trees up in the upper right corner there, the trees that were removed were closer to your house.

Mr. Steiner asked if Ms. Endres can put up one of the photos he sent. He said Mr. Joyce testified last month that in front of the property he didn't take out any trees or hardly anything and left several feet, he thinks that is what he testified to. He said he sent a follow-up as to what actually happened on October 26, 2021 which was over a month before he applied to Geauga Soil and Water to even clear the thing, a couple prior, keep on going.

Ms. Endres said that is the end.

Mr. Steiner said no, he sent one with his correspondence and he can resend it. He said there was a lot, there were many trees that were taken down in that front area, they didn't have a chain saw but they had one of those earth-movers that take down any tree that is you know.

Mr. DeWater said are you saying he brush-hogged the lot with a heavy duty lawnmower.

Mr. Steiner said no it wasn't a brush-hog it was like an earth-mover thing that destroys.

Mr. DeWater said so he mowed it and he cut them down that way. He asked what was the biggest tree in diameter he removed with that machine.

Mr. Steiner said he doesn't know but he sent the photo over to show what was done on the 25th.

Mr. Spiert said they had an industrial woodchipper there that ran for almost eight hours the entire day with all the trees they were clearing.

Mr. DeWater said your sediment erosion does not have to be installed until they start removing the stumps so if they are just cutting stuff flush and they are leaving the stumps and stuff in place their soil and water and silt fences and that do not have to be installed yet, not until they are actually moving dirt, pulling those stumps out. He asked did he have protection in after he did it, after they pulled those stumps or did he have that protection in before he was doing that.

Mr. Steiner said he believes it was before.

Mr. DeWater said so he was in compliance then.

Mr. Steiner said no, Soil and Water came out, it is in the records, Soil and Water came out and cited him for being out of compliance in December so whatever he did, whatever he did it occurred before he even made his application. He said no one is listening to us here, 12/2/21 and 12/3/21 is when they clear cut the whole back section, 10/26 is when they clear cut the front section minus the big trees, he applied on 12/3 after he clear cut or the second day of clear cutting he applied with Soil and Water and he said that this stump date would be 12/28 to Soil and Water. He said it is just thing after thing and just no one cares, no one cares about following the law.

Mr. Barr asked do you know what I care about and don't care about.

Mr. Steiner said he is going by the response.

Mr. Barr said you are saying that no one cares, you are saying that no one cares about this.

Mr. Steiner said well apparently practicality is more than the wording of the law.

Mr. Barr said you can't apparently assume what we think and don't think, you don't like it when we do that with what you think, you said that Mr. Joyce thinks this is a joke, Mr. Joyce has never said this is a joke, he hasn't even spoke today, you are the one making the assumptions so if you want us to rule based on just the law you need to take the assumptions out of what it is you are saying.

Mr. Steiner said he wants you to follow the law, that is his only request.

Ms. Endres said she has a view of what it was probably like in 2006.

Mr. Lamanna said okay, is that it. He said it is empty in the front so now they cleared a driveway in.

Mr. Barr asked Mr. Spiert what was cut down if this is 2006, he doesn't see anything between your property and that property right now, there is just a natural buffer of open grass so anything that was cut down had to be less than 14 years of age.

Mr. Spiert said he thinks you are right.

Mr. Barr said so there was nothing there that would have been a substantial size that would have been removed between your property and that property.

Mr. Spiert said you said this was 2006.

Ms. Endres said that is correct, right where the cursor is, the picture was taken March 27, 2006.

Mr. Spiert said he moved in in 2012 to this property and by that time the trees had come further forward and that grassy area was essentially a plain that has since been mowed by Mr. Seegott who lives adjacent to the proposed house under construction now.

Ms. Endress displayed another aerial and said it is April 9, 2013.

Mr. Lamanna said it doesn't look a whole lot different.

Mr. Steiner asked Mr. Spiert to clarify that they cut trees down, which trees are you referring to.

Mr. Spiert said the ones he thinks that are on the western most edge of the screen here, it may sound crazy but those are the ones that he looks out in the back yard that are now back quite away because they have cleared back.

Ms. Endres displayed an aerial and she said it is from December 9, 2021.

Mr. Barr said there is nothing along the buffer.

Mr. Spiert asked what do you consider the buffer sir, he is just trying to understand the terminology.

Mr. Lamanna said that area hasn't changed at all really.

Mr. Barr said that is at least 50' from your property, back of your property.

Mr. Averill said back at that time there was no definition of buffer.

Mr. Lamanna said there is no specific definition.

Mr. Steiner said do you not still enforce it because there is no definition.

Mr. Lamanna said no, but remember you have to prove what reasonably that means under the circumstances.

Mr. DeWater asked if he can ask you (Mr. Steiner) of what his definition of buffer is.

Mr. Steiner said he doesn't make the laws, they are your laws.

Mr. DeWater said that is not what he asked, he asked what is your definition of a buffer.

Mr. Steiner said he was driving down 306 today and there was like a development maybe or something across from a park and there were big mounds with trees on it that provided a large level of privacy, that is how he would want a buffer and he thinks that is probably how it is formally defined because the purpose of a buffer would be to provide privacy to the adjacent properties and when something is not defined then you would look at the intent of the law and go with that and rule in favor of those who are to be protected by a law so that is how he would define buffer, a very, very, very large mound and trees that would provide privacy.

Mr. Soryal asked on whose property, would that mound be on your property or the other property.

Mr. Steiner said no that would be the other property.

Mr. Barr said a mound is a mound, we define a mound as a mound, we don't define a mound as a buffer.

Mr. Steiner said you tell me what a buffer is, these are your laws.

Mr. DeWater asked could somebody else's definition of a buffer be 40' of grass with no structures.

Mr. Barr said we are protecting you and the builder of this house who also falls by the zoning and is protected by the zoning.

Mr. Steiner said he gets that you guys are protecting the builder of this house 100%.

Mr. Lamanna said you have to step back here when you start looking at what buffer means. He said cluster development, the idea of the buffer in cluster development was that you were going to have a higher density area of houses so to allow that higher density in area of houses there would be a separation between that and the other properties that might be developed with the normal three or five acre development, right, so it was to maintain a certain amount of character of open space and the like and lower density development to separate it so that it wouldn't look like all of a sudden you have a larger more dense housing development here, that is not the case here, this is a gigantic lot, this is not a one acre lot which is what cluster developments allow and if you typically look at the cluster developments that is what they are 1 and 1-1/4 acres so when you are talking about a buffer here, a buffer here means something different than a buffer if I've got five houses on that lot.

Mr. Steiner asked if that is in the code somewhere.

Mr. Lamanna said no it is not in the code, everything is not in the code, everything is not defined, there is not something that says a buffer means this thing 30' wide by 50' long, you just can't do it, you can't write a code that way, there are too many situations, every situation is different, you have to look at the intent and the history, that is why he is saying, you have to look at the intent, the history and the particular pieces of property involved. He said so the issue here is to him, the only possible issue here is where two houses abut one another because that is where these things are designed to affect, is there a sufficient buffer there so all of the rest of the stuff is kind of immaterial, it is what it is at the point of attack here.

Mr. Steiner said we could bring that photo back up.

Mr. Lamanna said okay, bring the photo back up.

Mr. Lewis said he didn't see anything in the minutes, how far the houses are apart.

Mr. Steiner said probably 70.

Mr. Soryal asked Ms. Endres if she can measure the distance to the property line for Mr. Steiner.

Mr. Steiner said from Access Geauga it is about 70 he thinks.

Mr. Lamanna asked how big is this lot.

Mr. Joyce said 4.3 acres.

Mr. Lamanna said if this was just developed as a straight up lot, the side yard line is 50'.

Mr. Steiner said but the law says it has got to be more than that.

Mr. Lamanna said right, I know.

Mr. Steiner said because it is a perimeter.

Mr. Lamanna said 90' because it is the perimeter of a cluster development but you understand that this is kind of not the normal structure of a cluster development.

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

Mr. Lamanna asked Ms. Endres if she has those pictures and if we have had contact from the purchaser.

Mr. Bill Joyce testified that he is on the line and he would like to speak. He stated that this is Mr. Jim Kenyon, the purchaser of the property and the owner of the house. He told Mr. Kenyon that he needs to be sworn in but he is on microphone right now.

Mr. Jim Kenyon said he is ready to be sworn in.

Mr. Lamanna swore in Mr. Jim Kenyon via telephone and he let the record reflect that Mr. Kenyon was duly sworn.

Mr. Kenyon testified by saying his name and said his wife here is Patrice Kenyon, most recently they are at 8120 Woodberry Boulevard, Bainbridge Township, 44023.

Mr. Lamanna said so you (Mr. Kenyon) would like to say something.

Mr. Kenyon asked who is speaking to please.

Mr. Lamanna replied this is Michael Lamanna the Chairman of the Board of Zoning Appeals.

Mr. Kenyon said thank you Michael and thank you Vice Chair Todd and the rest of the Board of Zoning Appeals for listening to our testimony and specifically he would like to thank Linda Zimmerman for helping us through this process, you have been very kind and patient and he asks a lot of dumb questions and she answered them very smartly so, she is the smartest bulb in the room, so thank you Linda. He said he thanks you for taking them telephonically, he appreciates that too, okay. He said so their background, we are not attorneys, never been an attorney, never desired to be an attorney, he is not an attorney. He said his wife is the matriarch of their family and has been the foundation of that for 35 years and per your guidance he knows that this is public record so if he needs to speak louder or slower please let him know.

Mr. Lamanna said he thinks we are doing alright here.

Mr. Kenyon said great and they have lived at 8120 Woodberry Boulevard for 12 years until July of 2021, they have been Bainbridge Township residents during that time, they have raised their family in Bainbridge Township and they love Bainbridge Township. He said they sold their home at 8120 Woodberry Boulevard with a plan to build their forever home nearby. He said they have a contract that they signed in September of 2020 for the property at 17320 Corban Drive so it is a year and a half since they signed that contract and the developer and their builder is Bill Joyce who is there now, okay. He said they have been working on plans that whole entire time, okay, and it is to build their forever home because they will retire there, live there forever as well as bringing his 90 year old mother-in-law to live with them. He said we developed plans with Mr. Joyce and this was a perfect site, why, we love Bainbridge, we are residents of Bainbridge and we want to remain residents of Bainbridge which we have been for 12 years. He said they at this 4. whatever acre site and said it is a beautiful site, a lot of trees, a lot of area to have a, it could be expansive to enjoy the walks, those kinds of things. He said we could have lived anyplace else but we chose to live in Bainbridge we targeted to specifically to remain in Geauga County. He said they spent much time siting this house and when they sited it initially there was some assumptions that were about buffers and setbacks so our builder and our surveyor came to look at those siting's or the siting of the house and then went to the Bainbridge Township Zoning and they found out that that siting was incorrect and they were disappointed to say the least so they got new information, a new understanding of what the buffers had to be and they really thought about how can we make this happen, right, within the laws, within the zoning requirements and actually as you know they are not asking for any variances whatsoever on this property so we got a call from our builder and they were disappointed of course, right, so they learned more about the situation, they looked at the setbacks, he explained to us how far it had to be from each one of the property boundaries, they moved the house physically back of couple hundred feet to adopt to what they knew was the zoning laws, to follow the zoning regulations, it is exactly what they did, they had the building inspector out there, that building inspector from the best of his knowledge on second-hand from our builder approved where our foundation should be for the house and they followed that and that took us multiple months, oh by the way, they don't have a home right now, they are not homeless but certainly moving between different locations right now, all of our worldly goods are in storage right now so they tried and are working and working hard at following the regulations as best they could and that is exactly what they want to do.

Mr. Kenyon continued by saying he wanted you to hear their story and they wanted to tell you what their story is because the whole idea of this was that they want to follow the regulations, they had the right people out there, at least he thinks the zoning inspector is the right person to have out there, who else would you have out there, they got the approvals to do that, they are not asking for variances and oh by the way, the birds eye view between this monstrosity of a house, it is an interesting term but it is a monstrosity he guesses in some person's opinion, it is just a house and we are about 150' from whoever is talking on the other side of this phone, right, that is a little bit different than Canyon Ridge, a little bit different property of what you all have approved down the Aurora Bainbridge area right, we are 150' with a four acre lot in Geauga County, this is not close to anyone, not close to particularly whoever that other person is on the phone, we are moving and we want to move his 90 year-old mother-in-law as quickly as possible in our house so they can take care of her and any delay, because they followed the rules, they followed the regulations as best as they know how, all they want to do is they want to move into their house, they followed the regs, they changed the house, it wasn't their first choice and they are not asking for any kind of variance right, all they are asking is for the Board of Zoning Appeals to allow them to continue. He said allow them to move into their forever home, vote on the facts, make the decision based upon the law, make the decision based upon the zoning inspector and what that inspector said, right, because they followed what that inspector said, they moved their house and waited three or four months because they had to redo that, right, so he wants you to know and finally to think about it, so thank you for your time. He said he is not somebody who is a lawyer, you can tell, he is just a business person and a family man, all he wants to do is move his family into this monstrosity of a house, bring his 90 year-old mother-in-law there, continue raising their family, having them come to their home and following the rules and regulations that are set out by the Board of Zoning Appeals and he asks you to allow them to do that and thank you. He said as far as what the inspector says, they have followed the law and followed the rules.

Mrs. Kenyon said thank you.

Ms. Endres said she wanted to clarify a little bit. She said was he was referring to, we had a pre-application meeting where she saw the first proposed site plan that showed that sideline setback as 50' which is the normal 50' setback in a R-5A district and she pointed out to the surveyor that this is a cluster subdivision and this particular cluster subdivision was approved with a 90' perimeter buffer so they changed the plans, they re-worked their plans so that they could put the house onto the lot and still respect that 90' buffer and they were nothing but cooperative all the way through.

Mr. Steiner asked if we can see the photo that he submitted, the most recent one from today, to get back to what the buffer looks like from their perspective.

Ms. Endres said she showed the pictures that she has.

Mr. Steiner said yes, it was one of those, you put it up there earlier today.

Ms. Endres said it will be in this PDF.

Mr. Steiner said okay, there you go. He said that is the view from our property.

Mr. Soryal said from the property line.

Mr. Steiner said correct.

Mr. Soryal said you are 60' further from that, your house is, from that point of where you have taken the picture.

Mr. Steiner said yes.

Mr. Soryal said so when you are in your house you are not seeing this.

Mr. Steiner said he is just seeing that from a little further back.

Mr. Soryal said he understands.

Mr. Barr asked if you would like to see what it looks like from the other way.

Mr. Steiner said you just showed us.

Mr. Barr said no, he took a picture too, he went out there because he was concerned, because he cares, he went out there today and walked that and his family waited in the car and he walked through the mud and he saw the other side, because he cares so we care up here. He said he went to show this to Mr. Soryal and he said he has already been out there.

Mr. Steiner said he wants to make sure everyone is following the law. He said whatever dealings these purchasers have with Mr. Joyce he has no.

Mr. Barr said he doesn't know Mr. Joyce at all, he didn't know Mr. Joyce until the last meeting when he walked in here, he didn't know the people that built that house until they came on the phone, don't make assumptions, you are making assumptions that cuts into our credibility, people that volunteer their time to come here, he is skipping time with his family to be here because he cares about Bainbridge and he has been a part of this community longer than you and these guys have all been here longer than you and they have been here longer than me, don't make assumptions.

Mr. Steiner said you seem upset about my statement that this township has bent over backwards for Mr. Joyce but he gave you five examples.

Mr. Barr said no he is upset when you said he didn't care because those people that you say bent over backwards was not him.

Mr. Steiner said the township has and he wants to see that they are long-time residents too, this is our dream house, they bought this house knowing that there is a lot there but we figured that Bainbridge would follow the law when it came to if someone ever wanted to build there, so his family lives there too, his family and they have been here for over 10 years, we are taxpayers and they do a lot for this community and he doesn't know these people who are buying the house and he has nothing against them but this is Mr. Joyce's problem and you have an obligation to follow the law as it states. He said sure, there might be legal room over the definition of what a buffer is but some of these things there is no legal room, it is in the law, if you don't like it, change it but until then you've got to follow it.

Mr. Lamanna said we have the power to grant variances anywhere so.

Mr. Steiner said you can still pull any of them and make them go through the process and have a variance and have a hearing on the variance.

Mr. Spiert asked Mr. Lamanna what he would consider an appropriate buffer for that property, he just wants to know so he can understand what the requirements are. He said that is his primary practical concern because he can see straight to his house from his backyard and from his kitchen he can see right into that house. He said he appreciates you coming out to take a look at the property, it was nice to do but his question is he is sure these are fine people that were on the phone but he would like them to not be able to see his children when they are in their backyard playing. He asked would it be his responsibility to plant trees at the rear of his property so he would have to reestablish some of the privacy.

Mr. Lamanna said at some point when you get two or three hundred feet away.

Mr. Spiert said that is a bit of a.

Mr. Lamanna said there are trees in-between you and.

Mr. Spiert said our house sits at an angle and that house is pitched on a hill and he is down in a depressed area so, while you are right, the distance as a crow flies, is that front, but the fact that they are looking down at an angle, it eliminates all of that privacy that we once had and he is okay to pay good money to put trees in because that is a concern to him, he just wants to know if that would be a requirement or expectation of the builder in this case to establish that buffer for privacy.

Mr. Lewis asked Mr. Spiert if he can see Mr. Steiner's house from his backyard in the dead of winter when there is nothing on the trees.

Mr. Spiert said it is a bit challenging because the trees while they don't have leaves it does break it up a bit, his children also want to play in the back.

Mr. Barr asked what about the other house that is right next to yours, is that another house.

Mr. Spiert said yes, the tall fence and big Oak trees that block that neighbor's view.

Mr. Soryal asked whose fence is it.

Mr. Spiert asked to the west of him.

Mr. Soryal asked if it is on his property or his neighbor's property.

Mr. Spiert said it is his neighbors.

Mr. Soryal said assuming the neighbors have a fence for their privacy from you.

Mr. Spiert said he would have built one himself and he will do whatever here.

Mr. Barr said the definition according to our book, "Buffer" means open spaces, landscaped areas, fences, walls, berms or any combination thereof, which are used to physically and visually separate one use or property from an abutting property in order to mitigate the impacts of noise, light, or other nuisances, so an open grassy area could be considered a buffer. He said thorn bushes that were removed could have been a buffer, trees can be a buffer, any of those are a buffer.

Mr. Spiert said okay.

Mr. Barr said that is the definition as read.

Mr. Spiert said he appreciates it.

Mr. Lewis said he would like to hear some comments from Mr. Joyce please. He said it came up in conversation that Mr. Steiner tendered an offer on this property at one point.

Mr. Joyce said yes.

Mr. Lewis asked how much was that for.

Mr. Joyce said he believes the lot was for sale for \$125,000 and he offered \$40,000.

Mr. Lewis asked if you have done any lot clearing in the 90' buffer zone on this parcel.

Mr. Joyce said yes, it is a 90' setback to the corner of the house, there is a 32' minimum of undisturbed vegetation which shows in the pictures, (he referred to the displayed photos) 32' is along the side of the house and then it increases from there. He said right where that icon is or was, the triple Maple which is close to the house, that silt fence is approximately right at the edge of the disturbed vegetation area that is approximately 45' from the property line and then the brighter picture where it is a little more scant that measures 32' from the property line. He said that is the view from, where the icon is, the first floor window at the closest point of the house to the neighbor's property, that is the view with not a leaf on a tree.

Mr. Lewis said it was always his understanding that a buffer like in a side yard or rear yard area was a no-build zone, no structures within it. He said if it is supposed to be maintained as a buffer his presumption was it is left in its natural state or it is improved so if you go into a buffer you need to replenish the buffer with something and he was just trying to see if a buffer had been cleared and as Mr. Barr pointed out it could of just been anything from thickets to grass, very plain, no trees or whatever.

Mr. Lamanna said a buffer does not have to be 90', it is the setback.

Mr. Soryal said you have to look at the buffer from the other side too and combine them.

Mr. Lewis said there is a lot of space.

Mr. Joyce said he sent those pictures to Linda and she downloaded them and would you add to those as evidence as a formality.

Mr. Lamanna said okay. He asked if the evergreens that we see in those pictures, whose property are they on, do we know.

Mr. Steiner said mine.

Mr. Soryal said regardless of the buffer, his understanding is Mr. Steiner doesn't care where the house is regardless of how many trees or how big a buffer there is, is he right.

Mr. Steiner asked he doesn't care where the house is.

Mr. Soryal said no, no you care where the house is more so than any buffer or anything.

Mr. Steiner said he cares about both.

Mr. Lamanna said you care where the house is, you don't like where the house is.

Mr. Steiner said he cares where the house is, yes and that is a live issue here, 100 versus 90.

Mr. Soryal said if Mr. Joyce had left 90' of trees you would still have an issue with where the house is.

Mr. Steiner said that is a counter factual, if he left 90' of trees maybe there would be more privacy.

Mr. Soryal said we talked about that last time how many trees etc. but your issue here is you are demanding to stop the building.

Mr. Steiner said it has got to be 90'.

Mr. Lamanna said there is not a requirement, this is not a privacy fence, the buffer requirement is not a privacy fence, it is not meant to block out all view of it, it is meant to break up and provide separation between what normally is two very different developments, here that is not the case, there really is not any difference between the development over here and the development over here, it is all pretty much the same density as a practical matter, it is the same density so that is part of what is considered when you are looking at a buffer, is what is the density, is this development different than this development here and it is not very much different and there is a pretty good, at least a fair amount of natural vegetation left between the two properties, 30' is a lot of natural vegetation. He said it would be nicer if there were some more evergreens in there.

Mr. Steiner said there is no buffer.

Mr. Lamanna said he doesn't know whether he would be willing to say that do we need more evergreens to have a buffer or not, there is a substantial amount of trees in there.

Mr. Steiner said there is no buffer on the application in 99 or in 2021, there is no buffer on the plans that he sees at least.

Mr. Barr said a buffer is vegetation or grass.

Mr. Lamanna said it can be natural vegetation.

Mr. Barr said there were grass or vegetation there in 1999, he is sure that wasn't a bearing for a third lot in 1999 so there was a buffer there, if you'd like he can read you the definition again.

Mr. Steiner said he rests on the record here, all he wants to say though is that he objects to Mr. Lewis voting, the individual who sat on this board last month has been actively saying that she disagrees with some of the stuff that you guys have been saying up here and Mr. Lewis came at me pretty intensely showing his bias already so the fact that we had part one of the hearing last month the individual who was there is now sitting in the audience actively disagreeing with what some of you are saying, this is not a fair proceeding so he wants that to be on the record.

Ms. Lori O'Neill asked if she can be on the record.

Mr. Lamanna said yes.

Ms. O'Neill said thank you.

Mr. Lamanna swore in Ms. Lori O'Neill, Alternate on the Board of Zoning Appeals and he let the record reflect that Ms. O'Neill was duly sworn.

Ms. O'Neill testified that first of all with all due respect Mr. Steiner, she expressed no opinion of agreement or disagreement with any of these proceedings so let's be on the record with that. She said the last time she was part of the hearing simply due to the fact that Mr. Lewis was on vacation and she is the alternate so in the event that one of the regular members cannot appear or be here one or both of the alternates, Mr. Barr is the other alternate on the board so last month Mr. Lewis was not available that is why she sat in, so just for clarification for you. She said secondly she has never expressed to you personally, to anyone else, or in this proceeding that she disagreed with anyone, she simply asked a question, you may have inferred her beliefs but she did not express any so please at least be clear about that. She said if she believes you created doubt about her conduct so be careful how you characterize what you believe other people think.

Mr. Steiner said he saw you over there going like this in response to something that was said.

Ms. O'Neill said that is not in any way an indication to you or anyone else what she thinks and asked do you agree with that.

Mr. Steiner said he is just saying what he saw, he saw.

Ms. O'Neill said you may have interpreted it as you feel, you may not say it publicly what she thinks and cast doubt on her as a professional.

Mr. Steiner said he would never do that.

Ms. O'Neill said okay, be careful. She said she was earlier sympathetic to certain things that you had to say, she thought that there was some people that perhaps overreacted a bit but now that she is the subject of it she would also caution you to be careful what you say, that is all.

Mr. Steiner said inaudible.

Ms. O'Neill said no sir.

Mr. Lamanna said excuse me, you (Mr. Steiner) have been extremely disrespectful and out of bounds here, your behavior and conduct as an attorney before a tribunal is reprehensible, it is out of line. He said now if you want to continue on this way he has the recourse of filing a complaint against you for your behavior, you have been impugning without any justification, you misrepresented what she was doing or saying as being, making some statement that she disagreed with the board, you can ask the question of whether or not Mr. Lewis can sit on in judgment on this application but our practice and rule has been if the person can come in, read the record and familiarize themselves with the record of the facts that were previously presented in the case and understand those facts that they can sit and complete the processing of the appeal so he has made that statement that he has read the record and understands the issues that have been raised, you have also been given an ample opportunity to restate those matters tonight so let's please conduct yourself in a civil manner and let's move forward and finish the discussion of your case, okay, thank you.

Mr. Steiner said he was not trying to impugn anybody.

Mr. Lamanna said we don't need a response.

Mr. Steiner said no, please.

Mr. Lamanna said he is just asking, please go forward with that understanding, we are not going to rehash what has happened up to this point in time.

Mr. Lamanna asked Mr. Joyce, do you have anything you would like to add.

Mr. Joyce said no.

Mr. Lamanna asked Mr. Joyce if his buyer has any landscaping plans for that area.

Mr. Joyce asked Mr. Kenyon if he had any plans for landscaping.

Mr. Kenyon said they are going to have landscaping and that is for sure, what those plans are, they are working on those plans but they will have landscaping.

Mr. Lamanna said the one thing that could help in our consideration of this is if we could at least in the area between the houses perhaps increase the buffer primarily by adding some kind of evergreen trees because there are some spots that are not a lot of year-round cover.

Mr. Kenyon asked could you explain that a bit more to him and how that applies to our situation and the objection that is going on right now, he is not an attorney.

Mr. Lamanna said it is more a matter of fact than of law but one of the issues before us is a question of the buffer and it is not a hard and fast defined thing, it has got to be 20' wide and this many feet high and have this many trees of this kind or that kind, it is a little more fluid than that but certainly anything that is added in that increases the buffering effect is helpful to making a determination that the buffer is adequate. He said from his view as he explained last time is the only real issue here is whether at the point between the two houses we have a sufficient enough buffer to meet the requirements of the statute so anything that adds to that certainly helps the case that the buffer is adequate is what he is saying, improves.

Mr. Kenyon asked how does one determine that if you put something there it is adequate, is there a count like you have got to put four 10' trees in, they are 30' wide, they are evergreens, they are of this species, how does he know, he is not an attorney, he doesn't know.

Mr. Lamanna said this is something, he is not saying by the seat of the pants, but it is kind of an eyeball test, just kind of looking at it and saying okay, you add a few more things in here, does that improve the situation and therefore provides better screening.

Mr. Kenyon asked who makes that, who is the judge, who makes the determination of that.

Mr. Lamanna said initially the zoning inspector makes the determination based on their reading of the ordinance and their experience and their judgment.

Mr. Kenyon said okay.

Mr. Lamanna said whether it is satisfying the intent of the zoning ordinance.

Mrs. Kenyon said she believes they got approval for that.

Mr. Kenyon said when they went to the zoning inspector do we have approval, we brought the zoning inspector out, for this site plan of the property, yes or no.

Mrs. Kenyon asked if they are approved.

Ms. Endres said they are approved.

Mr. Lamanna said you are approved but another party has raised an issue of zoning inspector error.

Mr. Kenyon said okay.

Mr. Lamanna said so ultimately we have to determine whether that approval is acceptable.

Mr. Kenyon said so let's go along the logic train here in saying if we would agree to add some buffer, some trees he is guessing, which you are asking for, right.

Mr. Lamanna said yes, probably evergreen trees.

Mr. Kenyon said what he heard is evergreen trees is what he is hearing, right, okay, some kind of evergreen trees, the zoning inspector would make that determination whether those are sufficient enough but this is, we are not determining yes or no on the trees, he thinks what you are asking for if this would help the situation, is he getting that clearly or is he misunderstanding.

Mr. Lamanna said yes, what he is saying is, if you are agreeable to adding some additional buffering trees in there we would look at that favorably in making a decision as to whether or not the buffer was sufficient.

Mr. Kenyon said conceptually they agree to that, he doesn't know what it means from a tactical perspective like 4' trees, 6' trees but conceptually to build our forever home they are open to having that discussion and hoping to make that happen.

Mr. Lamanna asked the board members if they had any thoughts on that particular aspect.

Mr. DeWater said when people are building barns the board usually have 6 or 7 trees from 8' to 10' tall so looking from this picture here, the big windows are over here, if it came down probably the same way, the issue is that the basement is on that side of the house so they may have to be a little taller.

Mrs. Kenyon asked if she could ask one more question please.

Mr. Soryal asked Ms. Endres if they are to apply for a fence permit, what is the tallest they can go.

Ms. Endres said they can go as tall as 8' but not in the front required yard.

Mr. Barr said they have another question.

Mr. Kenyon said he has another question for the board, the question is is there a partnership here, in other words, does the persons making the complaint also put up trees so that we have a larger buffer or is it only ours.

Mr. Lamanna said well normally it is the person seeking the approval who is the guy to do that, in all fairness to the other property owner, he does have at least 4 or 5 pretty good size evergreen trees already on his property in that location so he has already got some trees that are helping.

Mr. Kenyon asked how far is the house from the other house about, do you have any knowledge of that, how far the distance is.

Mr. Lamanna said 60 to 70 feet from the property line so it would be 150' total roughly.

Mr. Kenyon said so in your experience 150' between two homes, in your experience the long tenure that you have on these boards, right, is 150' close, not close, far, what is from your experience level with that kind of distance.

Mr. Lamanna said not close, it is not close that is why he thinks we are talking here about 8 trees or something like that just to add a little bit to fit in and he thinks the place where you would want to make the placement in a strategic way because he thinks depending on the topography, the house, where the existing evergreens are there are strategic places to place them where they are going to do more good but he thinks if we could do something like that it would ease our minds a lot.

Mr. Kenyon said so we are 150' apart, right now we are following all zoning regulations as well we know, okay, we have approvals and you are asking us to consider putting in 6 to 8 trees, he just wants to make sure that is the ask, that is the request.

Mr. Lamanna said yes.

Mrs. Kenyon asked who is asking that.

Mr. Lamanna said the board is proposing that to help make its decision easier.

Mrs. Kenyon said a decision for what.

Mr. Lamanna said the decision to determine that there is an adequate buffer there.

Mr. Kenyon said so there is an inadequate buffer right now is what you are saying.

Mr. Lamanna said no, he is not saying there is an inadequate buffer.

Mrs. Kenyon said okay.

Mr. Lamanna said he is saying the issue is up in the air.

Mrs. Kenyon said okay, they are trying to understand.

Mr. Lamanna said this would help make that decision clearer to them.

Mr. Kenyon said let him ask a very technical question. He said if we put these trees in how will the board vote.

Mr. Lamanna said we can't tell you that.

Mr. Kenyon said oh okay so, we put the trees in with some faith about what the board is going to do.

Mr. Lamanna said if the board goes against you it doesn't matter at that point in time, if the board goes for you obviously you've got what you wanted but he can't sit here and speak and we can't really, we are not going to take a straw poll on that.

Mr. Kenyon said okay. He said it is their forever home, they are looking at the big picture, right, which is that house is not a monstrosity, no matter what that complainant has to say it is quite an addition to the neighborhood and to the tax base as well as to Bainbridge. He said looking at the big picture they are certainly willing to work with the zoning inspector and to address the situation so that they can get a positive result.

Mr. Lamanna said okay, so you are willing to do.

Mr. Kenyon said you asked us to put in some trees that are based upon a decision of the zoning inspector is what the ask is, right, and the intent of it.

Mr. Lamanna said the zoning inspector will look and help you select a location to place the trees.

Mrs. Kenyon asked who does that.

Mr. Lamanna said how about six trees 8' high.

Mrs. Kenyon said say that again, she is sorry.

Mr. Lamanna said six trees 8' high.

Mrs. Kenyon said six trees 8' high.

Mr. Lamanna said yes.

Mrs. Kenyon asked and who decides where they go.

Mr. Lamanna said the zoning inspector will determine the location for them.

Mrs. Kenyon asked if they are going to have objections from the neighbor about where they are going to go or appeal that they don't like where they are at.

Mr. Lamanna said theoretically yes it is possible he supposes somebody could procedurally do that but he thinks that the likelihood of success would not be very great.

Mr. Kenyon said so you have spent as a board, so thank you first of all, he thinks you've spent over an hour last month and he thinks you are closing in on two hours, he is guessing that what you have to do in Aurora and Bainbridge down there and Geauga Lake is this is like an amazing amount of time you are spending on this so he wants to thank you.

Mr. Lamanna said we have six more applications to do here and it is 9:30 already.

Mr. Kenyon said what he is saying to you is thank you for your time, most importantly, he doesn't want to be argumentative here he just wants to build their forever home, they are willing to work with the building inspector, they are willing if that is what the determination is to put those trees in and they are willing to do that, they were asked, that is what they are willing to do, obviously there is a little bit of interpretation in there, size, something 7'8 versus 8' whatever but with a reasonable.

Mr. Lamanna said that is at the discretion of the zoning inspector.

Mr. Kenyon said they are reasonably ready to do that yes.

Mr. Lamanna asked if there is anybody else out there that has anything they want to say on this application.

Mr. Steiner said he just asks that you follow the law.

Mr. Soryal asked Mr. Steiner if some of these trees are to be erected or a fence would that make that go away or are you still not going to be satisfied.

Mr. Steiner said the 8' tall trees are not going to do anything.

Mr. Barr said it is going to grow.

Mr. Steiner said it will grow and then when will it be tall enough to draw in privacy from the God knows how high it is from the line.

Mr. Lamanna said again the purpose of the buffer is not to provide privacy, it doesn't say that it is for privacy, it is to provide separation and it is to provide a break between one density of development what was contemplated in the cluster development to be a higher density development, there is not a higher density development here so the need for separation is much less therefore the requirements for a buffer are much less. He said frankly we could easily say that the existing buffer is perfectly adequate but we tried to make some accommodation here to improve your situation so that is where we are, okay, so we have to move on at this point in time so you can have one last say or he guesses you had your last say.

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

Motion BZA 2022-2 – 17320 Corban Drive

Mr. Lamanna moved as follows:

The applicant has asserted five errors of the Zoning Inspector. The board denies the application and determined to be the Zoning Inspector was correct.

1. This application was filed at a time when the requirement under the existing zoning regulation was 90', this current house location is 90' from the property line.
2. The issue with respect to a plan showing a planting buffer is moot because with respect to the actual plan for the house construction the planting buffer or the buffering between the property have been determined and in addition the applicant has agreed to add six 8' evergreen trees in a location to be determined by the Zoning Inspector at the Zoning Inspector's discretion as to the location which will satisfy the intent of the zoning regulation with respect to creating a buffer and the board will note that the density development inside the cluster is not much different from that adjacent to the cluster so the 30 some feet that was left by the builder with the addition certainly of these additional plantings will satisfy that requirement.
3. With respect to Soil and Water, that issue is moot because they have implemented the appropriate requirements.
4. Whatever irregularity there may have been in 1999 would have been cured by the submission of the application with respect to this particular lot. In addition these requirements have to be administered in a practical way and it is within the Zoning Inspector's discretion to determine that at that time of the application process that it is not necessary to have all of the information with respect to location of the proposed structures especially when the structure is unlikely to be able to be determined at that time as opposed to the usual situations in cluster developments where there is a much smaller lot.
5. The question with respect to city water is not a matter that is a part of cluster development approval. There would be no reason for any requirement for city water service on a development of this size so this is an irrelevant point to the approval of the original cluster development.

Mr. Steiner asked what about the height issue, he raised a height issue at the last hearing. He said he wasn't privy to the, he wasn't provided with the plans apparently.

Mr. Lamanna said the zoning inspector has testified that they have done a calculation on the maximum height of this property as required by the code and then based upon their calculations and determinations that it does not exceed the height and frankly by looking at the pictures it would be his estimation that there is nothing certainly there that would indicate that it is likely that they would be in error just from experience of seeing these houses. He said there is nothing about this house that seems to make it extraordinarily large, we see a lot of houses go by so you know what the ones are that say hmm this guy is pushing the limit, it just doesn't look like that right now so that is the evidence in the record so.

Mr. Steiner asked if those plans will be in the record that you are looking at because those aren't in the record, he didn't see them.

Mr. Lamanna said the board will add the plans to the record right now, we will include those, they should be in the record, they will be made part of the record so make sure we put a set of plans in.

Mr. Steiner said not just the footprint plans.

Mr. Lamanna said no, the entire set of building plans. He said it is a little weird here because normally the application that is being made would include all of these in it, it is odd when you have an adjacent property owner making an application, it is out of the natural flow of things so unless somebody says hey, put all of those in, okay, but now they are in and they are relevant and they should be.

Mr. Steiner said that is why he brought up that issue because it wasn't in there.

Mr. Lamanna said he understands but that is how these things happen so if you don't ask the right question, these things would normally be included in something else that came in but because of the way your application came in since you didn't actually attach those to your application somebody would specifically have to ask but we have included them in the records.

Mr. Barr seconded the motion.

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

Mr. Steiner asked when this will become a final appealable order.

Mr. Lamanna said when we approve our minutes next month.

Mr. Steiner said okay so until then it is not.

Mr. Lamanna said it is not.

Mr. Steiner thanked the board.

Mr. Barr departed the meeting.

Mr. Gutoskey returned to the meeting.

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.

Mr. Jack Carson of 18489 Haskins Road was present to represent this application.

Mr. Lamanna swore in Mr. Jack Carson and he let the record reflect that Mr. Carson was duly sworn.

Mr. Lamanna asked how this relates to 2021.

Mr. Carson testified that we originally brought it up and we decided to move it and you guys said move it over but we determined that it is 6' of fall because his brother-in-law can't read a transit and when he went over there you could never get your fifth-wheel into the thing so they moved it over and he doesn't know where, he referred to the displayed aerial and said this is his son's property and described the property. He referred to a structure and said this is coming down and there will be another barn eventually, an agricultural barn put up. He said this driveway from the street up to here is up about 4' and this has all been cleared out and we just want to move it back to the original variance that we had because this is 3' higher, the back would be 6' just to the back of the barn.

Mr. Lewis asked if the whole property slopes down.

Mr. Carson said it actually crowns the front of that garage, it goes like that so the garage has a concrete floor and it goes up.

Mr. Gutoskey said where the garage is now, where is that relative to the asphalt because when he looked at this this afternoon, no matter where you move that relative to the driveway you are going to have to put in fill unless you are setting that building.

Mr. Carson said they are bringing that building over where it is more level.

Mr. Gutoskey said okay but are you setting the building lower than the driveway or higher.

Mr. Carson said a little bit lower so they have to dig it out anyway.

Mr. Gutoskey said basically the water is going to roll under the building.

Mr. Carson said there will be a drain across the front of it in the asphalt.

Mr. Gutoskey said when he looked at it and when he eyeballed it, it didn't look like the grade changed that much.

Mr. Carson said from the back of the garage it is about 18" right now and the barn is 48' long.

Mr. Gutoskey said you are going to have the same problems when you move it over.

Mr. Carson said no it is actually more level.

Mr. Gutoskey said you are going to be way lower than the drive.

Mr. Carson said yes, but that is going to come down a little bit that is why it was going to get extended straight into the barn so as you drive in. He said there is going to be a 14' door for an RV or a fifth-wheeler, originally it was moved over but we can't do it because of the fill. He said the back corner will have 6' of fill and there will be a 30' post to the center and then you got to go at least 3 to 1, it would take a million truckloads of fill and dirt, that whole property drops to the back.

Mr. Lewis said the whole property falls off so we didn't approve it at 25' and the reasons for that being moved to 38' are in our motion with all of the findings of fact and everything related to it. He said either way this property falls off, either way he is going to have to put fill in.

Mr. Carson said absolutely.

Mr. Lewis said and either way to set your poles or footers, either way it is going to happen.

Mr. Carson said yes but it is 6' on this side and when he moved it over it would only be about 2-1/2' of fill.

Mr. Lewis said you get into this procedural thing also where if you were heard, the board comes up with a motion and there is a vote, that becomes finalized a month later at our next regularly scheduled meeting so somewhere in this timeframe where after it has been finalized or inked there is a 30 day area to file an appeal so in this particular case the applicant hasn't filed the appeal and we are hearing a case we have already heard.

Mr. Carson said yes we had to resubmit.

Mr. Lewis said that is a problem.

Mr. Lamanna said let me explain to you. He said here is the issue, once you come before us and we make a ruling on something when that ruling becomes final that ruling binds forever, you can't come back and relitigate the issue unless you can just demonstrate that there has been a change of circumstances.

Mr. Carson said the change of circumstances is he didn't know how to read a transit.

Mr. Lamanna said well it has got to be something that you could not have reasonably known at the time so if you didn't adequately look at your property.

Mr. Carson said he didn't obviously until I went over there.

Mr. Lamanna said he is sorry, that is too bad. He said if somebody said hey, a large casim opened up here or I went to dig in the ground and suddenly found out there is a gigantic rock here that I didn't know about, then we would say that is changed circumstances, we'll address your issue but when you come back and say well, you know, I did some more investigating and now I decided, this will be a little expensive, you have to put in more fill, we already spent our time going through this thing so he thinks this doesn't seem to be something that either developed in the interim like suddenly you found out that a new drainage stream is making its way through, somebody just decided well, I did a little more careful work and it is not quite as level as I thought it was.

Mr. Carson said it is what it is, is what you are saying. He said they were trying to get it at least somewhat similar to the garage which you know, if it is, it is, no way of arguing, thanks.

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

Motion BZA 2021-29 – 9125 Taylor May Road

Mr. Lamanna moved that this application is being dismissed on the basis of res judicata. The board previously had ruled on this application and the applicant has not demonstrated there are any changed circumstances or new circumstances that weren't known at the time with respect to the change they are requesting.

Mr. DeWater seconded the motion.

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

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.

Mr. Steven Huckabee was present to represent this application.

Mr. Lamanna swore in Mr. Steven Huckabee and he let the record reflect that Mr. Huckabee was duly sworn.

Mr. Steven Huckabee testified that he would like to enclose his front porch. He said the house was built a long time ago and the porch has been there, he is not extending the porch he is just building it up and enclosing it.

Mr. Gutoskey asked where the dimensions come from as far as where the house was relative to the side yard and the front yard.

Mr. Huckabee said from the plan when they did the garage, they had a garage built.

Mr. Gutoskey said so you previously had some survey work done so you took the dimensions from there.

Mr. Huckabee said yes when they built the garage.

Mr. Gutoskey said he likes to get a handle on that when we are looking at doing variances when we have dimensions that are close.

Mr. Huckabee said the porch has been there since the house was built, it just wasn't enclosed.

Mr. Lamanna said okay.

Mr. Gutoskey asked if the height is 18' on the porch so is it two stories.

Mr. Huckabee said no it is just one story, the house is two stories.

Mr. Gutoskey said it just says the height is 18' on the porch on this plan here.

Mr. Lamanna said the existing porch is there already.

Mr. Huckabee said yes.

Mr. Lamanna said you are just going to enclose that so it is not getting any wider or any closer than it already is.

Mr. Huckabee said no, not at all.

Mr. Lamanna asked Ms. Endres if he is looking at that correctly.

Mr. Gutoskey said because of the pitch it is probably 18.

Mr. Lamanna said they are just enclosing the porch.

Ms. Karen Endres, Zoning Inspector testified by saying that is correct, they are enclosing an existing front porch and her understanding is it is not going any closer to Geneva Street than the existing uncovered porch.

Mr. Lamanna said and no closer to the side line to the east, north side yard. He asked if there is anyone here interested in this application.

Mr. Gutoskey asked about doing an affidavit on this to combine the lots.

Ms. Endres said Mr. Huckabee is agreeable, we talked about that, instead of doing a re-plat.

Mr. Huckabee said he is agreeable.

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

Motion BZA 2022-7 – 16716 Geneva Street

Mr. Lamanna moved to grant the applicant the following variances for the purposes of closing in an existing porch/pad.

1. A variance to 4.5' from the road right-of-way versus the required 15' setback.
2. A variance to 7' from the north side property line versus the required 15' setback.

Based on the following findings of fact:

1. A practical difficulty exists because it is an existing lot and the house is on a series of small lots.
2. This is an existing porch so it is not increasing the existing encroachment of the building onto the lots.
3. It also will not adversely affect the neighboring properties nor will it affect the character of the neighborhood.
4. The board notes that the applicant has agreed to provide an Affidavit of Fact effectively joining the five lots that he has so that we can ignore all of the potentially existing questions with respect to the internal lot lines and this will be consistent then with the other properties in the area.

Mr. Gutoskey seconded the motion.

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

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.

Mr. Patrick Joyce, Mrs. Aubrey Joyce and Mr. David Jansen were present to represent this application.

Mr. Lamanna swore in Mr. Patrick Joyce, Mrs. Aubrey Joyce and Mr. David Jansen and he let the record reflect that Mr. and Mrs. Joyce and Mr. Jansen were duly sworn.

Mr. David Jansen testified that for the house they have designed to put a front porch onto the existing house, he is sorry, he is old school and didn't know they would have a presentation, he has pictures with him but if Ms. Endres can swing that around to look at the front of the house (he referred to the aerial displayed).

Ms. Endres said she can swivel it to show the view you would like to reference.

Mr. Jansen said this is the house right here and he has some pictures but here is the front door, it kind of sits out by itself, they since lost that storm door because the wind just tore it right off the hinge so what they would like to do is put a porch across the front, they are keeping it behind the corner of this house and he is sure you are familiar with these lots, you go through the zoning and he does the calculations and technically for their piece of property up there they are only allowed to use 38% by zoning and that seems a little unfair and then this garage is ironically has two cars but there is no way to fit two cars in there unless you just want to pull them in and never get out of your car.

Mr. Lamanna said it looks a little narrow, unless you have a very small car.

Mr. Jansen said right so they want to take that out and they want to add a mudroom and a standard kitchen so that house will work a little better and then take down this garage and their next submission is to put the garage in the back with access on Cedar Street. He said in the application technically this new side entryway is going to be just 4" into the side yard setback. He said the variances are for this porch to encroach into the front yard, the house already encroaches into the front yard so he is hoping that since we are doing an open structure, it is not like building the house that much closer at least it will be open and a flat roof is not imposing towards the street and he knows it has nothing to do with Bainbridge but insofar as the neighborhood the houses on the other side of the street which he knows is Chagrin Falls but everything kind of gets close, it is a higher density neighborhood.

Mr. Gutoskey said yes, we are familiar with it.

Mr. Jansen said and all of the neighbors are fine with it, we have the signed statements from them, they all looked at the drawings and are all good with it so that is it.

Mr. Lamanna said you have two back to back lots.

Mr. Jansen said two back to back, yes.

Mr. Gutoskey said two lots.

Mr. Lamanna asked if an affidavit of fact will be done here too.

Mr. Gutoskey said he would say yes, probably.

Mr. Jansen asked what does that mean.

Mr. Lamanna said it means you basically file with the Recorder's Office, it is called an affidavit of fact and it basically says that these two lots are being used together and basically have to travel together in the future.

Mr. Jansen said so you just file it with the recorder, so it is a nominal fee.

Mr. Lamanna said it is \$28.00, it is usually only a couple of pages long, it is a small filing fee. He said what it does is that way it ensures that you can't undo these lots and nobody can get title to one of them and not the other one and that way we can treat it as a single lot so if you agree to do that then we can dispense with dealing with any of the internal lot lines if you do that.

Mr. Jansen said yes.

Mr. Gutoskey said on the east side of the house the porch is going to be 7' and the existing house is about 4'7".

Mr. Jansen said it is already sitting a lot closer.

Mr. Gutoskey said so basically the porch is going to be in from the property line from what the existing house is.

Mr. Jansen said yes.

Mr. Gutoskey said that is the adjoining house so your porch is still going to be behind this house here.

Mr. Jansen said and that house, he had done a project on that house so he actually had a survey for it so he feels pretty confident that that house is right where it is and if you ever drive past it you can't even park in front of that garage it is so close to the road so we intentionally did that and he knows they are only subject to side yard but still the streetscape they are trying to make sure they weren't making anything harder on the neighboring residents.

Mr. Lamanna said so the using garage is going to go.

Mr. Jansen said yes, it is for sale if you want it.

Mr. Gutoskey said if it was in Chagrin Falls it would be historic, you couldn't tear it down.

Mr. Jansen said you couldn't touch it.

Mr. Gutoskey asked Mr. Lamanna if he wanted to talk about the garage and do them as one.

Mr. Lamanna said yes we will do them as one.

Mr. Jansen said again, we are looking at this as one property, the problem with the garage is that technically that is a forward facing front yard setback, it is another front yard but we are in the backyard obviously so the garage is located in what seems to make the most sense so that it is next to the neighboring garage, it sits further back than their garage and it is really oriented so it accesses to the new mudroom and then they already have this deck here so it keeps all of this open for them to use as their backyard and then there was a height issue with the garage as well. He said he thinks the garage permits 15'.

Ms. Karen Endres, Zoning Inspector testified that 15' is the maximum size on non-conforming lots.

Mr. Gutoskey said and the building size because it is an accessory, it is 300 sq. ft. versus 816 sq. ft., the front setback and then the height.

Mr. Jansen said originally it was designed under R 135 which allows 21' and then the neighboring garage is over that height as well so he thought they must be okay but then to find out it is not okay so the garage next to the neighbors is a larger garage, it is comparable in height to what we are proposing and that is a newly built garage too, so actually it is not going to be a detriment to the neighborhood, he thought that condition already exists.

Mr. Gutoskey asked if there will be storage in the garage, that is because of the height.

Mr. Lamanna asked how much distance is there from the front of the garage to the actual, is there a sidewalk there.

Mr. Jansen said no, there is no sidewalk.

Mr. Lamanna asked how about the actual street, can you park a car in front of the garage and not have it hanging into the street.

Mr. Jansen said yes, that is how we situated it.

Mr. Lamanna said that is a key thing.

Mr. Jansen said right, the neighbors can get one car and wished they had a little more space so we said let's push it back a little further and have more space.

Mr. Gutoskey asked if these are to scale.

Mr. Jansen said no, he has a site plan though and he thought he had the dimensions on there.

Mr. Lamanna asked to go back to the aerial view.

Mr. Jansen said he is 10' from the property line.

Mr. Gutoskey said he has a scale.

Mr. Jansen said that is 10' and then whatever it is here to the street, here is the pavement, it is 10 yes.

Mr. Lewis said when your teenagers come of age can park their cars there.

Mr. Lamanna said so the house immediately adjacent is the same distance.

Mr. Gutoskey asked Ms. Endres to bring up the aerial view on South Street so we are looking at the view from where the garage is going to be.

Mr. Lamanna said that house there already has about the same, it is about even with them pretty much.

Mr. Jansen said we are sitting a little further back than them and we are highly comparable in height too.

Mr. Gutoskey said it looks like there is a sidewalk in front of their house or is it landscaping bollards or something.

Mr. Patrick Joyce testified that it is a stone wall.

Mr. Gutoskey said there are no sidewalks.

Mr. Jansen said no.

Mr. Gutoskey said he sees no problems on this site, it is totally consistent with the neighborhood.

Mr. Lewis said it is a congested area.

Mr. Jansen said it is a congested area and they pay extra for that.

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

Motion BZA 2022-8 and BZA 2022-9 – 7021 South Street

Mr. Lamanna moved as follows:

1. The board is going to treat these applications as a single application and the applicant has agreed to provide an Affidavit of Fact that will join these two lots together and therefore the board will dispense with any internal lot lines between the two lots and they will not be henceforth considered as lot lines for the purposes of determining satisfaction in setback requirements.

With respect to the application for an addition of a front porch the board will grant the following variances.

1. A variance to the front setback to 17.8' versus 30' for a variance of 12.2'.
2. A variance to the east side lot line to 7' versus 10' for a variance of 3'.
3. A variance to the west side lot line to 9.6' versus 10' for a variance of .4'.
4. A variance to the existing house setback from the east side lot line of 4.7' versus 10' for a variance of 5.3'.

Motion BZA 2022-8 and BZA 2022-9 – 7021 South Street - Continued

With respect to the request for adding a garage facing Cedar Street the board will grant the following variances.

1. A variance to the front setback from Cedar Street to 10' versus 30' for a variance of 20'.
2. A variance to the increase in the accessory building size to 816 sq. ft. from 300 sq. ft. for a variance of 516 sq. ft.
3. A variance to the accessory building height to 20.44' versus 15' for a variance of 5.44'.
4. The variances are granted with respect to the structures as shown in the applications submitted by the applicant.

Based on the following findings of fact:

1. A practical difficulty exists due to the high density development here and the fact that the existing properties already encroach upon the required setback.
2. The addition of a front porch is consistent with the structures in the neighborhood and the character of the neighborhood and it is also consistent with the other setbacks that exist in this area and therefore it will not adversely affect the adjacent property owners or change the character of the neighborhood.
3. With respect to the garage, the additional size, since this is actually being used as the only garage for the house it is reasonable to have a larger size since this is not just an extra storage building but actually used as a full two-car size garage.
4. The same with the height of the building, in this case this height will be consistent with the adjacent buildings as will the setback.
5. For the adjacent property which this building will abut so it will not adversely affect that property owner and it will also be consistent with the neighborhood.
6. The setback is already short in that area and the applicant has set it back far enough that a car can be parked in the driveway and not encroach into the actual portion of Cedar Street there.

Mr. Lewis seconded the motion.

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

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.

Mr. Stephen Keary, Mr. Thomas Supan and Mrs. Kathleen Supan were present to represent this application.

Mr. Lamanna said thank you for your patience tonight.

Mr. Stephen Keary said thank you for what you do because and he was going to say this afterwards but he has been here in Bainbridge since 1971 and he has been through a few of these for various reasons but he can't imagine what you just went through and thank you.

Mr. Lamanna swore in Mr. Stephen Keary, Mr. Thomas Supan and Mrs. Kathleen Supan and he let the record reflect that Mr. Keary and Mr. and Mrs. Supan were duly sworn.

Mr. Lamanna said you want to construct a rear covered patio, a new front walk and a new front porch.

Mr. Lewis said and we've got the HOA stamp of approval on this, right.

Mr. Stephen Keary testified that the rear patio is already existing, they are going to replace the concrete and build an overhang above it, hopefully.

Mr. Lamanna said so it is an existing patio and asked if this is going to be open, just a roof over it.

Mr. Keary said yes, right.

Mr. Gutoskey said he has the same question as he did on the other one, the dimensions where the house is located relative to the property line, where did those come from.

Mr. Keary said those are both measured and also from the original addition that was done in 2000.

Mrs. Supan testified that it was 2002.

Mr. Gutoskey said so you had a previous survey done on it or a mortgage ID survey.

Mr. Keary said the previous owner did yes and he measured and double checked on the side lot but it wasn't done by a surveyor but this was on the blueprint that was original and the front porch, they wanted something a little more accessible for if you notice the steps off the driveway but when there is inclement weather people can come right off the drive onto the front and then the front walk is instead of going to the small little front stoop that they had, people would be at the door and getting wet so instead of having that walk go out to the driveway we are taking it around a giant Oak tree right there and we didn't want to interfere with it so that is why the walk is going around the front.

Mr. Gutoskey asked if there is a porch on there now, anything on the front now.

Mr. Keary said there is a small stoop.

Mr. Lewis asked Mr. Keary if he is referring to this elevation.

Mr. Keary said yes.

Mr. Lewis said and before there was just kind of like a stoop here with a walk coming up to it so you are going to put a real porch on it.

Mr. Keary said yes, we are going to rebuild it.

Mr. Lewis said and go around and save the Oak tree.

Mr. Keary said yes.

Mr. Soryal said so you put in storage underneath of the porch.

Mr. Keary said they are going to have access.

Mr. Soryal asked like a door.

Mr. Keary said the door will be on this side actually, there is no door there now accessing the basement there, there is a window there.

Mrs. Supan said there is a door.

Mr. Lamanna asked how wide is the porch.

Mr. Keary said it is 8' deep.

Mr. Gutoskey said then you have a 3' overhang on that it looks like. He said there is a little side elevation here.

Mr. Lamanna said so it is really 11'.

Mr. Gutoskey said yes.

Mr. Lamanna said so they are already encroaching by 9' or so with the existing house.

Mr. Keary said when they went to the Lake Lucerne board they had 50' and until they came here he wasn't sure, he didn't know about your setback for Bainbridge.

Mr. Gutoskey said you might have to adjust the front setback because you have 3' to the roof so probably make it 51.84' or 51.5'.

Mr. Lamanna said we are increasing it by 11'.

Ms. Endres asked the board if they are talking about the steps going out.

Mr. Lamanna said no the overhang, it is an actual structural bump-out.

Mr. Keary said he apologizes for that, they originally weren't going to have that roof over the stairs because of snow and ice.

Mr. Lamanna asked Ms. Endres for a quick overview aerial of this and said there is nothing here that looks out of alignment.

Mr. Gutoskey said the drainage falls this way.

Mr. Keary said mostly this way.

Mr. Gutoskey said it falls to the side.

Mr. Supan testified that on the side they have a big culvert.

Mr. Lamanna asked if there are any more questions and added that he sees there is no one here for this application.

Mr. Gutoskey asked Ms. Endres when she looked at the coverage if she included that bump-out on the porch, it is 7'6' by 3'.

Ms. Endres asked if he is talking about this right here.

Mr. Gutoskey said no, the next one down.

Mr. Lamanna said it is not going to make any difference but we will make the lot coverage 4,800 sq. ft., we don't want to get things too tight.

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

Motion BZA 2022-10 – 8346 Summit Drive

Mr. Lamanna moved to grant the applicant the following variances for the purposes of constructing a new front porch, a covering over an existing patio and modifying a front walkway in accordance with plans that have been submitted by the applicant.

1. A variance to the maximum lot coverage from 4,000 sq. ft. to 4,800 sq. ft. for a variance of 800 sq. ft.
2. A variance to the minimum front yard setback from 75' to 51.5'.
3. A variance to the minimum side yard setback (east) from 10' to 7.69'.

Based on the following findings of fact:

1. A practical difficulty exists due to the small lot sizes and there are already existing houses and there is already substantial lot coverage.
2. This increase to 4,800 sq. ft. is not unreasonable given the size of the lot of only being 15,000 sq. ft.
3. The porch is just covering over an existing porch so really it doesn't make any change with respect to that.
4. The minimum side yard (east) reflects where the existing house is already so that is not affecting anything.
5. The porch increased 11' so the house is already slightly less than 75' but will still be greater than the 50' that is typical in Lake Lucerne.
6. In looking at this none of these changes will adversely affect the neighboring properties nor will they be inconsistent with the character of the neighborhood.

Mr. Gutoskey seconded the motion.

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

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.

Mr. Timothy Alder, Jr. was present to represent this application.

Mr. Lamanna told Mr. Alder thank you for his patience.

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

Mr. Timothy Alder, Jr. testified that he has lived here all of his life.

Mr. Lamanna said you want an accessory building.

Mr. Alder said yes please, a big one.

Mr. DeWater asked if he was planning on putting a driveway out to the building at some time.

Mr. Alder said no, he is not, he would have to go through, if you see all of the dead stuff he cut because it was poison ivy and overgrown and thickets and that is now grass and he is going to replant with foliage but that is a riparian setback as he learned filling out all of this paperwork so absolutely there is not going to be a driveway going to it.

Mr. Soryal asked what the purpose of the building is.

Mr. Alder said the Spring Valley homes with the three-twelve pitch roofs don't have attic space and their two-car garage simply doesn't have any storage once you put two vehicles in it and now that they have a boy they have actually utilized the third spare bedroom in the house for stuff. He said they would like to make their family bigger and with this house, he lived with his dad for his entire life across the block, he loves the development, he loves the people, the township, he wants his kids to go to Kenston and this would assist us in being able to store all of the stuff that is currently at his parents and her parents house, they would like to just kind of have all of the extra clothes, the kayaks, the bicycles and be able to store everything at their house just to kind of maintain like a self-sufficiency.

Mr. DeWater said and you won't be using the building for any type of business.

Mr. Alder said absolutely not, it would be storage.

Mr. Soryal said so you would almost have to roll things in, you can't have a driveway so how are you planning to bring stuff in and out of this thing, just walking through.

Mr. Alder said yes.

Mr. Gutoskey asked Ms. Endres if there is a physical ditch through here.

Mr. Alder said no.

Ms. Karen Endres, Zoning Inspector testified that she has not been to this particular property.

Mr. DeWater asked if the riparian setback is mowable.

Mr. Gutoskey asked if there is a stream there.

Mr. Alder said no, it is dry, when it is actively raining, a downpour, you get maybe a foot wide of water that comes from behind.

Mr. Gutoskey said but it is normally dry and it is grass.

Mr. Alder said 100% it is dry.

Mr. Gutoskey said he is wondering if this is one of those riparians that is kind of an error in just looking at it. He asked if that is a culvert that goes under the road there.

Mr. Alder said there is.

Mr. Gutoskey asked how big.

Mr. Alder said he believes it is 16”.

Mr. Gutoskey said probably 15” – 18” and you can kind of see a swale there.

Mr. Alder said the water is never rushing, it is never 8’ wide of water even in the heaviest of rainstorms, it just slowly trickles through and probably three days after a rain it dries up. He said it would be storage for like he said miscellaneous kid’s things, lawnmowers, bicycles, kayaks. He said it will hold one truck but that truck was given to him as a gift and it maybe gets two miles a year, it just sits on jack stands for the most part.

Mr. Soryal asked if he will be able to drive it in when it is dry.

Mr. Alder said yes.

Mr. Gutoskey said we did other out-buildings like this in here, we did one five or six years ago right up the street there.

Ms. Endres said it is a little over 170’ to the houses from that back lot line.

Mr. Gutoskey said he doesn’t see anybody here complaining. He asked if there is anybody who wants to talk about this item.

Mr. Alder said he will put in trees as a buffer.

Mr. Gutoskey asked how many evergreens.

Mr. Alder said he believes three 6’ – 8’.

Mr. Lamanna said it is going to be 27' off the back lot line.

Mr. DeWater asked what are the materials.

Mr. Alder said wood and as of the plan it was going to be a metal roof but now he is heading towards shingles because he would rather have it match the house and then when they build it it is going to match, they are going to re-side the house also to match to make it uniform from the street.

Mr. Lamanna said yes that is probably a better idea, no bright blue or red.

Mr. Alder said no.

Mr. Lamanna said although it would look good in some places but he thinks stuck in the middle of the woods you would have a lot of people complaining.

Mr. Alder said no.

Mr. Gutoskey said we have done these in here before and it is because there is no storage in these houses.

Mr. Lamanna said but they have 1-1/2 acres so it is not a tiny lot.

Mr. Gutoskey said this isn't a Lake Lucerne lot.

Mr. Lamanna said there is plenty of room back there and certainly given where the neighbors to the east are, they are so far up and this thing is so far back it is not even going to affect them.

Mr. Gutoskey said there is so much vegetation there.

Mr. DeWater asked Mr. Alder if he talked to his neighbors.

Mr. Alder said he has, he approached the three there in Spring Valley but he approached the two in the back in Peppermill and he didn't get any response at the door.

Mr. Soryal said you will get a response when you start building.

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

Motion BZA 2022-11 – 8686 N. Spring Valley Park Drive

Mr. Lamanna moved to grant the applicant the following variances for the purposes of constructing an accessory building.

1. A variance from the maximum size of 300 sq. ft. to 1,280 sq. ft. for a variance of 980 sq. ft.
2. A variance from the maximum height of 15' to 20'7" for a variance of 5'7" as shown on the plans submitted by the applicant.

Based on the following findings of fact:

1. The building is located to the rear of the property but there is a riparian that runs along the side of the house and then turns and runs along the back of the house so to get it out of the riparian it has to be set back farther.
2. The location is within the permitted setbacks.
3. Because of the fact of the setback it won't have any effect on the neighbor to the east and there will be a substantial distance from the properties behind so it should not adversely affect them.
4. The applicant is going to have a shingle roof and should blend in with the natural setting and therefor will be less obvious and less of a potential impact.
5. It is not inconsistent with other structures that have been built in Spring Valley.
6. The board also notes that in this case the lot size is 1.47 acres which is substantial and therefor an accessory building of this size will not be unreasonable on this property and likewise the height is only a small increase and the roof pitch is a normal roof pitch so that also would not adversely affect the neighboring properties.

Mr. Gutoskey seconded the motion.

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

Mr. Lamanna made the following motion with respect to the disposition of this case.

1. The board finds the question of zoning inspector error raised with respect to the application of Section 530.11 as incorporated in the Agreed Judgment Entry has been properly raised before this board and is properly before us for consideration. This is based upon the following findings of fact and conclusions of law. (a) it is clear that under the terms of the judgment entry and the zoning ordinance the board can interpret and review the provisions of the judgment entry in the course of hearing any applications for variances or for allegations of error by the zoning inspector with respect to the interpretation of the zoning provisions of the Agreed Judgment Entry; (b) the board can sua sponte review open and obvious error made by the zoning inspector, as (i) it is inherent in its power as a quasi-judicial body, (ii) there is otherwise no adversarial party hearing and neighboring property owners would not be aware of the issue, (iii) if such matter were not considered in a board decision regarding a variance, such matter may be relevant to the variance and impact whether it should be granted thus possibly resulting in a decision that is contrary to the spirit of the zoning ordinance and/or would not do substantial justice; (c) the matter was properly raised during the course of the hearing by the legal representative of the adjacent landowners during the course of the hearing and ample opportunity was provided to appellant to respond to such claims, and such landowners had standing to raise such matter; (d) filing a separate appeal is not the exclusive method, since in this case the matter was already pending before the board and the adjacent property owners receive no notice that a decision was made by the zoning inspector to not apply the section in review; and (e) the parties have not advanced any case that specifically denies the authority of the board to hear this issue.
2. The board finds there has been zoning inspector error with respect to the use of the structure, specifically that the provisions of 530.11 (regarding that such use be “completely within and enclosed building” and “not create any offensive noise”) applies to uses of the structure, whether considered a primary use or an accessory use. The provisions of this section are unambiguous and clear requirements. That there may be some uses permitted that would seem difficult to conduct within those strictures, or might have some different accessory use that might not be proscribed, does not affect the facts of this particular use or give it license to ignore the requirements of 530.11. First, most, if not all of the uses discussed in the hearing are in fact primary uses, that is, they are a principal permitted use of the property. Whether they are outside or in a secondary building rather than the “main” building does not make them “accessory”. Accessory uses are ‘customarily incidental’ to the principal use, and are ‘part of the permitted use’ (See Art. 623 Ohio Planning and Zoning Law). Thus, the same requirements and prohibitions that apply to primary use also apply to accessory uses. Whether or not in some hypothetical or highly unusual situation they might not apply, that is not the situation at hand. It is clear that the uses that have been discussed must meet the requirements of the cited section.

The terms of zoning in this area were frozen in time by agreement of the parties in a judgement entry. The parties receive the good and the bad of that situation. That changes have been made in zoning or in other districts that may allow certain uses there, does not change the area subject to the decree. Changes cannot be made by 'interpretation' or extension. They must be made by modification of the applicable consent decree as provided in its terms.

3. With respect to the location of the structure, that an area variance be granted with respect to the set back from the property side line to the distance that represents the current location of the building. This decision is based upon the conclusion of law set forth in paragraph 2 above, and the following findings of fact (i) the property abuts a landlocked piece of property unlikely to be residentially developed, (ii) the building is not in clear sight of adjacent residences, (iii) the size of the variance is significant but not substantial, (iv) the building is not likely to impact government services, and (iv) the building itself is unlikely to cause any adverse impact upon adjacent property or to change the character of the neighborhood. Other Duncan factors for granting an area variance are not significant to this decision. The principal ones for the basis of the decision are those set forth in (iv). Nothing in the grant of this variance is intended to extend to the use of the building or grant any variance with respect to such use.

This decision with respect to the area variance is substantially based upon the conclusion of law set forth above with respect to the use of the structure. If such conclusion of law was not present, the broader use of the structure would cause our findings of fact with respect to impact on neighboring properties, impact on character of the neighborhood and impact on township services (there would be increased complaints to the police), and thus the variance would not be granted.

This decision with respect to the area variance is substantially based upon representation that there has been an inspection by the Geauga County Building Department of this building and they have approved that building even though it was built without obtaining the proper permits. If such representation is not true, this variance would not be granted as the findings of fact would not be supported.

Nothing in this decision is predicated on landscaping required by a judgment entry between the subject property and the condominium property, except as it currently exists. No opinion or finding is made as to the obligations of parties under said entry.

4. This revised motion represents modification made to fully elaborate the decision and reasons therefor pursuant to the decision made on March 17, 2022 which reserved the right to make said modification. The original form of the decision will remain a part of the minutes but is otherwise of no force or effect.

Mr. Lewis seconded the motion.

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

April 21, 2022

Since there was no further testimony, the public hearing was closed at 10:55 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: April 21, 2022

AUDIO RECORDING ON FILE

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

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 10:55 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Ted DeWater; Mr. Joseph Gutoskey; Mr. Todd Lewis; Ms. Lori O'Neill, Alternate and Mr. Emeil Soryal. Ms. Karen Endres, Zoning Inspector was present.

MINUTES

Mr. Lewis moved to adopt the meeting minutes of February 17, 2022 as written.

Mr. Gutoskey seconded the motion.

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

APPLICATIONS FOR NEXT MONTH

Application 2022-12 by Chris Mick for property at 8065 Bainbridge Road

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

Application 2022-13 by Scott Friedman, as Manager of SDC III – OH, LLC for property at 7135 Aurora Road

The applicant is requesting zoning approval to split a 1.6563 acre lot into two lots. The property is located in the MUP District.

Application 2022-14 by Gabriel Bartlett for property at 7135 Aurora Road

The applicant is requesting area variances for the purpose of installing signage for the proposed new Starbucks. The property is located in the MUP District.

Application 2022-15 by Kevin Campopiano for property at 7558 Mystic Ridge

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

Application 2022-16 by ASZ, Inc. for property at 8454 E. Washington Street

The applicant is requesting a review and renewal of an existing conditional use. The property is located in a CB District.

Application 2022-17 by TLC Pet Hospital LLC/Anna Leeb for property at 8452 E. Washington Street

The applicant is requesting a review and renewal of an existing conditional use. The property is located in a CB District.

Application 2022-18 by Jason Majewski for property at 18540 Geauga Lake Road

The applicant is requesting area variances for the purpose of constructing an accessory building. The property is located in a R-5A District.

The Bainbridge Township Board of Zoning Appeals set a public hearing on the above applications for April 21, 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 11:13 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: April 21, 2022