

TOWNSHIP BOARD OF ZONING APPEALS—REGULAR

Auburn Township Administration Building

11010 Washington Street  
BZA-16-00a through BZA-16-16a

February 9, 2016

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**APPLICATION: Alleging Zoning Inspector Error:** The complaints, submitted by complainant Linda M. Debernardi, 17675 Auburn Road, Auburn Township Ohio 44023, are alleging no zoning enforcement and zoning inspector error regarding zoning complaints, dated October 5, 2015, November 10, 2015, November 30, 2015, filed against Nathan and Deanne Tiber and Nathan's Auto Detailing LLC, located at 17680 Auburn Road, Auburn Township Ohio, in a B-1 zoning district.

**BZA-16-00a alleging no enforcement action by zoning inspector from October 5<sup>th</sup> complaint**

**BZA-16-01a alleging lack of enforcement of a business meeting the definition of a commercial car wash and/or car repair [Article 2]**

**BZA-16-02a That no development requiring sewer and water facilities be approved by the Zoning Inspector prior to approval by county health [3.01j], compliance with state and federal regulations [3.05(d)], [6.07(a)] Complainant alleging the business permit should be "null & void" due to non-compliance with EPA and septic laws**

**BZA-16-03a alleging the zoning inspector erred by allowing lot coverage to exceed 10% [4.03(g) & Schedule 4.03(k)]**

**BZA-16-04a parking areas are to be paved with concrete or asphalt [5d(2)e submitted]**

**BZA-16-05a alleging lack of enforcement re: screening along street frontage, the parking lot, dumpsters and adjacent residential districts [4A.10]**

**BZA-16-06a alleging lack of enforcement re: bay doors cannot exceed 10' in height [5.03(k)(2)(c)]**

**BZA-16-07a alleging lack of enforcement re: storage of supplies [5.03(k)(2)(c)]**

**BZA-16-08a alleging lack of enforcement re: dumpsters locations [5.03(k)(2)(d)]**

**BZA-16-09a alleging the lack of enforcement, by the zoning inspector, has effectively issued a variance by allowing the car wash. [no section cited]**

**BZA-16-10a alleging error in applying the accessory use standards building/parking [5.02, 2.02 4.03(b)]**

**BZA-16-11a alleging error in allowing a residence to be connected to a business in a B-1 district [Article 4A, column 1 b-1(a)(1)]**

**BZA-16-12a alleging zoning inspector error in allowing two uses on the same parcel**

**BZA-16-13a alleging zoning inspector error by wrongfully deciding that an accessory building can be allowed in a B-1 district if it meets the zoning district list of uses [no article cited]**

**BZA-16-14a [OFFICIALLY WITHDRAWN AT MEETING]alleging error to allow a permit to enlarge, alter, or extend to occupy a greater area of land of a nonconforming use [claimant feels there is a nonconforming dwelling therefore the additional structure, living room, and deck were not permitted] [3.03(e)(1),(2),(3),(4),(5),(6), and (7)] B-1 district]**

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**BZA-16-15a alleging lack of enforcement re: storage or equipment and vehicles are required to be located in the enclosed building. [no section cited]**

**BZA-16-16a alleging error 6.01(a)(1)(a) requires an application to be reviewed by zoning commission before action can be taken by zoning inspector**

**MEMBERS PRESENT:** LAURA BELLAR, ROBERT FREEBAIRN, ROBERT PEALER, BRIAN STEWART, LEWIS TOMSIC, SCOTT BROCKMAN, SCOTT KAMENIR

**MEMBER ABSENT:** NONE

**MEMBERS HEARING**

**THE CASE:** Bellar, Freebairn, Pealer, Stewart, Tomsic

**DOCUMENTS**

**IN CASE FILE:** Legal Notice with attached descriptions of 17 alleged zoning inspector errors numbered BZA-16-00a through BZA-16-16a.

Copy of Agenda from February 9, 2016, meeting

Letter dated May 4, 2015 to Nathan D and Deanna M Tiber

Auburn Township Complaint of Zoning Violation dated October 5, 2015 from Linda Debernardi with 3 attached pages

Letter dated November 10, 2015, from Linda Debernardi with Exhibits #1-44.

Letter dated November 13, 2015, from Frank Kitko to Linda Debernardi

Letter dated November 30, 2015, from Linda Debernardi with numerous attachments and Official Notice of Appeal Alleging Error by Zoning Inspector, Signed by Linda Debernardi and Dated 11/20/2015

List of Contiguous Property Owners

Calculations of Lot Coverage as calculated by zoning inspector

Definition of Subordinate from Webster's Dictionary

. . . Additional documents in case file

Exhibits (1-10) Supplied at Hearing

The meeting was called to order by Chairman Brian Stewart at 7:00 PM.

Roll Call was taken.

The Pledge of Allegiance was recited.

The Chairman swore everyone in who was planning on testifying. He also asked if everyone in attendance had signed in at the meeting and indicated that the first time anyone was planning on speaking they should give their full name and address for the record.

There was no Old Business.

Mr. Stewart commented that even though there was a court reporter in attendance that the official record for tonight's hearing would be the minutes taken by the Board of Zoning Appeals Secretary.

Mr. Stewart read an opening statement which gave a brief overview of the Board of Zoning Appeals: The BZA is a quasi-judicial body and as such its role is similar to a judge in a court case. The Board will hear evidence and testimony that is factual and will make decisions based upon the facts presented, the rules set forth in the resolution and principles of law.

With this being said, the Board's proceedings are relatively informal; but, in order to conduct an orderly meeting and allow all parties of interest (contiguous property owners) the opportunity to present the evidence necessary to assist in making the Board's decisions, certain procedures need to be followed:

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All interested parties will be sworn in. The applicant will be asked to present his evidence to support the requested appeal, the Board will ask questions, and then all interested parties (contiguous property owners) may present evidence concerning the appeal and ask questions regarding previously presented evidence.

The meeting may be continued by either the applicant or the Board. The Board must base their decisions upon facts and not expressions of concern or nonfactual matters. The action of the BZA does not become official until 30 days after the date of the meeting that the minutes were approved.

Any appeals from the final decision of the BZA will be made to the Geauga County Common Pleas Court by any contiguous property owners that are present at the meeting.

After reading his statement, Mr. Stewart commented and elaborated on the uniqueness of the case that was being heard tonight.

Mr. Stewart explained that tonight's hearing of 16 allegations of zoning inspector error and non-enforcement is from a complainant who does not own the property that the allegations are made against.

Mr. Stewart further commented that even though the BZA has heard zoning cases alleging zoning inspector error; the Board has never heard a case when the appellant did not own the property in question.

Mr. Stewart continued explaining that the property in question, in which the allegations are against, is located in a B-1 General Business zoning district.

Mr. Stewart noted that the B-1 zoning district has been in existence since 1948, when our Zoning Resolution was adopted by Auburn Township and has existed for 68 years, and the current uses on the property in question have both been permitted uses since 1948.

Mr. Stewart commented that complainant alleges zoning inspector error based on the Zoning Inspector's interpretation of the Auburn Township Zoning Resolution. Mr. Stewart further explained that the Zoning Resolution is a living and breathing tool.

Mr. Stewart further commented that the resolution is similar to the United States Constitution--both documents were written a long time ago; the resolution is a good document but not perfect; it has been in effect for a long time and has served us for a long time. There are items in both documents that are no longer applicable or are in conflict; therefore the zoning resolution requires interpreting.

Mr. Stewart commented that with that being said, it is the Zoning Inspector's responsibility to interpret the Zoning Resolution. He elaborated that it is up to the Zoning Inspector to understand, interpret, and make a decision based on his interpretation. He further explained that one section of the resolution may override the content of another section.

Mr. Stewart also noted that what was being addressed this evening were basically bits and pieces of three (3) documents that have compiled the allegations from the complainant, Linda Debernardi. These documents are dated October 5, 2015; November 10, 2015; and November 30, 2015, and are part of the permanent record.

Mr. Stewart also explained how the meeting will be conducted. He further explained that each allegation will be heard, it will be discussed, and a vote will be taken by the Board on each allegation individually.

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The complainant was asked to present.

Jim O'Leary, 6349 Lost Nation, Concord introduced himself to the Board and indicated he is an attorney representing Linda Debernardi.

Mr. O'Leary thanked the Board for allowing the meeting to be moved from the 2<sup>nd</sup> Tuesday in January's agenda to the February meeting. Mr. O'Leary further explained that he and his client needed more time to prepare their case.

Attorney O'Leary agreed, as Chairman Stewart previously indicated, that the allegations are unusual circumstances, in that his client does not own the property where the allegations of zoning inspector error are being made.

Mr. O'Leary further explained that his client is looking for relief, in not having to look at this business on a daily basis. Mrs. Debernardi is currently living across the street from the property in question, in a residential district.

The attorney continued to explain that they had additional exhibits that they wanted to make sure were part of the permanent record. He further commented that the Board already has some of the exhibits and some the Board does not have.

Mr. O'Leary also stated that they only have one copy available of these exhibits, for the Board members to view at the meeting tonight.

The exhibits were handed to the Chairman and passed individually to the Board members.

**Exhibit 1** Article 1 [page 1 and 2] the Auburn Township Zoning Resolution.

**Exhibit 2** Permit Timeline plus 6 additional pages.

**[PLEASE NOTE THERE ARE 2 EXHIBITS IDENTIFIED BY AN EXHIBIT STAMP]**

**Exhibit 2** Application for Zoning Certificate (3 pages) plus 11 additional pages.

**Exhibit 3** Household Sewage Treatment System Installation Permit plus 10 additional pages.

A discussion took place regarding the septic and the EPA.

Mrs. Debernardi commented there needs to be a bathroom in the accessory building per the building code regulations [and that information is supplied in Exhibit 3]. Mrs. Debernardi further commented, in her opinion, that there are employees there [in the building] and an office is also located within the accessory building.

Mr. Tomsic, based on his expertise of being a certified septic system installer, commented that you can put a bathroom in an accessory structure without being required to go to the EPA; Mr. Tomsic further commented that you do not need a commercial permit for a bathroom in an accessory building, if the public is not using the bathroom.

Mrs. Debernardi further commented that there is a chart in the Exhibits that shows Mr. Tiber needs a bathroom. Mrs. Debernardi stressed that her point is, there is not enough septic for the bathroom in the accessory building. Again it was noted that the system is designed for 3 bedrooms in a house. A discussion took place.

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During the discussion, Mr. Tomsic explained how septic systems are designed; and the septic system is based on the bedrooms in a house, not the bathrooms; he further explained that just because the owner has one or two people using his bathroom that does not mean that they are over taxing the residential system.

Mrs. Debernardi indicated that Mr. Tiber was required to get a permit from the Geauga County for the business.

Mr. Pealer indicated that the Auburn Township Zoning Resolution does not require this.

She also commented that Mr. Tiber discharges water from washing cars for his business and he is also washing his business trucks.

Mr. Stewart and Mr. Tomsic both commented that this is a “moot” point, since the property owner is no longer detailing or washing cars at the location.

Mrs. Debernardi indicated that he is still washing his own cars there and that the EPA does not permit this. She testified that she called the EPA yesterday, and washing cars there is considered industrial wastewater and that is not permitted. Mrs. Debernardi also indicated the EPA will be visiting the Tiber’s residence.

Mr. O’Leary indicated that this is the problem, based on how the situation is looked at—is it residential or is it commercial.

Mrs. Debernardi indicated that Mr. Tiber needed to get an EPA permit.

Mr. Stewart asked that the presentation of the exhibits keep moving on.

**Exhibit 4** Auburn Township Zoning Resolution (4 pages) [Article 6]

**Exhibit 5** Auburn Township Zoning Resolution Article 2 page 2, plus 21 pages

It was presented that the KKR case involves a similar circumstance with an accessory building storing some equipment at a bar and that use was disallowed therefore, the same logic that was used related to the KKR accessory building was not applied here to this situation.

Mr. Stewart commented that the KKR case is in a residential district and this situation is in a business district; there is a big difference and there is no comparison between the KKR case and what is being heard tonight.

Mr. Pealer commented that on the Nathan Tiber’s application [from 2012] it states that the existing use of the lot is residential; and the zoning district is shown is B-1 and the garage which was being proposed to be built was going to be used for storage. Mr. Pealer felt that it was a point that needed to be brought up.

A discussion took place regarding subordinate and incidental. Mr. Stewart commented that both uses, currently at the property in question, are permitted uses. The property was bought for the residence, which is the main use. Mr. Stewart further commented that people are allowed to change their minds.

Mrs. Debernardi indicated that Mr. Tiber’s intent was never for residential. Lewis Tomsic explained that this property [in a B-1 zoning district] allows for the dual use—residential and business. [Reference Article 2 definition of BUSINESS-GENERAL]

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Mr. Tomsic explained that any improvement made on a property does not require the owner to get approval from the County Health Department. Mrs. Debernardi indicated that the permit was issued to Mr. Tiber's LLC. Mr. Tomsic indicated that the permit fee could have just been paid for from his business account.

At this point, it was also explained that the procedure in the Zoning Department is that when an application for a zoning permit is submitted and processed, the permit is issued to the name that is listed on the payment check, not to the person who signed the application. Therefore in this case the application was signed by Nathan Tiber.

**Exhibit 6** Two-page letter dated May 4, 2015, addressed to Nathan Tiber plus 11 pages.

Mrs. Debernardi also claimed that Mr. Tiber is using too much water on his property. Scott Brockman asked about how much water Mr. Tiber was using. Mrs. Debernardi indicated that Mr. Tiber fills five 250-gallon tanks, six (6) days a week, and in Mrs. Debernardi's opinion, this usage is affecting the drinking water for surrounding properties.

Mr. O'Leary also presented a water study to the Board and the amount of water taken out of that location is significantly more than what you would have in a residential use and that puts adjoining homeowners at risk.

Mr. Tomsic explained that the Tiber's well is a private water well, which he owns. Mr. Tomsic further commented that Mr. Tiber, can use the water from his private well as he wishes; and if the well goes dry, Mr. Tiber would have to drill a new one.

Mr. Brockman asked Mrs. Debernardi how she is determining that Mr. Tiber he is over taxing the well. Mrs. Debernardi indicated that there is a picture showing the tank. Mr. Brockman further commented that, in his opinion, he feels that Mrs. Debernardi is making assumptions regarding the tanks, water usage and discharge and these are assumptions and not fact.

Mrs. Bellar asked Mrs. Debernardi how long she has lived at this location. The response was for 25 years. Mrs. Debernardi further commented that the property is an eye sore and all she wanted is screening to block the view and that is the main point of her case.

Mrs. Debernardi also commented that she has received no cooperation from Auburn Township Zoning or Mr. Tiber.

**Exhibit 7** Pictures of property with no dates 34 pages

**Exhibit 8** Auburn Township Zoning Resolution (2 pages) plus 6 other pages.

**Exhibit 9** Auburn Township Zoning Resolutions (15 pages)

**Exhibit 10** Auburn Township Zoning Resolution (5 pages)

Mr. O'Leary explained that the last exhibit was going to be withdrawn.

It was requested that the ten exhibits be added to the permanent record.

BZA16-14a was withdrawn officially by the Mr. O'Leary, complainant's attorney; this withdrawal was also confirmed by the complainant.

Mr. Stewart indicated that there are now 15 items to be addressed. Mr. Stewart again explained that each item will be discussed individually; a vote will be taken by the Board, before moving to the next item.

The first item is **BZA-16-00a** which alleges that no enforcement action was taken on very specific items.

**BZA-16-00a alleging no enforcement action by zoning inspector from October 5<sup>th</sup> complaint**

Mr. Stewart explained that the complainant, Linda Debernardi, wrote a letter identifying very specific items. Mr. Stewart explained that the Zoning Inspector reviewed the information and provided a response to each item. He further commented that most specifically, Frank Kitko's response of November 13, 2015, was a direct response to your letter of October 5, 2015. Mr. Stewart commented that there were 3 specific items—one was that they were using the property to wash cars on site.

Mr. Stewart further explained, it appears that Mr. Kitko had taken action and addressed the complaint with the property owner. Mr. Tiber, the property owner, indicated and confirmed, through a written statement given to the Zoning Inspector, that he will not be performing any on site services—washing cars or doing any maintenance. At that point, Mr. Kitko has continued to monitor the situation.

Mr. Stewart also commented that he did not believe Mr. Tiber did any maintenance on the vehicles.

It was noted that at this point, it appears that Mr. Kitko has addressed that complaint with the owner of the business.

Mr. Stewart proceeded to discuss the parking and landscaping plan that had been submitted to Mr. Kitko by Mr. Tiber. Mr. Stewart commented that it also appears that Mr. Kitko is working with the owner of the business to get screening installed properly; the process has started and there is a plan in place.

Mr. Stewart further commented that it appears that the Zoning Inspector will be working with the owner to provide more landscaping/shielding in the next 6 months.

Mr. Stewart explained that if you review the requirements for landscaping as written in the Zoning Resolution, a lot of Mr. Tiber's property is an open area; for example, the driveway entrance is an open area and based on the Zoning Resolution, driveway entrances do not require landscaping/shielding.

Mr. Stewart noted that it appears there has been some screening installed being placed on the west side of the road in front of the business building itself. Mr. Stewart stated that there is progress, even though it may not be satisfactory to everyone at this point, a plan is in place.

Mr. Stewart also commented that this is a unique piece of property to screen because of the differences in elevations between the two properties [Tibers and Debernardi]. Mr. Stewart further commented that it is unique because the complainant, from her dwelling, is looking down on Mr. Tiber's property from a much higher elevation. A discussion took place regarding the elevation of the complainant's property versus the Tiber's property. Since the complaint's property is at a higher elevation from the Tiber's property, whatever screening is put in place will not shield the Tiber building from her property.

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It was also explained that Mr. Tiber is only responsible to take care of the landscaping from the elevation of his property and not the elevation from Mrs. Debernardi's property. Mrs. Debernardi commented that she is really only concerned about the road-side view.

Mrs. Debernardi also commented that there is to be a continuous full blockage of screening and with what is in place now you can see everything from the road.

She further commented that Mr. Tiber is parking cars all over the place.

Mr. Stewart commented that Mr. Tiber is allowed to park cars at a business in a B-1 district. A discussion took place as to whether the cars had to be parked on the side of the building and/or inside the building. Mr. Stewart commented that during the day, the cars do not need to be parked inside. Mr. Pealer commented that this requirement might be only if the property was being used as a car wash, and it is not.

Mrs. Debernardi commented that, in her opinion, the two little trees that were planted on Mr. Tiber's property is not screening. She also commented that there should be more dense screening than what is in place. She further commented that the residents who live on Carriage Hill think the same thing she does because they are all asking her what is going on.

Mr. Brockman commented that Mrs. Debernardi is continuing to make assumptions and use hearsay regarding the residents of Carriage Hill. Mr. Brockman asked that Mrs. Debernardi stop with the hearsay and assumptions.

Mr. Stewart again remarked that the Zoning Inspector is working with the owner regarding the landscaping and screening and it appears that the process has started.

Regarding the next item addressed in the letter, Mr. Stewart commented that Mr. Kitko discussed the temporary signage that was on Mr. Tiber's property with Mr. Tiber and it appears that that this issue was also resolved.

Mrs. Debernardi acknowledged this, but commented that was a while ago.

Mr. Stewart continued to explain what the allegations originally were, and Mr. Stewart wanted to make sure that everyone was in agreement that the allegations have been addressed.

Mr. Stewart further commented that the situation is a "work in progress" and based on Mr. Kitko's letter dated November 13, 2015, addressed to the complainant, Linda Debernardi that all the items have been addressed and enforcement action has been taken, contrary to her claim.

Mr. Stewart explained how the motion would be made in the affirmative. He further explained that if a Board member was in agreement with the complainant, they should vote yes; and if the Board member did not agree with the complainant, they should vote no.

With that being explained, Mr. Stewart indicated that the Board was going to vote on this first item; Mr. Stewart again explained that the Board was going to vote on each item individually.

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Mr. Stewart also explained that he wanted to again make it clear to the Board on how the voting will take place. If the member is in agreement with the complainant, than they need to vote yes; and if they are not in agreement, they are to vote no.

Mrs. Debernardi asked about parking, Mr. Stewart indicated that it would be addressed later in the meeting.

**Motion by Lewis Tomsic to grant BZA-16-00a, a complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, alleging no enforcement action by Zoning Inspector from an October 5<sup>th</sup> complaint against Nathan and Deanne Tiber and Nathan's Auto Detailing LLC, located at 17680 Auburn Road, Auburn Township, Ohio, in a B-1 zoning district, Auburn Township, Ohio 44023.**

If you are in agreement with the complainant that there is no enforcement action, you need to vote YES; to deny the allegation; vote NO. **The motion was seconded by Robert Pealer. Vote: Bellar, no; Freebairn, no; Pealer, no; Tomsic, no; and Stewart, no.**

Mr. Stewart proceeded to the next item **BZA-16-01a, a complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, alleging lack of enforcement of a business meeting the definition of a commercial car wash and/or car repair [Article 2] for a business located at 17680 Auburn Road, Auburn Township Ohio, in a B-1 zoning district.**

Mr. Stewart indicated that Frank Kitko, Zoning Inspector, reviewed the situation and had made suggestions to the business owner. This was accomplished through a letter dated May 4, 2015, to the property owners, Nathan and Deanne Tiber. Mr. Kitko explained in that letter that if Mr. Tiber wanted to do business as a car wash [his auto detailing] on his property, he would no longer be an offsite service company and Mr. Tiber would have to file a zoning request for a conditional use with the Board of Appeals.

Mr. Stewart proceeded to explain that the business owner decided that he did not want that; he decided he would continue his service business offsite as he had previously done.

Mr. Stewart further indicated that Mr. Tiber is not an on-site car wash business nor is he a car repair business. Mr. Stewart further explained that he does not meet the criteria of a car repair service garage business that would do routine maintenance or service of vehicles. Both of these allegations do not fit what this business is doing in this B-1 zoning district. At this point in time, he is not an on-site car wash or a repair business.

Mr. O'Leary stated that by definition, an auto detailing business is a car wash business.

Mr. Stewart commented that Mr. O'Leary's statement is not true. Mr. Stewart explained that first of all, Mr. Tiber is not detailing the cars on site. Mr. Stewart further clarified that it appears that Mr. Tiber did previously, for a short time, do some business on site, but he is no longer.

Mr. Stewart also stated that there are numerous types of zoning districts in Auburn Township and it is the responsibility of our Zoning Inspector to enforce them. He further explained that there are people who take advantage of the Zoning Resolution and the guidelines--it happens. Our Zoning Inspector does a good job enforcing these things; yes, things do slip through the cracks; yes, things do happen, but when violations are brought forward to the Zoning Inspector; the Zoning Inspector does his due diligence and works with the person that the complaint is brought against and works to resolve the issues.

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Mr. Stewart indicated that these items do take time to get resolved. The items for this particular situation are getting done in a timely manner. Mr. Stewart further explained that in this case, the property owner did do some on site auto detailing, the property owner was cited by the Zoning Inspector, Mr. Tiber acknowledged that he did it and he also wrote a letter stating that he would not do it anymore. Mr. Stewart commented that he did sign a letter to confirm that his business is an offsite service business.

Mrs. Debernardi interjected that the equipment [trucks] are located in the building; therefore it is a car wash, in her opinion. She further indicated that it doesn't say use, it says in the building.

Mr. Stewart indicated that the work is being performed offsite.

Mr. Tomsic commented also that he is performing the work offsite. He reiterated what had been previously stated by Mr. Stewart that Mr. Tiber was wrong, he admitted it and it is not a commercial car wash in any way, shape or form.

Mr. Tomsic further commented that you cannot consider this a commercial car wash, because he is parking trucks in the building. Mr. Tomsic felt that Mrs. Debernardi had taken a stretch with the definition, when it says "equipped". Mr. Tomsic further commented that if there is a hose in the garage is that a commercial car wash?

Mrs. Debernardi explained what the EPA explained to her. Mrs. Debernardi indicated that the EPA stated that if Mr. Tiber is washing his business trucks there, that is an issue with them and Mr. Tiber needs an EPA permit. A discussion took place again regarding businesses in Geauga County washing their company vehicles on site being a car wash?

**Motion by Lewis Tomsic to grant BZA-16-01a, a complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, alleging Zoning Inspector error of lack of enforcement of a business, allegedly meeting the definition of a commercial car wash and/or car repair [Article 2] [the business, owned by Nathan's Auto Detailing LLC, is located at 17680 Auburn Road, Auburn Township Ohio, in a B-1 zoning district. The motion was seconded by Robert Pealer. Vote: Bellar, no; Freebairn, no; Pealer, no; Tomsic, no; and Stewart, no. Motion denied.**

The next item is **BZA-16-02a, a complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, that no development requiring sewer and water facilities be approved by the Zoning Inspector prior to approval by county health [3.01j], compliance with state and federal regulations [3.05(d)], [6.07(a)] Complainant alleging the business permit should be "null & void" due to non-compliance with EPA and septic laws for a business located at 19680 Auburn Road, Auburn Township Ohio, in a B-1 zoning district.**

Mr. Stewart commented first off, Auburn Township cannot enforce this allegation. This would be enforced by the EPA or the Geauga County Health Department. It was noted that Health Department approval does not have to be received for the construction of accessory buildings.

Mr. Stewart further commented that as an accessory building it is not a requirement to go to the EPA. Mr. Stewart asked if there were any waste hook ups to the current septic system from this accessory structure. Mr. Kitko indicated that there may now be a toilet in the building.

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Mr. Stewart indicated that this is something that will be regulated by the EPA and County Health Department to enforce and is not in the Township's jurisdiction. Mr. Stewart commented that he does not have any information that commercial automotive waste is being used and discharged on Mr. Tiber's property.

Mr. Stewart asked Mrs. Debernardi what she considered commercial automotive waste. She stated that it is not what she considered commercial automotive waste; but she indicated that what the EPA explained to her is that washing trucks in the building would be considered industrial waste.

Mrs. Bellar asked if the EPA has been out to the site. Mrs. Debernardi indicated that the case was transferred from Geauga Health Department to the EPA for their jurisdiction of septic and well; they have not been there yet—she indicated that her point is that a permit should have been applied for before the commercial building was built.

Mr. Brockman asked for clarification so he could understand something. Mr. Brockman asked if Mrs. Debernardi was talking about the building that Mr. Tiber applied for initially in 2012; that Mr. Tiber called a garage and if so, how would Mr. Kitko understand that this building for storage would require sewer and water facilities if it was applied for as a storage garage.

Again, Mrs. Debernardi indicated that the permit was issued for a business. She explained that there is a picture of the issued permit and it was issued to the business; she feels that Mr. Tiber did know it was being used for an auto detailing business.

Mr. Brockman indicated that if Mrs. Debernardi is suggesting that in 2012 Mr. Kitko should have known that there might be a requirement for sewer and water in the future for this, that this would have been a reach for Mr. Kitko to make this assumption. Mrs. Debernardi indicated that Mr. Tiber should have known.

Mr. Brockman asked how does that reflect upon Mr. Kitko and Mrs. Debernardi indicated that "well Mr. Kitko issued the permit." Mr. Brockman indicated that the business [in 2012] was an offsite service business and the structure was used for storage.

Mr. Brockman proceeded to elaborate that Mrs. Debernardi is implying that Mr. Kitko should have known something [3 years] before it happened. Mrs. Debernardi indicated that he [Mr. Kitko] knows that now that Mr. Tiber is washing cars there.

Mr. Stewart and Mr. Tomsic both stressed again, that Mr. Tiber is no longer washing cars there, so for zoning purposes, it is not a car wash.

Mrs. Debernardi indicated that Mr. Tiber is washing the company trucks there and in her opinion, it is the same thing. Another discussion took place.

Mr. Pealer, indicated that the pictures Mrs. Debernardi supplied as exhibits, have no dates on them at all and without the dates, the pictures cannot support any allegations.

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Mrs. Debernardi indicated that she will testify that the pictures were taken between June 2015 and September 2015. She explained that the reason the dates were removed was because when she took them with her camera and transferred them to her phone some of the dates did not transfer.

**Motion by Brian Stewart to grant BZA-16-02a, a complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, alleging Zoning Inspector error in that no development requiring sewer and water facilities be approved by the Zoning Inspector prior to approval by county health [3.01j], compliance with state and federal regulations [3.05(d)], [6.07(a)] Complainant alleging the business permit should be “null & void” due to non-compliance with EPA and septic laws, for property located at 17680 Auburn Road, Auburn Township Ohio, in a B-1 zoning district. The motion was seconded by Lewis Tomsic. Vote: Bellar, no; Freebairn, no; Pealer, no; Tomsic, no; Stewart, no. Motion was not granted.**

The next item to be addressed was:

**BZA-16-03a, a complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, alleging the zoning inspector erred by allowing lot coverage to exceed 10% [4.03(g) & Schedule 4.03(k)], for property located at 17680 Auburn Road, Auburn Township Ohio, in a B-1 zoning district.**

Mr. Stewart explained that the B-1 zoning district is covered by Section 4A.06(c) lot requirements which allows up to 30% lot coverage. He further explained that to the Board’s knowledge all Mr. Tiber’s structures on his property do not exceed 30% lot coverage.

Mrs. Debernardi explained her logic on this allegation; since the permit was applied for a residential structure it should be 10%. She explained that if you add up all the buildings and the parking lot on Mr. Tiber’s property it is over 10% coverage

Mr. Pealer testified that he calculated all the structures on the property excluding parking and the lot coverage is under the 10%. It was explained that parking is not included in lot coverage calculations. Mr. Pealer indicated that Mr. Tiber’s lot coverage is actually at a .01. which is under the 30%.

Zoning Inspector Kitko, testified that for the record, the zoning district determines the lot coverage and not the use on the property. Mr. Kitko explained that Mr. Tiber’s property is located in a B-1 District and lot coverage in the B-1 District is 30% structures only—no parking areas or driveways are to be included in the calculation.

**Motion by Brian Stewart to grant BZA-16-03a, a complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, alleging the zoning inspector erred by allowing lot coverage to exceed 10% [4.03(g) & Schedule 4.03(k)], for property located at 17680 Auburn Road, Auburn Township Ohio, in a B-1 zoning district. The motion was seconded by Robert Pealer. Vote: Bellar, no; Freebairn, no; Pealer, no; Tomsic, no; Stewart, no. Motion was not granted.**

**BZA-16-04a, complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, alleging the zoning inspector erred in that by parking areas are to be paved with concrete or asphalt [5(d)(2) submitted] for property located at 17680 Auburn Road, Auburn Township OH in a B-1 zoning district.**

Mr. Stewart indicated that this is one of the areas in our Zoning Resolution that can be interpreted several different ways by several different sections of the resolution.

Mr. Stewart proceeded with the first item, parking shall have a hard surface and any area with five (5) or more spaces should be covered with a hard surface of concrete or asphalt.

Mr. Stewart also commented that Article 2 of the Zoning Resolution is the definitions. The definition of outdoor storage reads “an open area on a lot used for parking or storage of equipment, materials, machinery or vehicles for a period of 24 hours or more and shall be accessory to the principal permitted or conditional use on a lot.”

Mr. Stewart further explained that in another section of the resolution, “areas devoted to outdoor storage shall be located on an impervious surface.”

Mr. Stewart also commented that the definition of impervious surface is “A surface comprised of a material or combination of materials that repels water and prevents penetration of melt water from infiltrating soils. These are mainly surfaces constructed of impenetrable materials (e.g. asphalt, concrete, roofing materials, stone, gravel, brick, etc.)”

Mr. Stewart also noted that this gets into a grey area that can be interpreted several different ways. He further explained, that it is the interpretation of our Zoning Inspector, based on the numerous options within our own Zoning Resolution, that the Zoning Inspector’s determination is that gravel meets the definition of an impervious surface.

Mr. Stewart commented that this is an issue that has been brought to the attention of our Zoning Commission and that it needs to be addressed.

Mr. Tomsic explained that asphalt and concrete takes the water off one property and put it on another’s property. Mr. Tomsic further explained that we are a township and there are not storm sewers; and the more hard surface that is installed the more run-off problems that are created with drainage. Gravel driveways have a slow saturation process, so you are less likely to create flooding. .

**Motion by Brian Stewart to grant BZA-16-04a, a complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, alleging the zoning inspector erred in that by parking areas are to be paved with concrete or asphalt [5(d)(2) submitted] for property located at 17680 Auburn Road, Auburn Township OH in a B-1 zoning district. The motion was seconded by Lewis Tomsic. Vote: Bellar, no; Freebairn, no; Pealer, yes; Tomsic, yes; Stewart, no: Motion denied.**

**BZA-16-05a, a complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, alleging lack of enforcement re: screening along street frontage, the parking lot, dumpsters and adjacent residential districts [4A.10] for property located at 17680 Auburn Road, Auburn Township Ohio, in a B-1 zoning district.**

Mr. Stewart indicated that this complaint appears to be one of the more serious allegations. Mrs. Debernardi indicated it was an important one for the resale of the house.

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Mr. Stewart indicated that there were several interpretations when he read through the requirements of the landscaping and screening along road frontage that he wanted to point out.

Mr. Stewart explained that the Zoning Inspector is working with the homeowner to try to come to a resolution on this. Mr. Stewart further commented that, planting trees, as we know, do not grow overnight. He also explained that there are other options for screening; but Mr. Stewart explained that, for example, a mound, at this property would not do Mrs. Debernardi any good.

Mr. Stewart further elaborated, that for example, all of the driveways that are seen in the front do not require any type of screening and there is a lot of driveway in the front of the accessory building.

Mr. Stewart explained that there has been an attempt to install screening in front of the property; there has been some screening installed from the house to the south. Mr. Stewart indicated our Zoning Resolution requires a continual visual screen within 3 years of installation; not less than 6' tall from the natural grade. Mr. Stewart indicated that perhaps more trees are required to comply with what is being alleged here.

Mr. Stewart commented again that the Board of Zoning Appeals does not enforce this rule; it is our Zoning Inspector's responsibility. He stated that the Zoning Inspector has worked with the owner to come up with a solution here, it is not going to get solved in the middle of winter in February; however, if this is a legitimate complaint, you, the neighbor, have the right to expect some results here.

Mr. Stewart further stated that he hopes that there is a resolution that everyone can live with.

Mr. O'Leary commented that by way of explanation, that these 15 items seem tedious, but it was their feeling when this was brought to Mr. Kitko's attention and when Mrs. Debernardi got the letter, to preserve the administrative appeal process, we had to bring all of these allegations forward.

Mr. O'Leary further commented that some items may seem to be resolved now, at least in some respects, but the reason that all of these items are in front of you today is that at the time we received his [Mr. Kitko's] letter we had to preserve our right to appeal on each of these all these items.

Mr. Stewart indicated that Mr. O'Leary is on record for that.

Mrs. Debernardi asked if she could say one thing. Mrs. Debernardi commented that from the beginning she tried to work with a number of people on this issue. She further commented that this is the whole crux of the matter. She explained that she tried personally and spent thousands of dollars to block the view and she got no response on the other end.

Mr. Stewart asked who the other end was and Mrs. Debernardi indicated that both Auburn Township Zoning and the property owner. She explained that her point is, instead of trying to work with her and she got no response to her wanting some screenage, so we could all be happy, she again commented that she got no response other than to "bring it on".

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She also testified that the people in Carriage Hill feel the same way. Mrs. Debernardi, further commented that they [the Carriage Hill residents] may not be here today, but she got a lot of questions about what is going on over there [at Mr. Tiber's].

Mr. Brockman commented that he does not want to listen to hearsay about what Mrs. Debernardi might want to suggest what people in Carriage Hill are thinking. Mr. Brockman commented that this was previously done and Mr. Brockman asked Mrs. Debernardi to please not do it again.

A discussion took place.

Mr. Stewart indicated that this is an important issue and he hopes that the property owner realizes that also; #1 you have to be compliant; #2 you have to be courteous to the people that are adjacent property owners.

Mrs. Debernardi stated that how this started was, there were dumpsters of garbage hanging out of them. Mr. Tomsic commented that they saw the pictures of the dumpsters and that was all taken care of, and that the dumpsters were removed. Mrs. Debernardi commented, yes, but not really. She commented that as you are drive by and look at the business you see people [outside].

Mr. Stewart did interject and remind Mrs. Debernardi that this is a business district. He explained again that Mrs. Debernardi moved across from a business district that was established in 1948 [when zoning was established]. A discussion took place regarding all the different uses that are permitted in the B-1 zoning district, and it was pointed out that a more invasive business could be located there.

Mr. Kitko asked to address the Board for the record. Mr. Kitko testified that he has never refused to work with Mrs. Debernardi or the property owner; and in addition, for the record; Mrs. Debernardi has to understand, the process takes time. He further pointed out that just because you come in on a Friday, lay something on a desk, it takes a while to go through due diligence and follow up with the property owner.

Mr. Kitko further stated that “so don't say that we didn't address it.” He commented that we did address it and we are addressing it, it may have taken some time and you may not be happy with the timeframe, but again, we are addressing it.

Mr. Kitko further commented that Mrs. Debernardi and her attorney were told during the meeting with me and the Township's attorney, Bridey Matheney, “that this is an ongoing thing and it would be addressed in the Spring, so don't say we gave you the cold shoulder because we did not.”

Mr. Stewart indicated that this is an item that needs to be properly addressed with the cooperation of all parties.

Nathan Tiber, 17680 Auburn Road, asked what is considered tall enough trees. Mr. Tomsic explained, that's a grey area. In B-1 zoning district, it requires three (3) shade trees every 100 linear feet; the trees have to be 6' tall with 2" trunks or 20 shrubs for every 100 feet; but this does not include the driveway entrance.

Mr. Tomsic further explained that the screening of parking lots, that are visible along public roads, with 5 or more parking spaces is 3' tall and shall be placed around the perimeter so that it effectively screens a minimum of 50% of the view of the parking area.

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Mr. Tomsic again noted that Mrs. Debernardi's property is so high; there is not a lot that can be done to really block your view of the Tiber property. Mrs. Debernardi indicated that she is only concerned with the road view while driving by. Mr. Tomsic explained that the plan, Mr. Tiber submitted, with the small evergreens shrubs will probably be the most effective screening.

Mr. Pealer asked if there is an island on the property. Mr. Tiber explained that there is an island that is approximately 3' deep that is behind the area where plants could be planted so they are not in the ROW; and it is approximately 12-15' long then it drops to the driveway where there are rocks. So there is only a small area available that he would be allowed for planting.

Mr. Tiber also stated that as soon as he was contacted by Mr. Kitko, he immediately started to address these issues. Mr. Tiber indicated that as far as the planting, he went to Petti's [Garden Center] within a week or two and bought the biggest trees that they sold and they were 5-6' in height, as indicated on the new tree tags.

Mr. Tiber explained that he built 2' mounds to plant the trees in instead of digging into the natural grade of the soil that drops off. He further explained that the ball of the trees is actually sitting on top of the natural grade, so that dirt is built up around the trees to try to make them higher. Mr. Tiber indicated that he has tried and has made every attempt to do what Mr. Kitko has asked.

Mr. Tiber further commented that Mrs. Debernardi states that she has tried to work with me but the first I heard that she was upset about this was when she walked over and said that she was filing a lawsuit against me and that I would be served papers within weeks. This was before she even filed her 1<sup>st</sup> complaint with the Zoning Office. Mr. Tiber also commented that he felt they always had a great neighborly relationship prior to this.

Mr. Tiber commented that he obviously want his property to look nice. He explained that he got rid of the dumpsters and that it costs more money to use the little toters; Mr. Tiber further explained that he could have built a fence around the dumpster, but he felt that would have looked gaudier.

Mr. Tiber also commented about the trees that were planted on the side and in the front. The trees are 5-6' tall and they will take time to grow. Mr. Tiber further commented that if he planted more trees in that small area, most likely some of them would die because they would be too close together. Mr. Stewart felt that there is still work to be done here.

**Motion by Brian Stewart to grant BZA-16-05a, a complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, alleging lack of enforcement re: screening along street frontage, the parking lot, dumpsters and adjacent residential districts [4A.10], for property located at 17680 Auburn Road, Auburn Township Ohio, in a B-1 zoning district. The motion was seconded by Lewis Tomsic. Vote: Tomsic, no; Pealer, no; Pealer, no; Freebairn, no; Bellar, no; and Stewart, no.**

**BZA-16-06a, a complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, alleging lack of enforcement re: bay doors cannot exceed 10' in height [5.03(k)(2)(c)], for property located at 17680 Auburn Road, Auburn Township Ohio, in a B-1 zoning district.**

Mr. Stewart explained that this section of our Zoning Resolution references a conditional use for a car wash. Mr. Stewart further commented, first of all, we have already determined through the votes this evening that this business is not a commercial car wash. With that said, this specific section of our zoning resolution, does not apply to the allegation being made here. There were no other comments or questions.

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**Motion by Brian Stewart, seconded by Lewis Tomsic, to grant BZA-16-06, a complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, alleging lack of enforcement re: bay doors cannot exceed 10' in height [5.03(k)(2)(c)] for property located at 17680 Auburn Road, Auburn Township OH in a B-1 zoning district. Vote: Tomsic, no; Pealer, no; Freebairn, no; Bellar, no; Stewart, no. Motion denied.**

**BZA-16-07a, a complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, alleging lack of enforcement re: storage of supplies [5.03(k)(2)(c)], for property located at 17680 Auburn Road, Auburn Township Ohio, in a B-1 zoning district**

Mr. Stewart again explained that this allegation is very similar to what was just discussed regarding a commercial car wash. This section also pertains to a commercial car wash and as previously determined through the Board, does not apply to the allegation being made here.

**Motion by Brian Stewart to grant BZA-16-07a, a complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, alleging lack of enforcement re: storage of supplies [5.03(k)(2)(c)], for property located at 17680 Auburn Road, Auburn Township Ohio, in a B-1 zoning district. Vote: Bellar, no; Freebairn, no; Pealer, no; Tomsic, no; Stewart, no. Motion denied.**

**BZA-16-08a, a complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, alleging lack of enforcement re: dumpsters locations [5.03(k)(2)(d)], for property located at 17680 Auburn Road, Auburn Township Ohio, in a B-1 zoning district.**

Mr. Stewart commented that in this situation again this section reads from the resolution regarding a commercial car wash situation and we have already determined that this is not a commercial car wash. Mr. Stewart commented that the dumpster was voluntarily removed by the property owner.

**Motion Brian Stewart, seconded by Lewis Tomsic to grant BZA-16-08a, a complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, alleging lack of enforcement re: dumpsters locations [5.03(k)(2)(d)], for property located at 17680 Auburn Road, Auburn Township Ohio, in a B-1 zoning district. Vote: Bellar, no; Freebairn, no; Pealer, no; Tomsic, no; Stewart, no. Motion denied.**

**BZA-16-09a, a complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, alleging the lack of enforcement, by the zoning inspector, has effectively issued a variance by allowing the car wash. [no section of the resolution was cited], for property located at 17680 Auburn Road, Auburn Township Ohio, in a B-1 zoning district.**

It has been previously determined that this is not a car wash. Mr. Stewart commented that this is a business district, and it has been determined by our Zoning Inspector that this is a permitted use in the district and as an offsite service business; we have already established that this is not a car wash.

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**Motion by Brian Stewart to grant BZA-16-09a, a complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, alleging the lack of enforcement, by the zoning inspector, has effectively issued a variance by allowing the car wash. [no section of the resolution was cited], for property located at 17680 Auburn Road, Auburn Township Ohio, in a B-1 zoning district. Vote: Bellar, no; Freebairn, no; Pealer, no; Tomsic, no; Stewart, no. Motion denied.**

**Next item: BZA-16-10a, a complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, alleging error in applying the accessory use standards building/parking [5.02, 2.02 4.03(b)], for property located at 17680 Auburn Road, Auburn Township Ohio, in a B-1 zoning district**

Mr. Stewart commented that Article 5.02 of the Auburn Township Zoning Resolution defines the location of an accessory building. This accessory building on Mr. Tiber's property is in compliance with this section of the Zoning Resolution.

Mr. Stewart further commented on Section 2.02 of the Zoning Resolution, the subordinate use of an accessory building is clearly incidental to the use. Mr. Stewart commented that the residence is the main principle use for this piece of property and this structure is the subordinate use.

Mr. Stewart comment that 4.03(b) of the zoning resolution "accessory uses shall be permitted as a subordinate building or use when it is clearly incidental to and located on the same lot as the principal building or use. Mr. Stewart commented in this situation, we feel that this is a subordinate use to the site. The main use is a residence.

Mrs. Debernardi indicated that it is not incidental or subordinate or customary. The use of the structure is not a standard on that. Once again, the permit was issue to the residence, case law indicates that it has to be related to the residence, just like the KKR case where it had to be the same use as the bar—same logic. Mr. Pealer commented that it is a different zoning district. KKR is a bar [a non-conforming use in a residential district].

Mr. Tomsic commented that the Webster's definition of subordinates is of lessor importance or secondary.

Mrs. Debernardi indicated that case law means smaller.

A discussion took place regarding KKR. Mr. Kitko explained that KKR is a non-conforming use in a residential district. When the owner of the bar built the accessory building it was built for storage of bar equipment exclusively. The ownership of the bar changed and the new owners allowed a landscaper to store his equipment in the building which is not a permitted use in the residential district. Mr. Tomsic commented that we are talking apples and oranges.

**Motion by Brian Stewart, seconded by Lewis Tomsic to grant BZA-16-10a, a complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, alleging error in applying the accessory use standards building/parking [5.02, 2.02 4.03(b)], for property located at 17680 Auburn Road, Auburn Township Ohio, in a B-1 zoning district. Vote: Bellar, no; Freebairn, no; Pealer, no; Tomsic, no; Stewart, no. Motion denied.**

**BZA-16-11a, a complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, alleging error, in allowing a residence to be connected to a business in a B-1 district [Article 4A, column 1 b-1(a)(1)], for property located at 17680 Auburn Road, Auburn Township Ohio, in a B-1 zoning district**

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Mr. Stewart explained that the schedule of uses in a B-1 general business district 4a.05 has a footnote which reads R-1 district permitted main and conditional uses apply to B-1 district. In the R-1 zoning district schedule 4.03(k) one-family dwellings are permitted.

Mr. Stewart also read from the Auburn Township Zoning Resolution, Article 2 definition of Businesses, General: One or more of the following uses, with or without a dwelling unit unless otherwise provided for in the Resolution: . . .” with that said you are allowed to have a separate business with or without a dwelling.

Mrs. Debernardi indicated that getting into the non-conforming section, the chart [in the Zoning Resolution] also requires 1.5 acres. Mrs. Debernardi indicated that in 1971 there were no lot requirements for business, 1984 went to 1.5 acres, and 1990 it was 1.5 acres. She again commented that there was no acreage requirement for a business in 1971. Mrs. Debernardi indicated that since it is a non-conforming use and does not meet the acreage requirement; it cannot be grandfathered because it does not meet the requirement because of a shortage of 2/10ths of an acre.

Mrs. Debernardi further explained that the reason this is important is for septic and well issues.

Mrs. Debernardi added that in Section 3.03 references non-conforming. She further explained that Exhibit 9 supplements what she is explaining.

A discussion took place regarding the minimum acreage.

It was noted that the complainant previously withdrew the allegation regarding the non-conforming requirements. A discussion took place and it was also noted that the residential non-conforming was withdrawn not the lot nonconforming. Mrs. Debernardi indicated that 519.19 [of the Ohio Revised Code] you have to have an established use on that business to be grandfathered in and in that period of time there was never a business there [on Mr. Tiber’s property], therefore it cannot be grandfathered in.

[added to clarify above statement] 519.19 Nonconforming use of buildings and land not affected by zoning. The lawful use of any dwelling, building, or structure and of any land or premises, as existing and lawful at the time of enactment of a zoning resolution or amendment thereto, may be continued, although such use does not conform with such resolution or amendment, but if any such nonconforming use is voluntarily discontinued for two years or more, any future use of said land shall be in conformity with sections 519.02 to 519.25, inclusive, of the Revised Code. The board of township trustees shall provide in any zoning resolution for the completion, restoration, reconstruction, extension, or substitution of nonconforming uses upon such reasonable terms as are set forth in the zoning resolution.

Mr. Tomsic asked if he was the only dumb one that did not understand what was just said. Mr. Tomsic asked Mrs. Debernardi what was non-conforming [because both of the uses on the Tiber’s lot are conforming]. Mrs. Debernardi indicated that the property does not have the acreage; therefore it is nonconforming and his business is not allowed because it is non-conforming and had not been established prior to the lot becoming a non-conformity.

Mr. Kitko was asked to explain non-conforming. Mr. Kitko commented that there are different non-conformities [uses, subdivisions, lots of record]. Mr. Kitko explained that there are legal non-conforming lot of record, which is what both Mrs. Debernardi and Mr. Tiber lots are.

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Mr. Kitko further explained that you have legal non-conforming uses which currently do not exist on either property. Mr. Kitko explained that the both uses on Mr. Tiber's property are both permitted uses [even though the lot is nonconforming]; and Mrs. Debernardi's property is a permitted residential use on a legal non-conforming lot.

Mr. Kitko, further explained that all legal non-conforming lots of record are allowed to have permitted uses on them. Again, Mr. Tibers uses are both permitted.

Mr. Kitko again explained that legal non-conforming lots of record have to do with the area of the lot; not with the use of the lot. He emphasized that Mr. Tiber's lot is a legal non-conforming lot; the parcel existed [and has not changed in area or configuration since Auburn Township zoning was created in 1948]. Again, Mr. Kitko reiterated that the area or configuration of the lot has not changed, so the parcel is grandfathered as a legal non-conforming lot of record.

A discussion took place regarding the change in zoning law in 1990. Mrs. Debernardi commented that the lot is not meeting all the other standards that are in Exhibit 9 and the grandfathering was lost. She further indicated that the ORC [Ohio Revised Code] overrides this all.

Mr. Pealer commented that the use was never lost on Mr. Tiber's lot; the acreage compliance issue is a legal nonconforming lot, but the Tiber's are still allowed to develop it.

Mrs. Debernardi indicated that if you look at the lot of record rule, the rule states that they have to meet all the other standards and we are stating that it does not, which is part of my case at the moment.

It was asked, "What are the other standards that are not being met?" Once again Mrs. Debernardi responded that the building is not an accessory to the main use of the property. Mrs. Debernardi also referenced the Auburn Glen case law and its bearing on this allegation.

Mr. Stewart commented that it is a very unique argument. Mrs. Debernardi responded that more information can be provided regarding this so the Board could understand it better. A discussion took place.

**Motion by Brian Stewart seconded by Lewis Tomsic to grant BZA-16-11a, a complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, alleging error, in allowing a residence to be connected to a business in a B-1 district [Article 4A, column 1 b-1(a)(1)], for property located at 17680 Auburn Road, Auburn Township Ohio, in a B-1 zoning district. Vote: Tomsic, no; Pealer, no; Freebairn, no; Bellar, no; Stewart, no. Motion denied.**

**BZA-16-12a, a complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, alleging zoning inspector error in allowing two uses on the same parcel, for property located at 17680 Auburn Road, Auburn Township Ohio, in a B-1 zoning district.**

Mr. Stewart commented that this is very similar to the previous accusation. Mrs. Debernardi explained that the allegation here is that the lot is not large enough to have two uses run off the septic. Mrs. Debernardi is again indicating that this should have been addressed with the Health Department before the permit was issued. She noted again that the Health Department has turned it over to the EPA for a commercial septic system.

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**Motion by Brian Stewart seconded by Lewis Tomsic to grant BZA-16-12a, a complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, alleging zoning inspector error in allowing two uses on the same parcel, for property located at 17680 Auburn Road, Auburn Township Ohio, in a B-1 zoning district. Vote: Tomsic, no; Pealer, no; Freebairn, no; Bellar, no; Stewart, no. Motion denied.**

**BZA-16-13a a complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, alleging zoning inspector error by wrongfully deciding that an accessory building can be allowed in a B-1 district if it meets the zoning district list of uses [no article cited], for property located at 17680 Auburn Road, Auburn Township Ohio, in a B-1 zoning district**

Mr. Stewart indicated that under the zoning regulations in the B1 district we are going to apply the same scenario as the previous two items to this scenario. Mrs. Debernardi stated that the use is not relevant to the main use of the property. She noted again that the County Health Department has turned it over to the EPA for a commercial septic.

**Motion by Brian Stewart, seconded by Laura Bellar to grant BZA-16-13a a complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, alleging zoning inspector error by wrongfully deciding that an accessory building can be allowed in a B-1 district if it meets the zoning district list of uses [no article cited], for property located at 17680 Auburn Road, Auburn Township Ohio, in a B-1 zoning district. Vote: Tomsic, no; Pealer, no; Freebairn, no; Bellar, no; Stewart, no. Motion denied.**

**WITHDRAWN by complainant BZA-16-14a a complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, alleging error to allow a permit to enlarge, alter, or extend to occupy a greater area of land of a nonconforming use [claimant feels there is a nonconforming dwelling therefore the additional structure, living room, and deck were not permitted] [3.03(e)(1),(2),(3),(4),(5),(6), and (7)] B-1 district], for property located at 17680 Auburn Road, Auburn Township Ohio, in a B-1 zoning district.**

**BZA-16-15a, a complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, alleging lack of enforcement re: storage or equipment and vehicles are required to be located in the enclosed building [no section cited], for property located at 17680 Auburn Road, Auburn Township Ohio, in a B-1 zoning district.**

Mr. Stewart commented that the parking and loading facilities supplemental regulations for the B-1 zoning district indicates that the owner of a lot shall be responsible for the maintenance in good condition. The parking of any unlicensed or disabled motor vehicles for more than 15 days is not permitted. Mr. Stewart indicated that none of Mr. Tiber's vehicles are not operational or without a license.

Mr. Stewart commented that outdoor storage is defined as an open area on a lot used for parking or storage of equipment, materials, machinery or vehicles for a period of 24 hours or more. He further commented that this is permitted.

Mr. Stewart indicated that it did not appear the Mrs. Debernardi cited a section of the Auburn Township Zoning Resolution for the allegation. A discussion took place regarding Article 3(b)(3) was cited and 3.02 3 b 3.

Mr. Tomsic could not locate the section. Mr. Brockman indicated that the Zoning Resolution sections being used appear to be different.

Mr. Stewart referenced the outdoor storage definition.

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Mr. Kitko indicated that he has been monitoring the parking area and vehicles are being parked on the side of the building. Employees park on the side of the lot. Mr. Kitko also commented, for the record, since he has been monitoring the situation, there have never been more than 3 vehicles observed.

Mr. Stewart indicated that for outdoor storage, you can park anywhere on the lot. It is not defined specifically. Mr. Stewart noted that in the other section of the Resolution, vehicles need to be parked in the side and rear. Mr. Stewart further commented that this is another grey area [in the Zoning Resolution]. Mr. Stewart indicated, again, that this is for the Zoning Inspector to interpret and enforce.

Mr. Tiber stated that he has 36 aunts and uncles and 100 first cousins. He also indicated that their family has guests over all the time, because of his extremely large family. Mr. Tiber also stated that there are usually five or six vehicles by their home at all the times.

Mrs. Debernardi indicated that she is only concerned with the cars associated with the business.

Mr. Tiber indicated that there is one vehicle parked outside. Mr. Stewart inquired whether that vehicle could be parked on the side. Mr. Tiber indicated that he will work on that.

Mr. Pealer asked how long Mr. Tiber's building is. Mr. Tiber responded that the building is 40' x 40'. Mr. Pealer asked Mr. Tiber, in the spirit of being a good neighbor, maybe you can fence off the southeast corner of the building and park, around the back so it can improve the situation. Mr. Pealer indicated that this is just a suggestion he is making.

Mr. Stewart stated, in his opinion, that additional work is needed for screening and landscaping this year. Mr. Stewart stated that he is not saying that Mr. Tiber is not a good neighbor, but the screening and landscaping needs more effort.

Mr. Tiber commented that during the past two years he has ordered two loads of asphalt grindings to continuously try to move the parking area to the side and rear of the building. He further commented that the first load was enough to get down the side of the building. He further commented that the load from this past summer, that he received before any of this was brought up, took the parking farther back on the property and about ten feet behind the building. Mr. Tiber commented that he is continuing to expand, so the parking can be located to the south and behind the building.

Motion by Brian Stewart, seconded by Lewis Tomsic to grant **BZA-16-15a**, a complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, alleging lack of enforcement re: storage or equipment and vehicles are required to be located in the enclosed building [no section cited], for property located at 17680 Auburn Road, Auburn Township Ohio, in a B-1 zoning district. Vote: Tomsic, no; Pealer, no; Freebairn, no; Bellar, no; Stewart, no. Motion denied.

Mr. Stewart commented that this is the moment we have all been waiting for. . .

**BZA-16-16a**, a complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, alleging Zoning Inspector error alleging error 6.01(a)(1)(a) requires an application to be reviewed by zoning commission before action can be taken by zoning inspector, for property located at 17680 Auburn Road, Auburn Township Ohio, in a B-1 zoning district

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Mr. Stewart stated that this is a pretty interesting item and this can be interpreted several ways. Mr. Stewart proceeded to read the first section 6.01 (a) (1) (a) “Proposed permitted main uses in flood prone areas or permitted main or accessory uses in B and I Districts shall be acted on by the Commission prior to action by the Zoning Inspector; see 6.02(a) and 6.03(a).”

And 6.03(a) Application Referrals: The Zoning Commission **shall** (Mr. Stewart noted that he was emphasizing “shall”) assist the Zoning Inspector and Board of Appeals in the consideration of **certain** zoning permit and conditional use applications referred by the Zoning Inspector. Mr. Stewart emphasized it is stating “certain” zoning permits . . . not all but “certain”.

Mr. Stewart commented that in this case, it was not referred by the Zoning Inspector. So the Zoning Inspector was not required to submit it to the Zoning Commission. Mrs. Debernardi and Mr. O’Leary agreed.

**Motion by Brian Stewart, seconded by Lewis Tomsic to grant BZA-16-16a, a complaint, filed by complainant Linda Debernardi, 17675 Auburn Road, alleging Zoning Inspector error alleging error 6.01(a)(1)(a) requires an application to be reviewed by zoning commission before action can be taken by zoning inspector, for property located at 17680 Auburn Road, Auburn Township Ohio, in a B-1 zoning district Vote: Tomsic, no; Pealer, no; Freebairn, no; Bellar, no; Stewart, no. Motion denied.**

Mr. Stewart indicated that this concludes the new business for the meeting today.

Mr. Stewart noted that the next meeting will be March 8, 2016, to approve the meeting minutes from tonight’s meeting. The appeal period was explained to the complainant and her attorney.

**Motion by Brian Stewart to adjourn the meeting. The motion was seconded by Robert Freebairn. By voice vote, all members were in agreement. The motion passed.**

The meeting was adjourned.

Minutes submitted by

Minutes Approved on:

\_\_\_\_\_  
Jane G. Hardy, BZA Secretary

March 8, 2016

\_\_\_\_\_  
Brian Stewart, Chairman