

BRIMFIELD TOWNSHIP BOARD OF ZONING APPEALS

MEETING MINUTES of March 18, 2015

Brimfield Town Hall Meeting Room – 1333 Tallmadge Road, Kent

Present: Chairman Bruce Knippenberg V.C. Lisa Cotten Scot Etling
Vince Murdocco Ed Shutty

Alternates: Cheryl Rueschman

Absent:

Staff: Dick Messner, Zoning Inspector
Wendi O’Neal, Assistant Zoning Inspector

Public Present: NONE

Name	Phone	Company / E-mail
Cheryle Reits	330.329.1118	Clr7894@aol.com
Robert Cady	330.338.5841	
T.J. Fioritto		
David M. Langham		440.229.4260
Tom Fioritto		330.221.4159

CALL TO ORDER:

Brice Knippenberg calls the Brimfield Township Board of Zoning Appeals to order at 7:18 PM Wednesday, March 18, 2015 meeting.

Roll Call:

Cotten = Here **Etling** = Here **Knippenberg** = Here
Murdocco = Here **Shutty** = Here **Rueschman** = Here

MOTION#2015-009

A motion is made to accept the Agenda by **Vince Murdocco**, seconded by **Scot Etling**. Motion carries.

MOTION#2015-010

A motion is made by **Scot Etling** to approve the January 14, 2015 minutes, and seconded by **Vince Murdocco**. Motion passes unanimously.

MOTION#2015-011

A motion is made by **Vince Murdocco** to approve the February 18, 2015 minutes and seconded by **Scot Etling**. Motion passes unanimously.

Dick Messner dually notes that the meeting has been advertised per the Ohio Revised Code.

PUBLIC COMMENTS: None

SWEARING IN OF APPLICANTS AND COMMENTERS:

Bruce Knippenberg states that the Board of Zoning Appeals is a quasi-judicial board. We have an application for an appeal tonight. Anyone having any statements, comments or questions to make tonight, we ask that you state your name, address for the record and confirm that you understand you are under oath when speaking tonight.

APPLICATIONS:

Zoning Application Appeal:

Applicant: Thomas Fioritto
Location: Brimfield Drive
Parcel: 04-023-00-00-043-000
Proposed Use: Nursery

Bruce Knippenberg: We have the one application an appeal for a verdict passed down by the Zoning Inspector to allow a nursery. The applicant is Thomas Fioritto. Mr. Zoning Inspector would you like to key in.

Dick Messner: The legal notice has been posted. The contiguous property owners have been notified. On February second this year, Mr. Fioritto came in with an application for a permitted use for a nursery; which is permitted use in the commercial district under Section 309.02.A.6 retail establishments. We spent a week reviewing it; going over different things and one of the key issues that we were looking at was the print that he submitted with it. And which is basically the same permit; it is the same permit that was submitted to the Board of Zoning Appeals by Cappelli Surveying on 6-30-2012. At that time it was for a different application. From what we looked at it was simply hand drawn in some stalls which would basically be part of the stuff that would be handled at a nursery. We went through and did some research on our zoning and for retail and with the county prosecutor and a letter was sent on February 9, to Mr. Fioritto stating that we were denying his application for reasons highlighted in that letter as to retail establishments, nurseries, plants and animals, principal use of the property, sales of, and we also looked at chapter ten definitions for sales and so forth, principal use. It appeared to us that what we received was vague. There was no area for sales or the taking of sales, money, credit cards, so with that reason as spelled out in the letter, which you have copies; also a copy of the letter from the Portage County Prosecutor. We disapproved his application. We explained to Mr. Fioritto at that time his legal options was to submit an appeal to the Board of Zoning Appeals and on 2-26-2015 we did receive that application. You should have all the material that we have in front of you.

Bruce Knippenberg: Okay. Mr. Fioritto do you have any comments that you would like to make at this time or explain.

Tom Fioritto: I'm going to turn it over to my lawyer, Mr. Langham.

Bruce Knippenberg: Okay. Mr. Langham.

David Langham: My name is David Langham, my address is 200 Fremount Blvd. Broadview Heights, Cleveland, Ohio 44417. I understand that I am under oath. I am an attorney so I am also an officer of the court and have an oath as well. I understand from the application that it was filed and there was a timely appeal of it. The request was for a permitted use. The permitted use is as specified in your codified ordinances. It is a permitted use as a nursery. It was rejected because of the belief that it was vague. I'm not quite certain how vague could be vague when you use actually your own term, from right out of your own ordinance. So if the term is vague then your ordinance must be vague. We asked for permitted use of a nursery. I understand the zoning inspector, and to my belief is also the economic development director denied it because he thought it was vague and was using the same print as before. Whether or not the print was used as a prior application is irrelevant from a stand point as to what was submitted previously. Submitted in good faith based on the use that is being applied now; it actually works out to his advantage to be able to use the same print. That is why he choose the occupation that he choose to utilize his property to do that. He certainly if he would have used it for a different reason he would have submitted a different drawing like a bar or something else. But none the less the use as a nursery is what he intends to use it for and I really understand why it would be denied as vague on its face. Particularly from the economic developer director you would think like to bring some business into this township. And as a side note, he tried to apply before for the same use and the inspector just returned the paper work to him without even denying it. And when he returned it Mr. Fioritto asked him why it was being returned and he said well you don't have a business plan attached to it. I did a public records request from the Township to see how many other applications had business plans attached to it, to find out all the niddy-gritty details of how every business is going to run when it comes into your township. There was none. When asked previously of the Zoning Inspector in you know how to do that, the inspector and economic director told him to use the wrong form, when he asked what form do I need, he was told by him to go look it up on the internet. Rather than trying to cooperate and help him try to get it right. This time it was submitted on the right form for the use that your city requires it to be and clearly it is consistent with your rules and regulations and law. That to just deny it claiming it is vague seems to be a bit, I don't know what the proper term would be, but I can't think of another term of than it being down right goofy. When you use your own

word to do it that way asking for more information, I'm certain if CVS moved in and they put down that they wanted to put in a retail location you wouldn't say that that was vague. You would tell that it is what it is upon what they are asking; same way here and any other type of business if they do that. I can't understand why you won't want it in for this reason. It is consistent with your ordinances. Certainly I would hate for him to have to A. either find another type of business to utilize his property that he bought in your township or B. take this to the next level of which he doesn't want to do. He would really like to be a good citizen, a good corp. citizen. He has incorporated a new business for this venture, Fioritto Nurseries, LLC. And he wants to get moving on it. And would respectfully ask each of you to grant his appeal and to find that the reason that was denied for vague is not applicable and to further make sure that when the zoning inspector looks at it, follows 201 and 202, make sure all of the elements of the application were there and they were, I didn't see that anything was missing. Certainly there was no reason for this to be denied for something missing, and B. to make sure it doesn't have any negative impacts on any other sites. I don't see that. I think he would be randomly happy to answer any of your questions as long as they are fair and legitimate questions.

Bruce Knippenberg: The improvement plan or site plan that was submitted is this document (holds up document).

Tom Fioritto: Correct.

Bruce Knippenberg: Is there anything else?

Tom Fioritto: No.

Bruce Knippenberg: Ok. On the document you indicate a future building, the office building with the three bays. This would be for what? A storefront or as what?

Tom Fioritto: Partial storefront, partial garage to put material/product.

Bruce Knippenberg: Ok. Then you indicate several places for pete moss, firewood, so forth

Tom Fioritto: Just so you know a correction here, the original plan, as he had mentioned did not show the bay areas, which was something he said probably should be added so it wouldn't be as vague. I added then and it was still vague.

Bruce Knippenberg: I'm sorry let us know who you are.

Tom Fioritto: Oh, sorry. Tom Fioritto 2403 Tamarack Trail Brimfield, Ohio and yes I understand I am under oath.

Bruce Knippenberg: Okay.

David Langham: And just for the record the application itself did say that the premise to be used as a nursery, building to be constructed in the future.

Bruce Knippenberg: Right.

Lisa Cotten: When is that date?

David Langham: Undetermined. It may never be built. He hopes to do it sometime in the future.

Lisa Cotten: How would you have a retail business where costumers could come and do business without having a building?

David Langham: Same way that the people that sell nursery stock and Christmas trees, they come to the site and you transact business right there with them.

Scot Etling: But aren't most of those places temporary? A guy sets up Christmas trees in a parking lot.

David Langham: You are absolutely right, Christmas trees are a seasonal temporary thing and clearly if they were selling product in the spring, like the nursery stock that he would be selling, they would be doing it then as well. They choose to only do that for a temporary basis for assign Christmas trees. He is going to be selling product year-round. And he would be selling firewood, mulch, and other things that are typical of a nurseries and businesses like that from the site.

Scot Etling: So he's going to be inviting the public in?

David Langham: Absolutely.

Scot Etling: Ok so he would have to meet ADA requirements both for show rooms, for parking, for his lot, for accessibility around the site.

David Langham: Yes

Lisa Cotten: And so there would be no truck storage there, there would just be retail customers coming in to the business?

David Langham: There would be no storage for his construction business. It would be retail use there. Any equipment or business trucks or vehicles would be used solely for that particular business on that site.

Vince Murdocco: There is no building for the costumers? How are you going to have people come and pay? I mean..

Tom Fioritto: Let me jump in for a minute. I mean my intent is to put a building up. Although I may start off with say a shed sort of a system, once I start going and use that as a place of business transactions per say, for moneys to change hands per say. I don't see where it is necessary.

Lisa Cotten: So how long do you think you could operate out of a temporary building? You know if we gave you some sort of timeline to build the building.

Tom Fioritto: You know that is all based upon how the business is going and the funds, you know at the time. And make sure it takes off correctly; I need to make sure this works before I invest to much more money. You know but naturally this is the first step. And there are plenty of locations where people do business transaction not out of a bontified building with a show room in it and so forth. I have been to numerous nurseries that operate out of a, of a lack of better terms a garage sort of a setup.

Lisa Cotten: I guess in our definition in chapter ten it indicates that the land, building, structure or combination thereof for the storage, cultivation, transplanting live trees, shrubs or plants offered for retail sale on the premises including products used for gardening and landscaping, it leads itself more to having a structure there to house some of this items when, being in the climate that we are in, when the weather is not exactly good, from a business perception.

David Langham: I have actually seen some nurseries where they have like a job trailer, type of modular type of building where they have like a freezer and they have roses in there and they sell them in the winter time. Absolutely. So definitely as it relates to the particular product sold, so you would..

Lisa Cotten: So then would the plans seem a little vague, maybe in terms of the business plan of what is going to happen which kind of impacts what is going to happen at the site with construct?

Tom Fioritto: I'm just going to be frank with you. Number one, I don't know where it says spells that our, and I could be wrong, where a building has to be put up to beginning with. You know to apply for the permit.

Lisa Cotten: I'm just thinking logically, I mean if you are opening a business.

Tom Fioritto: Well logically, you are applying for a permit, and nowhere had I read that it says of that permitted use, that the ward of the permit is based on a building on site.

David Langham: And getting back to your original question it maybe vague as it relates to the particular product and you need to know all the specific products that are being sold and what nursery stock was being sold. It doesn't say what nursery stocks that are being sold, no different than CVS will say whether or not they are selling lottery ticket, cigarettes, or anything else of that type of product.

Lisa Cotten: I guess it's a little difficult, speaking for myself, I am put in this position to look out for the residents of the township and you know when I think of a CVS I know what they are selling, I know, I have a general sense. So I'm trying to get from you a general sense of what you are thinking about and what the potential impact to the community is going to be.

Scot Etling: Well I will take it a step further, according to this plan you are inviting the public to come in one entrance, you are not defining how many ADA parking you are going to have, on a building that does not exist, in addition to that you, there is no retail area, there's no storage area, we don't know where stuff is going to be stored. So I understand where vague is coming from with this plan.

David Langham: I think it does say the materials storage area.

Scot Etling: I got material storage, but is it stock? You know where does delivers come in? Same entrance that the public comes in?

David Langham: Same entrance, sure there will be just one entrance; there wouldn't be a separate entrance for commercial vehicles to bring in different than..

Scot Etling: So I'm going to go back to my original statement, you are inviting the public in and where are the ADA spaces, where's the public access? They are all coming in the same spot but they are all just going to have a free for all to get in and out.

David Langham: How many ADA spaces do you need when there is no building?

Scot Etling: Well that is the problem, there is no building. That's my problem. That there is no building; that defines vague to me.

David Langham: ADA. If you are saying that you need to have one designated ADA space here, if there is no building and if that's the ADA rule than fine, I could understand that. I don't think there is an ADA.

Scot Etling: Well you will have to refer to Dick for that, I don't know the specifics on the site. I guess that's what I'm trying to tell you is that is why your vague is coming from.

David Langham: But what I'm saying is, you know, as we do each issue separately, and if your issue with the entrance and now the ADA compliance. I don't see the words not ADA

compliant, if you could point to where it is not ADA compliant. We can address that issue specifically. And we can tell you that.

Scot Etling: Where on this plan does it show an ADA parking space?

David Langham: It doesn't because I don't think under the federal rules in order to be ADA compliant when there isn't no building, that you have to have designated spot. I think you have to have a designated spot only if there is a particular building with an entry. I think it is compliant under ADA rules as submitted to you. If you can find something different we would be happy to amend that and make that change or even amend it right now. If it turns out that there needs to be one ADA spot whenever there is no building. I'm not aware of that but certainly if there was an issue we could address that and comply with that. I can tell that Fioritto nurseries and Thomas Fioritto is not going to violate federal law. So if it requires ADA compliance or something it will have ADA compliance. He doesn't want to have a discrimination suit from somebody that is handicap and not be able to access that property properly. He will do that.

Bruce Knippenberg: I guess when I think about a nursery, I think about the nursery across the street from there on 43, Pizzute's, or the one off of Tallmadge circle. Where they have a nursery, a facility to raise plants to sell, you are just going to bring everything in as needed? So basically you will be turning over?

Tom Fioritto: There might be a little area where we grow them.

David Langham: So of the balls of some the trees will have like a mound of dirt in the area they are being stored. They are not just going to just left on.

Bruce Knippenberg: The equipment area in the back, that is for?

Tom Fioritto: Whatever I need to run a nursery.

Lisa Cotten: So what happens if this venture doesn't work out?

David Langham: He'll shut down. He'll sell the property or he will decide what other beneficial use this property could be had for. Whether it includes building an office building there, a residence there if it was permitted although this is a G-C, so it would be commercial. He would go through the rest of the code and/or a variance use and come back here before you and submit another plan for the next best use that you can with the finances that he has and the investors he has for it. Try to make good use for it and if he couldn't he would put it up for sale. But right now he bought it and he is trying to make good use of his property and get some return on his investment and be a good citizen. And sell a product of what is needed. He is not going to sell a product out that is not needed and if it turns out that the products that he is selling is not going to work; he's been in business a long time. He's been in his own business a long time.

Lisa Cotten: Tell us a little bit about the business.

David Langham: One of the other businesses that he has is a construction business. And this is where this business may lend help to this business. One of the businesses that he has is, say you are doing a street and you tear out the street and you tear out the devil strips, or the tree lawn areas and stuff, so he needs to buy the trees to put in through there. He will be buying his trees through his nursery rather than buying them from somewhere else. So he can utilize the fact that he is buying on volume over there and to also sell to the general public over there.

Lisa Cotten: So in essence without the building there, my take on this, is that this is a storage place for his trees and stuff that he would using at the construction site. Is that perhaps the case?

Vince Murdocco: Yes.

David Langham: No the amount of trees that he would use at his construction business, and correct me if I am wrong, would be minimal.

Lisa Cotten: Where are the construction vehicles stored now?

Tom Fioritto: At different construction yards and a lot of them are on the site.

Lisa Cotten: Have they ever been stored on this site?

Tom Fioritto: They have in the past. You know I don't know about it being stored. There are things that came and went. I think it got a little picky, at some point. It is no different than anyone else or you can drive through Brimfield and you will see tractors parked in people's front yards.

Lisa Cotten: This site is not zoned for that use though.

Tom Fioritto: I realize that but I said they came and went. On an emergency condition if I happen to be in the neighborhood and need to park overnight, I'm not going to lie, then yes. They park it there and pick it up in the morning.

Lisa Cotten: Ok.

David Langham: But he doesn't do that anymore. That is done and some of that big equipment is not contusive for a nursery. Some of the smaller ones might be. Certainly you might have a little bobcat there when you are selling mulch and you are loading it up in somebody's back of

pickup truck or something like that. That certainly.

Lisa Cotten: Is that all that would be there is a bobcat?

David Langham: There might be a backhoe there every once in a while, because you will dig when you get some trees in, you will need to dig and you want to put them in the ground a little bit. Make sure it take care of watering it. They will be doing that and maybe if you are lifting that into someone's truck or that would also be used for loading up any firewood, mulch or something else very similar to a bobcat. And perhaps a truck for delivering the product if somebody wanted it delivered to their house. Those would be the three primary pieces of equipment that would overlap between the two.

Lisa Cotten: What type of delivery truck would we be talking about?

Tom Fioritto: What type of delivery truck?

Bruce Knippenberg: Yes, like four yards, ten yards?

Tom Fioritto: About a 12 yard truck.

Bruce Knippenberg: Okay. The regulations do call for, well so two of the vehicles you won't leave on the site at night?

Tom Fioritto: Excuse me?

Bruce Knippenberg: In other words the book does require only one vehicle may remain outside overnight.

Tom Fioritto: Yes

Bruce Knippenberg: So you will either be removing the two or putting up a building to put them in?

David Langham: It would probably be just one dump truck. Any other vehicle would come and go and would be transit.

Bruce Knippenberg: I mean you have your backhoe, and your bobcat, and you have your dump truck.

David Langham: Right.

Bruce Knippenberg: Two of those have to be inside at night.

David Langham: Fair enough.

Bruce Knippenberg: So there will be some kind of building on the site?

David Langham: Well either that or there will be one piece of equipment outside until the building would be erected. Absolutely, he would be in compliance with that. He doesn't want to get a citation from you guys.

Tom Fioritto: Don't need it.

Ed Shetty: May I ask you a few questions just as far as how this goes? So we have the building-to-be, it is our understanding that there is going to be a temporary shed or some type of work office or maybe one of those mobile home looking things for the time being, in that we are to understand that maybe have your retail desk, you will have display of materials, your mulches, your stone, whatever is there and then we come out, this gravel lot. On the one side we have our storage bins, and on the other side where it says evergreen plants that's where you are going to store your trees, shrubs, bushes, plants, flowers,

Tom Fioritto: That's actually a landscape mound.

Ed Shetty: That's landscaping you are putting in?

Tom Fioritto: They have already started prepping a landscape mound on both sides.

Ed Shetty: Okay. Where it is written Evergreen Trees, that is not where you are going to store them?

Tom Fioritto: That's where I will be storing them.

Ed Shetty: That's where you will be storing all the plants and everything, now within that are you going to have some sort of irrigation setup? Above, underground?

Tom Fioritto: If I need to.

Ed Shetty: Now all of your bins, all your storage slots, the top soil which is at an angle and then the stone mulch, I mean it looks like you are going to have two different types of mulch, probably brown and black, your firewood, Pete moss, and what kind of stone are you going to use?

Tom Fioritto: Decorative stone

Ed Shetty: Now what are these going to be separated with? How are you going? Are you doing block on those?

Tom Fioritto: Yes.

Ed Shetty: And how much material will each of those house?

Tom Fioritto: I would assume the size I would say two truckloads each. So maybe 20 yards a piece.

Ed Shetty: And the equipment area is where any equipment would be stored that you would use throughout the day, the backhoe, bobcat, is there a plan to have the other pieces that go with the

bobcat? Like the bigger bucket, the forks and everything. And all of that will be housed in that as well?

Tom Fioritto: Yes

Ed Shetty: And then to-be-had inside the garage eventually? If you guys are doing well and funds permitted it, then you will move that equipment into there or is that bay going to be use for storage or maintenance or what is the plan for the three bays?

Tom Fioritto: Planning on having three bays and actually it was going to be for equipment; get it out of the weather the best I can.

Ed Shetty: Is that going to be general maintenance in those bays?

Tom Fioritto: Right.

David Langham: Of if business takes off come back and ask for a variance to store two pieces of equipment outside. But right now it would be just the one. It doesn't seem to be that there would be enough business to support a second piece of equipment at first.

Ed Shetty: And then within the gravel lot there's, once you fill out you plants, trees, all your storage of your live material and then you have some for parking here, do you feel that that is going to be enough room for them to bring your truck back down?

Tom Fioritto: That's plenty of room. That drawing is to scale. So if you want to scale that off.

Ed Shetty: Now when you said a temporary facility are you thinking something like?

Tom Fioritto: An office trailer.

Ed Shetty: And in the area to be cleared for additional storage, what is your plan for back there? More livery?

Tom Fioritto: Exactly.

Lisa Cotten: So if you were to bring in some type of temporary office structure, what would be the time frame that you would need to have it there on the site until you would build an actual building?

Tom Fioritto: Again that is based upon the actual building; I think I answered that before based upon how the business takes off there. I really can't tell you whether it be three months, or six months or two months; if I see a lot of growth then yea.

Lisa Cotten: I'm just concerned about some sort of temporary office structure being brought in, you know because sometimes you mentioned they bring in these modular units, like how long would be a reasonable time that you would have something like that on the property?

Tom Fioritto: How long would it be there for? Again.

Vince Murdocco: What is your break even on it? You have a business plan in your mind apparently, but at some point you have to determine when you are going to put the building and once that dollar figure in mind, like once I reach this level then I'm going to put the building up.

Tom Fioritto: You know it's all overhead; what are the taxes, what is the cost for the people there that are running it, and you are in the business and that business is breaking that nut and then some and you are making some profit. You can take those funds and invest more into the site, into the business which would be the building first off. If anyone wants a building it's me. Okay, I don't want to leave outside equipment and product wise outside. But I am not going to say that I'm going to put up a building in three months or the second season if the first season didn't pan out. And it didn't pay for the overhead that I had operating without the building. With the building naturally expenses is going to go up, more real estate taxes, whatever it costs me to put the building up and so forth. Like anything else I have to make sure it works first.

Scot Etling: Do you have any plans for signage?

Tom Fioritto: Yea.

Scot Etling: Is it anywhere on this site plan?

Tom Fioritto: No it's not.

Scot Etling: How many employees do you envision?

Tom Fioritto: Depending on the amount of work I got, but for starters probably just one guy.

Bruce Knippenberg: So you will have one person plus, probably yourself that will be in and out kind of thing. You will have some kind of structure there, so you will have some parking for that structure. People be invited into the building to transact business or are you going to do it all outside?

Tom Fioritto: Sure.

Bruce Knippenberg: You have everything you need for hook up at that point, everything you need for water, sewer?

Tom Fioritto: There is water. There is sanitary in the street that I can tie into. I can pull electric ahead of time. So all the utilities is there.

Bruce Knippenberg: Okay. I would like to invite any comments or questions regarding this if you have any, again please identify yourself.

Cheryl Reitz: 4156 Brimfield Dr. Kent, Ohio. And I know I'm under oath. I am in partnership with Bob Cady on the property right next door and the house after that. So we have invested in the neighborhood and in the duplex down the road. And I work very hard to keep them up to scale so they make a nice neighborhood. And I am all for, I was really happy that they were going to start something there because in 2003 when I wanted to put up condominiums I had to jump through hoops. I mean I spent \$25,000-\$30,000 for water retention, buffers between the properties and this guy brings in a sketch like this, I don't care if he does it, I'm glad someone is moving out there but I have to worry about how my house is going to be then before the banks got all done with the changes they wanted. They pulled the zoning and made it commercial. And now I have all this money out for condominiums which I had people in Brimfield that was like I'm retiring, I probably want to sell in a while, I need a place in Brimfield but they rezoned it so all that money went down the drain. So we sat on it and I talked to Dick about and he said that it would probably be worth more if its commercial. So I want when you make your decision to think about me and the guy across the street and everyone else, if we want to sell and we want to give money to our kids when we retire or whatever, are we going to be able to sell it with just a parking lot next door?

Lisa Cotten: Where is your property located?

Cheryl Reitz: We start at 1354, which is right next door. And he's been great, I'm all for if he can make it look good and make my property more valuable. But if it is going in there and it is not going to help me I have to say that I want you to look out for everyone on the street. So we have 1354 which is right next door, contiguous to him, we have 1384 which is the brick house.

Lisa Cotten: I'm trying to picture it.

Cheryl Reitz: If you pull on to Brimfield Drive, there is Kalmar Court, his lot, the little yellow house and the brick house are ours. And the zoning is commercial clear down, and I have talked to people and they all say that you have to be on a main street to sell anything commercial. So I never understood why we would go down 600 feet down Brimfield drive commercial. Here we are 12 years later and I still don't know how we are going to have a nursery on the main drag and you are going to have to advertise on the main road to get people down there. Especially if he's on the other side of a residential building. But my main concern is that he doesn't have a buffer, or what is going on between property lines like I had to do. And is my property going to loose value. I can't sell it as a residential because no one is going to get a loan on a residential house if it is in a commercial area. So I am stuck, unless I come back and beg you guys to let me build my condos.

Lisa Cotten: Okay.

Bob Cady: 2358 Lynn Road, in Brimfield. I have no problem with it, the only thing I would say is that you got a set of rules to follow. If he follows the rules, what's the problem. That's all I can say, if he's following the rules. I don't know what they are to run a commercial business there. I don't know what it requires but if he follows the rules and does what he is supposed to I don't know how you could deny it. But if he is not, if it calls for a place for a building, then you have to have it. Whatever hoops there are, just like everyone else. And I think he would agree to that.

Cheryl Reitz: I hope you are looking out for everybody not just him.

Cheryl Rueschman: I have a question. Winter, well last winter was very hard in this area. My house for the first time in 46 years has had rain and snow and melting, and when I walk through my yard which is all the way up hill; it drains really well. And this year it didn't drain. I am squishing, I'm not covering my boots, I'm covering about six inches above my ankle. What are you going to do about drainage? When people come in and mud and all this, what idea do you have to address anything like that? Because these last two winters in this area has been horrific even on personal property let alone anything commercial.

Tom Fioritto: Well I think what you are saying is far and few anyways, and its hard to respond to that being that it was an act of God. I mean if it becomes a dangerous situation then shut the place down for that long.

Cheryl Rueschman: That's your idea of how to address if it gets so much water.

Tom Fioritto: Well sure if it gets to a dangerous situation.

David Langham: If I may.

Bruce Knippenberg: Yes.

David Langham: I think you both have really good comments. And I appreciate Bob and Cheryl, and comments about the rules and all that but what of the comments in particular were what kind of buffers are there going to be? The drawings do have that, on both sides.

Cheryl Reitz: I didn't see it, I'm just saying that was what was required before.

Lisa Cotten: Had any of these buffers been put in to-date?

Tom Fioritto: Partially.

Lisa Cotten: What is the expected timeline to finish that, the buffering?

Tom Fioritto: Not long. I can get on that right away.

David Langham: That's almost like a phase one. That is going to be done right away. So anyway following up on that. And I understand that Cheryl you have a vacant house and it's our goal that this will help foster the growth in that area, to make it even better.

Cheryl Reitz: I'm happy he's in there. I just want him to do something to make my property more valuable. I know that is selfish but that is the way I feel. Like I said I lost the residential zoning to commercial.

David Langham: And then as it relates to the third person specifically what do you do when there is excess water moisture I don't think this is a site topo, where it has the elevations on it and stuff, but being in the business, I am pretty clear and certain that he is going to make it so that the water is going to go the right ways, so that it wouldn't be an inconvenience to his costumers and his costumers want to come back. And it is kind of nice that on the other side there is some condos because maybe those people will be buying some of the nursery stock, plants and flowers in the spring time when it comes time to but flower baskets and what not out outside their porches and whatnot. And everything that he is doing is to code and it is not his intention to do anything that is not to code. Or against the rules and hopefully his goal is your goal and everything he is doing will add value to the neighbor as it is currently zoned for that and if business is good maybe he will end up expanding and you can sell your property to him. It would take a lot to for that because it is a good size property right now and he's got room to expand in the back right now. So I hope I answered each of your questions.

Cheryl Rueschman: I just know how quickly with weather in this area things can become a mud bath and you are having the public come in. A. you don't want anybody to fall, and that happened to me. B. you don't want anybody to come into where it looks, acts, or is a perianal. Yes you are going have trees, and shrubs, I'm assuming you are not going to be like on the other side of Brimfield Drive where there's flowers in the summer. So this is strictly just trees, shrubs, mulch, etc. nothing you are going to do is coming in and buying flowers for the summer to plant or anything of that sort. Am I understanding you correctly?

Tom Fioritto: Like to sell flowers in the winter too.

Bruce Knippenberg: I think she is just wondering and curious what, I mean you have indicated here what you think you will be selling, it just says plants.

Tom Fioritto: Well if there is a call for it, I'm getting a taste from people coming in, saying I wish you had some roses here to. If I need to make a stop and get some roses to then I need get some roses.

Lisa Cotten: So how would you keep these and how would they be housed? You can't just leave them outside. Typically you see a greenhouse structure with the flowers inside.

Vince Murdocco: And hanging plants.

Tom Fioritto: Probably construct a pergola, maybe. That would be nice, to have the hanging baskets on it.

Bruce Knippenberg: I guess I find some vagueness to your plan, in just some of the things that we have talked about this evening. There is nothing about signage. There's nothing about your, you have your future building, but nothing about the current work shed or whatever you are selling from. You do have a parking facility but then again if you are going to have a building and the public is going too allowed in, the parking is discussed in the book. And I guess that there are some things in the book that allow for a site plan, even if it is not something we would review it is still something our zoning inspector would review. To ensure proper setbacks, where would you be placing this temporary building and where will you be placing the foundation of the future building if you are going to continue with the operation so forth. I'm going to assume that you are talking about a small temporary building and your future building is going to have three bays in it, probably capable of holding your dump truck or something.

Tom Fioritto: I think the credentials there are..

David Langham: All the setbacks are on the drawing and the footprint is outlined there; 20 foot setback, 5 foot there, 65 foot, 40 foot, 20 foot, they are all there. Even going the other direction and any temporary building would be within that same footprint.

Bruce Knippenberg: And any type of building? I mean the things that we normally get, you know include the building design, what it is going to look like again, we are talking about the value of her property and the surrounding property. If you are going to put the shed in and then the shed is going to rot on the property or whatever.

Tom Fioritto: I don't think I would let that happen.

David Langham: Plus if he put a rotten shed on there you would site him for it.

Bruce Knippenberg: Right. I'm just indicating.

David Langham: There are avenues for that.

Bruce Knippenberg: Unless it was a health nuisance it would be hard to site him for just an ugly building. There really is nothing in the book that says that ugly buildings are not allowed that is why we like some kind of site plan to find out what exactly is going in.

Tom Fioritto: Well you shouldn't even be bringing it up.

Bruce Knippenberg: Honestly there is nothing in there.

Lisa Cotten: We have just got burned in the past.

Vince Murdocco: We are trying to protect everybody.

Bruce Knippenberg: That's just my opinion; I find some things missing from the plan.

Tom Fioritto: Most of your questions were answerable. I mean has the vagueness been cleared up some?

Board Answer: No, Not really.

Bruce Knippenberg: I mean I would like to see it all in writing basically is what I'm referring to.

Vince Murdocco: I would like to see a picture of the building, the temporary building. What you have in mind. In addition to that my question was, when you go in to business there is a line there where you are going to say I can afford to put up this building. That is what I was fishing for is it a million dollars, I'm just throwing a figure out, half a million, where do your sales have to be before you say ok I'm successful enough, I want to put up this building in this location. Is that unreasonable to ask someone starting a business?

Lisa Cotten: No it is definitely not unreasonable for someone starting a business venture to.

Tom Fioritto: You have to project a volume. Yes I know what a projected volume is.

Lisa Cotten: And where are your costumers are going to come from

Tom Fioritto: And whether or not you hit that projected volume is another thing. I mean the funds, it could turn over fast enough where you could have a building up or see where you could afford to put up a building by the end of the year come fall.

David Langham: To me it sounds like we are at a bank and I want to loan money and I want to see your business plan and everything else. Whereas here we are in the hat of a Zoning Appeals Board its..

Lisa Cotten: We are dealing with the citizens and the surrounding property values. And that is, at least for me that is my primary concern.

David Langham: Sure.

Vince Murdocco: That's where I'm at because you know we are trying to protect and if you were in their shoes you would ask the same questions.

Tom Fioritto: Well both had mentioned they are already glad to see it and try to make something happen.

Bruce Knippenberg: Right. What is your proposed traffic? In other words you are going to have trucks coming in and making deliveries, are you going to be using any materials at a construction site? Are you going to sell it to yourself? That would increase the traffic that you are going to be expecting on the property or are you only going to sale to, I mean you mention the things about the trees, but you also have the Pete moss, and the firewood, mulch and other, stones, are those other items going to be used on your construction site. So that you are going to have vehicles out all day long or?

Tom Fioritto: No.

Scot Etling: Well when are you going to get your supplies? Are they coming in the morning or at night?

Tom Fioritto: Mornings, and probably get a delivery every two weeks. If it was to take off that fast, your building would be up in a week.

Scot Etling: And just to kind of echo what they are say, I want to see more information on the site plan, I want to see the parking lot laid out, I want to see the signage, I want to see where the building is going to go specifically, like he said I would like to see what the building looks like, so has the fire inspector looked at this? Do they have any issues with it? That kind of stuff.

David Langham: That would be fine if there was a building, he is asking for a permit without the building.

Vince Murdocco: I want to see it for the temporary building.

David Langham: And he is asking for it without the temporary building. It's in phases, first no building, then a temporary building, then a building. There is not going to be on day one a temporary building.

Lisa Cotten: I think that my concern is that without a building we are just talking about a storage yard. And that does not fit into the zoning.

David Langham: Storing what? Stuff that you are going to sell to the costumers and retail consumers.

Scot Etling: But what costumers? I mean right now there are no costumers. I mean if I bring all this stuff there and nobody buys it; it's a storage yard.

Tom Fioritto: No, No, Not quite. That's ludicrous.

David Langham: If you buy stuff and nobody buys it it's going to turn something that is going to be demolished and something else is going to happen there. It's not just going to sit there. And it's not going to be a storage yard with; it's going to be a forest and/or trees. It's going to be taking something that is blank and nothing and putting the tree stock there. It's not going to be storing trees; they are going to end up growing there. To say that, I would disagree with you on that, and I would also take issue with trying to determine what the food traffic is. That would be the equivalent to saying to someone that is opening a bar and saying I want to know how many patrons you are going to have; just to see if I can see if this things is going to work or not work or if it is going to be good for the rest of the community. It is what it is. The size of the footprint of this; is what it is. And it can only handle so much business. It is not going to be any more or any less than that. To think that it is any grander or any less grand you would have to be dreaming, you would have to be making something up. And I can understand he's answers as it relates to something else, his answers as it relates to a dollar amount, and any good business person knows when you know. When it makes sense. To sit there and say that ok I'm going to tell you right now that as soon as I hit this target sales volume, I am going to build a building or not. While that would be nice to have and would be nice to have if you are getting a loan from a bank or financing from somewhere else. It's also right to do it the right way, where it's going to make economic sense as a business person; you are going to do it when you do it. Just like me as a lawyer I am going to hire another secretary, when I know it's time to hire another secretary. Not when you hit a certain volume of business or not, just when there is that much more work to support it. You are going to respond to the costumers and you will grow with that as well. And you are going to build a building or something else at the appropriate time and you are going to make it work for your costumers. You are not going to make it work for to the point where you draw away business or you become such an eye sore and you are going to get cited sending all of your customers away. That just won't make any economic sense for any business to do it that way. And I think to the vagueness as it relates to what his business plan is and everything else, I can understand your concerns on that but as it relates to what is on paper, what he wants to do, what the minimum requirements to let him get going; there is enough specificity there to meet you revelations.

Tom Fioritto: You know are putting the cart in front of the horse a little bit on this and you are asking a lot of projected questions. What if and can you do this and when can you do that, relating to a business that you have to go through a growing period. And again I said this once before and I am going to be frank with you, I don't know if half the questions you are asking me have to do with issuing me a permit. What color the building is, if it gets to rainy one day, doesn't say anything about having to answer those questions to get a permit. It doesn't say one thing. I maybe be offending you by saying this,

Bruce Knippenberg: No you are not.

Tom Fioritto: I will tell you like it is, you read it, ok and you do what is right by law. That is all I am asking. Okay and while I'm there you want to check my place out, you want to talk to me like hey I want to talk to you. Can we do this or what is your intention, how are things moving along, you know do you think you are going to be at a projected pace to put a building up this year? I can answer all those questions. But again half the questions that you are asking, has nothing to do with issuing a permit. It is not a requirement.

Bruce Knippenberg: Well the only requirement would be a site plan review for what it is you want to have and you don't have; again, to me you don't have everything here.

Tom Fioritto: You wanted a building plan a long with that; you just said a little bit ago.

Bruce Knippenberg: I did. Normally when we,

Tom Fioritto: So when I get the building up I will give you a building plan.

Bruce Knippenberg: If any business comes, but see by the time you have the permit and you decide you don't want to do this anymore; you are not making any kind of commitment to the community. You are not making any type of commitment to your neighbors.

Tom Fioritto: Yea but if I am losing money, I'm not going to stay there.

Bruce Knippenberg: And I understand that but we are trying to protect the value of your neighbors as well.

Tom Fioritto: The value of my neighbors is the upmost important thing for me to remember and I have been doing it. And doing everything I can to make it as orderly and as pretty as I can. And I think my property as it stands now is in just as good shape and just as pretty as the property on either side of me; I you want to drive by there and take a look at the apartments next door and their vacant unit on the other side of me. By no means look like Taj Mahal's to my

property. You know what if I was to say to you, you know better make sure they keep up with the looks over there because I don't want them running my nursery down, but you aren't worried about that. Right?

Bruce Knippenberg: Well she hasn't brought in a permit yet.

Tom Fioritto: Yea but you are not worried about what they are doing to me. You aren't worried about the abandoned cars next door.

Lisa Cotten: Well we would treat it the same way.

Bruce Knippenberg: Well if there is an abandoned car next door and our book an abandoned car either has no tires or no license's plate or is sitting in the front yard, if you have such a situation turn it in to the zoning inspector and he will address it.

Tom Fioritto: I have told him I don't know how many times there is an abandoned black Chevy on Route 18. It's been sitting in the guy's front yard that is buried up to its wheel bears.

Tom Fioritto: It's been there I don't know for how long and I have told him about it. Nothing has been done about it.

Bruce Knippenberg: Okay.

Lisa Cotten: But everybody that comes in with a similar request we are asking the same questions. I mean I look as this board...

Tom Fioritto: I appreciate you looking out for the community. I live in the community.

Lisa Cotten: as looking out for the community. And making sure people's property values are protected.

Tom Fioritto: I look about for the community. I put in 100 feet almost of 36'' storm sewer that was in the easement, that you guys fought over with the county and nobody would jump in to fix it. Well bit the bullet and paid for that myself to keep the property and my neighbor's property nice. That wasn't brought up.

Lisa Cotten: Well it doesn't really pertain to this.

Tom Fioritto: Well I'm saying that's the person I am. Maybe that information would have helped.

Lisa Cotten: I'm not questioning the kind of person you are.

Tom Fioritto: Well I'm just saying if that information would have come up, that would give you a better view of the character that you are dealing with and talking to.

Lisa Cotten: But we are talking, we are not talking

Tom Fioritto: You are talking character a little bit.

Lisa Cotten: No we are talking about this property. What's the use?

Tom Fioritto: Well you hypothetically saying are you going to let it get ruined down and just let it ride. Are you just going to this, well you wouldn't ask if you knew me as a person and I had good character with you?

Scot Etling: We ask everyone the same questions.

Lisa Cotten: You need to come to meetings, we ask everybody that comes in here every meeting.

Vince Murdocco: Yea.

Tom Fioritto: I'm just getting a little frustrated I'm sorry. I have had, well a little emotional fed up with this. I had spent some money, love the community. I want to keep my business close to where I live. And make things happen there for both me and the community as far as I'm concerned. I just have had a lot of bad results working through zoning. It just hasn't worked out for me. And I think I have done everything that is required. How much I can add to that site plan, I do not know. The required dimensions are there, the required setbacks are there.

David Langham: It seems to me your one overriding concern several of you have is that you would like to see what the building in the future is going to look like. And while it would be nice if we could do that, at this point it is impossible. He doesn't know what it going to look like, he doesn't know whether it will take off or not, and he is not asking for that at this point. And I think if you would deny the appeal based on the fact that you want to see what the building might look like in the future, I think you might have an issue with that. Because I think the zoning says that no building, structure or premises shall be used anything differently. It doesn't say that there must be a building there; it just says that the premises must be used that way. And that is pretty clear in 309 and 01. And using the premises the way that it is. And I think that although it would be nice for a Tai Maha building is going to look like. He's not and he can't. And I understand the concern and it's, it would be a legitimate concern and it would be great if he could answer but he can't answer that. Unfortunately, but that's not and shouldn't be the reason why not to deny because of what it might not or might look like. This is not an architectural review committee and a home owners association which gets to approve the color of the brick and the mailbox and everything else like that. The duties that you are each entitled with are to make sure it meets the requirements of the code consistent with looking out for the

community. As I said initially, that is a concern, and I think he's answered that with respect to all of that.

Scot Etling: Let me be clear this is the reason why or the problem that I am having: I want to see a proper site plan, I want to see topo, I want to see signage, I want to see drainage, I would like to see something more current than three years ago.

Tom Fioritto: Where's the, where's this spelled out?

Scot Etling: This isn't me. This is what I want.

Tom Fioritto: That's cool. Where's it spell the requirement for the site plan that needs to be submitted? Does it say topo?

Dick Messner: Chapter Ten nursery it says land, building, structure or combination thereof

David Langham: or there combination thereof, goes on.

Dick Messner: Land, building, structure, or combination.

Bruce Knippenberg: Or combination.

Dick Messner: And one of the reasons it was turned down,

Tom Fioritto: doesn't say topo

Dick Messner: Please, please, one of the reasons it was turned down, you mentioned vagueness. The reason it was vagueness, and I wrestled around for a long time, It was the nursery application was going to be the principal use of that property. And with the materials that were submitted, I could not make that decision if it was going to be the principal use. I even went to Merriam's Dictionary to get retail definition to see if it matched up with our stuff. So the reason it was turned down because of the vagueness, because I'm not sure that the usage as a nursery as defined and also spelled out in chapter ten: land, building, structure or combination thereof for the storage, cultivation, transplanting of live trees, shrubs, plants retail on the premises, nothing to show on the premises, including products used for gardening and landscaping. All I see is a plan that was submitted in 2012 with hand drawn sections or looks like bins in there for various materials that could be used in a nursery and is normally used in a nursery. I don't see anything else that would be normally used in a typical nursery on it which would be live shrubs, live flowers, things of that nature; it is stuff that with is used in a nursery but partial. And that is why it was turned down because of the vagueness of what we received in that application and in my mind that is why I turned it down because it was vague as to what was submitted and that's why it was turned down and sent to the Appeals Board.

David Langham: And if I may ask a question, and I appreciate what you are saying the stuff that can be used, mulch and all that and you say its vague because you don't know what the other stuff is, I mean you have right here and it's on here. And it's not submitted in 12, 2012, its part of it was 2012 and some of it has been 2015.

Dick Messner: This is 2012 as submitted.

David Langham: This is evergreen, plants, trees how is that not a nursery? How is that vague? How is that..

Lisa Cotten: I'm interrupting it as a storage yard, its storing.

Dick Messner: Its vague because I'm not sure in the definitions of retail, nursery and principal use, is that what it is being used for as for what has been submitted.

David Langham: I understand that you are viewing this as a storage yard for a nursery.

Lisa Cotten: Storage yard for materials

Vince Murdocco: for construction.

Lisa Cotten: I mean without the building there and that's just honestly where I am coming from. I mean without the building there to quantify and solidify what's going to be done at the property to me and I'm just giving you the vagueness and that is the vagueness right there.

David Langham: Again as I said before it seems to be the vagueness is coming for the fact that you don't get this what they building is going to look like on day one.

Lisa Cotten: And that would be correct and that would be the case for anybody that came in here. I mean if anybody came in here and said well, I mean I have vacant land I can say I'm going to do something with it but I don't know if it is going to work. You know so there is some vagueness to it. I'm just being honest.

David Langham: Okay.

Bruce Knippenberg: I mean, basically, from what I am looking at the only thing that you are going to sell is Pete moss, firewood, mulch, stone, top soil, some evergreens, trees and plants, there will be nothing else being sold? I mean is there going to be another spot for landscape bricks or is there going to be, I mean I'm assuming, so this is your plan, is all you are going to sell. That's what I'm getting at.

Scot Etling: I mean you did say you would sell roses if it takes off. So I mean.

David Langham: That's all that is selling on day one.

Bruce Knippenberg: You know its..

David Langham: So what do we put in here? We may sell roses and put it on here, and we may sell tulips and put it on here.

Bruce Knippenberg: I don't know.

David Langham: I mean we maybe do this; you would have an encyclopedia of the ifs, comes, and maybes.

Scot Etling: I mean I am looking for not just a site plan, I want a complete site plan.

David Langham: I'm not aware that your requirements require a site elevations and a topo and

Scot Etling: I'm not looking for site elevations, I'm looking for topo, signage. Where's the signage going to be located?

Tom Fioritto: Is signage required?

Scot Etling: No, you said you were going to have a sign.

Tom Fioritto: I'm saying is it required for the permit?

Dick Messner: Once you open your business.

Tom Fioritto: Okay. Then it would be there.

David Langham: It is my understanding that signage is a separate permit that you request, so that would be separate in order to get approval for that at the appropriate time, but that would be separate.

Bruce Knippenberg: The signage is covered by another chapter, but it is generally one of the things that show up at the beginning. If you are going to have a sign or not, if you are not going to have a sign, that's fine. Then six months from now, you decide you don't have a lot of business I better put a sign up.

Tom Fioritto: I have a stone, a barn stone that sits in front of the place now.

Bruce Knippenberg: So you have a sign?

Tom Fioritto: Well I haven't carved it yet. I haven't carved it yet because of what I'm running into but that is what that stone is out there for and if you all give me your blessing one of the first things I'm going to do is take that stone and get it down to the shop and get it carved, Fioritto Nursery on it and set it back down.

Bruce Knippenberg: Okay, does anyone have some direction they think they need to go? Do we have a motion?

Lisa Cotten: I make a motion that we deny the appeal of the zoning inspectors decision based on the definition of use of the property, I don't feel as though this use fits into the General Commercial district as a storage yard without having a building located on it,

Bruce Knippenberg: You can work with Mr. Messner on what is required for the proper site plan. Anyway, we have a motion do we have a second?

Scot Etling: I second.

Bruce Knippenberg: Okay we have a motion; do we have any questions or comments before we take a vote? Ok, let's have a roll call vote please.

Cotten = Yes

Etling = Yes

Knippenberg = Yes

Murdocco = Yes

Shutty = Yes

MOTION#2015-012

A motion is made by Lisa Cotten to deny the Appeal of the decision zoning inspector to deny applicant Thomas Fioritto with property located at Brimfield Drive, parcel number 04-023-00-00-043-000 for the proposed use of a nursery, based on the definition of the use of the property and the use does not fit into the General Commercial Zoning District as a storage yard without having a building located on the property. Motion was seconded by Scot Etling.

Roll Call Vote:

Cotten = Yes

Etling = Yes

Knippenberg = Yes

Murdocco = Yes

Shutty = Yes

Motion passes unanimously.

AUDIENCE QUESTIONS:

OLD BUSINESS:

Bruce Knippenberg: I guess the old business would be the vehicle the gentleman was referring to. We would like to know what you have done about it.

Lisa Cotten: Did he file a complaint?

Dick Messner: There was never a complaint. Is there junk cars laying around here? Yes. But compared to other townships and cities of our size it is less than average.

Bruce Knippenberg: No, I understand, he actually made the actuation that he had filed a report.

Dick Messner: He didn't.

Bruce Knippenberg: Ok. That's all I wanted to know.

NEW BUSINESS:

GOOD OF THE ORDER:

SET NEXT MEETING:

Next meeting is scheduled for Wednesday, April 15, 2015, at 7:15 PM.

ADJOURN:

MOTION#2015-013

A motion was made by **Scot Etling** to adjourn the March 18, 2015 Board of Zoning Appeals meeting, and was seconded **Lisa Cotten** by at 9:00 PM. Motion carries.

Chairman Bruce Knippenberg

Vice Lisa Cotten

Scot Etling

Vince Murdocco

Ed Shutty

Secretary Wendi O'Neal

Alternate: Cheryl Rueschman