

Bainbridge Township, Ohio  
Board of Zoning Appeals  
December 20, 2001

Pursuant to notice by publication and certified mail, a public hearing was called to order at 7:10 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. John Kolesar, Mr. Todd Lewis, Mrs. Ellen Stanton and Mr. Donald Takacs. The following matters were then heard:

Mr. Lamanna swore in all persons who intended to testify.

Application 2001-45 by Michael and Irene Worthington for property at 17796 Kingswood Drive

The applicant is requesting an area variance for the purpose of maintaining a storage shed. The property is located in a R-3A District.

The zoning inspector's letter dated November 27, 2001 was read and photos of the site were submitted.

Mr. Michael Worthington, owner of the property, testified that he built a shed, but spoke to the building inspector when he built his deck and was told that a permit was not needed if the structure is less than 150 sq. ft., but later found out that the setback is 50' from the side property line and that he needed a permit. He continued by saying that the shed actually sits 22.7' from the side property line even though the submitted drawing shows only 15'. He submitted a site plan showing the location of the fence on his property and added that there is full foliage around the shed and said during the summer months it is barely visible from the east and north sides and barely visible from the road. He said the shed was constructed by Alpine Construction and they used nails and staples and if he tries to remove it, it would destroy the shed. He said his intent is to plant additional screening on the south, east and north sides outside the fence. He added that there are numerous sheds in the area that are not in compliance.

Mr. Lamanna said that is irrelevant.

Mr. Worthington said the 50' setback requirement is relative to five acres and his lot is only 2.5 acres.

Mr. Lamanna said the same setback applies to three acre lots.

Mr. Worthington said the setback must have increased because he understood that it was 25' for a two acre lot.

Mr. Lamanna explained that when the township had two acre districts, probably the setback was 25' in those districts.

Mr. Worthington said the shed in the current location is as unobtrusive as it can get and if he has to move it he will have no choice but to dismantle it.

Mr. Lamanna said the standard for granting a variance to the side yard setback rule is that a practical difficulty is needed and if you would have come in and asked to build it, there are plenty of other places on the lot to place it. He said there has to be unique features on the property such as ravines, etc.

Mr. Worthington said he had no intent of cheating the zoning department, he simply took the building inspector's word in 1999. He said he pointed to the corner of the lot and the building inspector said OK.

Mr. Lamanna said it is a difficult situation for the board to decide who is being accurate.

Mr. John Kline of 8239 Bainbridge Road and neighbor to Mr. Worthington, testified that he is the resident on the north side of the property and said this is a frivolous variance request. He said he was there before the building was constructed and when he heard hammering, he asked Mr. Worthington if he had a permit and Mr. Worthington said he did not need a permit but all this could have been avoided if the proper procedures were followed. He continued by saying that he is worried about his well, if gas or oil leaks from the shed, it could contaminate his well and feels this is creating a health problem. He said there is a lot of room to the west of Mr. Worthington's property and showed on the plat map that they have two parcels. He said there is oodles of acreage to put the shed on and he should not have to be here before Christmas to testify against his neighbor. He said there is a reason why the township has zoning regulations and would like to ask the board to deny this request. He said the building is not permanently attached to the ground and if this company is putting these sheds up all over Bainbridge, the zoning department should inform this company of this. He added that he measured and the shed is 8' from his property line and there is no reason why it cannot be put way in the back of their property. He said it can be seen from his front porch and discussed his property lines with the board.

Mr. Worthington said the facts just presented are incorrect and continued by saying that he and his wife built the fence back in 1994 and they did get a permit for it. He said he and Mr. Kline almost came to blows over the fence and added that you cannot see anything from Mr. Kline's property in the summer and if the shed is moved to comply, it will still be seen. He said if he violated the zoning law in ignorance, it is not an excuse, but it is nailed and stapled and it cannot be taken apart to reassemble it because it would destroy it.

The board discussed this application.

Mr. Kline said his only concern is his well.

Mr. Lewis said that according to the photos presented, it shows the structure is not permanently

attached to the ground and the shed could very easily be moved without de-installation.

Mr. Takacs stated that was his opinion also.

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

Motion BZA 2001-45 - 17796 Kingswood Drive

Mr. Lamanna made a motion to deny the request for the application for a variance.

Based on the following findings of fact:

1. The applicant has not demonstrated a practical difficulty in the location of the shed.
2. He has more than ample room in his parcel both as to space, terrain and open area to put a shed meeting the setback requirements.
3. The existing shed that is in the non-complying location is not permanently attached to the ground and as such it would be feasible to move the shed to another location that would comply.
4. Furthermore, this location could adversely affect the adjoining property because the adjoining property has a well located close to the property line in the vicinity of where this shed is located and products stored in the shed, if they leak, could potentially adversely affect the well if it is that proximate to the property line.

Mr. Takacs seconded the motion.

Vote: Mr. Kolesar, aye; Mr. Lamanna, aye; Mr. Lewis, aye; Mrs. Stanton, aye; Mr. Takacs, aye.

Application 2001-46 by Michael and Susan Previte for property at 7770 Brayton Trail

The applicant is requesting an area variance for the purpose of constructing a storage shed. The property is located in a R-3A District.

The zoning inspector's letter dated November 27, 2001 was read and photos of the site were submitted.

Mrs. Susan Previte, owner, testified that she wants to build a shed 82' from Brayton Trail and added that her house was there before Brayton Trail was put in.

Mr. Lamanna explained the setbacks for corner lots.

Mrs. Previte said her house faces Chagrin Road, the side faces Brayton Trail and her driveway is u-shaped with a pad at the end of the existing driveway and that is where she would like to place her shed.

The board discussed this application.

Mrs. Stanton asked Mrs. Previte if she knew the exact distance from Brayton Trail to her garage.

Mrs. Previte replied no.

Mrs. Stanton said it is really hard to tell if the shed will sit behind the house.

Mr. Takacs asked if the driveway was originally on Chagrin Road.

Mrs. Previte said yes, the address was 7785 Chagrin Road.

Mr. Takacs asked when the driveway was changed.

Mrs. Previte said she did not live in the house at the time, she has only lived there for one year.

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

#### Motion BZA 2001-46 - 7770 Brayton Trail

Mr. Lamanna made a motion to grant the applicant the requested variance of 18' from the required setback of 100' to 82'.

Based on the following findings of fact:

1. A practical difficulty exists because the applicant lives on an irregularly shaped corner lot.
2. Because this is a corner lot the house which actually faces onto Chagrin Road also has a 100' setback on the side of the lot that faces Brayton Trail.
3. The house itself currently is set back approximately the same distance from Brayton Trail as this additional out building is proposed to be so that there will be no increase in the existing encroachment into the 100' setback and because of that there should be no adverse effect on the neighboring properties.

Mr. Takacs seconded the motion.

Vote: Mr. Kolesar, aye; Mr. Lamanna, aye; Mr. Lewis, aye; Mrs. Stanton, aye; Mr. Takacs, aye.

Application 2001-47 by Bainbridge Associates, Ltd., for property at 8564 East Washington Street

The applicant is requesting a conditional use permit for the purpose of establishing a day care center. The property is located in a CB (Convenience Business) District.

The zoning inspector's letter dated November 27, 2001 was read and photos of the site were submitted.

Mr. Cliff Hershman of Bainbridge Associates, Ltd. and Mr. Tim Olland, Architect were present to represent this application.

Mr. Hershman testified that he is here for a conditional use permit but not here for site plan approval at this time because he did not want to go to the expense until it was approved and would like to get a vote on the concept.

Mr. Lamanna said the board does not like to grant applications on concept.

Mr. Olland testified that they wanted an opinion from the board because they are talking to the property owners along the street and are not sure which parcels will be involved.

Mr. Takacs said that since only part of the facility will be used for the day care center, it is difficult for the board to make a ruling without seeing any plans for the entire building.

Mr. Hershman said the rest of the building will be retail or office like a shopping center with the only difference being, everything will be in one building and added that the parcel to the east sits between the parcel the township bought and this.

Mr. Olland said the reason Mr. McIntyre suggested we come in, is, this is not a new building, the setbacks are established and we are looking at the property to the east and this would be a good use for either of those parcels. He said the goal is to get approval and we will come back with computer drawings and site plans.

Mr. Lamanna said part of a conditional use permit is traffic considerations and until the board knows the plans, we won't know the traffic considerations. He explained about the criteria that needs to be satisfied and said the board cannot make a decision without a detailed plan.

Mr. Olland said the building is now being operated as a retail center and the day care will use 11,000 sq. ft. out of 18,000 sq. ft.

Mr. Lamanna said day care centers have traffic flow concerns.

Mr. Hershman said all of that can be contingent upon further review.

Mr. Lamanna said the best the board can say is that we will not tell you that we will not allow a day care center at this site.

Mr. Hershman said that means a lot to them and it will enable them to move forward with their plans.

Mr. Lamanna said a day care center will not have the same effect on the neighbors as opposed to a gas station.

Mr. Hershman asked if there are any inherent problems with a day care center in a CB District on E. Washington Street.

Mr. Takacs said there is more of a concern if there is a day care with children of what the other 7,000 sq. ft. of building will be used for.

Mr. Lewis said the applicant needs to look at the parking space requirements when using the additional 7,000 sq. ft. of space for something else and added the board would like to see the entire project.

Mr. Lamanna said there has to be some assumed use for the property.

Mr. Olland said that 30 cars would be needed for the day care.

Mr. Hershman said that this helped him a lot and he would like to come back to the board next month.

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

#### Motion BZA 2001-47 - 8564 East Washington

Mr. Lamanna made a motion to table this application until the next regularly scheduled meeting to be held January 17, 2002.

Mr. Takacs seconded the motion.

Vote: Mr. Kolesar, aye; Mr. Lamanna, aye; Mr. Lewis, aye; Mrs. Stanton, aye; Mr. Takacs, aye.

Application 2001-13 by Judson Retirement Community for property located at the Northwest corner of Washington Street and Haskins Road (Continuance)

The applicant is requesting a conditional use permit with variances for the purpose of establishing a residential care facility. The property is located in a R-5A District.

The zoning inspector's letter dated November 27, 2001 was read and photos of the site were submitted.

Mr. Lamanna stated that since this is a continuance, he did not want to recapitulate everything that was reviewed at the last meeting.

Mr. Tony Coyne, Counsel on behalf of Judson, introduced the following people that will be testifying on behalf of Judson.

Ms. Cynthia Dunn, President of Judson Retirement Community, Mr. Bill Fehrenback of the Pattie Group, Mr. Mike Schweickart of Traff-Pro, Mr. Ron Friedman, Mr. Joe Pacchioni, Engineer, Mr. Roger Sours, Appraiser and Mr. Jim Herman, Architect.

Ms. Cynthia Dunn thanked the board for the opportunity to come back. She proceeded to testify by reviewing Judson's mission statement. Ms. Dunn stated that Judson's Retirement Community's Mission is to provide older adults life enhancing quality programs and facilities that afford choice and maximize integration of services in meeting individual needs. She continued by saying that Judson operates two campuses in greater Cleveland and they have been serving greater Cleveland since 1906, they purchased Bicknell Mansion in Cleveland Heights in 1939, they built Jordan Gardner Tower/Judson Park in 1973, acquired former Wade Park Manor 1983, opened new Bruening Health Center in 1991 and converted Bicknell Mansion to Mansion Courts in 1998. She continued by saying that Judson is not for profit, non-sectarian, governed by a volunteer board, named by New Choices as one of the Nation's 20 best for six consecutive years and accredited by the Continuing Care Accreditation Commission.

Ms. Dunn talked about the programs which include independent living apartments, assisted living suites and apartments, short term rehabilitative nursing and long term nursing, health and wellness program for residents and community participants, special programs for those with memory impairment, adult day care and home care. She discussed the services which include maintenance (building and grounds), housekeeping, transportation, utilities, dining services/cafe, beauty parlor and library, programs such as educational, cultural, health and wellness and spiritual and security and hospitality.

Ms. Dunn continued by describing the project (Judson at Bainbridge). She said there will be two phases and the first phase needs 70% presale and the community building will include: 100 independent living suites, 30 assisted living suites, dining room and cafe, health and wellness center, art studio, theater and 30 garden homes that are clustered around the community building. She said that 80% of this parcel will be kept green and the second phase will consist of 80 independent living homes in the community building, 30 assisted living apartments in the community building and 30 clustered garden homes. She

continued by saying that this will be an 83 acre campus with 18% coverage, 80% green and open space with 288 units and the maximum number of people will be 370. She said the assisted living is one on one, Judson will own the property and the homes, the residents will pay an entry fee, a part of which is refundable, residents will pay a monthly service fee which includes a number of the services previously discussed and the residents are assured use of the Bruening Health Center for either short term or long term nursing care.

Ms. Dunn testified that Judson did a market study which showed that there are 11,000 seniors over the age of 65 in the area which represents 18% of the total population and that the people have familiarity and confidence in Judson, most preferred the location and the most desired features include: gardens, walking trails, health and wellness facility and programs and dining options. She stated that the residents in Lake in the Woods are concerned about their property values but there has been no negative impact when these communities are well done.

Mr. Bill Fehrenback, President of the Pattie Group, testified that Judson asked them to put together a site plan to maintain a pastoral park like setting. He referred to the site plan that was seen last March and said there have been a few changes. He showed the existing vegetation, proposed new plantings with over 500 trees, proposed orchard areas, four main barns which Judson intends to restore and keep them in place, and the existing pond. He showed, on a drawing, the existing site on Haskins and Stafford Road and said they will install additional trees and a split rail fence and the intent is to have a lot of very attractive vegetation with a minimum 100' setback on all the property lines. He referred to the existing vegetation on site, the open field, and said the proposal is to put the buildings primarily in the open area and some trees will have to be removed. He continued by saying that there is 2.3 acres of existing wetlands, 1.77 acres of undisturbed wetlands and said they want to maximize the features of the site, the lawns, trees and wetlands. He said that 13.69 acres or 16% of impervious surfaces will be roads and roofs and they will add as much vegetation to the site with 500 trees and shrubs. He indicated where the buffer zones for the property edges were and said there will be walking or hiking trails that will be 1.44 miles long and the main element that changes is that the main entry has been moved down to be directly across from the intersection of Stafford Road and Haskins Road.

Mr. Michael Schweickart of Traff-Pro testified that he was retained by Judson for a traffic impact study for this site to determine what the traffic impact might be on Haskins, Washington Street and Stafford Road and the two proposed access drives to the site. He said he calculated the existing traffic levels to determine the probable traffic for this type of development and the Level of Services (LOS) ranges from A - F with A being good and F being bad.

Mr. Schweickart said that it was found that this intersection was working at Levels A and B and ODOT recommends that this intersection not be operated at less than a Level C. He continued by saying that when the traffic generated by this type of facility is added it could generate 51 trips in the AM and 77 trips in the evening and this level of service will not change and our analysis is that there will be no impact to this intersection with this development.

Mr. Ron Friedman testified that he was asked by Judson to take a look at the proposed site for light trespass glare and light pollution and the decision was made to use shorter than normal poles with cut-off lights. He said their poles are short, lower wattage with very little spill-off on the roadway and the neighbors will not be able to see it. He said they will be architecturally attractive poles and those neighbors close will be hard pressed to see any exposed lights.

Mr. Joe Pacchioni, Engineer, testified that he is working on the storm water, waste water and potable water for this facility and according to the county, state and township, more water cannot discharge off-site than there already is. He explained the drainage points and the location and said they will remain there and will not be at a greater rate than what currently happens and they will control the storm water on the site. He said they have talked to the EPA about installing an on-site septic system but the EPA prefers a sewer system and the county told us until we go through zoning, they cannot give us an answer on the sewer but they said they will be willing to talk to us. He said regarding the water, we talked to the county and we will have to build a water storage tank on site for a public water system and the tap-in fee will be approximately \$300,000 - \$400,000. He explained that the sanitary sewer will be only designed to handle Judson, and the water pressure problems will be addressed.

Mr. Coyne submitted a packet to the board regarding a summary done by their appraisers along with the following Exhibits.

Exhibit 1 - Judson Power Point Presentation - Hard Copy

Exhibit 2 - Judson Power Point Presentation - Disk

Exhibit 3 - Summary of Judson Retirement Community - Judson at Bainbridge

Exhibit 4 - Main Elements of Design for Judson Bainbridge done by the Pattie Group, Inc.

Exhibit 5 - Ernst & Young Tax Revenue Analysis for The Judson Retirement Community

Exhibit 6 - Traffic Impact Study for Proposed Retirement Community

Exhibit 7 - Bainbridge Township Land Use and Zoning Report by D. B. Hartt

Exhibit 8 - Planning Analysis of Proposed Judson Senior Community by Donald A. Lannoch

Mr. Kolesar said that the applicant stated the reason they want to locate in Bainbridge Township is for the semi-rural or rural atmosphere and what they are proposing will reduce the rural atmosphere.

Ms. Dunn said what we are proposing will not reduce the rural atmosphere.

Mr. Coyne said that based on the current zoning code, if this were built out from a coverage standpoint, we are not putting in anymore than the existing code allows and the built-out environment will be very similar to what we are doing.

Mr. Lewis said that the land coverage will be approximately the same but the occupancy density will be significantly different. He continued by questioning the traffic study and said in looking at the previous

minutes' testimony of the March 2001 BZA meeting, it states there will be 330 seniors with 50 - 60 employees seven days a week, 24 hours a day and when reading over the traffic report on page 27, which refers to the occupiable units in the community, your study looked at existing traffic but did it embrace the 330 additional people.

Mr. Schweickart of Traff-Pro replied yes.

Mr. Lewis asked of the 330 residents what the number of driving occupants will be.

Mr. Schweickart said many will use transportation.

Mr. Lewis asked of the 330 occupants, how many will be drivers.

Mr. Schweickart said they took the national average.

Mr. Lewis asked of the 50 - 60 employees, what is the profile of those employees, ie. nurses, cooks, food, medical supplies, delivery trucks, hazard waste/medical removal, grounds maintenance and when reading the study, there is no meaningful head count.

Mr. Schweickart said the numbers do provide a worst case scenario that would be generated by a facility of this size.

Mr. Lewis said that he sees multiple types of things occurring at least five days a week with commercial traffic such as food delivery, laundry facilities, waste removal and beauty parlor.

Ms. Dunn replied yes.

Mr. Lewis asked if these solicited services will be open to the public.

Ms. Dunn said there will be 50 employees but not all at one time which is a big difference and there will not be a nursing center on campus. She said there will be a little bit of assisted living with health and wellness programs that could be opened to the public.

Ms. Dunn said the 50 - 60 employees are full time equivalent throughout the week.

Mr. Lewis said there is nothing in the traffic study for Phase 3.

Ms. Dunn said there is no Phase 3 at this time, we are talking about a two phase project on 83 acres.

Mr. Lewis said then there is no Phase 3.

Ms. Dunn said there has been no decision to exercise the option on that property.

Mr. Lewis referred to the letter dated March 6, 2001 from the Department of Water Resources that the request for sewer service was denied and asked if that was still current.

Mr. Coyne said that letter was generated automatically until the land use is decided.

Mr. Lewis referred to the letter dated March 6, 2001 from the Geauga County Commissioners regarding the rejection of Judson's request and asked if it still stands.

Mr. Coyne said until we are done here, we can't get that approval.

Mr. Gary Levine of Lake in the Woods asked if when the traffic study was done, if it was done when Haskins Road was closed.

Mr. Schweickart replied no.

Mr. Levine asked if there is an option for the property across the street near Stafford.

Mr. Coyne said yes the property has an option.

Mr. Levine questioned the placement of impervious ground cover.

Mr. Pacchioni said that residences will change the lot coverage.

Mr. Levine asked if water storage is normally in a water tower.

Mr. Pacchioni said the county warned them about pressure in the area.

Mr. Levine asked where they will get their water.

Mr. Pacchioni said they will go to the county and they cannot get approval until they get zoning approval.

Mr. Levine referred to the D. B. Hartt report.

Mr. Coyne said that report was accepted but not adopted.

Mr. Levine referred to the D. B. Hartt report and asked if the board considers the sense of the community.

Mr. Lamanna replied no and said it is not a basis for the zoning and was not adopted by the trustees. He explained that the board of zoning appeals sits here as a quasi-judicial board and the public opinion is really not a significant fact in its decision.

Mr. Levine asked who will be primarily responsible for medical needs for the community.

Ms. Dunn said they will have a nurse on staff but they will also use 911.

Mr. Don Noble of Lake in the Woods testified by saying he has not heard anything new here tonight and asked how Judson feels about school taxes. He added that he did not think the landscaping (trees) can be reproduced.

Mr. Coyne said that \$600,000 in taxes will go to the school.

Mr. Jim Valvoda of Lake in the Woods asked if the facility will be sprinklered.

Mr. Coyne replied yes.

Mr. Valvoda said the water tank will have to be elevated and asked where it will be located.

Mr. Pacchioni said the water tank will be placed on the highest point of the property and one will be a standpipe but we don't know what the county will require, it will be up to the county as to what they want to see.

Mr. Valvoda asked if Judson has an option to purchase the land.

Mr. Coyne said they have a signed option.

Mr. Chris Cook of Lake in the Woods stated that they love it out here and he is not anti-development but he moved here because of the quality of life. He continued by saying that you have to have a plan and we have a constitution and in 1987 the present zoning resolution was adopted by Bainbridge Township and said this is environmental zoning, not economic zoning and the residents want to maintain the rural character. He continued by saying that Bainbridge Township has six different types of zoning and we have R-5A because those areas are environmentally sensitive. He said you can't change or violate the zoning resolution without changing the master plan. He read from the zoning resolution regarding regulations and standards for residential care facilities which states "The use of a Residential Care Facility as a conditional use shall serve as a transition from a residential zone to a Professional Office District (POD), Convenience Business (CB) or Commercial Recreation (CR) zone as shown on the official Bainbridge Township Zoning Map." He referred to the conditional use permit that was granted for Montefiore and said you cannot expand the use into a residential district.

Mr. Stanley Jaros testified that his family owns this property and he feels very strongly about this

property and he lived there before Lake in the Woods. He said his family sold the property to Phil English for that development and it went to the Supreme Court to change the zoning from five acres to 1-1/2 acre zoning. He said this property is owned by a family trust and there is going to be a point when the property will not remain a woods, etc., and it will be not be there forever.

Ms. Sue Barnhizer of E. Craig Drive testified that she has been a resident of Bainbridge Township since 1956 with the exception of three years and said she wants to speak about the zoning and the protectors of that. She said she wants to ask Judson what their hardship is and the effects on the school because generally seniors will vote down school issues and said since she has lived here with the benefits that we have, she still has high taxes. She said she cannot take her five acres and put 19 units on it which is comparable to what they want and if they want to protect the rural atmosphere it does not mean 288 units on 83 acres.

Mr. Joe Richey of Lake in the Woods showed a plat map of the subdivision and testified that he owns subplot 100 and said a stream runs in the back of his yard and the wetland areas are protected by the Ohio EPA. He said there is a beautiful stand of virgin woods back there and he came from Chesterland but had to move and does not want to move again and asked about the property on the east side of Haskins Road.

Mr. Coyne said Judson has an option to buy it but no plans for it yet.

Mr. Richey testified that with so much pavement, he does not want to lose his backyard with a lot of water running through it and with 83 acres there should only be 16 homes. He said most people have two plus acres and you need a certain amount of land to support septic systems and ground water. He said you will have employees, delivery trucks going through the area which could bring more crime and an increase in traffic and there are too many unknowns that were not looked at and this will be a huge drain on city services, fire and police and cannot see how this will benefit the community.

Ms. Susan Dipple of Lake in the Woods said that many of the residents will have independent suites and many of them will be driving and referred to the traffic study and said it should have included the traffic at Lake in the Woods Trail and Rt. 306.

Ms. Janice Dobre of Lake in the Woods referred to the traffic study and asked if the visitors were considered in the study.

Mr. Schweickart replied yes.

Ms. Dobre asked if the residents and visitors will be using Lake in the Woods Trail.

Mr. Schweickart said there will be a few people using Lake in the Woods Trail.

Ms. Dobre said she has heard nothing new here and heard less on how it will impact our community. She said she has yet to hear Judson say they will do something for us and she wants to be assured it will not change so she would like them to block off Haskins Road and asked what Judson is going to do for Lake in the Woods.

Mr. Sven Wiberg of Lake in the Woods said this sounds like a wonderful thing but it is not appropriate for this location since it is zoned five acre residential and this is a big difference from 16 homes. He referred to the traffic study and said the peak period needs to be taken into consideration, the total number of trips per day, the number of walkers at night and said he cannot believe that people coming from Chesterland or Russell would not come through Lake in the Woods and said the number of trips are vastly more than the current zoning allows. He added that he talked to Gus Saikaly and this area is not within the sewer plan and it would increase the flow into our existing sewers through Tanglewood and does not believe this sewer was designed for this type of facility. He said the water tower would only help the county because they could ask for a bigger tower to service the area which could open up the entire Washington Street/Snyder Road area for commercial development.

Ms. Jan Senter of Lake in the Woods said that Judson must think we are very naive when they tell us they have no plans for the other side of Haskins Road.

Mr. Lamanna said the potential plans are not before the board at this time and it is not something we can consider.

Mr. Miland Bhanoo of Lake in the Woods Trail asked if the 50 full-time equivalent is more than 50 employees or less than 50.

Ms. Dunn said there could be more than 50 employees.

Mr. Alan Frasz of Lake in the Woods asked if there are restrictions in assisted living zoning because this looks like high density condominiums and asked how it differs and asked if there are any restrictions or if they can rent to anybody or are they condos in disguise.

Mr. Lamanna said that issue will be addressed later on.

Mr. Mike Stoller of Lake in the Woods said that density needs to be taken into consideration.

Mr. Lamanna asked with respect to the traffic study, if any consideration was given when that area is built out.

Mr. Schweickart said that Traff-Pro was not charged to look at anything else but this.

Mr. Lamanna asked how the independent units fit the description of residential care facility and said

that this model may not fit with our zoning and it seems to him that the residential care facility zoning adopted in 1997 does not fit this model of independent units.

Ms. Dunn said that the residents will have a contract that guarantees that we will provide them services for the rest of their life and said it is wrapping around and helping these people become independent.

Mr. Lamanna said he thinks it is an excellent model but not sure that was what was contemplated here and suggested that Judson go to the zoning commission.

Mr. Coyne stated they would comply with the Americans with Disabilities Act and referred to Chapter 3721 of the Ohio Revised Code which Judson complies with. He said this board could revoke the conditional use permit but we comply with everything except the contiguous line which requires a variance.

Mr. Lamanna said that when this was adopted he did not think the zoning commission was thinking of this type of facility and if you look at the definition, it does not contemplate independent free standing units, it contemplates what Montefiore and Manor Care are doing.

Mr. Coyne asked Mr. Lamanna if he was suggesting one building would fit the criteria.

Mr. Lamanna said if a different arrangement is contemplated, Judson should go back to the zoning commission because there is a real question as to whether the free standing units really qualify with residential care.

Mr. Coyne said it is how we are trying to treat senior citizens.

Mr. Lamanna said he is not trying to be critical of what Judson is doing, but since it is a conditional use, it should be narrowly construed.

Mr. Coyne said they could submit something in writing to better explain this.

Mr. Lamanna said what was being presented to the zoning commission was buildings with 40 units etc. and not this particular situation. He said it creates high density zoning and could create other people in the area wanting a use variance for condos for example and it is not just this piece of property, it could affect other pieces of property along E. Washington Street. He continued by saying there is still the sewer and water issue, but the board is not here to approve or deny those conditions, they still have to satisfy and obtain those connections if we go forward with this but there is the non-contiguity issue. He said last time the board discussed whether this is an area variance or a use variance and a use variance relates to use and area variances relates to setback lines and this is more complicated than that.

Mr. Lamanna continued by saying that regarding the contiguity issue, if you read Section 135.06 (b) it states "The use of a Residential Care Facility as a conditional use shall serve as a transition from a residential zone to a Professional Office District (POD), Convenience Business (CB) or Commercial Recreation (CR) zone as shown on the official Bainbridge Township Zoning Map. As a transitional use, the RCF shall not be expanded beyond its original lot lines of record and as shown on the site plan included with the application for a conditional zoning certificate and approved by the Board of Zoning Appeals. Nor shall any use other than residential expand off of it into a residentially zoned area." He stated that it was not intended to create a use that could be freestanding in a middle of a residential district and if you look at the information presented at the time when the zoning commission created this, it was intended to be a transition and this is not really a permitted use in this area. He continued by saying that with regards to area variances, they are usually related to a particular nature or character of land such as ravines, etc. and in this case, it is a structure type of problem which could be argued for every single property in this district and anybody can come along and ask for the same thing. He said if the board treats this as an area variance we would be re-zoning the entire area to permit this and this was not the intent of the trustees when adopting this amendment. He explained the problems of leap-frogging properties all the way around Bainbridge Township and the board would do a great disservice and injustice for what this was intended. He said he does not criticize Judson, they run a marvelous program and have a marvelous concept but the board has not heard anything about an unnecessary hardship.

Mr. Coyne stated that Judson complies with all the provisions except the contiguity one and we won't put any burden on the public system. He referred to Duncan vs. Middlefield and other cases and said that if you look at Montefiore, only 200' of a 1,200' property line is contiguous to commercial.

Mr. Lamanna said that Montefiore is sitting on a state highway and provides a buffer transition from the Market Square shopping center to a residential district and it is preventing continuing creeping commercial zoning in that area.

Mr. Coyne said they are adjacent to a use very similar and we submitted a planning report that does answer some questions and why we qualify for a practical difficulty in an area variance.

Mr. Lamanna referred to the criteria for area variances and whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance and said the applicant scores zero on that.

Mr. Coyne said they do not have to qualify for all of them.

Mr. Lamanna asked whether the variance is substantial and said this is a pretty substantial variance. He asked whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance and whether the variance would adversely affect the delivery of governmental services and said there will be a high demand use of the land and it will increase the number of government services.

Mr. Lamanna asked whether the property owner purchased the property with the knowledge of the zoning restriction and said that goes without saying. He asked whether the property owner's predicament feasibly can be obviated through some method other than a variance and said this does not apply. He asked whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance and said this property does not meet the spirit and intent of the zoning code and finally whether granting the variance requested will be contrary or derogate from the general purposes of this Zoning Resolution as provided in Section 101.02, Bainbridge Township Guide Plan for Land Development, 2000, and the district involved as provided in section 131.02. He asked what the purpose was of creating this conditional use and said he does not think Judson comes out very favorable on any of this and it is not what was intended by the zoning commission. He continued by saying that this is a totally different use and not consistent with what the zoning commission had planned and said it is not the board's prerogative of what they did was wrong, but it is the applicant's recourse to ask the zoning commission to change it.

Mr. Coyne referred to Chapter 135 and said that is the zoning on our very property which includes residential care facilities and we are in compliance with every single one of them.

Mr. Lamanna said that if you go back and look at what happened with the zoning commission and the intent behind it, that was their major consideration and it wasn't an accident that this transitional zoning was put in the code.

Mr. Coyne said he would like to see the intent of the zoning commission or history of the amendment by viewing the records or minutes of the meetings.

Mr. Lamanna said they can be obtained from the secretary.

Mr. Coyne said that they heard some opposition to this tonight, but his client is still enthusiastic about the project.

Mr. Lamanna said that the Assistant County Prosecutor will be providing the board with advice also. He said the board has a concern with what this will do or how it will affect other property's rights or abilities to change their zoning or their use.

Mr. Coyne asked the board to table this application until the next meeting to be held in January.

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

Motion BZA 2001-13 by Judson Retirement Community for property located at the Northwest corner of Washington Street and Haskins Road

Mr. Lamanna made a motion to table further discussion of this application until the next regularly scheduled meeting to be held January 17, 2002.

Mr. Takacs seconded the motion.

Vote: Mr. Kolesar, nay; Mr. Lamanna, aye; Mr. Lewis, nay; Mrs. Stanton, aye; Mr. Takacs, aye.

Since there was no further testimony the public hearing was closed at 10:20 P.M.

Respectfully submitted,

John Kolesar  
Michael Lamanna, Chairman  
Todd Lewis  
Ellen Stanton  
Donald Takacs, Vice Chairman

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

Bainbridge Township, Ohio  
Board of Zoning Appeals  
December 20, 2001

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 10:20 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. John Kolesar, Mr. Todd Lewis, Mrs. Ellen Stanton and Mr. Donald Takacs.

Minutes

Mr. Takacs made a motion to approve the minutes of the November 15, 2001 meeting as written.

Mr. Lewis seconded the motion that passed unanimously.

Applications for next meeting

Application 2001-13 by Judson Retirement Community for property located at the Northwest corner of Washington Street and Haskins Road (Continuance)

The applicant is requesting a conditional use permit with variances for the purpose of establishing a residential care facility. The property is located in a R-5A District.

Application 2001-37 by Six Flags Worlds of Adventure for property at 1060 North Aurora Road (Continuance)

The applicant is requesting a conditional use permit for the purpose of developing an area to create a uniquely themed section of the park that features exotic land and water animals and attractions that compliment the other "worlds" of rides, water park and marine life. The property is located in a CR (Commercial Recreation) District.

Application 2001-47 by Bainbridge Associates, Ltd., for property at 8564 East Washington Street (Continuance)

The applicant is requesting a conditional use permit for the purpose of establishing a day care center. The property is located in a CB (Convenience Business) District.

Application 2002-1 by Sylvester and Sallie M. Bell for property at East Broadway

The applicants are requesting area variances for the purpose of constructing a new single family dwelling. The property is located in a R-3A District.

Application 2002-2 by Mary A. Briggs for property at 16790 Bedford Street

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

Application 2002-3 by Select Image Accessories for property at 9380 Washington Street

The applicant is requesting a substitution of a non-conforming use for the purpose of establishing an auto accessory service company. The property is located in a R-5A District.

Application 2002-4 by Robert and Carol Biermann for property at 8000 Darby's Run

The applicant is requesting an area variance from height regulations for the purpose of constructing a new single family dwelling. The property is located in a R-3A District.

The Bainbridge Township Board of Zoning Appeals set the public hearing on the above applications for January 17, 2002 at 7:30 P.M. at the Bainbridge Community Hall, 17826 Chillicothe Road, Bainbridge Township, Ohio and unanimously resolved to request the Board of Trustees to issue a purchase order for legal advertising.

Since there was no further business, the meeting was adjourned at 10:30 P.M.

Respectfully submitted,

John Kolesar

Michael Lamanna, Chairman  
Todd Lewis  
Ellen Stanton  
Donald Takacs, Vice Chairman

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