

Bainbridge Township, Ohio
Board of Zoning Appeals
April 7, 2005

Pursuant to notice by publication and certified mail, a special meeting was called to order at 7:30 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Todd Lewis, Mr. Mark Olivier, Mrs. Ellen Stanton and Mr. Donald Takacs.

Application 2003-56 by McGill Property Group fka Heritage Development Company for property at PP# 02-420598 Aurora Road

The applicant is requesting a conditional use permit with area variances for the purpose of building a commercial retail center. The property is located in a CR District.

The Board discussed the method in which the decision with regard to application 2003-56 incorporated the conditions in a certain Memorandum of Understanding. The Board decided that it desires to revise its previous decision and therefore:

Mr. Lamanna moved that the Board rescind its March 17, 2005 approval of the minutes of the March 3, 2005 meeting with respect to the decision on said application.

Mr. Lewis seconded the motion.

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

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Mr. Lamanna made a motion to revise the motion and decision of the Board as follows:

To grant the applicant, (McGill Property Group/Bainbridge North Land Development, LLC (“Applicant”) a conditional use permit with respect to construction of a shopping center (the “Shopping Center”), such Shopping Center to be constructed in accordance with the plans as submitted by the Applicant attached hereto as Exhibit A. The board also grants the Applicant a variance for lot coverage to a total coverage of 45.31%.

Said conditional use and variance are subject to the following conditions as requested and agreed by the Applicant:

1. The Applicant shall acquire the adjacent eight acres located in the City of Solon and such acreage shall be subject to a conservation easement in favor of Bainbridge Township or such other person as may be designated by the Trustees (hereafter “Trustees”) or may be held in such other form as the Trustees otherwise designate.

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2. The Applicant shall complete, and follow through and comply with all of the County and State drainage requirements applicable to this property including approval of the Geauga County Soil and Water Conservation District and shall also review and comply with such items as were addressed in the board's previous meetings as additional items to be addressed.
3. With respect to the access onto Geauga Lake Road, no left turn shall be permitted from the access to Geauga Lake Road. An island shall be installed to prevent left hand turns provided that if at some future date the Trustees determine that it would be convenient or appropriate to permit left hand turns at that location, the Applicant shall remove the island at its expense and reconfigure the location to permit left hand turns.
4. Applicant and its successors and assigns shall not petition for annexation to any adjoining or contiguous municipality as to this property or any other property Applicant may acquire in Bainbridge, and deed restrictions shall be placed upon the property to further insure future enforcement of this condition.
5. Applicant shall agree to cooperatively work with Trustees toward the formation of a Joint Economic Development Agreement, which will allow Bainbridge and Solon (or any other municipality contiguous to Bainbridge) to mutually advantageously pursue infrastructure improvements, land preservation, and other permitted expenditures as may be agreed upon.
6. Applicant shall acquire a portion of the twenty-four (24) acre parcel known as Cuyahoga County Parcel No. 956-37-002 and either (i) donate eight (8) acres of such land contiguous to the retail shopping center to Bainbridge, or the Chagrin River Land Conservancy ("**Conservancy**"), with a conservation easement in favor of the Conservancy, or (ii) acquire in its own name such parcel, with a conservation easement in favor of the Conservancy, or (iii) at the option of Trustees, cause title to be delivered to another non-profit organization or governmental agency designated by Trustees.
7. Applicant will comply with Commercial/Recreation zoning regulations, unless a variance is granted by the Board of Zoning Appeals for Bainbridge Township.
8. Infrastructure (water/sewer) shall be limited to all properties south of railroad tracks. Tie in by property owners for sewer and water shall be voluntary to either Aurora and/or Solon public sewer and water systems.
9. All utilities shall be placed underground.
10. Applicant shall make improvements within Bainbridge Township to Route 43, and to Pettibone Road, and Geauga Lake Road at its expense as shown on the Traffic Plan attached hereto as **EXHIBIT "TP"**.
11. All roads in the Shopping Center and shown on **EXHIBIT "A"** shall be private roads, but must comply with all applicable county regulations. Applicant, and its successors and assigns, shall not offer to dedicate the roads for public use and shall be solely responsible for the maintenance, repair and replacement of such private roads.

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12. The Applicant shall protect existing wetlands and aquifers by limiting impacts to less than 0.5 acres of Category 1 and 2 wetlands.
13. Principles of “Low Impact Development” will be followed to insure maximum retention of water on the site and the Low Impact Development Plan shall be reviewed, approved and executed in a manner acceptable to the Geauga County Soil and Water Conservation District and Bainbridge.
14. Applicant shall present a plan to Trustees that negates the negative effects of salt runoff from the parking area.
15. Property maintenance techniques shall be used to minimize salt use on the parking lots.
16. Applicant shall design the drainage system for the Shopping Center so that surface water drainage does not leave the site to the south of the property and shall positively drain to the north, and away from State Route 43.
17. The storm water retention basin constructed or to be constructed on the site shall remain pervious and conform to the slope requirements in the Zoning Code to be calculated as open space.
18. Building exteriors shall, minimally, conform to the exteriors used at the Market Place at Four Corners south of Route 43. There shall be facades, recesses/projections, awnings, windows, repeating pattern of color changes, texture and material, different roof lines, windows or openings facing the private through road through the Shopping Center. There shall be no attachments to the façade of any building, except for signage, and all outside presentation of merchandise shall be behind wrought iron or similar look fencing. There shall be no sidewalk display, or placement, of merchandise for sale, vending machines or similar objects in the sidewalk areas. There shall be no chain link fence visible within the Shopping Center area.
19. The shopping center shall contain amenities for the consumer and be considered “environmentally” attractive. These amenities shall include: benches for seating; concealment of trash containers, loading docks to be buffered with landscaping; weather protection features; clear entranceways. Sidewalks shall be made of special pavers or scored concrete.
20. All lighting at the Shopping Center will meet the following requirements:
 - a. The following definitions apply:
 - (a) Glare: Glare is the sensation produced by luminance within the visual field that is sufficiently greater than the luminance to which the eyes are adapted to cause annoyance, discomfort, or less in visual performance and visibility.
 - (b) Glare, Direct: Direct Glare is the glare resulting from the human eye being able to see the light emitting portion of a light fixture.
 - b. Lighting fixtures and devices from which direct glare is visible on adjoining roads or property shall be prohibited.
 - c. Flashing lights shall be prohibited.

- d. All lighting fixtures with lamps rated at initial lumens of two thousand five hundred (2,500) or greater must be the full cutoff type. A full cutoff light fixture is defined as one which emits no light above a horizontal plane drawn through the lowest part of the fixture. The maximum height for all pole lamps shall be the same as Market Place at Four Corners.
 - e. Exterior lighted signs shall only be internally illuminated.
 - f. All illuminated signs for commercial purposes shall be turned off between 11:00 P.M. and sunrise, EXCEPT that signs may be illuminated while the business facility is open to the public. All forms of flashing, rotating, moving or digital lights shall be prohibited.
 - g. All outdoor lighting fixtures shall be turned off between 11:00 P.M. and sunrise, EXCEPT when a business facility is open to the public, when used for security purposes, or to illuminate walkways, roadways, equipment yards and parking lots.
 - h. Applicant shall submit an overall exterior lighting plan and signage plan on terms acceptable to the Trustees.
21. Landscaping must be bermed to certain specifications to “soften” the view of the development from all directions. Trustees shall have approval of final landscaping plans. Such plans shall include maintenance provisions.
22. The Applicant shall purchase eight (8) acres of land in the City of Solon adjacent to the Shopping Center to either convey to Bainbridge, or the nominee of Bainbridge, or, at the election of Trustees, to be retained by Applicant and subjected to a Conservation Easement enforceable by Trustees and the Chagrin River Land Conservancy and shall make land available in the northeast corner of the Shopping Center for Bainbridge to build a fire and/or police satellite safety center, which shall obtain access from Geauga Lake Road. The portion of the land utilized by Bainbridge for the fire and/or police satellite safety center shall not be included in the lot coverage calculation for the Shopping Center. Applicant shall share details of its security program with Trustees. Applicant shall provide access to Bainbridge (which shall not be included in the lot coverage calculation for the Shopping Center) to and from any satellite safety center, immediately to the south of the railroad tracks depicted as the Erie Railroad Company tracks on **EXHIBIT “A”**, such access to be constructed by Bainbridge, for the use of Bainbridge for police, fire and other emergency vehicles from any satellite safety center to the private through road in order for such vehicles to obtain quicker access to Pettibone Road.
23. Neither Applicant, nor John McGill, nor any company in which John McGill has a controlling interest, nor their principals, agents, successors, or assigns, shall seek or support annexation proceedings now or in the future for the Shopping Center, nor the Marketplace at Four Corners nor any other property they now own or hereafter own in Bainbridge Township.

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24. The out parcels at the Shopping Center shall utilize low monument signs comparable to those utilized at the Marketplace at Four Corners and be subject to Bainbridge Township Regulations.
25. Trustees shall also have the right to enforce compliance with each of these conditions.
26. Nothing contained herein shall affect or limit the right of Geauga County to enforce any applicable county regulations.

The grant of said conditional use permit and conditional variance are based on the following findings of fact:

1. The board finds that the conditions and circumstances of this application and of the neighborhood with the conditions set forth above are substantially the same as those for Market Place at Four Corners, the subject of application 2000-55, located across S. R. 43, and therefore hereby incorporates by reference the following findings of fact in the decision on application 2000-55 which are relevant to this decision:
 - (a) This property is located in a unique location in the township being near to two municipalities in the corner of the township bordered by a highly traveled state highway;
 - (b) The variance is not insubstantial but is barely substantial;
 - (c) The essential character of this neighborhood being already a heavily commercially used area which is zoned for that purpose will not be substantially altered and the properties would not suffer additional detriment as a result of granting slightly additional lot coverage;
 - (d) The Applicant is maintaining a substantial buffer area in excess of the zoning ordinance requirements to the adjacent residential districts;
 - (e) The variance would not adversely affect the delivery of government services, as it appears that all necessary fire and police support could be easily provided to this property and in fact the additional tax revenues that would be available from this property would very positively affect the overall delivery of government services within Bainbridge Township;
 - (f) The property owner probably was aware of this restriction when they purchased the property however in this particular case, this criteria could be given little weight;
 - (g) There is no other way that the property owner's predicament can be obviated other than by granting this particular kind of variance, there is not another alternative to doing this.
 - (h) The spirit and intent behind the zoning requirement can still be observed in this case.

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- (i) With respect to the rural character of the township, this area long State Route 43 is already fairly highly developed with dense convenience business type applications along one side and with the recreational amusement park activities on the other side so this would not be a more intense use of the property;
 - (j) The removal of a potential for annexation of this parcel by adjacent municipalities ends (i) a risk of adverse financial impact on the township, and (ii) considering the different and more highly intensive development generally permitted under zoning provisions of the adjacent municipalities, the risk that the impact on the neighbors and the derogation from the zoning that would be greater than under the variance; and
 - (k) The granting of the variance will not be contrary or derogate to the general purposes of the zoning resolution which recognizes that this is a CR District (Commercial Recreation) that recognizes that there will be substantial traffic into this district from outside of the township and also recognizes that retail use is a permitted use in this district and in looking at the guide plan, that the guide plan also has recognized that this is an area that will be subject to substantial development of this nature.
2. With respect to this application, the board believes the Applicant has presented evidence with respect to the impact of the traffic flow, and the board of zoning appeals finds that the traffic flow is minimal; that by adding an additional exit on Pettibone Road would alleviate any local traffic conditions, and that the Applicant has extensively studied the drainage issues surrounding the site and developed a plan that will enhance the drainage in the area and will adequately control water outflow from the proposed development.
 3. With respect to the lot coverage issue, the board finds that the variance requested is consistent with the board's findings on previous applications with respect to this area of the township and because of the close attention to drainage being exhibited by the Applicant should not adversely affect the surrounding properties.
 4. The board also finds that this development is consistent with those permitted as a conditional use in this district.
 5. The board finds that, as a conditional use, all of the provisions in the code applicable to conditional uses generally and for this district would apply.
 6. The board finds that all of the foregoing findings of fact are based upon and subject to the conditions to the conditional use and the variance on conditions, set forth above, being in existence. All such conditions are found to be necessary in order to satisfy the requirements for granting a conditional use set forth in the zoning resolution, and to be necessary for satisfying the criteria for the granting of the variance, including but not limited to these involving impact on adjacent properties, provision of services, consistency with neighborhood and substantial justice. The Board finds that absent the conditions, it would not have found facts in favor of the conditional use and variance.

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Mr. Lewis seconded the motion

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

Since there was no further business, the meeting was adjourned at 8:00 P.M.

Respectfully submitted,

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

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

Date: April 7, 2005

