

Bainbridge Township, Ohio
Board of Zoning Appeals
September 16, 2010

Pursuant to notice by publication and certified mail, the public hearing was called to order at 7:05 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Todd Lewis, Mr. Mark Murphy and Mr. Mark Olivier. Mr. Christopher Horn was absent.

Mr. Lamanna welcomed everyone to the regular meeting of the Bainbridge Township Board of Zoning Appeals. He then explained the hearing process and swore in all persons who intended to testify.

Application 2010-19 by Ruth C. Jackson for property at 8372 Chagrin Road

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

The zoning inspector's letter dated September 16, 2010 was read.

Ms. Ruth Jackson was present to represent this application.

Ms. Jackson testified that ten years ago when she moved in she had a little building erected to house her extra furniture etc. and then four years ago she built a smaller one to keep all of her firewood dry and rather than building just a little lean-to thing she went to the time, trouble and expense of putting doors on it, it has wood siding, it has gutters, it has windows and a flower box and it is adorable. She said they don't look like the kind of sheds that you buy at Home Depot and they are not on a foundation, they are on 4 x 4 and 4 x 6 Wolmanized treated wood.

Mr. Olivier asked where the shed was that was torn down ten years ago, where was that located.

Ms. Jackson said she didn't tear anything down.

Mr. Olivier said he thought she said there was one there.

Ms. Jackson said no, she had one built by a company and then five years later, she built a small one for her firewood because she had the firewood just stacked like everybody does and because there is a slope to the property, with the weight of the wood, a couple of the pieces of firewood slid down the bank so rather than just restacking it and having the same thing happen again, she actually got this structure built.

Mr. Olivier asked if there are two structures.

Ms. Jackson replied yes.

Mr. Shane Wrench, Zoning Inspector testified that they are two separate structures.

Mr. Murphy asked about the photograph that shows a tent.

Ms. Jackson said that is a temporary thing because she had a lot of ice build up on the house last year like everybody else and when the gutters were full and it started to melt, water went up under the roof and she had water inside the garage so she decided to put up a tent to take everything out of the garage and put it under the tent while she re-did the inside of the garage ceiling and two walls. She said this is a just temporary thing.

Mr. Murphy asked if both structures can be seen on the aerial photo and if they are looking at one of the first structures and if they can see the log storage structure.

Ms. Jackson said not really. She explained the location of the tent and the neighbor's house and showed the peak of the first structure and the second structure is right behind the fence. She said when you drive up the driveway it is here (she referred to a photo).

Mr. Lewis said there are two structures and a temporary structure or whatever the tent is classified as and asked when the larger structure was built.

Ms. Jackson said ten years ago.

Mr. Lewis said in 2000.

Ms. Jackson said yes.

Mr. Wrench said there is nothing in the file.

Mr. Lewis asked if that one is 5' off the property line.

Ms. Jackson said no.

Mr. Lewis said the side yard is 50' in the zoning.

Mr. Wrench replied yes.

Mr. Lewis said it was mentioned that in the 2000 GIS there wasn't a picture, they didn't exist.

Ms. Jackson said it's possible.

Mr. Wrench said it shows up in 2006.

Mr. Lewis asked if in 2006 there was one structure up.

Mr. Wrench said it looked like both.

Mr. Olivier asked if the one structure off the back is closer to the neighbor's property line.

Ms. Jackson said it is 8' from the line.

Mr. Wrench referred to the Geauga County GIS photo and said it doesn't look like it is there in 2007 but it is in 2008.

Mr. Murphy asked if both of the sheds are on 4 x 4 treated wood.

Ms. Jackson said they are both on Wolmanized and the lot line goes at an angle so one is 8' from the property line all the way down to 12' because of the setback.

Mr. Murphy said it is pretty right on in terms of the direction the line goes and it looks like it is perfectly parallel to that building right now on the GIS photo.

Mr. Lewis said he is gathering that both buildings are up.

Mr. Wrench replied yes.

Mr. Lewis said and neither one of them were permitted, neither one of them have variances and both of them are way close to the property line versus the 50'. He said he also understands that they are pretty much on a treated wood sled base thing and not on a permanent poured concrete and masonry base.

Mr. Lamanna asked if the one closer to the street is to the front of the house.

Mr. Wrench said yes.

Mr. Lamanna asked if it is more than 100'.

Ms. Jackson said she has pictures.

Mr. Lewis said we have a structure in the front yard.

Mr. Lamanna said normally the board would not allow a structure in front of the house and told Ms. Jackson if she came here for a variance to put a structure there, the board would have said no, we don't allow structures in the front yard of the house.

Ms. Jackson said she was sorry, she didn't realize.

Mr. Lamanna asked Ms. Jackson why this location was selected and why she decided to build these structures where she built them.

Ms. Jackson said because then she would not have to cut down 80' trees because there are a lot of trees on the property.

Mr. Lamanna said they could have been put at the back of the driveway.

Ms. Jackson said the Hemlock there is probably 40' high and she thinks the Hickory is 60' high and she wasn't about to cut down the trees.

Mr. Lewis said it is kind of a give and take because the minute you put a house on a lot, to put the house there you are removing trees so if you want another structure the compromise is you give up a tree just like you would for a house. He asked about the topography of this backyard and asked Ms. Jackson if her house is on septic.

Ms. Jackson replied yes.

Mr. Lewis asked where the leach fields and tanks are, in the front yard or backyard.

Ms. Jackson said the well and septic are both in the front lawn.

Mr. Lamanna asked if the person who lives on the southeast side is here.

Ms. Glenna Snider, adjacent neighbor at 8382 Chagrin Road replied yes.

Mr. Lamanna asked Ms. Snider if that is a large outbuilding on her property.

Ms. Snider testified that it is a garage.

Mr. Lamanna asked how big it is.

Ms. Snider said it is 20 x 40.

Mr. Lamanna asked if it is 50' off the side yard.

Ms. Snider said no it is not.

Mr. Lamanna asked if there is a variance for that.

Ms. Snider said she is assuming that it was a variance and it was built in the sixties.

Mr. Olivier said it wouldn't have needed a variance.

Mr. Lamanna asked Ms. Snider how far off the property it is.

Ms. Snider said probably less than 10'.

Mr. Lewis said 25'.

Ms. Snider said okay, 25'.

Mr. Lamanna asked Ms. Snider if she has an issue with these buildings.

Ms. Snider said yes she does and submitted photos to the board. She referred to the photos and said this is what they look like from her side.

The board viewed the photos and discussed the placement of the sheds.

Ms. Jackson asked to see the photos.

Mr. Lewis said there are two views from the neighbor's front porch looking over at the structures.

Ms. Jackson said the shed is 8' behind the fence but the picture looks like it is right on the line but it isn't.

Mr. Lewis said the board understands that but we are looking at the proximity of the structure, the size and it is in front of the front line of the house which is a no-no.

Ms. Jackson said she didn't know that.

Mr. Lewis said there is not only one structure without a variance but we have two structures. He asked Mr. Wrench what the GIS shows regarding when the first structure went up.

Mr. Wrench said he thinks it was 2006.

Ms. Jackson said this was all covered with shrubbery, about 20' high, and this past winter with all of the snow we had they all got bent over and they died so she cut them down but they are growing rapidly and will all grow back.

Mr. Lewis asked Mr. Wrench if he can tell how much room is between the big structure and her garage to get an idea of how wide that driveway pad is.

Mr. Wrench said about 20'.

Mr. Lewis asked what the dimensions are on the second structure, the new one.

Mr. Olivier asked Ms. Jackson why that spot was chosen for the shed for the wood storage versus behind the house and why she chose to come forward versus going back.

Ms. Jackson said simply because originally when she had 11 trees taken down because they had carpenter ants in them and they were right in front of the house plus one that was around the back that was going to fall over on the living room so she had all of those taken down and she had all of that firewood so she just stacked it because it was just convenient to go out the garage and grab the firewood and go back in.

Mr. Lewis said since it is on a sled base type of structure and it is not on a hard foundation it could be moved through the passage between the first structure and the garage on the driveway and relocated to the back.

Mr. Murphy asked if there are other neighbors interested in this.

Mr. Rudy Conrad of 8362 Chagrin Road testified that he is the neighbor on the northwest of Ms. Jackson and he and his wife bought their house in 1996 or 1997. He said the previous tenants that lived where Ms. Jackson lives, the place was pretty much run down and when the sheds went up, they were built solidly, they are not tacky and when you go between the house and the shed it is the logical spot to keep the wood away from the house. He said possibly it could have been built behind but at this point there is a fence immediately behind the first structure which would then necessitate coming out as well as the garden, if you were to pull that wood shed around behind. He said the question he has is there is no encroachment on the other person's property and is there a reason why the variance could not be granted because it doesn't appear to him to be an eyesore and it is not built in such a manner as to be offensive, they just weren't thrown up and not built to decent standards. He said as a person who has interest in keeping the neighborhood the way Bainbridge is intended to be it seems that it conforms to the style of the neighborhood so those are his points of interest.

Mr. Murphy asked Mr. Conrad if he has seen the other neighbor's view of that same structure and if he would like to come up and see the photos.

Mr. Conrad said he has been down that driveway and over there and it is a white wall.

Mr. Murphy said two white walls and they are 5' from the property line is what he is seeing so far. He told Mr. Conrad that they must look nice from his side, he is guessing, but he doesn't have any pictures of the other side of the structures.

Mr. Conrad asked if there were windows on the back side or something that approximated a window in art form, would that then change anything.

Mr. Lamanna said technically no because in order to qualify for a variance on a setback, one must demonstrate a practical difficulty which means there is something about your property which prevents you from complying with the requirement, for example, your lot is very narrow and therefore to build a house on it, you can't fit a house on it without being less than 50' from the property line.

Mr. Conrad said if you want to go down the line there, none of these houses are 50' apart.

Mr. Lamanna said that is the basis for granting a variance, if the lot doesn't support it and likewise if somebody comes in and says their lot is only this wide and they want to put their structure 25' or 30' away, the board would consider those cases but the board would not grant a variance to place an accessory structure in the front yard unless somebody had the most bizarre lot imaginable where their house was sitting in the very back corner of the lot and there was nothing behind them and their entire lot was the front yard, the board might allow it in a case like that but in any normal type setup, we would just not allow an accessory structure to be in the front yard so if you came here and asked for that variance, it would not be granted.

Mr. Conrad asked if it is really in the front yard.

Mr. Lamanna said yes and the front yard is determined by the front of the house and beyond the front of the house.

Mr. Conrad said so the actual very front face of the house so we are looking at maybe 4' of that is in violation.

Mr. Lamanna said right and also it is pretty close to the property line, 8' – 10' and if you look at the variances we have granted it is far closer than any the board has ever granted and referred to the setbacks and lot sizes in Lake Lucerne where the houses are 20' apart to start with but this is not consistent with anything the board normally does with these situations and secondly there is the practical difficulty and you have a giant ravine in your backyard and there is no place to put it, that is a reason to move it to the side, it is not a reason to move it to the side because someone would like to have it really convenient to their garage door so they don't have to walk very far to get to their accessory structure or that they don't want to look at it out their back window so they will put it over next to the neighbor's property so they don't have to look at their accessory structure. He said the fact that somebody says that they don't want to cut down some trees on their property in their backyard, it is really not a sufficient reason either to demonstrate a practical difficulty.

Mr. Lewis said and in this particular case the topography is relatively flat and we have also established that the well, septic tank and leach fields are in the front yard so from the board's point of view the entire backyard within the setback requirements is available to either or both of these structures. He told Ms. Jackson that it may not be her choice but there is no practical difficulty in front of the board saying she could not build them there in the first place or move them there to comply with the standards at this time.

Ms. Jackson said there is one other discrepancy because the neighbor decided to put up a split rail fence and therefore had her lot surveyed and it is clearly marked that her garage is approximately 6' from the lot line, it is certainly not 20'.

Mr. Lewis said he would say that is something between the zoning inspector and that property owner, it is not this application and what the board is here to talk about this evening. He said if Ms. Jackson has an interest in that application, please feel welcome to come to that meeting as her neighbors have expressed their thoughts.

Ms. Jackson said she is not here to cause trouble and as she understands it, her neighbor's initial problem was the shrubbery died and why seven tall shrubs all died at the same time during the winter, she has no idea but she had them cut down and they have re-grown and they are fine and her other problem was that it was too pristine like and she suggested that she paint them brown.

Mr. Lewis asked Mr. Wrench how he became aware of these two structures.

Mr. Wrench said a resident called.

Mrs. Conrad asked what if there was no call or complaint, they have been there.

Mr. Lamanna said like any enforcement thing the township has one zoning inspector in a very big township and he is not spending all of his time driving around trying to see if people are trying to do things that violate the zoning laws. He said it is the responsibility of the property owner when they construct something to comply with the zoning and building requirements, it is not the township's responsibility to go out and find it.

Mrs. Conrad said she understands that.

Mr. Lamanna said if we observe it that is what will happen and if somebody files a complaint and they go out and observe the violation then the only choice at that point is to move it forward.

Mr. Olivier said we have also found them.

Mr. Lamanna said if somebody is looking at the next door property and there is an issue with the next door property and they observe something that looks like a new building and there is an encroachment and there is no record of a variance applied for, we find them that way. He said obviously the way you are going to find these types of things is if somebody else doesn't like it and they file a complaint.

Mrs. Conrad said it has been there numerous years.

Mr. Murphy said it appears to be less than three years for the wood shed and somewhere over four or five is all we know from the map.

Mrs. Conrad said that is years.

Mr. Lamanna said there is not really a statute of limitations on the zoning and the fact that somebody didn't complain for a long period of time, it really doesn't change the township's obligation to enforce the zoning. He said if somebody let something go for seven years and they came and complained, when we look at what the adverse impact is on the neighboring property owners, the board would probably take that into consideration if they hadn't raised the complaint for a long period of time. He said if they couldn't see something and then all of the sudden some trees died and then they realize that something is there that they really hadn't seen before, that is a whole different story.

Ms. Jackson said that is the story.

Mr. Lamanna said that is a minor aspect here, the major aspect of this is there is a setback requirement, the applicant is trying to show a practical difficulty, the board wouldn't grant a variance to put the shed in the front yard under any circumstances and if the applicant came in and asked for a variance to put something this close to the side line in the front yard, this would not be granted, it would be out of the character of the neighborhood contrary to the zoning.

Ms. Jackson said she was sorry, she was not aware.

Mr. Lamanna said that is the problem of somebody coming in wanting to keep something that the board would never have approved in the first place. He said because somebody built something and it was something the board would not have approved in the first instance, the board would not approve it after they built it because if that were the case then everybody would just go ahead and build what they want and then come in here and ask for approval. He said what he would suggest is and you can see pretty clear that the board is not inclined to grant the variance is that the applicant go back and look for some alternate locations to move the buildings which may also require a variance and the board will continue this application to next month and Ms. Jackson can come back with locations where they can be moved and come up with some alternative plan because otherwise if this is denied, a new application would have to be made with an additional fee but if the board continues this, she can come back with a different proposal and go from there.

Mr. Karl Southerland of 8352 Chagrin Road testified that she cut down a lot of trees and rather than stack the cordwood there which would have been an eyesore she chose to make it pretty by putting the building there and it is a very attractive building, it is a good logical place for that wood and he thinks it is good looking but that is his opinion. He said she could have just stacked the cordwood there and nobody would have been able to say anything.

Mr. Lewis said the cordwood is not a structure.

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

Motion BZA – 2010-19 – 8372 Chagrin Road

Mr. Lamanna made a motion to table this application until the next regularly scheduled meeting to be held October 28, 2010.

Mr. Lewis seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye.

Application 2010-20 by Lou Belknap of Agile Sign & Lighting for Giant Eagle for property at 8535 Tanglewood Square

The applicant is requesting area variance(s) for the purpose of installing signage. The property is located in a CB District.

The zoning inspector's letter dated September 16, 2010 was read.

Mr. Lou Belknap was present to represent this application.

Mr. Belknap testified that they are reducing the signage. He said they have currently put up a set of 5' letters that they are going to take down and the new ones will be 4' 6" instead of the 5' that is currently there. He said currently they also have the words "Food and Drug" directly beneath them and that is currently up there now and that is being removed as well so they are getting rid of that with the intent to put up the "Pharmacy" sign so that is an additional sign. They are reducing the main ID sign and they are taking down "Food and Drug" and installing the "Pharmacy" sign.

Mr. Lewis said you are going to remove the letters underneath Giant Eagle and you are going to put it up here (he referred to a rendering) which is why you need the height variance.

Mr. Belknap said correct because it is going to be aligned with the Drive-Thru so it will be on the same plane.

Mr. Murphy asked if they will keep the Drive-Thru Pharmacy sign on the end of the facility.

Mr. Belknap said that is correct and this will be on the same plane so that is where the variance for the height comes in at.

Mr. Lewis asked about the new Giant Eagle lettering being 6" shorter.

Mr. Belknap said they had 305 sq. ft. before and they are at 247 sq. ft. with the new design.

Mr. Lewis asked what is new about the signs.

Mr. Belknap said size, they are smaller.

Mr. Lewis asked if the color, illumination and materials are the same.

Mr. Belknap said they will all be the same but this actual sign is smaller and of course the length is shortened, it is a smaller layout. He said they are roughly 63 sq. ft. give or take less on that layout. He said the "Food and Drug" currently is 42.66 sq. ft. and they are going to eliminate that square footage. He said by putting up the "Pharmacy" sign the total layout is 66 sq. ft. but it is actually less than that so they are actually putting up 35 sq. ft. less than what was approved last time.

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

Motion BZA – 2010-20 – 8535 Tanglewood Trail (Giant Eagle)

Mr. Lamanna made a motion to amend the previously granted variance for Giant Eagle (BZA 2009-28) to make the following changes:

1. The applicant will reduce the size of the Giant Eagle letters from 60" previously approved to 54".
2. The applicant will also remove a "Food and Drug" sign that was previously approved and this will be replaced by a sign reading the "Pharmacy" as shown on the submitted drawings at 66 sq. ft.
3. The board grants a variance with respect to the "Pharmacy" sign to a total height of 20'-11".

Based on the following findings of fact:

1. This will actually result in a total reduction of the previously approved signage.
2. "The Pharmacy" sign is pretty much an even swap out for the "Food and Drug" sign.
3. The reason for allowing it is the height level is basically the same as the original Giant Eagle sign in that it is in an appropriate place upon the building façade to place this sign and it is not an attempt to put the sign at a height that would be above the building level or otherwise cause attention to such a sign.

Mr. Lewis seconded the motion

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye.

Application 2010-21 by David Ducas of Woodbridge Homes and Doug Fink for property at S/L 30 Hawksmoor Way

The applicants are requesting area variance(s) for the purpose of constructing a new single family dwelling. The property is located in a R-5A District.

Mr. Murphy recused himself from this application due to business dealings with one of the applicants.

The zoning inspector's letter dated September 16, 2010 was read.

Mr. David Ducas of Woodbridge Homes was present to represent this application.

Mr. Lamanna explained that in order to have a variance or anything approved, it must have three votes out of five whether there are three members, four members or five members, there must be three yes votes. In this case all of the members must vote yes, if it is two to one, it is a denial. He said the applicant may want to postpone this to next month in order to have a full board.

Mr. Ducas said he understands.

Mr. Ducas asked if the board had the maps that were supplied.

The board replied yes.

Mr. Ducas testified that the soils tests are somewhat relevant but more important are the drawings that show the location of what they are talking about. He explained per a map as you come in Hawksmoor this is where the road has eroded down and when coming up there is a steep hillside right here. He said this is the roadway so it would be on the east side of the road as you are coming up the hill you pass the initial phase of Hawksmoor on the right, the culdesac, you go through the washout area that has been repaired and this is the first lot on the left as you are coming up the hill. He said what is hard to see are the grade lines that are 10' changes so there is a significant slope heading back that way and without a variance this area here (he referred to a site plan) is the only place that a house could reasonably be located however as you move the house this way and back (he referred to a site plan) to the 100' line.

Mr. Lewis asked if there is only one house built adjacent to this one.

Mr. Ducas said yes there is a house to the south. He said this is a proposed structure because they have not designed the house yet because it doesn't make sense yet. He said this shows a 75' setback which is 25' less and said to keep in mind that this is a very significant slope as measured from the road to where the house would be, it still remains, not as the crow flies but across the terrain is 100'. He said locating the house up in this direction here (he referred to a site plan) affords several things and there is a reason they gave the board the soils test because this area back here is sandy soils and the homeowner back here (he referred to a site plan) from what he is told had to re-dig a well. He said moving the house back to the 100' setback pretty much puts you without overhanging the hill and running into a variety of hillside issues that requires potential grade beams and foundations, extended footers, widened footers, three course footers and taking down a significant amount of trees which potentially could affect the slope. He said anything that they would do is engineered, we looked at geophysics at the situation however it still lends itself to an extreme additional cost for that. He said moving it forward gets it out of the significant drop in the grade, moving it over here (he referred to a site plan) also gets them pretty out of those drops but they have now pressed the parking area right up on the property line and it also means that a significant amount of trees need to come down buffering these two properties and it would be the first intent to try to remain some sort of natural barrier between their property and the adjacent property. He said this area on the other hand at the top of the hill has very little loss of some of the large woods that are there so again not to belabor the point, sandier soils here, a little more complicated for building, moving it over without the variance runs them into significant slope issues which without a plan he could not tell the board exactly what the cost is but it could be anywhere from \$40,000 to \$100,000 in extra cost. He said maintaining a buffer of trees between these two neighbors and then also not taking down significant trees in this area and the hardship in his opinion primarily is the excessive cost of maintaining and stabilizing the slope and building a structure that will survive the potential shearing.

Mr. Lamanna asked Mr. Ducas if he is looking to be about 80' or 85' off the sideline roughly.

Mr. Ducas asked if that is the south line.

Mr. Lamanna said yes.

Mr. Ducas said approximately that is what they show yes as opposed to literally putting the parking pad which would be approximately 35' deep and not in the attempt to aggravate the neighbor but simply that is the only option.

Mr. Lamanna asked if that neighbor is here.

Ms. Patricia Steinmeyer of 17941 Hawksmoor Way testified that she is here and strongly opposed and said her husband would be here as well but he is out of town.

Mr. Lamanna asked how far back her house is located.

Ms. Steinmeyer said their house is about 140' back and when they purchased the property the property next door was already sold and plans were already made to build on that property and they worked very hard on setting their property and location and would take every consideration and followed the restrictions from their homeowner's association and they feel something forward would be pretty much an eyesore for anyone in the neighborhood and they would like to see what needs to be done in the neighborhood.

Mr. Lamanna explained that the board addresses only the zoning, if there are restrictive covenants, the board's action does not affect those restrictive covenants, they still have to comply with any covenants that exist in the development.

Ms. Steinmeyer said people in the neighborhood have taken on additional costs to build on their properties and don't feel that cost is an issue.

Mr. Lamanna said cost is a factor.

Ms. Steinmeyer said the property is buildable and within the variances that is what should be done and there is another family that they do know about that was refused a variance by the zoning inspector before and had to change their entire plan and these plans aren't adequate to their homeowner's association requirements so how do you grant a variance on that, it is not very clear.

Mr. Lewis asked if Mark and Dianna Seufer are here.

Ms. Dianne Seufer replied yes.

Mr. Lewis asked who the head of the Hawksmoor Homeowner's Association Architectural Review Committee is.

Ms. Steinmeyer said her husband is but he is out of town.

Mr. Lewis asked Ms. Steinmeyer if that is her husband and if she lives next to this property.

Ms. Steinmeyer said yes and she lives next to this property.

Mr. Lewis asked how many people are on this architectural review committee.

Mr. Steve Lesko testified that he is a member of the architectural review committee and there are five members that were appointed by the trustees, Steve Lesko, Mark Steinmeyer, Bob Scholl, Matt Burke and Surya Verma.

Mr. Lewis asked if one of them is here with a position to speak to this submission. He said the board has a letter of denial and it is based on improper location.

Mr. Lesko said correct and in early August Mr. Ducas submitted a request for a variance to the architectural review committee and we had a meeting in August and discussed Hawksmoor Association business and prior to that meeting we reviewed this submittal and we found the submittal inadequate based on several sections of our declarations and covenants as well as lack of information so they denied it. He said there is an appeals process, it is clearly in violation of the declarations and covenants and Mr. Seuffer has not taken that direction.

Mr. Lewis asked if they have this letter.

Mr. Lesko said they do have the letter.

Ms. Seuffer said their understanding from that letter is that it falls on the township's shoulders to grant a variance, that is how they understood it as well as their attorney, that they needed to get the township's blessing first because they don't even have plans yet and they need to see if they can even build on that lot first before plans are drawn up.

Mr. Lewis said usually with the board's variances and he thinks it is in their submission that the board require a full set of building plans to be submitted with the application for the board to consider but he can suggest that he has the topography of a piece of land, the board has a refusal from a homeowner's association but he does not have a house and no building plans. He said the homeowner's association and the township has not seen it so there are certain interesting points with the process but part of their process is asking for very detailed adequate information. He said right now he sees a lot that may have some topographical challenges to it, it does not mean it is not a buildable lot and there are a million walk-out ranches and walk-out two-floors all through Geauga County because our topography is not flat so he sees it as an opportunity to do something architecturally exciting. He said he is flying real blind here, he does not see an intent by the applicant to re-submit something to the architectural review for consideration, compromise, conversation or whatever, right now he has a flat out refusal with no building plans and it is not real exciting.

Mr. Ducas said he doesn't believe the Finks would design the same house were it in two different locations so coming up with building plans times two is a bit cost prohibitive for full architectural drawings. He said as well he doesn't remember at all having a request for additional information outside of a denial that indicated that section which he has a letter here which the board may not have that indicates, they have disapproved a request based on Section 6.2 of the Hawksmoor Association.

Mr. Lewis told Mr. Ducas he can't volley with him on the homeowner's association's set of rules.

Mr. Lamanna said if he looks at the words of their letter without trying to define what might be behind it to him basically what they are saying is since you are not complying with Bainbridge Township zoning, we cannot approve this and he does not know if something else was intended.

Mr. Lesko said that is fine but it is also clear in the plat that was filed by the developer, Phase II that there is a 100' setback and that plat clearly labels that setback and he believes that they did not intend for Bainbridge Township to enforce our zoning laws and that is the reason why we have it in there and it is very clear by the declaration that we are not to award a variance for any front yard setback for whatever reason. He said there have been other people who have had difficulties in constructing their properties.

Mr. Lamanna said that is your issue not the township's issue and you can go and argue to the fact that he put a 100' setback line on the plat that he filed with the county means anything or not because he does not know right off the top of his head whether the county requires him to put that on there or not, that may be a requirement of the county. He said his argument is that is a requirement of the county, that is a minimum thing on the plat, it didn't create a specific deed restriction beyond the fact that the zoning requires a 100' setback line, you may be even required to put that on for the county, but that is not this board's problem or issue.

Mr. Lesko said the covenants are very clear that it is a 100' setback and it clearly dictates that they are not to deviate from that.

Mr. Lamanna said the fact that is your covenant does not limit their right to come in and seek a variance, but they have to satisfy both of us, a and b, not a or b and the fact that this board grants it, our standards are totally different from the homeowner's association standards and vice versa so that is where this board is coming from so we have to look at it from a standpoint if there is a practical difficulty here that makes granting a variance reasonable because of the nature of the lot. He said there is obviously some evidence before the board based on the topography of the lot that it is a pretty severe slope and the last thing we need is houses falling down slopes because the slope is not stable enough.

Mr. Lesko said that is true but the other side of it is what is the practical difficulty as far as financial which seems to be the argument made here that it is cost prohibitive.

Mr. Lamanna said it is not totally a question of cost, with practical difficulty cost is a factor and obviously with enough money any practical difficulty could be fixed, truck loads of dirt could be brought in to fill in the ravine etc. and anything could be done to overcome any difficulty but you have to look at what is reasonable under the circumstances and what the impact is. He said the other reasonable issue to look at is does this affect the character of the neighborhood and would it adversely affect the neighboring parties and those are the things the board has to consider in rendering a decision.

Mr. Lewis said he has a question for the architectural review board and asked if their board with their by-laws granted any other front yard setback variances or approvals in Hawksmoor.

Mr. Lesko replied no and said other people have asked and have been denied.

Mr. Lewis asked front yard, rear yard.

Mr. Lesko said there was a pool case for Roche and that was granted after the pool was finished. He said they had the pool put in and they didn't come to anybody and it was a rear yard setback along Bainbridge Road.

Ms. Karen Hammer of 7090 Bramshill Circle testified that he put the pool in on a common well without approval.

Mr. Lamanna said that is an issue for the people who are on the common well.

Mr. Scholl testified when they all invested in the property they all knew about the 100' setback and we knew what type of house we could build and we had to design our houses in order to keep that 100' setback.

Mr. Ducas said he wanted to address one comment that Mr. Lewis made and it simply is why they may or may not be here wasting anybody's time today, is the letter that we received, we did not receive the letter the board has but he can show the board the letter they have which does not indicate a lack of any additional detail it simply indicates that they are unable to prove it based on Section 6.2. He said he had a personal conversation with Mr. Lesko on the phone and his comment to him was David, we simply legally do not have the right to approve something that violates the Bainbridge ordinance 6.2

Mr. Lewis asked Mr. Ducas who said that to him.

Mr. Ducas said Mr. Lesko.

Mr. Lesko said that is correct.

Mr. Ducas said they were never asked for additional information.

Mr. Lamanna said they are starting on the standpoint of, you submitted something to them and they said they couldn't approve this under any circumstances and so what is the point of wasting everybody's time in going forward with it until you come back to the township and resolve that issue first. He said in hierarchy of order you really have to come here first and tell the board what you want to do and if this board approves it then you go and try to get the second bite of the apple or whoever bites the second apple and convince Hawksmoor that it is okay to build it even if this board approves it.

Mr. Ducas said by evidence of the participation here it does not seem that is exactly the intent.

Mr. Lewis said the board has the August 16th letter and it is informing of their various sections and if any further clarification is required, we encourage you to review the homeowner's association governing documents so it looked like they did leave the door open.

Mr. Lesko said the letter clearly says that the landscaping plan, the house plans and all kinds of things need to be submitted.

Mr. Olivier said your deed restrictions don't call out a 100' setback.

Mr. Lesko said they do.

Ms. Dianna Seufer said they had their lot for three years and they had an offer about two years ago and the same situation came up, the couple wanted to know if they could get a variance and at the time she called Rich Fishbach who was the president and they had an offer and was looking for a variance and asked him if he saw that as a problem and he verbally told her no. She said so when this couple came along and asked the same thing she thought there wouldn't be a problem, they discussed this two years ago, it wasn't a problem then which is why they moved forward thinking they will come and do the correct process through the township and follow the rules. She said it is not about not following the rules and if they had known they needed more information they certainly would have provided it because they are scheduled to close on Monday and it is frustrating with the lack of communication and they would have given them anything they needed had they spelled that out to them.

Ms. Steinmeyer told Ms. Seufer that she has the documents that are given to every homeowner who purchases property and while they recently have renewed their by-laws the covenants and restrictions have remained the same and in April every homeowner was sent and given a copy of what is required and it is what the association is governed by what we stand by and they have all of the answers in their documents.

Mr. Lewis asked if the 100' is in their covenants or is it in the deed restrictions filed with the county on the plat.

Mr. Lesko said all of the properties are that way on the plat. He read from the covenants and said it is clear there should be a 100' setback, it is part of the plats and it is part of what they have to abide by.

Mr. Lamanna said there is nothing in the written covenants that says there shall be a 100' setback, you are relying on the plat.

Mr. Rich Fishbach of 17980 Hawksmoor Way and trustee of the homeowner's association testified that they are relying on what they believe to be the township setback based on the zoning. He said he has another comment to make on the comment that Ms. Dianne Seuffer just made but the minimum quantities are not in their covenants and restrictions but they are clearly referred to the fact they are their setback requirements as set by 6.2.

Mr. Lamanna said what 6.2 says is pretty standard language and you are saying we as a board cannot override the zoning but that says then, if they go to zoning and the board says they will grant a variance to the setback requirement, then the homeowner's association has the authority to grant that variance but he does not know what the standards are for granting a variance in the deed restrictions without reading it but assumes there is some basis for making a decision and in this case it probably has to be reasonable.

Mr. Fishbach said they have other issues, aesthetic issues.

Mr. Lewis said he is interested to hear if this changes this and creating a non-conforming setback with the entire development, he is real interested in knowing what kind of impact that is going to have on the adjacent properties and he realizes there may not be a realtor or an expert property appraiser here but he is real interested in knowing about the other ten or thirty people that have invested into their properties and asked Mr. Lesko if wanted to speak to that.

Mr. Lesko said he did because there are two other properties that are still for sale by the developer and this is the original developer of Phase II that still owns those properties and his expertise is those properties are probably unbuildable at a 100' setback as well which means they are going to be probably sitting there for sale forever. He said if there are 75' setback homes, then they will come to us saying they want a 35' setback.

Mr. Lewis said the only reason the board is considering this is the practical difficulty based on the topography of the site.

Mr. Lamanna said if somebody came in for a 35' setback this is a continuum of balancing between how it affects the neighborhood, how it affects the neighbors and what the property is like and if somebody came in and wanted to build 3' from the street the answer would probably be no, sorry, the lot should not have been designed that way, the adverse affect on the neighborhood would be so great. If somebody came in and said they need 99' the balance test would say you would have to show a pretty big adverse impact for one foot. He said it is not relevant to say what if somebody came in and asked for 35', that is a different case.

Mr. Lesko said the other side of the coin is every house that was built had a minimum setback of 100' and some of them are 300' back, we have all incurred additional expenses etc. to build within that neighborhood, it would have a major impact if we had a home sitting 75' off the road on top of a hill which is 25' to 30' above the road, it just wouldn't fit in his professional opinion, it wouldn't fit the neighborhood.

Ms. Seufer said that is not what the email said to us.

Mr. Lamanna said nobody here can testify to what anybody else feels so if the neighbors wanted to say something they should have been here.

Ms. Steinmeyer said they do have neighbors sitting here.

Mr. Lewis said he had a question regarding the architectural review and with the board's knowledge of the topography of that site and the challenges associated with it, where exactly can you build with a practical reasonable expense and safety without moving the front of the house forward.

Mr. Lesko said they wouldn't have the total cost and said define practical as far as cost, another \$10,000 or \$20,000 or \$30,000.

Mr. Lewis said what he is after here is whether or not the Hawksmoor board is inadvertently deeming an unbuildable lot based on a front yard setback because if you can't go back, the only way to build is to move it forward.

Mr. Lesko said he understands but part of their denial from the architectural review board and from Mr. Ducas' own comments that while the lot is buildable without the variance the granting of the variance allows the construction costs closer to typical costs and presents less disruption and an ample setting for the future home and the Steinmeyer's lot.

Mr. Lewis said so what it means is the builder has already stated it is a buildable lot without a variance.

Mr. Lesko said correct.

Mr. Lewis said so all we are really doing is chasing the cost of the home.

Mr. Lesko said correct.

Mr. Lamanna said all practical difficulty cases, in every case, it is always a question of what it is going to cost.

Mr. Olivier said this board grants variances for slopes less severe than this and this is a case, in his mind, that needs it.

Mr. Lamanna said he is not particularly interested in five years from now reading that they have a house sliding down a hill in Hawksmoor because it was built on too severe a slope and now they are having a problem because it turned out that even though the soil guy looked at it all, there were conditions that nobody anticipated or they did it in a dry year and now it is a really wet year and now all of a sudden what appeared to be a nice stable slope is now no longer that. He said if you have a house in your neighborhood that is sliding down a slope the impact on the neighborhood will be a million times what this impact is.

Mr. Lesko said they are not sitting here saying that, they are trying to be practical about it but the information that has been submitted to them is totally not suitable.

Mr. Lamanna said he thoroughly understands the situation but they want to come and ask the township if it is reasonable on this property based on the township standards the board would allow this to be built 75' away and the board will look at it but they have to go back to the architectural review board and look how it fits aesthetically because the board of appeals has a limited ability to deal with aesthetics. He said the board can look at the impact on the neighborhood and the impact on the neighborhood has got to be really radically different from what is there and in most cases it is more of a supporting type of situation, not a major determinant because if it is all based on looks the board gets in dangerous ground because the board would be setting the limits of their authority so they have to operate within its limits of authority as a township with zoning standards when making zoning determinations. He said the architectural review board has a broader charter in terms of aesthetics and everything else but the board is looking at it from the standpoint that a 25' variance is still 75', it is an odd shape lot, there is a severe drop-off etc.

Mr. Lewis said it is a huge slope, it is 40' over 150 and was trying to figure out the slope angle from that.

Mr. Lamanna said it is 30%.

Mr. Lewis said it is a very severe slope.

Mr. Olivier asked about the setbacks of the house to the south and if it is within the side yard setbacks.

Mr. Wrench said it is 25'.

Mr. Olivier said there is not one other house built on a grade like this.

Mr. Lewis said and it is where the flat spot is.

Mr. Wrench displayed the topography map of the property.

Mr. Lamanna asked if anyone had anything else to say.

Mr. Fishbach said for the record, he was quoted as saying there would not be a problem with setbacks and when he was asked about this it was approximately two years ago and he was trying to recollect but he has been a trustee for the association for five years and he is pretty sure where his limits of authority are and he would not have given any indication that they could approve any kind of variance without a proposal in writing which is one of the things he asked for.

Mr. Lamanna said this board operates the same way but it has no weight in this board's decision.

Mr. Mark Seufer testified that it was actually on two occasions that they talked to Mr. Fishbach and one of the things he said was it shouldn't be a problem.

Ms. Seufer said they are just trying to move forward, they are not trying to push the limits.

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

Motion BZA 2010 – 21 – S/L 30 Hawksmoor Way

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

1. A variance from the minimum required front yard setback of 100' to 75' for a variance of 25'.

Based on the following findings of fact:

1. A practical difficulty exists because the applicant submitted evidence showing a severe 30% slope at the back of the property and by having a 75' setback the applicant can avoid building in that area.
2. This variance will also allow the applicant to keep the proposed structure at least 85' off of the adjacent side yard where the closest property is located.
3. It will increase the amount of natural screening between those properties which will reduce the adverse impact on the neighboring properties.
4. A 25' reduction would not appear to adversely impact the neighborhood.
5. The board notes for the record that this applies only to the requirements of Bainbridge Township and the applicant will still need to satisfy any requirements of the Hawksmoor deed restrictions and covenants.

Mr. Lewis seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Olivier, aye.

Since there was no further testimony, the public hearing was closed at 8:35 P.M.

Respectfully submitted,

Michael Lamanna, Chairman
Todd Lewis, Vice Chairman
Mark Murphy
Mark Olivier

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

Date: October 28, 2010

AUDIO RECORDING ON FILE

BZA PH 9/16/2010

-23-

Bainbridge Township, Ohio
Board of Zoning Appeals
September 16, 2010

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 8:35 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Todd Lewis, Mr. Mark Murphy and Mr. Mark Olivier. Mr. Christopher Horn was absent.

Minutes

Mr. Lamanna made a motion to adopt the minutes of the July 22, 2010 and August 5, 2010 meetings as written.

Mr. Lewis seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye.

Meeting Schedule

Mr. Lamanna made a motion to change the date for the regularly scheduled meeting in October from October 21, 2010 to October 28, 2010.

Mr. Lewis seconded the motion that passed unanimously.

Applications for October 28, 2010

Application 2010-19 by Ruth C. Jackson for property at 8372 Chagrin Road -
Continuance

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

Application 2010-22 by Parkside Church for property at 7100 Pettibone Road

The applicant is requesting a modification of a previously approved conditional use permit (BZA 2009-32) for the purpose of constructing an addition. The property is located in a R-5A District.

Application 2010-23 by Robert W. and Cynthia J. Goldberg for property at 8623 Apple Hill Road

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

The Bainbridge Township Board of Zoning Appeals set a public hearing on the above applications for October 28, 2010 at 7:00 P.M. at the Bainbridge Township Community Hall, 17826 Chillicothe Road, Bainbridge Township, Ohio and unanimously resolved to request the Bainbridge Township Board of Trustees to issue a purchase order for legal advertising.

Since there was no further business, the meeting was adjourned at 8:53 P.M.

Respectfully submitted,

Michael Lamanna, Chairman
Todd Lewis, Vice Chairman
Mark Murphy
Mark Olivier

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

Date: October 28, 2010