

Bainbridge Township, Ohio  
Board of Zoning Appeals  
August 19, 2004

Pursuant to notice by publication and certified mail, a public hearing was called to order at 7:35 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Todd Lewis, Mrs. Ellen Stanton and Mr. Donald Takacs. Mr. Mark Olivier was absent. The following matters were then heard:

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

Application 2004-25 by C4 Polymers Inc. for property at 16625 Wren Road

The applicant is requesting an area variance for the purpose of maintaining a sign. The property is located in a CB District.

The zoning inspector's letter dated July 28, 2004 was read and photos of the site were submitted.

Ms. Deanna Smith was present to represent this application.

Ms. Smith testified that she is requesting a variance for an existing sign because Stroud's previously had a sign there that they never got a variance for and because she did not know that, she replaced the sign. She submitted a copy of the sign to the board.

The board viewed the photos.

Mrs. Stanton asked if there are any other signs.

Ms. Smith replied no.

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

Motion BZA 2004-25 – 16625 Wren Road

Mr. Lamanna made a motion to grant the applicant the following variances:

1. A variance from the maximum wall sign size of 50 sq. ft. to 80 sq. ft. for a variance of 30 sq. ft.
2. A variance from the maximum height of sign above grade of 15' to 20' for a variance of 5'.

Based on the following findings of fact:

1. The sign is replacing an existing sign that was on the building.
2. The building is a large building and the sign is well below the top of the building.

Motion BZA 2004-25 – 16625 Wren Road - Continued

3. It is located in an area that would be difficult to lower the sign to the 15' height.
4. Given the size of the building and the amount of frontage on Wren Road, the sign is a very small part of the building and is not unreasonable given the amount of frontage and the size of the building.

Mr. Takacs seconded the motion.

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

Application 2004-26 by Robert Takatch for property at 8636 North Spring Valley Drive

The applicant is requesting area variances for the purpose of constructing a detached garage. The property is located in a R-3A District.

The zoning inspector's letter dated July 28, 2004 was read and photos of the site were submitted.

Mr. Robert Takatch was present to represent this application.

Mr. Takatch submitted a sketch to the board that indicates an arbor between the proposed garage and house and testified that he may join the house and the garage together.

Mrs. Stanton asked if there is a concrete pad or gravel for the turn-around.

Mr. Takatch said he put a pad in of crushed concrete for the turn-around.

Mr. Takacs asked if this is going to be a detached garage in front of the house.

Mr. Takatch replied yes.

Mr. Lamanna asked if the garage cannot be moved back and attached to the house.

Mr. Takatch said there are trees and a septic system in back of the house.

Mrs. Stanton asked if the garage can be pushed back closer to the house.

Mr. Lamanna asked if it can be connected to the house to make it one structure, then it won't become a single structure.

Mr. Takatch said it could be combined with an arbor.

Mrs. Stanton said it will be a front yard obstruction.

Mr. Takatch said he hears what the board is saying but it would be an off-shoot of what he already has with the existing pad.

Mr. Takacs asked if he would consider a u-shaped driveway.

The board suggested pushing the garage back and relocating the driveway.

The board viewed the photos and setbacks requested.

Mr. Takatch was in agreement to attach the garage to the house.

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

Motion BZA 2004-26 – 8636 North Spring Valley Drive

Mr. Lamanna made a motion to grant the applicant the following variances based on the applicant's modification of his plan to move the proposed garage back and connect it to the house.

1. A variance from the required front yard setback of 100' to 90' for a variance of 10'.
2. A variance from the required side yard setback of 50' to 36'-6" for a variance of 13'-6".

Based on the following findings of fact:

1. The applicant will attach the proposed garage to the house with a structure of his choice so that the house and garage will become a single structure and therefore there will not be a separate detached garage as a front yard encroachment but the garage will become part of the house.
2. A practical difficulty exists due to the existing location of the house.
3. It is the only feasible location for adding the garage.
4. The variance is minimal and will not cause any adverse effect on the adjacent houses.
5. It is only a small increase in the front yard and there are already significant setbacks for each house on the adjacent sides and given the narrow nature of the lot here, it is not inconsistent with the other existing setbacks in the area.

Mr. Takacs seconded the motion.

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

Application 2004-27 by Signature Sign Company for Kay Jewelers for property at 7175 Aurora Road

The applicant is requesting area variances for the purpose of installing signage. The property is located in a CR District.

The zoning inspector's letter dated July 28, 2004 was read and photos of the site were submitted.

Mr. Randy Grigson, Store Planner for Kay Jewelers was present to represent this application.

Mr. Grigson testified that he is requesting a variance for a sign for the store frontage and to add a sign on the back side of the building.

Mrs. Stanton asked if Kay Jewelers is one of three tenants in the building.

Mr. Grigson replied yes.

Mrs. Stanton asked if there will be a ground sign for the building.

Mr. Grigson said he believes that the landlord will put up a ground sign for the tenants.

Mrs. Stanton said there will be a ground sign and wall signage and asked how that will work with the other tenants.

Mr. Takacs said the board should see all the proposed signage at once and asked why there are 3' letters.

Mr. Grigson said they are as large as the landlord's building facade and the width of the letter is relative to the storefront at 23'.

Mr. Takacs asked if the signage can be cut down.

Mr. Grigson said they can cut it down with them being the first tenant going in but they want to maximize the signage for the structure and they want the signage on the back.

Mr. Takacs asked why not use 30" letters instead because they can be seen at 300'.

Mr. Lewis asked how far the building sits back from Aurora Road.

Mr. Grigson said it is a front parcel.

Mrs. Stanton asked if he wants to put signage on the back side of the building also.

Mr. Grigson said yes, they want a second sign on the back side or development side of the building.

The board discussed the variances requested.

Mr. Lamanna explained that the second signs that are allowed are about one-half the size of the main sign and the board does not think two large signs are needed. He suggested reducing the front sign down to comply.

Mr. Grigson asked what the square footage of the signs would be.

Mr. Lamanna said the permitted signage for the front is 34.5 sq. ft. and the back is 20 sq. ft.

Mr. Lewis asked where the sign will be in the back.

Mr. Grigson said it will be above the door.

Mr. Lewis asked if the rear sign will be illuminated also.

Mr. Grigson said yes.

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

Motion BZA 2004-27 – 7175 Aurora Road (Kay Jewelers)

Mr. Lamanna made a motion to grant the applicant the following variances with respect to signs:

1. A variance from the maximum number of wall signs permitted of one to two for a variance of one.
2. The front wall sign will be limited to the 34.5 sq. ft. permitted.
3. The second sign on the rear of the building will be no more than 20 sq. ft.
4. A variance from the maximum height permitted above grade level of 15' to 19'-9" for a variance of 4'-9".

Based on the following findings of fact:

1. Because of the nature of this building in the shopping center, it has essentially two facing sides, so the second sign is along the back side so that the business will be visible from the main shopping center.

Motion BZA 2004-27 – 7175 Aurora Road (Kay Jewelers) - Continued

2. With respect to the height variance, these are both wall signs that are placed well below the top of the building and they are located architecturally on the building in a point that is balanced and if moved lower than that, it would interfere with other architectural features of the building.

Mr. Takacs seconded the motion.

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

Application 2004-28 by Richard Krause for property at 8388 E. Washington Street

The applicant is requesting a conditional use permit with variances for the purpose of establishing a laser tag arcade/game room. The property is located in a CB District.

The zoning inspector's letter dated July 28, 2004 was read and photos of the site were submitted.

Mr. Richard Krause, Future Manager of the Arcade, Mr. Ray Voelker, Future Owner of the Arcade and Mr. Steve Ciciretto, Architect were present to represent this application.

Mr. Ciciretto testified that this building is the old hardware building on Washington Street next to Highway Garage. He said a game arcade with arcade games and laser tag is proposed for this building and they are permitted in a CB district. He said there is a pole barn structure in the back of the building that will be torn down and replaced with a new foundation, and the store front will be new that will compliment McFarland Shopping Center and Highway Garage.

Mr. Takacs asked if the building will be increased from 40' to 60'.

Mr. Ciciretto said yes, the total lot coverage is at 30% and will be below 40% with parking and landscaping and the propane tanks will be removed. He said the lot coverage is somewhat reduced but a variance is requested because the code says no more than 30% of the floor area can be covered with arcade games and the shaded areas on the floor plan indicate where the games will be. He said there will be three party rooms, a food court area, lockers for coats, bags, etc. and the back of the building will be the laser tag facility. He said music will be played and not only will there be children, but there will be adult leagues and it will not solely be geared for kids. He explained that there will be an armory area and questioned whether a variance is really needed because they are actually only using 7% for the game area itself.

Mr. Takacs asked about the restrooms.

Mr. Ciciretto said there will be restrooms for men and women and they will be handicapped compliant and added that the kids can come in and have a snack.

Mr. Takacs asked what kind of food will be served.

Mr. Krause testified that there will be no fried foods, only food that can be warmed up and maybe some ice cream.

Mr. Voelker testified that they will probably have hot dogs, popcorn, etc.

Mr. Ciciretto said he will finish explaining the lot coverage.

Mr. Lamanna said he is still not sure about the issue on the calculation of the floor coverage.

Mr. Ciciretto said the code states that only 30% of the room is to be used for games and video devices, but because of the proposed 6,000 sq. ft. addition, should it be part of the space for calculation.

Mr. Lamanna asked what that space will be used for.

Mr. Krause said it will be a black room with fog lights and barriers for the kids to hide with man-made stuff, home base at two opposite ends and some stairways and cubbyholes.

Mr. Lewis said he sees the whole room as games and the whole room constitutes itself as a game.

Mr. Ciciretto said he sees the room like a bowling alley and asked if a bowling ally is a game.

The board referred to the zoning resolution regarding laser tag with no machines etc.

Mr. Ciciretto said they presented it that way for the board's consideration.

Mr. Lamanna said it is hard to say because the idea is to not have the floor area jammed with things and asked how many people will be in the laser tag area.

Mr. Krause said potentially there will be up to 40 people in that area.

Mr. Voelker said there are professional groups and 40 people are well inside of the recommendation and they recommend 5,000 sq. ft. and we have 6,000 sq. ft.

Mr. Ciciretto said in building code terms, close to 1,000 people could occupy this space.

Mr. Lamanna said the board won't consider that area in the calculation but will limit the area to 40 participants.

Mr. Ciciretto said the shaded area on the floor plan represents 7%.

Mr. Lewis asked about the footprint of the machines.

Mr. Ciciretto said it will be a 10,000 sq. ft. building.

Mr. Lamanna said there could be 3,000 sq. ft. of games so the board won't apply that to the laser tag area but will apply the 40 person limitation.

Mr. Takacs referred to the food preparation and said a zoning certificate is required.

Mr. Ciciretto said the board could make it part of the zoning certificate. He read from the zoning resolution that "no attendant shall permit any person under eighteen (18) years of age to be on the premises prior to 4:00 P.M. on any day that public schools are open for regular school attendance or after 9:00 P.M. if public schools are open the next day." He said they are looking for an extension on that time by an hour because the Kenston kids are out at 2:30 P.M. and also some employees may be under 18. He said that 3:00 P.M. would be a reasonable time and added that the goal was that students won't cut school to go to play games or stay out too late at night but they hang out at Arabica where there is no time limit.

Mr. Lamanna said there is no reason or basis at all to change the time by granting a variance.

Mr. Ciciretto said the kids hang out at Giant Eagle and Arabica and asked about the time at the other end.

Mr. Lamanna said he could see some relief for the time in the beginning.

Mr. Voelker said that all the Chagrin Valley kids get out at about the same time and asked if they have a 16 or 17 year old employee that closes up at 9:00 P.M. and if they are in the building cleaning up at 9:30 P.M. if they will be in violation.

Mr. Lewis said it is the hours of operation that matters.

Mr. Lamanna said he would not consider an employee the same thing.

Mr. Lewis said if it takes an employee until 9:30 P.M. to clean up, that does not mean the laser tag will still be going on at 9:30 P.M.

Mr. Lamanna said the intention is that they do not want recreational activities late at night and asked about the encroachment of the building addition.

Mr. McIntyre said the east side will be 41' instead of the required 50'.

Mr. Ciciretto said the north side will not change.

Mr. Lamanna asked about the front of the building and said he is assuming that the pole sign is going.

Mr. Ciciretto said they have not discussed that yet.

Mr. Lamanna said the pole sign is going.

Mr. Ciciretto said it is gone.

Mr. Takacs asked about future signage.

Mr. Ciciretto said it will probably be a monument sign but they are not looking for a variance for the monument sign and said the intent is to have the sign in the green area in the front. He added that the canopy is covered and projects out.

Mr. Takacs asked if they will be parking cars right up to the right-of-way.

Mr. Ciciretto said yes and the canopy is closer to E. Washington Street and it is a very elegant way to be dropped off for laser tag.

Mr. Lamanna said there is an increase in the encroachment to the front with the parking to the right-of-way.

Mr. Ciciretto said that is correct and explained the existing parking and proposed parking.

Mr. Lamanna said there is plenty of space for parking.

Mr. Takacs asked how many parking spaces there will be.

Mr. Voelker said that because of the size of the building, zoning dictates the amount of parking spaces we must have.

Mr. Krause said there will be 100 – 125 parking spaces.

Mr. Ciciretto said that 82 spaces are driven by zoning, not by use.

Mr. Lamanna said he would rather give a variance and get rid of the parking right up to the street and in the front and add some green space and try to move the parking back.

Mr. Krause said just the first row.

Mr. Lamanna said they need to try to circulate the traffic in one side and out the other.

Mr. Ciciretto said the goal would be to have the employee parking in the back but there is a watershed in the back that needs to be addressed.

Mr. Takacs asked about access around the building.

Mr. Ciciretto said they really did not want people hanging around in the back of the building.

Mr. Takacs asked about access for emergency vehicles.

Mr. Ciciretto said there is a sidewalk on the side of the building.

Mr. Voelker said they are OK with ten spaces going away with only 40 people in that 6,000 sq. ft. space because the people usually come in mini vans.

Mr. Lamanna said there should be one entrance drive and one exit drive and the applicant can decide which drive they want to be the ingress and which one they want to be the egress.

Mr. Ciciretto said they will put the sign in the 20' area.

Mr. Lamanna said they have to figure out which drive will be for ingress and egress and it would be more likely for the east drive to be the entrance.

Mr. Lewis asked if the board is looking for mounding or landscaping in the 20' area.

The board was agreement that there should be some landscaping and mounding in that area.

Mr. Frank Lanza of 7738 E. Washington Street testified that he thought the parking lot had to be 40' back and the setback from E. Washington Street had to be 70'.

Mr. Ciciretto said this is an existing building.

Mr. Lanza asked about the age group that will be using this facility.

Mr. Voelker said the age group will be 12 – 22 and there will be some young adults.

Mrs. Harry Edwards of 16449 S. Franklin Street asked if there will be a size limit for the children.

Mr. Voelker said it is more of a size thing because the vests weigh 5 – 7 pounds.

Mr. Lanza asked if the front of the building will be extended.

Mr. Krause said yes with a canopy.

Mr. Ciciretto said there is a two lane drop-off but it could be cut back to 15' for better circulation so the cars don't go both ways.

Mr. Takacs asked if it is 92' from the building or the canopy.

Mr. McIntyre said it is from the building.

Mr. Ciciretto said that 70' is the setback.

Mr. McIntyre said it is 70' from that road but with a conditional use it is 100'.

The board discussed the front yard setback.

Mr. Lewis asked about outdoor lighting.

Mr. Ciciretto said the lighting will be on the building with cut-off fixtures to light the parking lot.

Mr. Lewis asked how they will keep the light from flooding beyond the property line.

Mr. Ciciretto said they will be cut-off fixtures and there will be lights under the canopy for security lighting and security lights in the back.

Mr. Lanza said the parking is mostly in the front and on the east side.

Mr. Ciciretto said the parking will be pulled off of the property line and he is sure Mr. Lanza's concern is if he has cars parked back there, he does not want kids fooling around with them after hours. He said this facility is another alternative for kids to go for something to do and explained that parking could be added to the west side.

Mr. Lanza said they will not be able to drive around the building.

Mr. Ciciretto said that is right.

Mr. Lanza said there is a natural drainage back there.

Mr. Lewis asked if there will be external sound, music.

Mr. Voelker said no.

Mr. Takacs asked if there will be any flashing lights.

Mr. Voelker replied no.

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

Motion BZA 2004-28 – 8388 E. Washington Street

Mr. Lamanna made a motion to grant the applicant a conditional use permit for the purposes of operating a laser tag and game arcade and subject to the conditions contained herein.

1. In reviewing the requirements with respect to this conditional use, there is a limitation per Section 143.02 (b) with respect to percentage of space occupied by games. The board finds that with respect to this application the area being used for the laser tag will not be subjected to this limitation and will not be considered part of the building with respect to the other arcade games in the remainder of the building but that in order to have a similar restriction with a similar intent, a condition will be that the area used for laser tag will not have more than 40 people participating in the laser tag at any one time.
2. With respect to area variances on the building construction, the following variances will be granted:
  - A. A variance to the southerly property line or front property line from the required 100' to 70' for a variance of 30'.
  - B. A variance to the westerly property line from the required 100' to 31' for a variance of 69'.
  - C. A variance to the easterly property line from the required 100' to 41' for a variance of 59'.
  - D. The board will also grant a variance with respect to the hours of operation requirement in that the board will change the initial hours with respect to persons under 18 years of age from 4:00 P.M. to 3:00 P.M.
  - E. In addition, the board will grant a variance for the required parking spaces for a building of this size to 72 total to reflect the removal of the spaces.

Motion BZA 2004-28 – 8388 E. Washington Street - Continued

Based on the following findings of fact:

1. The reason for providing the 30' variance to the southerly property line is that 70' is consistent with the setback for other than a conditional use and it appears to be no reason that this property should be held to a different standard.
2. The 69' variance to the westerly property line represents the imposition on that side yard setback of the current structure.
3. With respect to the variance to the easterly property line, this is an increase in the current variance of 41' caused by the expansion of the building and the board will grant this variance because the fact that even as expanded, the building will be substantially smaller than the available lot space and due to the fact that the building is oriented at an angle to the side yard lot line as compared to the front lot line, which is parallel, this causes a slight increase in the approach of the building to the side. There is also a practical difficulty because of the width of the lot, it is much shorter than its overall length.
4. With the respect to the variance for the hours of operation, this facility primarily serves people in middle school and high school and their dismissal is prior to 3:00 P.M. The board will also interpret this not to include those persons who are actually employed by the business and who are working as permitted by the applicable labor laws.
5. Due to the nature and use of this building, those additional parking spaces will not be required for its actual use, but noting that there is plenty of additional area on the property for further parking if it becomes necessary in the future.

The following conditions will apply to this use

1. With respect to the property, the existing propane tanks will be removed.
2. The existing pole signs will be removed.
3. The applicant will remove the parking spots that are immediately adjacent to E. Washington Street and other than the ingress and egress, that will become a landscaped area with a two to three foot mounded area. The applicant will be able to put the monument sign within that area.
4. One of the access ways will be dedicated to in only and the other to out only to be selected by the choice of the applicant.
5. All lighting will be in conformance with Section 161.12 of the Bainbridge Township Zoning Resolution.
6. All requirements in Section 117.13 of the Bainbridge Township Zoning Resolution which are generally applicable to all conditional uses are also required to be met at all times by the applicant.
7. Further additional conditions upon the conduct of the business, that in areas where music is being played, all doors and windows to the outside will be kept closed so that the interior noise does not move off the facility.

Motion BZA 2004-28 – 8388 E. Washington Street - Continued

8. The applicant will monitor the grounds to avoid any undue congregation of people hanging around who are not either reasonably in the process of coming to the facility or leaving the facility so there does not end up with any problems being caused to the neighbors.
9. With respect to the food operations at the facility, they will be primarily oriented as ancillary to the actual use of the facility for parties and the like at the facility and are not intended to become a restaurant type operation or a take-out food operation.

Mr. Takacs seconded the motion.

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

Application 2004-29 by Northcoast Cycles, LLC for property at 7315 Aurora Road

The applicant is requesting area variances for the purpose of installing signage. The property is located in a CR District.

The zoning inspector's letter dated July 28, 2004 was read and photos of the site were submitted.

Mr. Dale Kramer was present to represent this application.

Mr. Kramer testified that the signs are similar and were previously approved for the other property E. Washington Street. He submitted a hand-out to the board members regarding his application for signage variances at 7315 Aurora Road for his BMW Motorcycle dealership. He continued by showing the board the site plan and said he moved the existing driveway but did not lose any green space. He said since the location is right at a curve in the road, he is asking for a variance for the monument sign and it will have to be moved back for a proper sight line because of the pole.

Mr. Takacs referred to the variance requested for the height and asked if it needed to be that high.

Mr. Kramer said yes, for visibility.

Mrs. Stanton said a variance was already given for 7'.

Mr. Lamanna said it is much bigger frontage now.

Mr. Kramer said the BMW rondel is internally illuminated with a white face and the rest are lit with spot lights.

Mrs. Stanton asked if the variance is for 4' above grade level.

Mr. Kramer said yes and they could recess it and lower it but it can't go higher.

The board reviewed the requested variances.

Mr. Lewis asked if the sign on the building will be illuminated.

Mr. Kramer replied yes.

Mr. Lamanna asked how far the sign will be away from the building.

Mr. McIntyre said it extends 18" away from the building.

Mr. Kramer said he wanted to give the building some depth so they pulled the sign away from the building a little and they eliminated the walkway around the building so people will not be walking under it. He said the round sign with the motorcycle will not be lit, there will only be a spot light on it.

Mr. Lamanna asked if the motorcycle sign will be 18" from the building.

Mr. Kramer said yes and it is just to give some dimension to the sign.

The board discussed the proposed signs and variances requested.

Mr. Kramer explained the location of the service sign and said the service department is almost obscure and the sign will be tucked under the canopy. He said it is not a street sign, it is more of a directional sign.

Mr. Lewis said at 9" there is 90' visibility.

Mr. Kramer said it is almost 150' from the street.

Mr. Lamanna asked about the size of the main BMW sign.

Mr. McIntyre said it is 23' and the calculation was based on the cabinet.

Mr. Lamanna said it is only 46 sq. ft. based on the letters.

Mr. Kramer said that BMW said there were to be no rondels on the building and added that his sign was custom made and he wants his own identity.

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

Motion BZA 2004-29 – 7315 Aurora Road

Mr. Lamanna made a motion to grant the applicant the following variances for the purposes of installing signage:

1. A variance for the separate wall signs, one of which is a service location sign and the one of which is an emblem sign with no lettering or words on it.
2. A variance from the total signage permitted of 138 sq. ft. to 201.5 sq. ft. for a variance of 63.5 sq. ft.
3. A variance from the maximum permitted wall sign of 50 sq. ft. to 69 sq. ft. for a variance of 19 sq. ft.
4. A variance from the maximum permitted ground sign of 25 sq. ft. per face to 44 sq. ft. per face for a variance of 19 sq. ft. per face.
5. The wall sign shall not be more than 18” away from the wall.
6. A variance from the maximum permitted ground sign height of 10 ft. to 12 ft. for a variance of 2 ft.
7. A variance from the maximum permitted height of sign above grade level for the positioning of the logo from 15 ft. to 19 ft. for a variance of 4 ft.

Based on the following findings of fact:

1. The variance is granted because the sign is on the appropriate place on the building and it is also consistent with other signs in the general area.
2. With respect to the ground sign, the applicant has a unique type of ground sign and due to the location of the premises and the bend in the road and the existing power pole, a slightly taller sign is warranted as is the additional signage area.
3. The signage area is due to calculation methods and actually overstates the amount of informational lettering that exists on the sign and given the overall size of the property and its location is reasonable for providing notice to people seeking the premises and to be able to make the premises identifiable giving the other surrounding businesses.

Mr. Lewis seconded the motion.

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

Application 2004-30 by Prestige Homes for property at 8125 Woodberry Boulevard

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

The zoning inspector's letter dated July 28, 2004 was read and photos of the site were submitted.

Mr. Chris Brown of Prestige Homes was present to represent this application.

Mr. Brown testified that the Woods of Wembley subdivision was designed and laid out before the riparian setback regulations were adopted and this is not a significant waterway but it is a waterway. He said they are looking for a 30' variance from the required 100' setback from the right-of-way so as to not impact the waterway. He said the proposed house sits on a cul-de-sac and people will not be able to tell what the setback is especially the way the houses will be positioned next to it so the houses will look like they are the same depth.

The board discussed the proposed variance request and were in agreement that there was no issue.

Mr. Lamanna said it is more important to protect the stream.

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

Motion BZA 2004-30 – 8125 Woodberry Boulevard

Mr. Lamanna made a motion to grant the applicant the following variance.

1. A variance from the required minimum front yard setback of 100' to 70' for a variance of 30'.

Based on the following findings of fact:

1. A practical difficulty exists. There is a stream running through the back of the property and in order to maintain a protective distance from that stream to the house, the house needs to be moved forward 30'.
2. In addition, since the house is on a cul-de-sac, the fact that it is slightly closer to the street will not be noticeable or adversely affect the surrounding properties.

Mr. Takacs seconded the motion.

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

Application 2004-31 by Harry Edwards for property at 16449 S. Franklin Street

The applicant is requesting area variances for the purpose of constructing a lean-to on an existing garden shed. The property is located in a R-3A District.

The zoning inspector's letter dated July 28, 2004 was read and photos of the site were submitted.

Mr. and Mrs. Harry Edwards were present to represent this application.

Mr. Edwards testified that he and his wife are proposing to build a lean-to onto an existing garden shed. He said they spoke to the adjacent property owner and they had no problem with it and to the south it is all woods.

The board discussed the property to the south.

Mr. Lamanna asked about the property behind.

Mr. Edwards said it is a residential property with a garage or barn up on a hill.

Mr. Takacs asked what the lean-to will be used for.

Mr. Edwards said it will be used to store firewood and will be open on all sides. He added that his property is surrounded by all woods.

The board reviewed the site plan and aerial photo.

Mr. Olivier arrived at 9:32 P.M.

Mr. McIntyre explained the property lines on the GIS map.

Mr. Takacs said the rear yard setback will not change, only the side yard setback.

Mrs. Stanton asked if this will be a separate structure.

Mr. Edwards said no, it is an addition to an existing outbuilding.

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

Motion BZA 2004-31- 16449 S. Franklin Street

Mr. Lamanna made a motion to grant the applicant the following variances for the purposes of adding a lean-to to an existing shed.

1. A variance from the minimum required side yard setback of 50' to 7' for a variance of 43'.
2. A variance from the minimum required rear yard setback of 90' to 4' for a variance of 86' which is the same as the existing building.
3. A variance from the maximum lot coverage of 10% to 32.8% for a variance of 22.8% which is an overall increase of 1.76% from the current 31%.

Based on the following findings of fact:

1. A practical difficulty exists. This is a small existing lot, very narrow, only 50' wide.
2. There has been an existing accessory structure at the back of the lot.
3. The side yard setback will still be within that of the main structure and reasonable given the narrowness of the lot.
4. There is nothing on the adjacent lot to the south and it will not be adversely affected.
5. The lot immediately to the east is orientated to a right angle on Oak Street so the building will not even be visible in the back yard of that lot and it will be at the far end of the lot so there will be no adverse impact on adjacent neighbors and this is fairly consistent with other structures and accessory buildings in this district.

Mr. Takacs seconded the motion.

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

Since there was no further testimony, the public hearing was closed at 9:37 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: September 16, 2004

Bainbridge Township, Ohio  
Board of Zoning Appeals  
August 19, 2004

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 9:37 P.M. by Mr. Michael Lamanna, Chairman. Members present were: Mr. Todd Lewis, Mr. Mark Olivier, Mrs. Ellen Stanton and Mr. Donald Takacs.

Old Business

17787 Chillicothe Road

The board held a discussion regarding further consideration of the decision on application 2004-7 and reviewed the testimony presented in the hearings on such application as well as the decision, findings of fact and conclusions of law that were made at the June 17, 2004 meeting. The minutes of such meeting with respect to such application, which were not included in the minutes of such meeting which were previously approved, are as follows:

Application 2004-7 by Arnold Leeb for property at 17787 Chillicothe Road – Continuance

The applicant is requesting a use variance and area variances for the purpose of constructing an animal hospital. The property is located in a R-3A District.

The zoning inspector's letter dated May 13, 2004 was read and photos of the site were submitted.

Dr. Arnold Leeb, applicant and Mr. Roger Weiss, Attorney for the applicant were present to represent this application.

Mr. Weiss testified that this is a continuance so the board could consult with legal counsel and the applicant is here for the purpose of the board voting on this application.

Mr. Lamanna said that the board did consult with the county prosecutor's office on granting a use variance and in granting a specific use, it would be limited to that specific use. The board looked at the issue on whether it should consider this application with no previous application to the zoning commission. He said the purpose of the variance does not effectuate a rezoning of the area but to address a specific problem with a certain piece of property. He said this is one of one-half dozen properties along Rt. 306 with some potential issues and it would be more appropriate to seek rezoning of the property or this area and this would be a proper procedure to go through until such time if rezoning is not considered. He continued by saying that the applicant has given a brief of the reasons why this board has authority to grant a variance but there are a number of other properties in the same situation and the board would be re-zoning a number of other properties as well. He said if the zoning commission feels a rezoning is inappropriate, the applicant can return to the board of zoning appeals. He said beyond this procedure, the applicant falls short on requirements that are set forth in the standards for a use

variance and he thinks the two significant problems are that this proposed use is only permitted in a CB or industrial district which means there are other potential uses that are less intrusive such as professional office district and there is no evidence that this property cannot be economically used and there is no evidence there cannot be a reasonable return on this property from a residential standpoint.

Mr. Lamanna continued by saying that all the board has is a report from D. B. Hartt and testimony solely based upon information he obtained from a third party who did not appear for examination by the board.

Mr. Olivier said he agrees with Mr. Lamanna in that he is not certain that this use could not be in a less intensive district and an attempt to rezone should be made or an amendment to change a veterinarian use to a different classification should be pursued before granting a use variance on this property.

Mr. Takacs stated that he agrees with Mr. Lamanna and Mr. Olivier.

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

#### Motion BZA 2004-7 – 17787 Chillicothe Road

Mr. Lamanna made a motion with respect to application 2004-7 to modify the board's decision to reflect the changes, as reflected in the documents before each of the members, and which are now in the possession of the secretary. The board also notes that it had a unanimous decision by the three members who were originally present at the final hearing on this matter and the initial decision who have all concurred on these changes as well as the two other members who were not present at that time.

Mr. Takacs seconded the motion.

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

#### Motion BZA 2004-7 – 17787 Chillicothe Road

Mr. Lamanna made a motion to deny the applicant's request for a use variance.

The following rationale applies to this decision:

(a) The applicant's request for a variance is not presently the appropriate course of action and the applicant should seek rezoning of the area prior to seeking a variance, based on the following findings of fact and conclusions of law:

1. The applicant has property that has substantially similar conditions to other properties, located to the south (Cipiti property, the adjacent property owned by the township and the additional properties beyond the Cipiti property at least as far down as those opposite the south end of the Early Learning Center). All of them could make essentially the same arguments for a variance. The applicant's experts admitted in their testimony that these properties had the same concerns as the applicant's property and the same conditions that gave rise to the alleged unnecessary hardship affecting the applicant's property. Nothing distinguishes the applicant's property. The area with these characteristics is large and substantial.
2. The applicant has not previously sought rezoning of this property. There was extensive testimony about prior review of the general area by the Zoning Commission. Based on such testimony and the official record, these actions do not constitute a prior attempt by this owner to seek a rezoning that is consistent with his plans. The prior actions of the Zoning Commission related to creation of an 'historical district' that encompassed an area much larger than the east side of RT. 306. Also the concept of an historical district had other procedural and practical concerns which led the Zoning Commission not to enact any rezoning.
3. The provision in Chapter 117.10 (c) (7) states that "No variance shall be granted if rezoning the property in question is proper and will achieve substantially like results." This requirement is consistent with the decision of the courts in *Kline v. Hamilton County Board of Zoning Appeals* 120 Ohio App. 3rd 362 and *Consolidated Management v. Cleveland* 6 Ohio State 3d 238 which address when rezoning rather than variance is an appropriate remedy.

(b) In addition to procedural grounds, the board also denies this application on its substantive merits based on the failure of the applicant to demonstrate the conditions necessary for granting a use variance; based on the following findings:

1. The applicant has not demonstrated that the variance is the least possible to achieve a just relief. The applicant has requested a use that is only permitted in industrial and convenience business districts and did not address the possibility of uses that would have been permitted in a Professional Office District so it did not satisfy the requirements that its proposal is the least possible variance. Nothing in applicant's expert testimony addressed this, and in fact, such testimony supported the proposition that POD uses would overcome the alleged hardship.

2. The board finds that the requested variance would not be in conformance with the spirit of the zoning resolution as it would create a situation where a non-residential use would be included in a residential district which could adversely affect additional properties and create a situation where additional properties could request further use variances of like kind and create further adverse effects on neighboring residential properties. The applicant's expert did not present any convincing testimony on this subject. His view is that there is no affect on adjacent properties as they are all affected by the same external circumstances. The proposed development would further affect the adjacent properties. (There also appears to be a mischaracterization of the use of adjacent properties by the expert).
3. The granting of this use variance would also derogate the general purposes of the zoning resolution in that it would create a Convenience Business use in the midst of a residential district which is contrary to the intent of creating the residential district.
4. The applicant was aware of the circumstances surrounding this property and the zoning of this property at the time the applicant purchased the property.
5. The applicant has failed to demonstrate that there has been an unnecessary hardship. In order to demonstrate an unnecessary hardship, the applicant needs to demonstrate that it cannot obtain a reasonable return on its property. The applicant has not presented credible evidence that shows that this property cannot be used for residential purposes in a profitable manner. The current condition of the building on the property and the fact that it is in a substantially run down condition, is not sufficient evidence to demonstrate that and the applicant has attempted to have his expert land use planner assert that the property is not suitable for residential use or economically viable for residential use by presenting a letter from a real estate person. However, the realtor did not testify before this board and therefore the bare conclusion was not subject to examination by the board as to the facts used, the method applied, and the validity of the conclusion. Such letter will not be admitted or considered relevant and therefore this board will not consider that information in rendering its decision. The Planning expert also tried to make a conclusion on economic viability. Again no facts were presented and no calculations shown. There was only a conclusion. This conclusion was in part based upon the statement of the realtor. The Planner has also not demonstrated that they are an expert in this area. Thus, the board makes a finding of fact that there has not been sufficient proof to demonstrate that there is an economic hardship.
6. The applicant's experts provided much information on why this area could be useable for other than residential from a planning perspective. While interesting, and quite important to a rezoning request, this is not relevant to the decision to grant a variance. It addresses what might be desirable as an objective for the overall community; it does not address whether the proposal of the applicant in derogation of the current zoning or particular detriment to adjacent property considered without regard to 'community benefit'. It did not support the application on these issues.
7. The board finds that there are no special conditions as set forth in Chapter 117.10 that are peculiar to this property and that did not result from the actions of the applicant.

(c) Since the board has determined that a use variance is not granted, the area variances requested are denied as being moot and lacking demonstration of practical difficulty.

Mr. Takacs seconded the motion.

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

#### Minutes

Mr. Lamanna made a motion to approve the minutes of the July 15, 2004 meeting and in addition to that to also include the modified decision with respect to application 2004-7 as well.

Mr. Takacs seconded the motion.

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

#### Applications for next meeting

##### Application 2004-32 by Mark L. DiSanto for property at 9311 Taylor May Road

The applicant is requesting area variances for the purpose of constructing a shed. The property is located in a R-5A District.

##### Application 2004-33 by Karen Marlowe for property at 16707 Akron Street

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

##### Application 2004-34 by Geauga County Habitat for Humanity for property at 16690 Dayton Street

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

##### Application 2004-35 by Debora J. Bork for property at 253 (16371) S. Franklin Street

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

##### Application 2004-36 by LaBella Antiques for property at 8231 E. Washington Street

The applicant is requesting area variances for the purpose of installing signage. The property is located in a CB District.

Application 2004-37 by Sean F. Neligan for property at 18919 Riverview Drive

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

Application 2004-38 by Boyer Signs & Graphics for Cowboy Restaurant for property at 8586 East Washington Street

The applicant is requesting area variances for the purpose of installing multiple signage. The property is located in a CB District.

Application 2004-39 by Joyce Building Company – William Joyce for property at 16699 Brigadoon Drive

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

Application 2004-40 by Ralph and Ann Dickinson for property at 17920 Snyder Road

The applicant is requesting an area variance for the purpose of maintaining a shed. The property is located in a R-5A District.

Application 2004-41 by Carmen J. Gaitan for property at 9225 Willson Drive

The applicant is requesting an area variance for the purpose of constructing a detached garage. The property is located in a R-5A District.

Application 2004-42 by Brilliant Electric Sign Co. Ltd. for Bella Design Jewelers for property at 8560 E. Washington Street

The applicant is requesting area variances for the purpose of installing signage. The property is located in a CB District.

Since there was no further business, the meeting was adjourned at 9:52 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: September 16, 2004