

AGENDA
BUTLER COUNTY BOARD OF ZONING APPEALS
BUTLER COUNTY ADMINISTRATION CENTER
130 HIGH STREET
HAMILTON, OHIO 45011
April 19, 2011

I. Opening

- A. Roll Call Mr. Gary Salmon
 Mr. Thomas Bevington
 Mr. Alan Daniel
 Mr. Henry W. Philpot
 Ms. Lee Steenken

II. Approval of Minutes

- A. March 15, 2011

III. Old Business

- A. BZA11-06V Scott Webb Architect/ Music Investments LLC
 6895 Morning Sun Road
 Oxford, Ohio 45056

IV. New Business

- A. BZA11-07V Jeff Quinn
 7071 Franklin Madison Road
 Middletown, Ohio 45042
- B. BZA11-08V Rob Michaels
 6150 West Alexandria Road
 Middletown, Ohio 45042
- C. BZA11-09V David Bolden
 5335 Hamilton Middletown Road
 Hamilton, Ohio 45011

Adjournment

REGULAR MEETING: Tuesday, April 19, 2011
Butler County Government Services Building
Conference Room 1
315 High Street, 1st Floor
Hamilton, OH 45011

CALL TO ORDER: Mr. Bevington called the meeting to order at 7:00P.M.

ROLL CALL: Mr. Thomas Bevington
Mr. Alan Daniel
Mr. Henry W. Philpot
Mr. Gary Salmon
Ms. Lee Steenken

MEMBERS ABSENT: None

STAFF MEMBERS: James Fox, Zoning & Floodplain Manager

In the interest of expediting tonight's hearings, Ms. Steenken made a motion to amend the agenda and move Old Business BZA11-06V behind New Business. Mr. Salmon seconded the motion. Motion carried.

AYES: Steenken, Salmon, Philpot, Daniel, Bevington

NAYES: None

APPROVAL OF MINUTES:

March 15, 2011 Meeting Minutes

Ms. Steenken made a motion to approve the Minutes from the March 15, 2011 meeting as presented. Mr. Salmon seconded the motion. Motion carried.

AYES: Steenken, Salmon, Philpot, Daniel, Bevington

NAYES: None

BZA11-07V

Jeff McQuinn
7071 Franklin Madison Road
Middletown, OH 45042

Mr. McQuinn said he is here tonight to ask for a variance on a Building Permit for an oversized detached garage and he recently came into some properties out in his neighborhood so he can protect his own belongings and is a field mechanic and he drives a service truck and wants to conceal it from the road and a standard sized garage is not large enough for the truck.

Mr. Bevington asked what type of truck it is.

Mr. McQuinn said it is a Ford F-550 service truck with a crane on it.

Mr. Bevington asked the applicant if he will be doing work in the garage or strictly for shelter for his truck.

Mr. McQuinn said the only work he will be doing in there is for his lawnmower, his kid's go-cart and oil changes for his vehicles.

Mr. Bevington asked the applicant if he plans on running a business in it.

Mr. McQuinn replied no sir.

Mr. Bevington asked Mr. McQuinn if he intends to have electric and water in the garage.

Mr. McQuinn said yes to electric and no to water.

Mr. Daniel asked McQuinn if he has checked with his neighbors.

Mr. McQuinn said yes, on all three (3) sides.

Mr. Salmon asked the applicant how he plans on getting back to the garage.

Mr. McQuinn said from his existing driveway and pointed to the proposed location.

Mr. Daniel said, for the record, the Township Trustees have no objection.

Mr. Salmon said he wants to make sure that the applicant understands that the Board of Health facts is that if he does build this and the septic fails, he will not be able to put a septic system in there.

Mr. McQuinn responded, yes.

TESTIMONY IN FAVOR: None

TESTIMONY IN OPPOSITION: None

NEUTRAL TESTIMONY: None

STAFF COMMENTS:

Mr. Fox said Staff Comments are as follows:

Case No. BZA11-07V, Jeff McQuinn, Middletown, Ohio 45042 is requesting a variance to build an accessory structure larger than zoning allows.

- Staff Comments:
1. The property is zoned A-1 Agricultural.
 2. This area is rural in character.
 3. The applicant is seeking a variance, said applicant shall be required to establish to the board, proof by preponderance of the evidence that an unnecessary hardship will prevail unless the variance is granted.
 4. The spirit and intent of the zoning resolution is not to allow this type of variance, but since this will not change the character of the area the staff will recommend approval with the following conditions:
 - A. A Building Permit is required.

Mr. Daniel made a motion to grant approval of BZA11-07V with the conditions recommended by staff. Ms. Steenken seconded the motion. Motion granted.

AYES: Daniel, Steenken, Philpot, Salmon, Bevington

NAYES: None

Case BZA11-08V

Rob Michaels
6150 West Alexandria Road
Middletown, Ohio 45042

Ms. Elizabeth Michaels, 6150 West Alexandria Road was present to represent Mr. Rob Michaels and said he has always had a passion for fish ever since he was five (5) years old. He started with a recreational pond and then he started raising these and would like to have the option of this being a supplemental thing for him where he could take an early retirement. Ms. Michaels said this would be a seasonal business and people would have to call and make an appointment to come and pick out fish to take them home, and would not be coming and going as they please. The fish are not to be sold as food or anything like that – strictly for garden ponds and hotels some times use them.

Mr. Fox asked if they are called Koi.

Ms. Michaels said yes, Koi, they are a Japanese carp.

Ms. Michaels said they had a sign done and brought a picture of it in there, and did not realize that it might need to change as she did not know what the rules were on that and he put an idea of where she would like to put and that can change to wherever it has to go and would probably take

it down seasonally since they would only operate from April to October based on water temperature.

Mr. Bevington asked Ms. Michaels how big is the sign.

Ms. Michaels replied four foot by six foot (4' x 6') and they would have it set back from the road because they can not obstruct our view to pull out of the driveway.

Mr. Bevington asked Ms. Michaels if the neighbors have any problems with this that she is aware of.

Ms. Michaels replied nothing that she is aware of. One neighbor comes over to see the fish and is usually just curious as to what we are up to.

Mr. Bevington asked Ms. Michaels how long they have had their property.

Ms. Michaels replied ten (10) years this month.

Ms. Steenken asked if this requires an office in the applicant's home.

Ms. Michaels said they have their computer in there but it would be very simple, and they would not have people come into the house, all transactions would be outdoors.

Mr. Fox asked if the pond has already been constructed and if so, how big is it.

Ms. Michaels said yes, maybe 10' x 20' is the main pond and then it has two (2) side ponds – maybe 15' x 4' and those are the ones that hold the fish for sale – the other one would just hold fish for keeping and breeding.

Mr. Fox asked Ms. Michaels to estimate how many fish the pond would hold.

Ms. Michaels said you can really crowd them and he dug it deep – he could put about 1,000 fish in there if he wanted to but they do not have that many fish on their property and they are starting out slow and they have not had to separate them and things like that.

Mr. Bevington asked where the fish would be placed in the winter time.

Ms. Michaels said they would stay in the pond and they would run a heater on the top to keep the ice melted.

Ms. Steenken asked Ms. Michaels if this process involves waste production or odors.

Ms. Michaels replied, no – it is all natural pond water and is run on pumps and filters and ultraviolet light and they do water changes and are cleaner than you would see in somebody's yard. We want the water clear to help see the fish. She added there is natural algae growth.

Ms. Steenken asked Ms. Michaels if they intend to employ anybody to help with this process.

Ms. Michaels replied no, not at this time. If it were booming then that might change but she does not see where the two (2) of them could not handle it because they do not have that many fish and

because Mr. Michaels works swing shift and it is by appointment only and she does not foresee that.

TESTIMONY IN FAVOR OF: None

TESTIMONY IN OPPOSITION OF: Shirley Taulbee, 6170 West Alexandria Road, Middletown, Ohio

Ms. Taulbee said she lives next door to whatever is going on over there and she has not heard a thing, seen a thing until she got this letter and she does not want a fish hatchery next to her property/her yard. She has a pond on her property and she bought the property in 1975 and she is still there and does not want that next door to her. Ms. Taulbee said there is building going on over there all of the time and she complained about the noise of the banging sheds and lean-tos for the horses and she does not think it would be proper to put a fish hatchery next to her property. Ms. Taulbee added that West Alexandria is a busy enough road already and feels it would bring more traffic which they do not need.

Ms. Steenken said she did not have the occasion to go out and look at Ms. Taulbee's property and asked Ms. Taulbee to point out the location of her property.

Ms. Taulbee pointed out her property on the map.

Mr. Salmon asked Ms. Taulbee how many acres she has.

Ms. Taulbee replied 18 point something acres and the pond was there before she bought it.

Mr. Salmon asked Ms. Taulbee what she does with the rest of her acreage.

Ms. Taulbee replied but was inaudible.

NEUTRAL TESTIMONY: None

Mr. Daniel asked the applicant if she has checked with any other neighbors other than Ms. Taulbee in the area and across the road.

Ms. Michaels said she did not go up and knock on any doors but most of them can see our backyard and came over to inquire, but she did not.

Mr. Salmon asked the applicant how many Koi they had on their property last year and presently.

Ms. Michaels replied 400.

Mr. Salmon asked Ms. Michaels how many fish she anticipates they would have if this request is approved.

Ms. Michaels said did not think there would be more than 800 and they usually sell one or two (1 or 2) fish to a family, they do not sell them by the hundreds and could run out of fish if they do not breed or hatch the eggs, it is a possibility but they don't want that to happen.

Mr. Daniel asked Ms. Michaels if she could anticipate the number of sales over a six (6) month period.

Ms. Michaels said maybe five (5) on weekends. She does not really know what kind of interest there will be but it will be by appointment only, and so she really does not know.

Mr. Philpot asked Ms. Michaels if they have sold any fish yet.

Ms. Michaels replied no.

Mr. Daniel asked the applicant if they plan on any additional advertising aide from the sign.

Ms. Michaels said they might have a website but have no intention of shipping the fish out of state or anything – maybe do some cards or flyers but no major advertising. She added it would be by word of mouth.

Mr. Philpot asked Ms. Michaels if she has any idea what traffic they will be looking at.

Ms. Michaels said it will be by appointment only so she does not feel it would affect traffic at all and would probably have just two to four (2-4) appointments in a day.

Mr. Daniel said the applicant made a comment earlier and said it would be five (5) appointments a weekend.

STAFF COMMENTS:

Mr. Fox said when we set our Staff Report there was nothing in the applicant's letter asking about the sign being approved – but if the Board decides to approve the variance and include the sign as part of the variance that would be ok but it would need to be stated as part of the condition of approval that the applicant can or can not have the sign, and if the sign is approved, it has to be ten (10) feet outside of the right-of-way minimum (not the edge of pavement) unless they want to go even further back and that would be fine, but it must be incorporated in the conditions if the Board decides to approve it.

Mr. Fox said Staff Comments are as follows, the request is to operate a business from their home.

Staff Comments:

1. The property is zoned A-1 Agricultural.
2. This area is rural in character.
3. The applicant is seeking a variance, said applicant shall be required to establish to the Board, proof by a preponderance of the evidence that an unnecessary hardship will prevail unless the variance is granted.
4. The spirit and intent of the zoning resolution is not to allow this type of variance, but since this will not change the character of the area the staff will recommend approval.

Mr. Salmon asked Mr. Fox if that would be that the sign would have to be a ground sign.

Mr. Fox replied yes that is correct – it can not be a pole sign.

Ms. Steenken asked if there is a sign size limitation.

Mr. Fox said the applicant is well under the code requirement of 64 feet.

Mr. Daniel said with respect to Ms. Taulbee and the Township Trustees, we did not have any opinion or objection and as far as traffic, West Alexandria is a County road so the Trustees have no jurisdiction.

Mr. Philpot made a motion to approve the variance for BZA11-08, Rob Michaels, 6150 West Alexandria Road, Middletown, Ohio, since the Trustees did not have a problem with it and also it does not change the character of the area, and a sign must be set back a minimum of ten (10 feet from the right-of-way and must be a ground sign. Mr. Daniel seconded the motion. Motion carried.

AYES: Philpot, Daniel, Salmon, Steenken, Bevington

NAYES: None

Case No. BZA11-09V

David Bolden
5335 Hamilton Middletown Road
Hamilton, Ohio

Mr. Bolden, 3939 Stockbridge Lane, Fairfield Township, Ohio said he is here to request a variance for open storage and was going to rent the property to a landscaper who made some inquiries before he decided to rent the property and found out he could not open his business there. Mr. Bolden said he has neighbors that he has no complaints with and there is a man across the street that owns acres of land that has trailers, yard barns and things like that and he keeps it looking good and there is Lithko Concrete behind him that has hundreds of piles of stuff, which he has no problem with their running a business there, and I can have a he house on my property if it is 100% enclosed. Even Wal-Mart or Home Depot keeps theirs 100% enclosed and thought he should be able to (inaudible) landscaper who will keep it orderly and nice and setting trees on parts that are unpaved and things of that nature. Since this has been all said and done, the landscaper has gone to Warren County and he would hate to have this happen to him in the future – to have a landscaping business or whatever instead of a car lot or other type of thing but he wants to expand its use because he had no idea that a guy couldn't put trees, flowers or mulch out there and sell them to home owners. He added he wants to keep the door open for the next time a landscaper or someone wants some open storage and he'd like to know ahead of time if he can rent it.

Mr. Bevington asked Mr. Bolden if this was kind of speculation right now.

Mr. Bolden said at the time it was not speculation, but it has been 35 days later as he couldn't in March.

Ms. Steenken asked what the current use of the property is.

Mr. Bolden said a car lot business is not very good and that is what it's been used for a lot of years – and other than that it was used as a gas station when he was a kid – he can sell motor oil but he can not sell a tree and it is kind of frustrating but he does understand you have to go through these things just to make it work.

Mr. Salmon asked Mr. Bolden if he operates the car lot.

Mr. Bolden said no, he leased it to other people but it was a car lot when he purchased the property.

Mr. Daniel asked Mr. Bolden if he owned the whole place.

Mr. Bolden replied yes, all the way down to Lithko.

Mr. Bevington asked if they got permission to approve on a greenhouse.

Mr. Bolden said that has already been approved in the listing, it just states he can not have open storage and that was a condition that the landscaper was going to have, for instance trees not inside the greenhouse and sitting outside on the unpaved portion would not be allowed because that was open storage as well as mulch, or gravel or if he put bedding flowers in there, but open storage was a restriction.

Mr. Philpot asked Mr. Bolden what exactly he is going to store outside.

Mr. Bolden said the gentleman was going to store trees for sale and small plants and flowers as well as mulch and gravel, like you would see at a small nursery or home improvement place.

Mr. Philpot asked the applicant if he would have a fence.

Mr. Bolden said yes, the landscaper was going to have some fence there and all within the right-of-way, now he might be back next spring, he does not know, whereas it is kind of late in the season to start now.

Mr. Daniel asked the applicant if he has any perspective lookers.

Mr. Bolden said no, but he does not want to have to say that someone can't run a business.

Mr. Salmon said so the proposed storage barn here may or may not be possible.

Mr. Bolden said it depends on whether the future renter wants to do it – this is what he has proposed but he has since moved on.

Ms. Steenken said the issue is open storage.

Mr. Bolden said he felt that the businesses in the area behind him are storing stuff all over the place and he would not be any different as long as it is keep orderly and neat. He has so much right-of-way that has to be cut and he really can not do anything with the unpaved areas, ODOT's right-of-way comes all the way up to where his pavement is and so that area remains nothing but grass on both sides of the property.

No further questions.

TESTIMONY IN FAVOR OF: None

TESTIMONY IN OPPOSITION OF: None

NEUTRAL TESTIMONY: None

STAFF COMMENTS:

Mr. Fox said Case No. BZA11-09V, David Bolden, 5335 Hamilton Middletown Road, Hamilton, Ohio 45011, is requesting a variance to allow the service or processing and materials used in the business to be stored outside of an enclosed building. Staff Comments are as follows:

1. The property is zoned B-2 General Business District.
2. This area is commercial in character.
3. The applicant is seeking a variance, said applicant shall be required to establish to the board, proof by a preponderance of the evidence that an unnecessary hardship will prevail unless the variance is granted.
4. The spirit and intent of the zoning resolution is not to allow this type of variance, but since this will not change the character of the area the staff will recommend approval with the following conditions:
 - A. The open storage area must be kept clean and orderly.
 - B. Proposed storage barn needs a Building Permit.
 - C. All storage of open material such as: mulch, rock, stone, topsoil, etc. must be stored in the designated storage area ONLY.
 - D. The open storage area can not exceed six (6) feet tall.
 - E. Storage of bags of mulch, rock, stone, topsoil etc. must be stored in storage area.
 - F. Landscape the storage area and the area proposed for small plants.

Ms. Steenken made a motion to grant approval of BZA11-09V, David Bolden, and request for a variance to allow the service or processing and materials used in the business to be stored outside of an enclosed building subject to the Staff recommendations. Mr. Daniel seconded the motion. Motion carried.

AYES: Steenken, Daniel, Philpot, Salmon, Bevington

NAYES: None

BZA11-06V

Scott Webb Architect/Music Investments LLC
6895 Morning Sun Road
Oxford, Ohio 45056

Mr. Scott Webb, Architect, Music Investments LLC, said they are here tonight to request a Use Variance for the William Trace Farm and Conference Center located on Morning Sun Road. He said he brought along some pictures to show, and said he wanted to start by saying what this

proposal is NOT, as there was some confusion with their original application where they used the word “restaurant”, and wants to ensure everyone this is not a restaurant and they will not have hours, it will not be open daily, there will be no signs, and it is not a restaurant. Secondly, it is no grandfather’s barn – not a place for fraternity parties or anything like that. It is a program-based venture that has to do with farming organic growing and the environmental way of life out there. The anticipated uses that Mr. Uhl and his team have provided for us are community organic gardening to start with; the Employee Health and Wellbeing Program at Miami University is already using this as Mr. Uhl has very generously given garden plots to people in the community, at no charge, to garden on the property and learn about organic gardening and has built cold frames out there and has been growing plants in there all winter long.

Mr. Webb said this is over 75 acres of property and the way it will be used is five (5) acres for organic gardening around the front part of the property and around the barn; four (4) acres for the community center; and five (5) acres farmed in oats, five (5) acres in alfalfa; five (5) acres of berries and trees; sixteen (16) acres in woodlands to be preserved and 35 acres are currently being farmed with corn and soy beans and the anticipated uses are continued gardening, continued farming in all of the locations that are currently being farmed and educate the community about farming.

Mr. Webb said the anticipated uses for the barn itself will be one-day or multiple day conferences for the University school system, original businesses; an education center for schools and local groups/citizens; elementary school children and a senior center have been out there and they would like to do social events including weddings, receptions, private parties (reunions, anniversaries and birthdays), and in addition to that, Mr. Uhl has paved trails throughout the property and pointed them out on the map/drawing and said they will be for walking, running and open to anyone who is using the center.

Mr. Webb said with regard to the use of the barn itself and food service and alcohol, which is certainly a concern for everybody, there is a kitchen on the property and then he showed a picture of the actual barn how it looks now – and said there is an open area (about 2,000 – 2,500 Square feet), a small commercial kitchen, restrooms and an outdoor deck area. He added that food preparation will be minimal at this location as they anticipate that events will be catered and this could be used as a warming kitchen or something like that.

Mr. Webb said part of the educational goal of Mr. Uhl is to teach people about organic gardening, healthy living and would like to be able to do cooking demonstrations in a “farm-to-table” concept where you can pick vegetables from the garden and come in here and have a demonstration on how to prepare them; and this isn’t something that Mr. Uhl just adopted, he owns a couple restaurants in town with organic, healthy food and organic food are very important concepts to him and translate well where he can encourage that to the next degree.

Mr. Webb said the facility will not be licensed to sell alcohol and there is not going to be a liquor license associated with this. The liquor, if any is served at all, would be brought in you do with wedding receptions or something like that – Mr. Uhl has made it a requirement that whoever would be renting the facility would sign an agreement of responsibility and they would be required to employ off-duty police officers during event to make sure it stays orderly and any consumption of alcohol would be limited to the barn and it’s immediate area.

Mr. Fox asked Mr. Webb if a liquor license is required to even allow consumption on property.

Unidentified person replied no, so long as it is a private party.

Mr. Webb said the facility is limited by building code for 100 occupants; and right now there is an existing driveway that has been shared for generations with Mr. Douglass' property and goes up this way and Mr. Uhl has put a second entrance and this allows a turning radius for school buses to be able to drop people off and we are proposing some parking right off this driveway to small groups and the intention is for none of this parking to be paved – one of the important issues for them out here is to avoid environmental issues and want to be sensitive to that and there will not be any additional lighting for parking. The only lighting will be on the barn itself. Traffic control will also be a requirement of anyone using the facility that they would have to provide traffic management – use of buses or other services required as well.

Mr. Webb said regarding signage, Mr. Uhl's intention is a ground-mounted sign to signify the property, not a flashy restaurant sign, and with regard to lighting on the property, it will be only on the barn itself.

Mr. Webb said one change, Mr. Uhl has looked into and met with the Butler County Engineer's Office (BCEO) as there was some concern expressed by some of the residents about sight lines as you are pulling in and out of the property and he has met with the County Engineer's Office and spoke with representatives from Ohio Department of Transportation (ODOT) who recommended that he widen the second driveway to 30 feet wide where it crosses the right-of-way line, which he is willing to do, and also to provide a concrete apron for ten (10) feet in so that tires don't spin as people try to enter the property.

Mr. Webb has also listed prohibited activities in his brochure – any illegal activity – and prohibits any type of hunting (bow, firearms, etc.), no use of motorcycles, ATVs or other noise-producing activities like that, horses or mountain bikes, or anything that will damage the terrain.

Mr. Webb said one thing we would like to address tonight is this proposal with regard to Oxford Township Comprehensive Plan. The Comprehensive Plan talks a lot about conservation, protection from development, and it also talks about practical ways to protect farm land out in this area and what Mr. Uhl is proposing to do here is a way to do exactly that – the Comprehensive Plan says permitted use for most farms to be entirely subdivided into two (2) to ten (10) acre properties and the old Comprehensive Plan did not let that happen so he feels it is important to say here that we are not proposing any development here at all, in fact, Mr. Uhl has taken down 6 or 7 derelict buildings on the property and has gone to great lengths to clean out the stream ways and Mr. Uhl hauled tons of garbage off of the property and cleaned it up and is trying to be a good steward of the property and the Plan talks about viewsheds out here and they have been improved by removal of the trash, by creating trails for people to walk through and enjoy the property and the rural way of life out there. This is listed in the Comprehensive Plan as a sensitive environmental area – anything that includes streams, flood plains, steep slopes, wooded areas, habitats of endangered and threatened species, and areas with potential for aquifer pollution. We are doing nothing to harm any of those and this development actually saves all of those things and every tree standing there will remain. Mr. Uhl has gone to great lengths as an environmental steward to work on sustainability of the property as well and has worked with the Environmental Protection Agency (EPA) to create a sanitary system, he's using well water and collects rainwater for use of gardens and he is providing geothermal heat for the property as well.

Mr. Webb said the issue to the sensitive environmental areas for the conference planning site are areas that need to be protected by development and that is what our clients are trying to do here – protect this area from development. By purchasing the 75 acres and farming as much of it as he

can, and introducing gardening to parts of the community, we feel this is a way to celebrate the rural life up there and not contrary to its goal.

Mr. Webb said part of the Comprehensive Plan talks about creating innovative zoning to make things happen. In Hanover Township there is a winery, in Oxford and Milford Township there are farm markets and there are lots of ways it can be compatible with rural landscape that are innovative to keep this property from being developed and that is exactly what Mr. Uhl is trying to do here.

Mr. Webb cited the Comprehensive Plan and said in the goals, it states the desire to maintain the rural landscape, and as we have shown here, and have gone to every effort to protect every part of it. The Comprehensive Plan for Oxford Township calls to conserve woods, water, wildlife and other sensitive environmental resources and said they are not developing anything but protecting all of these things that are important.

Mr. Webb said he talked about improving the cooperation and coordination with Miami University as he mentioned earlier some employees have already come out to use the facility. Mr. Uhl is a runner and runs on the trails all of the time and has had school children out to enjoy the property and is a way to create a healthy community at the same time of preserving it.

Mr. Webb said he had a deluge of emails from people in support of this and those who have had an opportunity to come out to the farm and feels it speaks volumes to the cooperation that we are trying to achieve with the university.

Mr. Webb mentioned some other parts of the Comprehensive Plan, including the Rural Character section, one of the goals is to reduce the current rate of conversion of land from agricultural to residential uses and maintain large contiguous areas of rural landscape rather than small patches and we want to keep the property (inaudible) and recognize the importance of viewsheds along the Township roads and are trying to make it very attractive. Mr. Webb showed some photographs of the improvements to the property. The Comprehensive Plan calls for preserving and protecting fields, grazing areas and streams and also talks about enforcing codes to secure the removal of junk vehicles and all the stuff that ends up in our streams and Mr. Uhl has hauled out literally tons of trash from property.

Mr. Webb cited a section on ways to help the rural economy and talks about coming up with new ways to help the rural economy – such as such as through bed & breakfast lodging and scenic byways and their clients are trying to attract people to the notion of farming and gardening.

Mr. Webb said they would appreciate the Board of Zoning Appeals' consideration.

Mr. Philpot asked Mr. Webb how they would enforce what he mentioned of traffic control and such.

Mr. Webb said the only way to use the facility is to use it through Mr. Uhl and is sure he would prepare a contract or something.

Mr. Philpot asked how Mr. Uhl could enforce it if he is not there. He added that lots of times there is a policy but not enforced and he would like to know how they would intend to do that.

Mr. Thomas Uhl, 6637 Contreras Road, Oxford Township, said Jim Robinson would write the contract and no one would be allowed to use property without signing a contract and they would have to agree to pay for the traffic, the security and we would want a retainer and said they have invested a lot of money and the inside is finished up and it cost them a total of about \$1.2 million dollars in it and is not going to let anyone damage it and built it in such a way it will last for generations and they have four (4) sons and plan on passing it through to their children. It is built extremely well, Scott (no last name given) has been through there many times and you are all welcome to come out and look at it. He added that he would enforce it literally through a lawyer and no one would be allowed on the property if he was out of town and we were going to have someone he would refer it to Jim (no last name mentioned) and they would have to sign off to him, the person in charge and it may be a police man that would be responsible or someone in charge.

Mr. Philpot said he is not sure if he understands how the building is going to be used, after talking about gardening and such.

Mr. Uhl said he thinks the question was if someone had a wedding there – and so it would have to comply with all of the regulations of using it.

Mr. Philpot said so we are talking about parties or whatever it may be.

Mr. Uhl said we run three (3) businesses and we also have another small area we bought in 1985 on Contreras Road and cleaned that one up and rehabbed that dairy barn – we do not cater to anything much later than 11:00 p.m., do not cater to any students per se except on a more adult level and there is nothing they do that would indicate they are going to have a party barn and the people that know me, know I will not tolerate that and am not interested in any income to extend myself to that level.

Mr. Uhl said they do not run foolish businesses and he runs very-well managed, professional operations and does not do anything without a lawyer for the legality side of it and he does not know how to assure Mr. Philpot they are responsible people.

Mr. Philpot said that is fine, and that Mr. Uhl has answered his question. He added it would take effort to do that and was just trying to get an idea of what types of parties.

Mr. Uhl replied they would be adults, they would be adult conferences, they would be a wedding... and does not know how else to explain.

Mr. Webb said he thinks it is important to note this is not like just an empty hall to be rented– what is going to go on out there will be program-based and that is why we are focusing on that. It would be someone that wanted to come to a farm to hold a conference or to hold a wedding – not just rented to the general public.

Mr. Philpot said this helps him.

Mr. James Robinson, Attorney at Law, 14 West Park Place, Oxford, Ohio, 45056, said he just wanted to add a different angle from what Mr. Webb has presented to you about this application and the process that brought us here tonight. What is not evident by the pictures is the process that the Uhls have gone through in the last two (2) years. By his count, their office has had 13

contacts with Mr. Fox and his office, they have met with the EPA, The Department of Health, the County Engineer, the Building Department and over that process they have modified their plans, based upon certain recommendations and made by these various officials, to make sure that they comply with every rule and regulation that the County or the State has in reference to this project. These are honorable people and they want to make sure that, should they be able to operate that, it will be in complete compliance with every rule and regulation that encompasses it.

Mr. Robinson said he can safely say, what you see tonight here is in compliance with all those that would apply as we sit here tonight and they certainly would comply with any restrictions that the Board might put on hearing this. They have made the modifications he mentioned and have removed trash, installed cold frames, have students out there which are another component – an educational component - of having lectures and conferences from members and have already received requests from members of the school district to use the facility in an educational component.

Mr. Robinson said the Uhls were here last month and it did not go forward and they spent some time after that meeting addressing some concerns raised by some neighbors. They have also extended an invitation to some of those who they understand had some concerns and unfortunately none of them have taken the tour but that offer still stands and there is nothing to hide out here and hope that some day some of those people will use the property.

Mr. Robinson said Miami University has indicated directly to us that they have no objection and last time he checked with Mr. Fox there was no written objection received from anyone and neither from Hueston Woods, which are contiguous owners.

Mr. Robinson said he wanted to address the liquor issue because he knows it is going to come up, and, as Mr. Uhl's attorney, there will be no activity in that facility unless it complies with all local laws including the liquor laws and is a statement that we will put on record, we will not allow an activity to occur there that is in violation of any liquor law, and said he wanted to make that very clear right now. This project is not their livelihood, it is a long time dream of Mr. & Mrs. Uhl and they are fortunate enough from success in their other businesses to have the money to invest in this – and they do not need to make money at that location for their livelihood and it is their dream.

Mr. Robinson said Mr. Webb indicated how those tillable acres on the property are being used, and the woods are being preserved, the remaining portion of the property, a small portion of the total acreage they own out there, consists of a driveway, a lot of dilapidated buildings which have been taken away and so they have not come in and built a new building, but rehabbed an existing one which he thinks people will find very attractive and has a lot of uses. The proposed program-based uses are not contrary to the public interest and all of the restrictions that Mr. Webb has pointed out and Mr. Uhl has agreed to.

Mr. Robinson said they are willing to add a condition, they are willing to accept, if the Board so desires, that there would never be amplified music outside the barn, and are willing to accept that if there is a concern that it would cause a problem for the neighbors or any interference with their use and would accept that condition as a further indication of the type of programming that they would like to see out there.

Mr. Robinson said he recalls a similar request that the Board had back here in 2006 on Brown Road for a conference center, very similar, and he knows the request was granted, and the persons did not go ahead due to financing but it is very similar to the precedence that you gave in 2006.

Mr. Robinson said regarding Staff conditions, they are ok with items B, C, D and E, and are willing to add that no amplified music be allowed outside the building as stated earlier, and would ask that the Board consider an extension of item A, the hours of operation, even with these program-based things, 11:00p.m. would be more appropriate for these kind of things and asked the Board to reconsider, should they grant this request.

Mr. Robinson said they have heard that there is a question that should the Board grant this variance, that there be some sort of spot zoning, "spot zoning" is a legal term, and the argument over whether this is spot zoning belongs in another venue, in his opinion, and as far as he last checked the Butler County Zoning Resolution is still in effect, and the Board still has the authority to grant variances or not, and whether it is spot zoning or not is for another time and place in his opinion.

Mr. Robinson said we do not think granting the variance will give rise to expansion of the use – as some neighbors questioned where does it stop, and they are willing to accept a variance that identifies the areas depicted in the pictures and accept the condition it is not to be expanded beyond the area which is identified for this and Mr. Uhl has no intention of changing the character of the woods or the tillable acreage and if that is a concern, if the board grants this, a door is open to some sort of expansion we are willing to indicate to you that is not our intention if the Board feels a limitation is appropriate in that regard to satisfy some of the neighbors' concerns that does not propose a problem for us.

Mr. Robinson said there will be no activity out there that violates any liquor law.

Mr. Robinson said there were some concerns about a neon sign and believes that Mr. Webb has addressed it and indicated the sign would be minimal to identify that location and it will not be lighted and the only lights out there will be around the building and vertically in nature, and will not be shining out.

Mr. Robinson said Mr. Uhl indicated there will be no fraternity or sorority parties out there and no rock bands or amplified music, no hunting or shooting and they will do everything to protect and preserve the land and the woods, which is a lofty goal.

Mr. Robinson said they appreciate the Board's consideration with this request and thanked the Board.

Mr. Salmon said there is quite a bit of conflict between the outline which was provided to the Board and what was said tonight. Firstly, it was said they would have a pole sign, which is not allowed, the next thing, Mr. Webb stated the kitchen would be used periodically and in here it states it is full kitchen and can make foods from scratch to finish, and asked which way is it going to be used? This document and what was said, (inaudible) at the Township meeting we have so much conflicting information, and asked which is right and which is wrong.

Mr. Webb responded and said most of what he said was read directly from the document they were talking about and the discrepancy of the kitchen is it is a full-service kitchen and prepare small amounts of food on the site but it is not large enough to serve 100 people from scratch and

if they used the facility they would likely cater it. It is a full service kitchen in the sense that part of the education program is to provide cooking demonstrations from the farm to the table cuisine so we do not think there is a conflict there and with regards to the sign, there is no sign out there currently and Mr. Uhl is not familiar with the Zoning Code as he is so he has corrected that error and there with not be a pole sign there.

Mr. Salmon said there are different things in the document, like the mention of the alcohol in designated areas, off-duty police officer, etc. and who is going to determine that.

Mr. Webb replied the officer in charge.

Mr. Salmon said he spoke to officers today and none of them want to touch that as far as taking keys.

Mr. Uhl said he has Township police stopped out there many times at night and they have told him they would be more than willing to.

Mr. Salmon said he just spoke to their Chief today and the responsibility of deciding who can drive and who can not, most of the time off-duty police are there to control traffic, keep or and protect property; and number three, would be if there was alcohol consumed and somebody they know can not drive, then who determines who is the designated driver or not is not in their realm and would create a great liability for them.

Mr. Robinson said the pole sign is another evolution and complaints issued about an unsightly sign since the time that was printed is another example of the evolution, and there will not be a pole sign. This is one of many things that have changed and there will not be any program there that is not in compliance with liquor laws.

Mr. Daniel said Mr. Webb made two (2) comments, one that a parking attendant in the parking lot, and the other, there would be security in the building and asked if he is correct in hearing they will have a parking attendant in the parking area and a security person which is more like an off-duty Township patrol person so at an event there would be a person in the parking area and someone (inaudible).

Mr. Robinson said assuming there would be alcohol there, it is not going to be the majority of the program, but to answer your question, if there is going to be a gathering, as Mr. Webb pointed out, the maximum allowed number of people under the code, it is going to be an event that would bring that many people, there will be a driving attendant and if there is alcohol there and is in compliance with liquor laws, it is his commitment to have a security officer there. If Oxford Township Police are not available to do that, there are other law enforcement agencies where they may come from.

Mr. Daniel said Mr. Robinson made a comment about 100 people, and asked then if they had 89 people then does that mean they would not have security.

Mr. Robinson said he said the maximum amount is 100 is allowed. If it is a large gathering and you want to put some number on it we will live with it. There will be some events where there will be 10 or 15 people – might be a lecture or a group of school children and we do not think those types of things would require a parking attendant and security. If there is going to be a

large gathering, and some of it has to be left up to discretion and have to judge it, it is your interpretation.

Mr. Salmon asked when they have garden stuff going on, will that be open to the public. Is the building and the garden separate?

Mr. Uhl said it's all the same, and everyone who has signed up for it gets a key code and he would be glad to give all of the Board members a key code and they can come out any time they want. People have been doing that and this is the second year with the security system and they have had no problems.

Mr. Salmon asked if the education things in the barn will be charged to the school districts and how do they determine who is the paying customer and then doing gratis events.

Mr. Robinson said with (inaudible) it was cleared through the normal channels up to the Superintendent's Office. Mr. Uhl secured a written acceptance, signed by the Assistant Superintendent of Schools, this was an authorized fieldtrip by the kids and we had that in hand before they showed up so we would not allow a maverick group to come out here. With Miami University we have releases, Mr. Uhl deals with a faculty representative of the class where those students might come to make sure it is an authorized activity of that particular class and as this continues to grow and he gets more and more requests, we have asked that the university installs some type of internal system so we can get verification that it would be an authorized activity – if they are associated with the schools we need to have verification/authorized fieldtrips.

Mr. Salmon said the information is broken off into the different acreage use, Sections 1, 2, and asked if this was granted would they have any problem with allowing just Section 1 or Section 2 to be used – because that would take out the running tracts if we granted variance on just the garden and limited to those areas.

Mr. Robinson said it would not be a problem.

Mr. Salmon said well they mentioned people attending a conference could use the trails, but then if it were limited to the barn or garden then they would not be able to use the trails. He added that he is worried about is if they are walking trails without supervision, what is to keep them from wandering off the trail on to adjoining people's property or something like that. I'm just trying to understand this.

Mr. Uhl said part of the project is to get people out and moving, in fact he likes running and would like to offer it to a high school to do their morning run and part of the program is to eat well and get active and so forth. The trails are very much a part of the facilities.

Mr. Robinson said in order for someone to use the trails on private property at no charge is not a commercial venture – people would be prohibited from walking the trails.

Mr. Fox said unless the Board was to put that on as a condition, but as staff he would not like to see that as a condition because he would not be able to enforce it on Saturdays and Sundays and would like to keep it on the building.

Mr. Bevington asked Mr. Uhl what other businesses he has in Oxford.

Mr. Uhl said he has two (2) restaurants – Stella 12 Beech and Morning Sun Café. Stella 12 Beech is an upscale American/French cuisine restaurant where they stop serving at 10:00p.m. and is generally closed by 11:00p.m. and is strictly a dinner facility and Morning Sun Café is a breakfast/lunch facility. They have another business in Fairfield, a logistics business, and design and ship materials.

Mr. Bevington asked Mr. Uhl if he has organic or fresh food at the two (2) restaurants.

Mr. Uhl said he started his business because he had problems with what was in restaurants – he wanted fresh food and fresh vegetables and he and his wife talked about it and created a restaurant (inaudible) was trained by Jean-Robert in Cincinnati and he came back from Chicago and that is our specialty of the restaurant – everything is fresh and a lot of the vegetables are brought in by farms daily seasonally and some times the vegetables you order are literally just picked less than an hour before and we bring in vegetables from our farm for that purpose and he believes it is a healthy way to eat and they do the same thing at the Morning Sun Café – we know where the eggs, vegetables and chickens are from.

Mr. Bevington asked Mr. Uhl if he has a liquor license for either one of those facilities.

Mr. Uhl replied yes they do they have now going on three (3) years and he would not do anything to interfere with those and he has no interest in doing anything that would cause a problem with those restaurants and they are very restrictive on who they serve liquor to and are on the edge of town that does not cater to draft beer in a plastic cup and it would not cater to any activity like that and he would not risk everything they have put together for the sake of selling a few beers.

Mr. Bevington asked Mr. Uhl if he has ever been charged with a liquor violation in either of his facilities.

Mr. Uhl replied no and hopes never to because he takes it very seriously.

Mr. Robinson said the students don't start to go out until after the facility is closed and setting a deadline of 11:00p.m. would pretty much predict the fraternities would not be there

Mr. Philpot said the area is rural, and Mr. Uhl is talking about wanting to be there until 11:00p.m. and then you would have people going out to their cars and then the traffic. Mr. Philpot asked Mr. Uhl if he would be opposed to saying that they must leave at 10:00p.m. and no one should be in that building at 11:00p.m. – it is a rural area and we're talking about 100 people so that would be probably 50 cars would be leaving at 10:00p.m. and many people are sleeping at that hour – it may sound silly to you but this is why we are having this meeting so we can get all of these things out in the open. He said he can understand the applicant's desire to have it remain open till 11:00p.m. but he has seen how people linger and linger and linger and now you're at 11:00p.m. – 11:30p.m. before they leave.

Mr. Uhl said he is willing to live within what is reasonable by the Board and wants to be a part of the community and feels it would compliment the agricultural setting and his grandfather farmed out there for a long time and was named after him as a way of complimenting him and feels what they do in their restaurants is a simple healthy way of living.

Mr. Philpot said he is not moving in any direction but this is a big deal – and so we need to clarify exactly what is going to happen if this is passed and that is what he is trying to say – he is not questioning Mr. Uhl and believes that Mr. Uhl is an honorable man.

TESTIMONY IN FAVOR: Amelia Huerta, 714 South Lucas Street, Oxford Oh 45056; Cassie Wilson, 1003 Park Avenue, Hamilton, OH, 45013; Alfredo Huerta, 4489 Shollenbarger Road, Oxford, OH 45056; Ethan Miller, 3770 South Point Parkway, Oxford, Ohio 45056; Matthew Uhl, 360 Symmes Road, Fairfield 45014

Ms. Huerta said she has been working on the farm for the Uhl's for about a year now and they started building the cold frames and (inaudible) and she has been involved in the whole process of creating a garden and she is also currently working on a Masters Degree through Miami University and through that program it has several core (inaudible) and those include community development, inquiry-based learning, basically active, hands-on learning and global understanding and throughout the program they are responsible for creating community engagement lab projects and is where we create a project to engage people in the community – anyone who wants to get involved, and this is the perfect place to create those types of projects to put her school work to use and a lot of the people in this program are teachers and apply this in their classrooms.

Ms. Huerta said she also works at the restaurant as a server and also works on the campus and that is her outlet to get people out there and getting the community involved. Ms. Huerta shared some pictures taken a year ago at the Uhl's farm of some children planting pumpkin seeds and her fellow students engaging to have a real hands-on experience and said she is really excited about the possibility of doing more stuff like this. She said another possibility is having children come and help plant pumpkin seeds then having them return in the fall to help harvest the pumpkins, cook with them and get them to connect with their food on a more immediate level and this is a lot of what she sees for the potential for this space to be used for.

Ms. Huerta said another example of possibilities is called The Slow Food Group at Miami University and one of the things they did recently was to host a canning workshop and she shared some photographs from the workshop and it was all about taking real, whole ingredients, like growing tomatoes for themselves.

This kind of immediate connection between the garden and the facility there, the merging between those two (2) really present such a good opportunity to have people supporting each other and it needs to be a group thing and can not be just one individual.

Ms. Cassie Wilson said she works as the Assistant Director of the Employee Health & Well-being at Miami University and about a year ago the Uhls came to us and invited us to participate in farming plots on their land and they opened it up to employees and had 10 -12 employees and faculty had gardened before and were looking for more space and some had never gardened before and wanted to learn. We got a good group out there. The Uhls were wonderful about opening up and showing us around and we had about 20 participants from the end of May to November this past year and the feedback as a Program Coordinator was wonderful and it was a healthy experience for them and they brought fresh vegetables home and it is a wonderful complement to our program – health, nutrition and the whole gamut and we are really excited to work with them and they have been professional the whole way and we have opened it up again to employees this growing season and we are really excited to have this opportunity.

Ms. Wilson said she supports that 100% and will continue to support it.

Mr. Huerta said he is a professor in the Department of Botany at the Miami University and has been teaching for 22 years now at Miami and teaches courses that are relevant to environmental conservation and stability and he is not the only one that teaches those types of courses on campus but it is something that he deals a lot with in his teaching and one of the things he thinks that is critical is to help our students, most of whom have never even planted a seed. He is the faculty advisor for the group mentioned earlier, Slow Food Miami University, which is the local chapter of a financial organization which happens to be an international organization based in Italy, which has as their main focus is to promote healthy eating and sustainable agriculture and those types of things, so as the faculty advisor for this group, he would like to read a short paragraph written by the President of their chapter, that was written in favor of this:

“My name is Katie (last name inaudible), I am a Miami University Freshman, aspiring farmer and President of Slow Food MU. Slow Food is just one chapter of an international organization pushing for good, clean and fair food. As a campus chapter, we focus on building ties between university students and our precious farm land by organizing activities that connect students with their food such as cooking classes, film showings in various forms of community outreach that have been successful in bringing students closer to the people that produce our food and we can better connect students with community members... on behalf of Slow Food I urge you to approve this and it will help to preserve rural communities and traditions and strengthen the bond between campus and community and further the mission of Slow Food M.U.”

Mr. Huerta said he feels it is important for everyone here to understand that the issues we deal with in trying to help people learn where our food comes from is really critical and this represents that opportunity.

Mr. Ethan Miller said he is a staff member at Miami University and one of the people that got a garden plot under the cold frame and there is a greenhouse next to it and had things sprouting out there all winter and he heard about the opportunity through an email from the Office for Employee Health & Well-being for free so he responded and went out to sign a contract to state what we would be doing and they gave us the keys and the code to get into the gate and would have use of it from May until November and hopes to be planting peas, beans, carrots, onions, etc, soon and recommended it to others.

Mr. Matthew Uhl said he did not want to be redundant and knows that everyone has hit on every topic so far and said his opinion is this is a very unique venture offering something that is not offered in any capacity in the area right now and sees an obvious demand for this service and offers for the betterment of the land as well and has been a part of it since the beginning since it was littered and abandoned and turned into something that is very picturesque and inviting and it will continue to evolve and has really filled a niche that has not been filled within the region.

Mr. Fox said he received 17 email messages today in support of this, and will not read all of them due to time constraints, but they are here for anybody to review and he has read them, and wanted to bring this to everyone's attention and said he believes Mr. Robinson and Mr. Bennett has a copy of them. He added that he likely has more in his office which he left earlier in the day to look at all of the recent flooding.

Mr. Robinson said by their count there are an additional 14 after that for a total of 31 and then a couple more bringing it up close to 40.

Ms. Steenken made a motion to accept the photographs and emails sent to staff as part of the record. Mr. Salmon seconded the motion. Motion to accept has been approved.

AYES: Steenken, Salmon, Daniel, Philpot, Bevington

TESTIMONY IN OPPOSITION: Mr. Jay Bennett; Mr. Jonathan Woche, McBride, Dale, Clarion; Susan Wilson; 1624 Hester Road, Oxford; Adrian Bolser, 4194 Stahlheber Road; Sandra Douglass, 6925 Morning Sun Road, Oxford, 45056; Robert Douglass, 6925 Morning Sun Road; Oxford Ohio 45056; Cathy Butterfield, 4377 Harris Road, Oxford; John Gifford, 5511 Morning Sun Road, Oxford Ohio; Calvin Ziegler, 6334 Morning Sun Road; Karen Remley, 7341 Chatham court, Unit B; Carroll Cleevenger, 6401 Morning Sun Road, Oxford, Ohio; Ms. Emily Smucker, P.O. Box 1049, Medina, Ohio, 45258

Mr. Jay Bennett, said he is here on behalf of a number of people and with respect to what we've just heard about use of the conference center, natural foods, he says it's a great thing and kudos to Ms. Huerta and Professor Huerta, and the others, he feels those things are commendable.

Mr. Bennett said we heard a lot about preserving the farm land and maintaining rural landscape, which is good, however, we are hearing about police officers and traffic control officers and cars, and that does not protect the peace, quiet and uninhabited state of farm land and the woods because this is a Use variance for 75 acres that supports and features a commercial activity.

Mr. Bennett said in the flyer you got for William Trace it basically said there would be social events and as far as the farming part of it – all of the things they speak of can be done under the current zoning – it can be done under the agricultural zoning. What can not be controlled is when you have 100 people arriving there celebrating something, alcohol is available this changes the character of the area. In the Staff Report Mr. Fox said, "The spirit and intent of the zoning resolution is not to allow this type of variance, but since this will not change the character of the area the staff will recommend approval with the following conditions..." and he would respectfully disagree. Putting a 75 acre use variance in a pristine agricultural, environmentally-sensitive environment is definitely changing the area.

Mr. Bennett said all of the farming, the gardening, and having employees come out and having school children out there are a great goal and a great operation, but it can be achieved by agricultural land without a variance. He said he reviewed the comprehensive plan (and showed a map) and in his 37 years of doing Zoning and Land Use, he has never seen a plan look like this. The Executive Summary itself decries the loss of 999 acres of farm land to residential development and this is a loss of 75 acres to a commercial activity. This area is unusually environmentally sensitive and if you look at the map, Agricultural is the most intense use of Oxford Township then we have Unsuitable For Development, you have State Park land and Environmentally-Sensitive – those are the four (4) uses that are outlined by the Comprehensive Plan.

Mr. Bennett said the fact remains that the entire 75 acres will be use variances – and granting the 75 acres of potential commercial activity in a pristine environment is inconsistent with the Oxford Township’s Comprehensive Plan. He understands, and believes, Mr. Uhl has no intent to expand, but, once the variance is granted it runs with the land – it is not a personal license for the owner and does not cease upon the owner’s transfer of the property and it can not be conditioned upon the transfer of the property to somebody else and is basically a limitation on the alienation of the property if a condition like that is attempted to be put on.

Mr. Bennett said the step worth mentioning that this variance is solely for the use by the applicant, any transferred property, and the new owner must come before the Board for approval and is not what the case law says. The next owner can use the commercial aspects of this use in a way that Mr. Uhl never contemplated and even if you could relegate this to a single owner, the owner is an entity that has a perpetual life, and LLC, so even if there could be a condition attached that said, “if this property is transferred to another owner, then they would have to come back before this Board for this variance again, that is a non sequitur, it is moot because basically this entity could hold property from now until forever with only the (inaudible) interest in that particular, whether it be shares or units, or members whatever in the LLC, or if it is changed to an incorporated entity, it could be changed (inaudible) and still the same type as it is now.

Mr. Bennett said what you are here tonight to decide is whether or not Music Investments LLC will suffer an unnecessary hardship. Based upon the code, the Ohio case law and expert analysis, there is no unnecessary hardship that can be proven by the applicant.

Mr. Bennett said the showing an unnecessary hardship is required for granting of a use variance and the owners must demonstrate that they will suffer an unnecessary hardship by the literal enforcement of the zoning code and the map and the question is, how the Board does determine an unnecessary hardship and whether it has been shown. The hardship is generally determined by the characteristics of the property, the nature of configuration and or topography of a piece of property and the uniqueness of the property. The only other reason for a use variance and the unnecessary hardship that must be proven is that there is a substantial change in the character of the surrounding area and this area has been the same for generations.

Mr. Bennett said use variances are not favored in the case law since they constitute a re-zoning without the benefit of a legislative process that takes into consideration the adopted Comprehensive Plan. The Board is being asked to change 75 acres from one of the most environmentally-sensitive areas, one of the least impactful uses Agriculture, to a commercial activity, one of the most impactful activities.

Mr. Bennett went on to further explain what is required to demonstrate an unnecessary hardship of use variances.

Mr. Bennett said agriculture is definitely economically feasible. Mr. Bennett said the Board may find there is a self-imposed hardship, a person who purchases a piece of property with knowledge of the zoning of the property but with the intention of using it for another purpose rather than obtaining a variance is not entitled to the Use Variance to relief such a condition.

Mr. Bennett cited a quote from *Culkar v. Brooklyn Heights*, and said it states it quite succinctly, “Unnecessary hardship” results when it is not economically feasible to put the property to a permitted use under its present zoning classification due to characteristics unique to the property, however, merely stating that the land would be more valuable with a variance or less valuable

without it, does not amount to a sufficient hardship, rather the evidence must be presented to show the property is unsuitable to any of the permitted uses zoned.”

Mr. Bennett said just from hearing from the others we have heard from tonight we can conclude that it is not unusable and it is feasible to use this for agriculture and in fact it is being used for agriculture and he does not see that an unnecessary hardship has been presented nor has the character in the area changed, however, this may be a case of self-imposed hardship. This property was purchased in 2009 and there have been a lot of changes and a lot of improvements made to this property prior to them coming to ask for a variance.

Mr. Bennett said it is the province of the County Commissioners to require there to be an inquiry, a study of whether this could be consistent with the Butler County Land Use Plan done in an application to re-zone the property and believes the Board should deny the variance in that no unnecessary hardship has been demonstrated or can be demonstrated and for the substantial change that is requested the proper venues for re-zoning, or if the Board should decide, he would suggested that three or four (3 – 4) acres be split off from the 75 acre parcel and the rest remain agricultural and that the 3 -4 acres be submitted for a B-PUD (Business Planned Unit Development) which he had suggested to Mr. Webb previously. A B-PUD allows certain conditions to be attached to the permit that the zoning code will not allow and is basically wiping the slate clean and having a clean drawing board so all the impacts, which are substantial, to his client can be addressed. In a B-PUD, the minimum lot size is 3 (three) acres and requires 25% green space. The County Commissioners can reduce the parking by ten percent (10%) and must confirm to the Butler County Land Use Plan and requires a landscape plan and screening is required and he has dealt with conditional uses and screening is the key where you are trying to reduce the impact of one use when it is next to another use and they should not really be next to each other but by some anomaly of the zoning and development of that particular area you find them next to each other and then you are depending upon those types of situations in order to buffer.

Mr. Bennett asked the Board to deny the applicant’s variance and allow them to choose a more appropriate proceeding and either submit a B-PUD for a portion of the property and the remainder remain A-1 (Agricultural) or to apply to the County Commission for a re-zoning of the 75 acres.

Mr. Bennett said last week he took all of the application materials and the staff report and sent them to a land planning expert, Mr. Wocher, from McBride, Dale, Clarion, a very well-respected land planning firm in Cincinnati, and he took those materials and did an analysis as to whether it demonstrated unnecessary hardship.

Mr. Jonathan Wocher, McBride, Dale, Clarion, 5725 Dragon Way, Suite 220, Cincinnati, Ohio, 45227, came to the podium and said he is a Planner and a Partner with McBride, Dale, Clarion, and worked with communities to develop comprehensive plans, zoning regulations and also works with developers with getting through processes similar to this so he has the experience and reviewed the materials.

Mr. Wocher gave a presentation to the Board from a professional Planning perspective on unnecessary hardship and said a use variance is not very common and is very hard to get and explained what the standards are for unnecessary hardship.

Mr. Wocher said he did not hear the term “unnecessary hardship” in the applicants’ presentation and does not feel this was the standard that they were shooting for and he thinks they missed the mark by not doing that.

Mr. Wocher said this is basically saying there is no way to use this property without a variance and that is really is the question you have to ask yourself.

Mr. Wocher distributed some materials to the Board in support of his presentation and the standards of variances.

Mr. Wocher said it is his opinion that the property can be used for residential use or agricultural use or both, which are uses that are permitted in the A-1 district that there is no unique conditions or features that justify treating this property differently than other properties that are similar and justifies allowing commercial use which is not permitted in the area and he offered that the Zone Map Amendment is a more appropriate approach and the legislative process would be a more appropriate place to make the argument on whether or not this is consistent with the Comprehensive Plan. They are presenting information that is more appropriately presented to a legislative body to determine whether a zone change should be permitted.

Mr. Wocher said the need for the variance is a result of the actions of the applicant and not related to specific conditions of the property and related to the desire to have commercial operations and that granting a variance will adversely impact the rights of adjoining property owners and is not a part of the community’s plan and is not consistent with the Zoning Resolution and would give special privileges to this owner that would not be afforded to other property and does not feel they have demonstrated an unnecessary hardship and recommended to deny the request.

Mr. Bevington asked Mr. Robinson if he had any questions.

Mr. Robinson replied he did not.

Unidentified speaker asked, for clarification, to have Mr. Bennett identify the people he does represent.

Mr. Bennett said he represents Ms. Emily Smucker and the Douglass family.

Mr. Susan Wilson said her parents are Bob and Sandy Douglass, and she grew up on that farm and some day it will be hers and you can see it butts right up to our property and her concern is about the proposed parking and the potential of cigarette smokers smoking on the property with the possibility of creating a fire and damaging her parents’ property, their crops or vehicles from potential fire. Ms. Wilson said the education factor here however if they are talking about children planting seeds they will come in May, and then school will end so they will not see the plants grow during the summer and if they get a chance to come back with school opening in the fall that would be great but all they would be learning would be how to put a seed in the ground not how it actually grows during the summer.

Ms. Wilson said a block away from Mr. Uhl’s restaurant is the Oxford Community Art Center that hosts a children’s garden and is there all through the summer and children go there every Saturday to plant seeds, watch them grow and get to take some of the food home and they take some of the food to the pantry to give away to less-fortunate people.

A mile away there is also the Family Resource Center that offers garden plots for people in the community to plant their own garden and she said they can go do that in town. There are other alternatives then coming out here and there are walking trails out at Miami University for people to use.

Mr. Adrian Bolser said he is here on behalf of the Krauss and Bolser family, who own property on Morning Sun Road, and we were informed about the March meeting because our property is adjacent to the Uhl property and part of the families have been closely tied to farming for generations. He said he does not know Mr. and Mrs. Uhl personally, however, we do admire their hard work in starting their businesses and thanked Mr. Uhl for his service to our country serving in the U.S. Marine Corp. Mr. Bolser cited some of the applicant's statements about their goals supporting their request (from the Uhl's paper page one).

Mr. Bolser said many of the items listed as anticipated uses seem to fit the concept very well however, we do find some items to be inconsistent with that concept, including 2A – one-day or multiple-day conferences and 2C to include social events including wedding receptions, private parties, etc. and these do not fit with the concept, including living in balance with nature, the applicant has expressed. He added that the consumption of alcohol contradicts the concepts and we object strongly to those proposed uses.

Mr. Bolser said they are concerned that if approved, the variance would remain with the property and are not in favor of the current description of anticipated uses.

Ms. Sandra Douglas said several years ago we wanted to do a bed & breakfast and it was an addition that we wanted to add to our house and several of you remember me. Before she could do one thing she had to come before this Board and present this and then you let me know whether or not we could do this and she does not think that was done.

Mr. Robert Douglass said they had to get permission from these folks before we could do anything and he never got this letter till two (2) years until this project had began and is almost complete and asked why two (2) years.

Mr. Fox (2) years ago the applicant applied for a Building Permit to convert the barn to a house and we issued a permit and we were in negotiations and Mr. Robinson has said close to a year now to where we are today.

Mr. Douglass said it changes monthly and does not think they know where they are going with 75 acres of commercial in the middle to beautiful Butler County where it is zoned agricultural. His family came here in the 1800s and they homesteaded and he is concerned if they allow the zoning change to commercial look for me to be right back in here because I'm going to put up a Holiday Inn and I will come down here and say, "I'm ready to open and I want a variance" – do I expect you to grant that to me? No!" That is what he is presenting to you tonight – something that he has decided to do and pull the wool over your eyes and you don't realize what you will be getting into if you allow this zone change.

Mr. Fox said this is not an actual zone change. We are not changing the physical zoning of the property, they are asking for a Use Variance.

Mr. Douglass said he is concerned about fires and the lack of fire hydrants. If there is a fire and there is a wedding there will there be a sufficient amount of water and sprinklers to put the fire out. Will there be a loss of life and he is also worried about the safety for people on the trails because there is a bobcat and coyotes in the area and they may prey on wildlife but can prey on people. And there are other animals there that will be affected by this.

Mr. Salmon said we have been in contact with the City of Oxford and they have a full-time Fire Department there and would take approximately ten (10) minutes to arrive out there.

Ms. Cathy Butterfield, 4377 Harris Road, said she wanted to state that the Butterfield Farm Market is strictly agricultural and after reading through this (inaudible).

Mr. John Gifford said he has lived there for 22 years and thinks the idea in concept is great but voiced his concern over the location and increased traffic and there have been several accidents there.

Mr. Calvin Ziegler said he is opposed to this request and is concerned about traffic accidents with deer and alcohol consumption on the premises.

Ms. Remley said she is concerned about what was brought up versus what information was given in the packet and the information is not exactly clear or defined and has concerns about safety, the keys given out to people and who will have access and loitering, lack of lighting, in the proposed parking area and traffic. She added that she does not feel they answered those issues clearly.

Unknown speaker (name and address inaudible), Fairfield Township, said his family owns the property that was divided off of the original Douglass homestead back to 1924 after his grandmother came over from Poland and is speaking on her behalf. He does not have a problem with Mr. Uhl's farming but does have a problem with the conference center and meeting center. The lodge at Hueston Woods has a conference center and meeting facility and we already have one and do not need another reception area or meeting center in a rural area. People have access to Hueston woods' trails, woods and fishing and Mr. Uhl's program that states if the variance is granted will be transferred on and kept in his family.

Mr. Cleevenger said he opposes this request and has a concern for traffic and potential increase in crime and would like it to remain rural.

Ms. Emily Smucker said she received a letter because her property is adjacent to this property and read a letter she wrote stating while she is not adverse to agriculture for educational purposes and does support enriching educational experiences, she is in opposition of this request and is concerned about the consequences of trespassers, hunters, all-terrain vehicles doing damage and for safety and feels it will open a Pandora's box of unintended consequences if this is approved and her family asks the Board to deny this request.

Mr. Fox asked Mr. Robinson if he has anyone he would like to cross-exam before he does any rebuttal.

Mr. Robinson said he thinks it is appropriate and appreciates the comments, particularly by the Bolser/Krauss family, Mr. Gifford and Mr. Cleevenger because they put in their concerns which were well stated and for you to consider on this application. What we have is disturbing, we have a professional from out of town who refers to and mislead you in terms of what the proper standards in our own Butler County Zoning Code and thinks that is very unfortunate and unprofessional and would refer you to Section 26.82 of the Butler Zoning Resolution which talks about our standards and whether or not you will grant a variance and they are not as stated here previously and talk about whether the property in question will yield a reasonable return or whether they can be of any beneficial use of the property without the variance.

Mr. Robinson said what we are really talking about is whether and how the applicant can use this barn, an existing structure it's no longer applicable to the type of farming and agricultural use it had when it was built and that is the question we pose to you – we can not really use it for any purpose without variance and whether the variance is substantial, point B in our Resolution and that is that the variance is not that substantial, contrary to a misunderstanding perhaps, we are not seeking a variance for all 75 acres and we will delete any appropriate restriction on any variance you might grant that would be limited to the use of that barn and the immediate area around it as defined and what it is currently being used for and none of the rest of the 75 acres. We would certainly agree to that and have no intention or desire or was it implied to that we would use the entire 75 acres or seek a variance for commercial use of the entire 75 acres and hope that explains to some of those who have spoke to you about that issue and it is obviously important to them and certainly understands their concern. Our position is that it would not substantially change the character of the neighborhood.

Mr. Robinson said whether the variance would adversely affect governmental services, water, sewage and garbage, as we have indicated this is self-contained and they have met with the Health Department, the Environmental Protection Agency and have been collecting rain water and there will be no adverse affect and no additional request for governmental services.

Mr. Robinson said Mr. Bennett asked you to consider whether the property owner purchased the property with knowledge of the zoning description. It is true they bought it knowing it was agricultural and they have rented out the fields and decided not to alter the use of the woods and are now faced with the immediate area from the barn and what can they use it for. The solution of this with the help of Mr. Fox over the past two (2) years, what can we do and what can we use that for and that has evolved into what we have submitted to you here tonight.

Mr. Robinson said yes, they knew what it was when they bought it and have tried to find ways to use it in a positive way with the help of Mr. Fox's office as well as other County officials. We need a variance for them to operate that barn in the way it has been described and whether the spirit and intent behind the Zoning requirement would be observed and substantial done by the granting of the variance and feel it is in keeping with the Oxford Comprehensive Plan and presented this to the Oxford Township Trustees and they did not take any action as a courteously but we felt it did meet with the Comprehensive Plan of Oxford and is in keeping in the spirit of the Butler County Zoning Resolution.

Mr. Robinson said in terms of proof by a preponderance of the hardship, all we ask is that you use our standards and not Cedar Creek or some interpretation that does not apply here. We have standards, they are in place, they are lawful and we ask that you consider this resolution as it is proposed and we are only seeking a variance for that immediate portion around the barn and not the entire 75 acres and we would accept any condition you would put on it that would keep us within the confines of that area.

Mr. Daniel asked if that building has a sprinkling system.

Mr. Fox said you would have to ask Mr. Webb because the permit they have is for a Residential Application, if this got approved then they would have to come back to us and Mr. Webb is an architect and would have to stamp and seal drawings. He asked Mr. Webb if it will have to get sprinkled.

Mr. Webb replied no –not every commercial use has to be sprinkled – if occupancy is limited to 100, there are a lot of other avenues in the code (the extra fire alarms and things like that) to get around the technically, but first and foremost that is what would limit the occupancy. If occupancy went over 100 it would require sprinkle, but not less, so it would comply.

Mr. Daniel asked if the Fire Department has looked at the building.

Mr. Webb replied nobody has looked at it because we need our zoning approval first, as Mr. Fox pointed out it was a permit to build a residence then when Mr. Uhl contacted me to determine if the building could be turned into a commercial use, I did a code review for him, investigated things like fire sprinkles, number of exits and all of those things, and determined that it could be converted to a commercial use and it is going to take a reapplication to the Building Department for extra fire safety measures, rated walls and stairs.

Mr. Daniel asked Mr. Webb if he knows what the walls are rated now.

Mr. Webb said right now the building is not complete. Mr. Uhl stopped construction and had me look at it to see if it could become a commercial use. We need zoning approval first before we can turn it into a commercial use, rather than spend the extra money and not get zoning approval would be a waste.

Mr. Fox said this application is a Residential Application and has no commercial aspect in it at this time that he is aware of.

Mr. Webb said his evaluation was that it does not currently comply but could comply if it were finished correctly.

Mr. Daniel said over the past year, the owners have raised the former house with building permits for the conversion of the existing barn to a residence (inaudible). Then asked what does this building have anything to do with an organic farm. If you can answer that I will not say another word.

Mr. Uhl said it started with the barn that we weren't sure if it would be useable and was literally full of cow manure and we literally did not know what we had when we started. We could not start without some type of permit and that is how we got the permit from the County.

Mr. Fox said Mr. Daniel is asking, how does the organic farm relate to the activities that are going to take place in the building, and from his own understanding they are going to grow organic food on the property, whoever it is, these people will then have the opportunity to go into this barn and cook their organic food, right, and eat it.

Mr. Uhl said we are going to feature that activity in the facility.

Unidentified man started to speak. Mr. Fox responded and reminded everyone they are all done with testimony at this time and the questions will come from the Board members at this point in time.

No further questions.

STAFF COMMENTS:

Mr. Fox said, Case No. BZA11-06V, Scott Webb, Architect / Music Investments LLC, 6895 Morning Sun Road, Oxford, Ohio 45056, is a request to open a recreation facility and restaurant.

Staff Comments are as follows:

1. The property is zoned A-1 Agricultural.
2. This area is rural in character.
3. The applicant is seeking a Variance, said applicant shall be required to establish to the board, proof by a preponderance of the evidence that an unnecessary hardship will prevail unless the variance is granted. .
4. The spirit and intent of the zoning resolution is not to allow this type of variance, but since this will not change the character of the area the staff will recommend approval with the following conditions:
 - A. Hours of operation will be 8:00 A.M. to 9:00 P.M., Monday through Sunday.
 - B. The amount of clients must not exceed the allowable building capacity.
 - C. No further expansion of the facility without Board approval.
 - D. This Variance is solely for the use by the applicant. Any transfer of property, the new owner must come before the Board for approval.
 - E. All conditions for this facility must be recorded on the deed of this property.
 - F. All driveway access must be approved by Ohio Department of Transportation per their standards
 - G. Commercial Building Permit is required for the structure

Mr. Fox said those are the comments he has and is welcome to any comments the Board deems necessary.

Mr. Philpot asked if the Board decides to make a motion to deny the variance request and it fails, do we then have to make another vote to allow a variance.

Mr. Fox replied that is correct and suggested Mr. Philpot make a motion if he felt he has a recommendation.

Mr. Philpot said he does not agree that the character of the area will not be changed – it will be, and he sees no hardship for the land and he has listened with an open mind and asked questions.

Mr. Daniel said he feels they put the horse way before the cart and feels sorry for the money that they spent with this and believes it is a lot better than what it was many years ago.

Mr. Salmon said the uses of organic gardening and farming do not require this variance. Ms. Steenken agreed with Mr. Salmon's opinion and also feels the commercial use of the barn would change the character of the area.

Mr. Philpot made a motion to deny the applicant's request for a Variance, BZA11-06V, Scott Webb Architect/Music Investments LLC. Mr. Daniel seconded the motion. Motion to deny has been approved 4-1.

AYES: Philpot, Daniel, Salmon, Steenken

NAYES: Bevington

ADJOURNMENT:

A motion was made by Mr. Salmon, seconded by Mr. Daniel to adjourn. All in favor, motion carried.

These minutes represent a summary of the proceedings and do not purport to be the entire record. A complete transcription of these proceedings was taken from an audio tape by James M. Fox under supervision of the Secretary and may be obtained upon written request. Any charges associated with preparing such transcript shall be borne by the person requesting such same and must be prepaid.

Hamilton, Ohio
April 19, 2011

Tom Bevington, Chair

James M. Fox, Secretary

Lee Margraf