

Bainbridge Township, Ohio
Board of Zoning Appeals
January 15, 2009

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 Ms. Joyce Hannum, Alternate, Mr. Mark Murphy and Ms. Lorrie Sass. Mr. Todd Lewis was absent. Mr. Mark Olivier arrived at 7:30 P.M.

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.

The following matters were then heard:

Application 2009-1 by Roger Fortney for property at 16760 Snyder Road

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

The zoning inspector's letter dated January 15, 2009 was read and photos of the site were submitted.

Mr. Roger Fortney was present to represent this application.

Mr. Fortney testified that he wants to build a 160 sq. ft. tool shed for his garden tractor with a snow blower on it and right now it is parked in his garage and he has to shuffle his cars around to get it out and what he would like to do is build a shed on the side of his garage. He said he talked to his neighbor and he has no complaints about where he wants to put it and his neighbor has a huge picket fence that runs down between their properties so it won't cause any unduly sights from his area. He said he picked this spot also because there is a spot there about ½ the size of the tool shed where he stacks his firewood so basically the foundation is half way done and he would only be infringing upon about five feet into the area.

Mr. Lamanna asked how tall it is and if it is just one story.

Mr. Fortney said it will be a normal size.

Mr. Lamanna asked if it is a pre-packaged building.

Mr. Fortney said he will build it himself, he built his house.

Mr. Lamanna asked if it will be matched up to the house.

Mr. Fortney replied yes and he just had the siding done last year and he plans on matching the beige color of the siding of the house to the tool shed and there is a great big Pine tree to the front of his house. He showed the board per the GIS aerial photo that was displayed where the tool shed is going to go and he will be able to drive onto the driveway to clean it up. He referred to the neighbor's fence per the photo and added that his neighbor told him that it is his yard and to do what he wants, he did not care but he had to meet the zoning regulation. He added that his neighbor will not be able to see it because of the Pine tree. He showed the board photos of his yard.

Mr. Murphy asked if there is any reason that the shed wouldn't be just as effective behind the garage and asked if there are windows in the garage.

Mr. Fortney said the drive goes right into the garage.

Mr. Murphy asked if it is a two car garage with a double-wide door.

Mr. Fortney said it is a double wide door.

Mr. Murphy asked if the shed could be put in the back of the house.

Mr. Fortney said he would have to drive around and he probably would not be able to drive his tractor out of it in the wintertime.

Mr. Murphy asked if the tractor is a snow plowing tractor.

Mr. Fortney explained that it is a small one and he could not drive it up through the yard in the wintertime. He said he has a people door on the north side of the garage.

Mr. Murphy said the shed will be right behind the people door so the shed becomes useful there.

Mr. Fortney said absolutely.

Mr. Murphy asked about the distance off the side yard for the garage.

Mr. Fortney said it is on the paperwork.

Mr. Michael Joyce, Zoning Inspector testified he is contending that the lot line is actually the fence line not the red line and it is showing as being 66'.

Mr. Fortney said that is not shown properly on the GIS.

Mr. Murphy said that occasionally happens but the board has to start with something.

Mr. Fortney showed the board per the GIS where the property line starts and it all shifts over.

The board discussed the property lines.

Ms. Sass asked what that distance would be from where the shed would be to the fence.

Mr. Joyce said 56'.

Ms. Sass said her question is does he need a variance.

Mr. Joyce said he is 46' off the property line, not 50'.

Mr. Murphy said if the red line is truly the property line and right, the barn is only going to be 4' off the property line and that is what he sees.

Mr. Fortney said that is what you see but he can show the board a stake because he had a one-line survey done and that was between the Horvath's and his property.

Mr. Murphy asked if there is paperwork from the survey.

Mr. Fortney said no, he never received any but he can show the board the stake.

Mr. Joyce said if the red line was correct there would be 26' to the property line beyond the shed.

Mr. Murphy asked Mr. Fortney if he is building the shed this month.

Mr. Fortney said he has a snow blower on his tractor because he had triple by-pass surgery so he is not allowed to shovel snow and he can't afford to pay \$25.00 - \$30.00 a push so he snow blows his own yard and it makes it a lot easier.

Mr. Murphy said the board has to know where the corner of the lot is.

Mr. Fortney said come on up to the house and he will show him a stake.

Mr. Murphy said he has had four different people put stakes in his yard in four different places all claiming to be the right corner.

The board discussed the property line.

Mr. Lamanna said the board could ask Mr. Fortney to demonstrate that the property line is accurate.

Ms. Sass said the question is does he establish practical difficulty.

Mr. Lamanna said the board is granting a variance based on his lot line being where the fence is and if his lot line is not where the fence is, then he has a non-conforming structure at that point.

Mr. Murphy said but the board allowed him to build that non-conforming structure.

Mr. Lamanna said it is based on information presented that says the lot line is in a certain place and with the understanding that the applicant is responsible for where that lot line actually is and if it turns out to be someplace different, the applicant can't come back and say the board said he could build it there.

Mr. Fortney said he could ask Mrs. Marion Horvath if she has a copy from the surveyors.

Mr. Lamanna said it would be worth it to check to make sure.

Ms. Sass said especially if it is not going to be built this month and told Mr. Fortney to see if he can get it just to satisfy that question.

Mr. Fortney said he will not be building it until spring and asked the board if they want to see it but in his mind he is satisfied that this is incorrect because he was there when the surveyors came in.

The board discussed the property line and the GIS photo.

Mr. Fortney said when the surveyors came out they did sight a line.

Mr. Murphy said we have to assume the GIS Geauga red lines are wrong.

Mr. Lamanna said they are not that accurate but it is the applicant's risk if it is wrong, then it behooves the applicant to get some further information to check that and if Mr. Fortney was there when it was done, most people can't say that.

Mr. Fortney explained per the GIS that the next lot is an open lot and the next lot has a new house that was just built that this board gave a variance to move the house closer to the lot line so in essence the board has pinched this lot for the next person to build on. He said this board gave a variance for a complete house and that house is now closer to the next lot line which means whoever builds on this empty lot is going to be pinched by his house and the new house.

Mr. Murphy told Mr. Fortney that he can request the county look at it and correct that line on the GIS.

Mr. Joyce said the county will make corrections based on a surveyor's report.

Mr. Murphy said things look wrong, either someone has been planting corn on your (Mr. Fortney's) property for 30 – 50 years or something is wrong on this side of the road.

Ms. Sass asked where this is located on Snyder Road.

Mr. Fortney said just north of Stafford Road and showed where the Frank Marous homestead is on the corner.

Mr. Lamanna asked Mr. Fortney to check it to make sure he is satisfied and the board will make a decision based upon what he is saying and if it turns out to be wrong, it is his responsibility based on the facts that were presented to the board and if it is not accurate, it is Mr. Fortney's risk that it is not accurate and he wants Mr. Fortney to understand that.

Mr. Fortney said he understands.

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

Motion BZA 2009-1 - 16760 Snyder Road

Mr. Lamanna made a motion to grant the applicant the following side yard setback variance for the purpose of constructing a 10' x 16' x one-story shed adjacent to his house.

1. A variance from the minimum required side yard setback of 50' to 46' for a variance of 4'.

Based on the following findings of fact:

1. It is a small variance.
2. This location allows the applicant access to his driveway so that he can store his tractor there and use it for plowing the driveway.
3. It will not cause any undue hardship to any adjacent property owner nor is it inconsistent with the other construction in that area.
4. The board does note that the variance is granted based upon the applicant's representation of where his property line is as being 56' from his house on the north side and that he understands that if that is not accurate he assumes the risk of any inaccuracy of that location.

Mr. Murphy seconded the motion.

Vote: Ms. Hannum, aye; Mr. Lamanna, aye; Mr. Murphy, aye; Ms. Sass, aye.

Mr. Olivier arrived at the meeting.

Secretary's Note: Mr. Michael Joyce stated for the record that the Zoning Application states "...that the penalty for falsification is imprisonment for not more than six (6) months, or a fine of not more than one thousand dollars (\$1,000), or both."

Application 2009-3 by Joyce Building Co. – William Joyce for property at 7020 Country Lane

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

The zoning inspector's letter dated January 15, 2009 was read and photos of the site were submitted.

Mr. William Joyce was present to represent this application.

Mr. William Joyce testified that in 2006 he combined these two lots on Country Lane and when he was doing the split, the existing home was going to be a spec house and they had already done a soil sample on both of these in order to get the sanitary in. He said when he went to build this house the health district said to put the septic in the back so he slid this house up and put it parallel with Country Lane and the primary septic system is in the back and he was working with a customer on this and at that time they knew that it was a tight envelope for the building because of the 100' side yard setback because of the two road frontages but these were the preliminary locations on getting these approved for septic knowing that the health district was going to have him put the septic in the back yard, they moved the house forward. He said in the zoning application, this was an approved plan and they slid it as far forward as they could and kept it within the envelope and as the board can see, the garage is not parallel with the property line. He said it looks like a detached garage but it is connected by a covered breezeway. He showed the board the approved plan at 138' back and when he put the other lot together, he realized that it was cocked pretty heavily and he started this house already and to start fighting the weather, he turned the house on its foundation clockwise so he would parallel the garage to the property line so as not to encroach on the 50' side yard but to turn the house closer to parallel Country Lane so these houses would line up nicer and it was a call he did at the last moment with only his decision and it ended up kicking this front corner out so he had the surveyor draw it again. He showed the board what was proposed and it would have been looking in the backyard of another house and he lives back there so he is trying to make the neighborhood as consistent as possible. He said by turning the garage parallel with the property line the line of sight lines up visually and because it is a five acre lot it looks like it is perfectly parallel but the front corner hangs over and the reason he made the call with the risk that he would be in trouble, in fact Third Federal came out and they didn't red-flag it, one day someone will say it is out of compliance so he is just following through here with this.

Mr. Joyce continued by saying that another reason he felt competent in doing this without permission from the township initially was that from South Franklin the elevations are 11' so you are really looking uphill and 14' at the rear and because it is not encroaching on the neighbor he thought that elevation difference does not cause a problem to any neighbor so that is why he is asking for an approximately 5' overhang on the left corner of the home.

Mr. Michael Joyce, Zoning Inspector testified that this is also a case that he has given the Zoning Commission to look at. He said the general requirements (Chapter 161) state that a corner lot such as this one, the setback on the side yard is the same as the front yard on the secondary street which is 100', the R-5A district, which this house is set, actually gives you a side yard setback on a corner lot from a secondary street of 75' but Section 101 says in any conflict, follow the most severe so if he was looking strictly at the specifics of this district that setback would have been 75' so he has asked the Zoning Commission to study this and eliminate any confusion or inconsistencies.

Ms. Sass asked if this is based on the 100'.

Mr. Michael Joyce said this is based on 100' and he is actually 95'.

Mr. Lamanna said it is an interesting interpretation question because in this case there is a very specific provision and the other provision only says that the same standard applies as set forth and the other section does not itself have a conflict, it only says if this situation arises use the front yard setback but in this case one could argue they created a separate front yard setback and there really isn't a conflict and it would not be unreasonable to say there is not a conflict but it is a close enough call that it should come here. He said he thinks it should be fixed but in this case one could say it is a matter of interpretation since Chapter 161 is general and it is general in the fact that it itself does not set a standard, the standard is set by Chapter 135.03.

Mr. Michael Joyce said he agrees.

Mr. Lamanna said it is just a question that it needs to be fixed but it certainly is consistent with what was intended when this was enacted.

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

Motion BZA 2009-3 – 7020 Country Lane

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

1. A variance from the minimum required side yard setback of 100' to 95' for a variance of 5'.

Based on the following findings of fact:

1. The variance from the setback requirement which in itself is a little bit unclear but the board will treat it under the most strict reading as being required of 100'.
2. The main reason for granting this variance aside from its negligible impact is that it is fairly clear that the intent when passing 135.03 was that side yards on a corner lot that abuts the secondary street only require a 75' setback in any event.

Ms. Sass seconded the motion.

Vote: Ms. Hannum, aye; Mr. Lamanna, aye; Mr. Murphy, aye; Mr. Olivier, aye; Ms. Sass, aye.

Application 2009-2 by Melissa Cobb (MCG Architecture) On Behalf of Riser Foods Company (Giant Eagle) for property at 8515 Tanglewood Square

The applicant is requesting an area variance for the purpose of adding a drive-thru pharmacy. The property is located in a CB District.

The zoning inspector's letter dated January 15, 2009 was read and photos of the site were submitted.

Mr. Matt Majeed of MCG Architecture, Mr. Andrew Rauch, Architect for Giant Eagle and Mr. Richard Katz of Tanglewood Partners were present to represent this application.

Mr. Majeed testified that MCG are the architects for Giant Eagle supermarket and Mr. Andrew Rauch is the architect for Giant Eagle and Mr. Katz is representing the landlord. He said the intent for Giant Eagle is they are planning a pharmacy drive-thru on the north side of the store and this is going to be part of an internal renovation and expansion for the store and Giant Eagle is looking to bring in a lot of new facilities including cleaning up the inside, expanding their facilities and uses for the customers one of which is relocating the pharmacy and adding a pharmacy drive-thru which is something to provide a little bit more convenience and with the weather, it will make it a lot easier to get in and get out. He said the intent for the variance is really just the location of this island right here, he referred to the site plan, and it will be 14.6' from the property line and it requires a 20' setback.

Mr. Majeed continued by saying technically they could have easily moved it up and avoided the variance but they are in need of this variance because of the internal circulation inside the store and the location of the pharmacy will be the corner and pushing the drive-thru back 10' will make it not very feasible when it comes to the actual layout of the pharmacy and how the pharmacy is able to do their work. He said the idea is right here, he referred to the site plan, at this point is 14.6' as opposed to 20' and this is more of an imaginary property line, it is a property line but it is not a road, it has always been a shared driveway in between the retail center and the existing building.

Mr. Michael Joyce, Zoning Inspector testified that as shown in the photograph it is completely covered in cement.

Mr. Majeed said there is no true delineation or landscape delineation or anything of that sort that would cause any hardship or any traffic issues there. He said the stacking that they show are five cars but it most likely will not be the case, they follow the suit of some retailers like McDonalds and stack in as much as possible but this is not something that normally happens to have that many cars, on the average on a good day there might be two cars. He said this is not a time based thing where you have a lunch period where you would have fifteen cars stacked up, this is more of an all day facility and it is really more of a convenience on days when it is 5° outside and you don't want to walk in so that is really what they are asking for.

Mr. Lamanna said there is a huge amount of traffic in that area.

Ms. Sass said there is a drainage issue right in that area that they tried to fix but right now it is a frozen solid sheet of ice and asked if that is going to be fixed and added that it is huge and it is right where this is going to be. She asked what happened.

Mr. Richard Katz testified that they had to replace the driveway because there was some damage and when they repaved it, it seemed to level it out and that caused a catch basin.

Ms. Sass said it is a frozen, solid pond.

Mr. Lamanna asked if this will have any outside speakers.

Mr. Majeed said no, this is not intended for anything else for privacy reasons and it will have the same color and materials as the rest of the building with a pharmacy window being added.

Ms. Sass asked if the traffic flow will come in along that shared area.

Mr. Majeed replied yes.

Mr. Joyce said the driver has to be by the building.

Ms. Sass said she understands that because they are going to come in the main drive and asked if they will loop around.

Mr. Majeed said yes.

Mr. Lamanna asked when these separate parcels were created and if it was recent.

Mr. Katz said they were separated in 2001 but they are eased properties and they needed to separate them by virtue of their lender.

Mr. Lamanna said from a zoning standpoint these properties are considered a single parcel.

Mr. Joyce said that is one of the things he wanted to talk to the board about because he hasn't been able to find anything that would document that and there are other properties in the township like that.

Ms. Sass said there is a lot of traffic coming around the back and referred to the daycare, ice cream store and bank and there are a lot of parents taking their kids around there and there are a couple of other businesses.

Ms. Hannum said there is a day spa and a groomery.

Ms. Sass said and there is a 24 hour gym so there is a lot of activity and that is why she is asking about the flow of traffic.

Mr. Murphy said there should be plantings there.

Mr. Majeed said their attempt with the striping was just to delineate the area for the traffic and part of the concern of wanting to keep it striped is to avoid having something that is hard concrete to cause more problems and it was kept open because they did not want to start adding a concrete curb that big that would cause more damage that would work against what they were trying to do, they were trying to keep it as minimal as possible and it would minimize the amount of traffic impact in that area because of what the board was saying.

Mr. Lamanna said the advantage of landscaping it instead of having just a striped area is then people are forced not to be zipping through there. He asked if there will be a curb there.

Mr. Majeed said yes that is a curb just to provide a delineation and there is a man-hole that is there and part of it is to protect that area there.

Mr. Lamanna said there is quite a bit of room in there.

Ms. Sass said there is but the quite a bit of room is quite a bit used by people.

Mr. Murphy said it is a giant free-for-all there.

Mr. Lamanna said there is nothing to delineate where you should be going.

Mr. Murphy asked what the black circle is on the site plan.

Mr. Majeed said it is just an enlargement.

Mr. Murphy said people will be driving 30 – 40 MPH through there because they are headed to the back.

Ms. Sass said there is a speed bump between the light post and the next building to the north so a lot of the parents taking their kids back to the daycare don't want to slow down to go over the speed bump so they zip around it.

Mr. Majeed said part of the reason instead of putting the curb in addition to this is, he can do that but he will be infringing within 5' of the property instead of 14.6', we are coming in for a variance because you need 20'.

Mr. Lamanna said that would not be an issue, a variance would not be needed for a curb.

Mr. Majeed said it is a hard surface.

Mr. Joyce said it is a structure.

Mr. Murphy said you are cutting into a traffic flow for the property.

Mr. Joyce said the closest point of the part of the curb to the building is about 80' which is about 6-1/2 traffic lanes on a typical road.

Mr. Lamanna asked if that is between the buildings.

Mr. Joyce said yes.

Mr. Lamanna said but there is parking around that one building on the corner.

Mr. Joyce said the corner is striped off, they don't park there theoretically.

Mr. Lamanna said there is a mailbox right at the corner but there are cars that park all along one side and down the front.

Mr. Murphy said the yellow line that appears to be the property line is really the middle of that driveway and the incoming traffic is on the one property and the outgoing traffic is on the other property and that is how everyone has treated it forever so if we are going to do something here that changes all of that by this, you should at least define the area and he would like to see six or eight nice size 30' – 40' trees there.

Mr. Katz testified that it is the main traffic lane for Kmart for the trucks and if we put trees in the middle of that, that will not work well.

Mr. Murphy said the road is 12' or 18' but there is 80' there that everybody uses as a road right now and if we are going to do something there is a chance to make it better.

Mr. Lamanna said his inclination is to take the pavement out of that area and landscape it.

Mr. Majeed said if the board has no problem, they can turn this into a curb, add landscaping, nothing like 30' high trees, they can add some cutesy little landscaping so he does not have a problem with that.

Mr. Murphy said add 5' trees and we will wait.

Mr. Majeed said they will add landscaping, they can delineate that if the board allows them the fact that all of a sudden they will be within 4' of the property line instead of 14.6'.

Mr. Lamanna said that is okay because this is a shared access anyway.

Mr. Murphy asked Mr. Katz if he owns the property to the north.

Mr. Katz said it is Tanglewood Partners that have that.

Mr. Lamanna said they are cross-easement agreements.

Mr. Katz said there are cross easements that go across the property with shared parking.

Mr. Lamanna said the intent is the properties really get treated as a single entity for zoning purposes so the fact that they are mucking around with this internal property line under the concept of that agreement it really doesn't create an issue.

Mr. Murphy said it is a wild free-for-all.

Mr. Lamanna said he knows.

Mr. Majeed said a curb will give better delineation of the drive.

Mr. Lamanna said you want something there that is more than a stripe because otherwise people will come there and take a line of site.

Mr. Andrew Rauch said he was having trouble seeing so he came up to the table to review the site plan.

Mr. Lamanna explained what the board was talking about regarding the landscaping.

Mr. Majeed said if the board has no problem and this serves the city better, from Giant Eagle's standpoint, he does not think it is an issue of turning this into a curb.

Mr. Murphy said people cut through from Bainbridge Road to get onto Rt. 306 north.

Mr. Katz said his only concern would be the truck flow, if it doesn't impede the truck flow.

Mr. Lamanna said there is 20' of roadway there or more.

Ms. Sass said at 8:30 on a weekday morning parents are dropping off their kids, the early morning gym users are coming in and the spa is starting to open along with the grocery store.

Mr. Lamanna said maybe some islands could be installed at the end of the parking bays to keep the cars in the roadway.

Mr. Majeed said this is an irregular shaped space and if the landlord starts putting in curbs, you are only going to cause more problems and the snow plowing is an issue and semi-truck deliveries are another issue.

The board discussed the traffic and parking situation in that area.

Mr. Murphy asked what the reason is for being all the way up in the front corner.

Mr. Majeed said the proposed pharmacy is going to be located there and if it is moved further back it would start impacting the internal layout.

Mr. Murphy said if the pharmacy window was 30' further back, you would not have to be here.

Mr. Majeed said absolutely and if it is moved back 5' they would not have had to come here and probably not solve this problem.

Mr. Lamanna said it is a good thing to have it moved forward because there is not an opportunity for people to build up speed before they get to the stop sign and they are going to have to stop there and look.

Mr. Murphy said it is a way to put a stop on that traffic right there.

Mr. Lamanna said the good thing to do is to put a stop sign at that intersection for the incoming traffic.

Mr. Katz said they put in speed bumps.

Mr. Olivier said the landscape area sticks out beyond the canopy so you are cutting that driveway down.

Mr. Lamanna said another reason why you want to stop the traffic there is because the traffic will be exiting from that pharmacy that is going to turn right going across there and if people come in and are not stopping there will be two lanes of traffic crossing each other without good control, so somebody exiting the pharmacy will be crossing the traffic line of people coming in without real good line of sight necessary to see them coming.

Ms. Sass said there is one stop sign there already.

Mr. Majeed said they are having problems on the left by adding the drive-thru on the right.

Mr. Murphy said he would like to see the traffic addressed.

Mr. Lamanna said this will reduce some of the free-for-all because an area will be delineated.

Mr. Murphy said but not by just painting more yellow lines.

Mr. Lamanna said that is why he would like a landscaped area because it controls a chunk of that area.

Mr. Murphy said he thinks more than just a curb is needed, just adding a canopy and a curb is okay, it is good for the pharmacy but you now have just stuck some posts out in the free-for-all area and it might be a better time now to help that situation.

Mr. Lamanna said the other thing that could be done is to really stripe defined traffic lanes in that area, the actual road, with yellow lines and a double yellow line down the middle with actual lanes marked on the pavement.

Ms. Sass asked Mr. Joyce to pan out on the GIS so the board could see around the back of the shopping center to get a sense of where the groomery and spa are located.

Mr. Katz explained per the site plan where the groomery and spa are located.

The board discussed the traffic in that area.

Mr. Katz said if they go across the speed bump too quickly they could get air-born so we flattened it out because we were scared for the kids. He said the groomery and LaLook are fairly well protected back there from that aspect of it and actually there are some parking stripings there as well that have faded away.

Mr. Lamanna said it would probably be a help through that area to stripe a really defined drive because people tend to follow the lines.

Mr. Majeed referred to the site plan and said we are talking about this area for the pharmacy drive-thru and working with the board we understand the need for the delineation and that is why we are talking about adding a curb but now we are talking about creating roadways, that is not going to happen, we are only going to work with the board on this area by adding this curb and if need be create a better delineation and we thought by striping this area in addition to the setback that it makes it a visible area that tells people to follow the line that it is not a hard edge where you could potentially damage it but if the board feels strongly about having something beyond a striped area they could have a landscaped area.

Mr. Murphy said a year from now when the yellow paint is worn off and somebody is flying in there and this little curb will be in the middle of a freeway and this time of year and those yellow lines are gone and someone comes flying around the corner and they hit this curb and someone goes air-born and goes left of center that is a risk but if it had trees in front of it or something it would tell people that it is no longer roadway.

Mr. Majeed said they are going to do the landscape.

Mr. Katz referred to the site plan and showed the board an area where the cars do not drive through.

Mr. Lamanna said the board would like to see a stop sign at the end of the access road and it is a single property and it is a good protection for people coming out of there otherwise people are going to come out and they are not going to see the in-bound traffic and they are going to cut right in there.

Mr. Murphy said he does not know if the board can agree to this without seeing the rest of the drawing on the existing building because the little building has a whole delineated safety area on that corner that is not on this drawing, the ice cream shop has four canopies so just by saying yes let's do this, we have now got a 12' road that is not on the drawing and explained per the site plan.

The board discussed the traffic pattern on the north side of the building and the proposed landscaping.

Mr. Lamanna said this will be good because it will force the traffic around in a neater pattern. He asked how much area of new canopy there will be.

Mr. Rauch said there will be 250 sq. ft.

Mr. Lamanna said the building size is being expanded but it is an open canopy area so it is not as significant and there will be a trade-off with the landscaped area.

Mr. Joyce said there is no zoning issue on the interior lot and they still meet the ratio of building space to parking space but the overall expansion will be about 12,000 sq. ft.

Mr. Katz said Giant Eagle will be kept open during the renovations.

Mr. Joyce explained the existing building and what will be demolished and they will build it out 13.5' further than the existing walls and will be raised to the full size of this building so they will be increasing Giant Eagle and it will be brought out straight so there will be a consistent size lane and there will be a small walking area (south side).

Mr. Lamanna asked if all of the storefronts will move out.

Mr. Joyce said all of the storefronts now are being evacuated and moved down and they will move out an additional 13.5' from there.

Mr. Lamanna said that requires further action by the board because that is a modification of their conditional use by adding to their building. He said just because the lot coverage is there, you can't add to the building.

Mr. Joyce said if this is a conditional use that is correct.

Ms. Sass said it is going into the parking area.

Mr. Lamanna said they are not going beyond where the building stops now.

Ms. Sass said they are, there is a canopy.

Mr. Lamanna said but that is part of the building, and if you are not going beyond where the building ends now, you are not expanding the building.

Mr. Majeed said no.

Mr. Lamanna said people get the idea that they are not changing their lot coverage but they are just making their building bigger and the answer is if they are over on their lot coverage, they cannot make their building bigger because the variance was granted based on the building that is on there so if they are not expanding the building beyond its current limit other than the canopy it is okay.

Mr. Joyce said he would not have considered the canopy area as part of the building size. He explained per the site plan the solid wall of the building and the end of the parking lot where the canopy is now and they are going out an additional 13' 7" to the edge of it and will be extending the sidewalk out to the parking area so the people parking in this area have a natural sidewalk to walk on as opposed of having to walk through the active drive lanes and there will be no canopy there.

Ms. Sass asked if the entrance will be moved.

Mr. Joyce replied no and said they are adding a café which is currently underneath the entrance area for a dining area and then the rest will be left as it is.

Mr. Lamanna said but that is already an existing building and the footprint of the building will not be changed.

Mr. Majeed said they are raising the building height and that is why they came in here for a variance because it is actually the edge of the canopy that is 14.6'.

Mr. Lamanna said technically the canopy itself is an extension of the building footprint so the board really needs to act on that aspect of it as well and the way it is constructed, it is part of the building.

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

Motion BZA 2009-2 – 8515 Tanglewood Square (Giant Eagle)

Mr. Lamanna made a motion to grant the applicant the following variances for the purpose of constructing a drive-thru as shown on the application.

1. A variance for the purposes of the distance from the lot line of 20' to 14' 6".
2. A variance for the purposes of extending the building by approximately 250 sq. ft. of the canopied area.

With the following conditions:

1. There will be a landscaped area created as shown on the submitted drawing, originally shown as the hatched striped area, and it will be turned into a curbed landscaped area. The board notes that the curb does not create another structure and its distance from the side lot line is not an issue.
2. The applicant will also add a stop sign on the in-bound lane of the center immediately on the intersection across from where this drive-thru will be located to stop the in-bound traffic flow.

Based on the following findings of fact:

1. This is an internal property line.
2. This property was previously subdivided with the agreement and understanding that it would be treated for all purposes as a single zoning entity and that this infringement would only be on that internal property line and would not adversely impact the surrounding properties.
3. By adding this landscaped area, the hard coverage will be reduced by an amount that will more than offset the additional building area being created by the addition of the canopy.

Mr. Olivier seconded the motion.

Vote: Ms. Hannum, aye; Mr. Lamanna, aye; Mr. Murphy, aye; Mr. Olivier, aye; Ms. Sass, aye.

Application 2008-32 by Jon Bruce for property at 8573 Beacon Hill Drive - Continuance

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

Mr. Lamanna made a motion to postpone this application to the March 19, 2009 meeting at the request of the applicant.

Ms. Sass seconded the motion.

Vote: Ms. Hannum, aye; Mr. Lamanna, aye; Mr. Murphy, aye; Mr. Olivier, aye; Ms. Sass, aye.

Application 2009-4 by Bainbridge North Land Development LLC for property at 18813 North Market Place Drive

The applicant is requesting an area variance for the purpose of constructing a retail building. The property is located in a CR District.

Mr. Lamanna made a motion to postpone this application to the February 19, 2009 meeting at the request of the applicant.

Ms. Sass seconded the motion.

Vote: Ms. Hannum, aye; Mr. Lamanna, aye; Mr. Murphy, aye; Mr. Olivier, aye; Ms. Sass, aye.

Since there was no further testimony, the public hearing was closed at 8:43 P.M.

Respectfully submitted,

Joyce Hannum, Alternate
Michael Lamanna, Chairman
Mark Murphy
Mark Olivier
Lorrie Sass

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

Date: February 19, 2009

AUDIO RECORDING ON FILE

BZA PH 1/15/2009

-20-

Bainbridge Township, Ohio
Board of Zoning Appeals
January 15, 2009

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 8:43 P.M. by Mr. Michael Lamanna, Chairman. Members present were Ms. Joyce Hannum, Alternate, Mr. Mark Murphy, Mr. Mark Olivier and Ms. Lorrie Sass. Mr. Todd Lewis was absent.

ZONING INSPECTOR'S COMMENTS

Mr. Michael Joyce, Zoning Inspector met with the board to discuss Marketplace Shopping Center and Conditional Use Permits.

MINUTES

Mr. Lamanna made a motion to adopt the minutes of the December 18, 2008 and January 10, 2009 meetings as written.

Ms. Sass seconded the motion.

Vote: Ms. Hannum, aye; Mr. Lamanna, aye; Mr. Murphy, aye; Mr. Olivier, aye; Ms. Sass, aye.

ORGANIZATIONAL SESSION

Sunshine Law

Mr. Lamanna made a motion to adopt the Ohio Sunshine Law (ORC).

Mr. Olivier seconded the motion.

Vote: Ms. Hannum, aye; Mr. Lamanna, aye; Mr. Murphy, aye; Mr. Olivier, aye; Ms. Sass, aye.

Meeting Schedule

Mr. Lamanna made a motion to set the meeting night of the Board of Zoning Appeals on the third Thursday of each month at 7:00 P.M. at the Bainbridge Town Hall; which meetings may be continued from time to time, at the discretion of the board, to such other dates as set at the meeting; and also that the board may schedule additional meetings during the month upon the board's motion.

Ms. Sass seconded the motion.

Vote: Ms. Hannum, aye; Mr. Lamanna, aye; Mr. Murphy, aye; Mr. Olivier, aye; Ms. Sass, aye.

Election of Vice Chairman

Mr. Lamanna made a motion to appoint Mr. Lewis as Vice Chairman.

Ms. Sass seconded the motion.

Vote: Ms. Hannum, aye; Mr. Lamanna, aye; Mr. Murphy, aye; Mr. Olivier, aye; Ms. Sass, aye.

Election of Chairman

Ms. Sass made a motion to appoint Mr. Lamanna as Chairman.

Mr. Olivier seconded the motion.

Vote: Ms. Hannum, aye; Mr. Lamanna, aye; Mr. Murphy, aye; Mr. Olivier, aye; Ms. Sass, aye.

Notice of Meetings

Mr. Lamanna made a motion to require a \$25.00 fee and 12 self addressed stamped envelopes for notice of public hearings and/or special meetings.

Ms. Sass seconded the motion.

Vote: Ms. Hannum, aye; Mr. Lamanna, aye; Mr. Murphy, aye; Mr. Olivier, aye; Ms. Sass, aye.

Zoning Secretary

Mr. Lamanna made a motion to reappoint Linda Zimmerman as secretary to the Board of Zoning Appeals.

Ms. Sass seconded the motion.

Vote: Ms. Hannum, aye; Mr. Lamanna, aye; Mr. Murphy, aye; Mr. Olivier, aye; Ms. Sass, aye.

By-Laws

Mr. Lamanna stated that he wants to add to the By-Laws and Procedures an additional provision dealing with complex applications so that if the Chairman determines that there is an application which is due in complexity or issues posed that are likely to require multiple meetings to complete the hearing, the Chairman could require that any of the interested parties have a case management conference with the Chairman to set out the procedural rules and structure of the case that will be presented so that they can most effectively have the case presented and hear it in a way that will not unduly burden the time of the board and added that it could be done with a conference call. He said that way the board could have a more orderly way of dealing with the experts and documents.

Mr. Lamanna made a motion to adopt the following by-laws as amended.

BAINBRIDGE TOWNSHIP BOARD OF ZONING APPEALS

BY-LAWS AND PROCEDURES

Effective January 18, 2007

Amended January 15, 2009

Application Requirements

All applicants, other than individual single family dwelling units, be required to provide at least seven days prior to the Bainbridge Township Board of Zoning Appeals meeting, six copies of any exhibits they plan to introduce at the meeting and six copies of any expert report from any expert they plan to have testify at the meeting, and if not provided, such exhibits and expert reports may be refused admission to evidence at the meeting, all subject to the discretion of the chairman.

Alternate Board Member

"Alternate Member" The Trustees may appoint one (or more) people to be designated alternate member(s) of the Board. The alternate member(s) will serve in place of the regular member(s) whenever a member is absent from the meeting, or with respect to an individual matter before the board, when a member declares that the member will recuse themselves from participation in the matter. The Chairman (or acting Chairman, if the Chairman is absent) will (if applicable) select the alternate member to serve and will state in the record that such alternate is serving either for the entire meeting or the particular matter. Alternate members may attend meetings where they are not serving but will have no rights to participate as a board member or engage in the board's deliberations. An alternate member will not automatically succeed to the term of any member who resigns or whose term ends.

The alternate member would not be required to attend every meeting but would be welcome to do so. If there were a substantial matter that we expected to continue over more than one meeting, the board might request that the alternate attend so they would be ready to step in if someone was absent at a subsequent meeting on the same matter. As noted, they would not participate as a board member unless there was a vacancy. They would receive the information packet that all the members receive each month and would be asked to attend joint meetings, educational situations, etc. If their attendance is required we would notify them as soon as we knew that a member would not be available. Subsequent appointment to the board should be understood as neither automatic or assured.

Meeting Proceedings

As part of its proceedings, the board of zoning appeals may upon motion of one of its members and acceptance by the board adjourn into executive session for the purpose of conducting its business meeting and/or deliberations.

Procedural Rules

A. Court Reporters

1. The applicant must request at least one week in advance to have a court reporter present.
2. The proceedings of the court reporter will become a part of the record to supplement the official record as taken by the secretary to the board but will not supersede that record.
3. Prior to that transcript becoming an official part of the record, the applicant must at the applicant's sole cost, furnish a copy of the transcript to the secretary of the board for the board's review to determine the accuracy of that transcript.

B. Expert Witnesses

If any applicant or other party plans to introduce or use testimony of any expert, said person will file with the secretary at least three copies of the written report of such expert or a written summary of the planned testimony and a statement of credentials, not later than ten days prior to the meeting. The Board may refuse to hear any expert without such written report but may waive this requirement for good cause shown. When an applicant or opposition presents expert testimony, the opposing party will be provided an opportunity to present opposing expert testimony on such terms as the Board will determine. The Board may also establish specific procedures in individual matters regarding timing of expert testimony and exchange of expert reports.

C. Documentary Evidence

All documents requested to be admitted to the record will be the subject of a formal request by the interested party. At least three copies must be provided (unless the Board grants an exception), one of which will be marked as part of the record by the Secretary. The Chairman will rule on whether any document will be admitted in whole or part, including any restrictions and limitations.

D. Applications

The application (and all associated drawings) will be part of the official record. The relief requested and any relief allowed will be limited to that stated in the application (unless the Board specifically grants greater relief). No factual information contained in the application will be deemed as true or in evidence unless testified to at hearing by the applicant; provided that adverse admissions of the applicant in the application may be relied upon by the Board.

E. Zoning Inspector's Report

The Zoning Inspector will provide a written summary of the variances the application seeks or would be otherwise needed, any questions, pertinent facts concerning the premises and the application, and/or photographs. Such reports, information and photos will be part of the official record and considered to be given under oath. The contents of such report may be questioned by the applicant or other interested parties.

F. Consensual Changes by Applicant

If the Applicant makes changes to the application either sua sponte or upon request of the board during the meeting, all such changes will be deemed consensual changes and will become part of the record. Such changes will be marked on the official copies of documents in the record (such as drawings), but failure to make such notation will not make the changes invalid.

G. Letters and Other Communications

All letters and other communications regarding an application whether directed to the Board or individual members will be placed in the file. Such letters and other communications will not be part of the record as they are not sworn or subject to cross examination. They will not be used by the Board in making its decisions. Information which would be admissible under exceptions to the hearsay rule (such as public document) in such communications may be admitted by ruling of the Chairman.

H. Attendance of Property Owner

On each application there will be present either the property owner or a person who has received written authority from the property owner to act upon their behalf and bind them with respect to the application and any of the matters therein.

I. Complex Applications

If the Chairman determines that there is an application which is due in complexity or issues posed that are likely to require multiple meetings to complete the hearing, the Chairman can require that any of the interested parties have a case management conference with the Chairman to set out the procedural rules and structure on how the case will be presented so the Board can most effectively have the case presented and hear it in a way that will not unduly burden the time of the Board.

Ms. Sass seconded the motion.

Vote: Ms. Hannum, aye; Mr. Lamanna, aye; Mr. Murphy, aye; Mr. Olivier, aye; Ms. Sass, aye.

Applications for February 19, 2009

Application 2009-4 by Bainbridge North Land Development LLC for property at 18813 North Market Place Drive - Continuance

The applicant is requesting an area variance for the purpose of constructing a retail building. The property is located in a CR District.

Application 2009-5 by Jozef Kofol (Northwoods Grille) for property at 16381 Chillicothe Road

The applicant is requesting an expansion of a non-conforming use by the addition of two lighted arch structures. The property is located in a R-5A District.

The Bainbridge Township Board of Zoning Appeals set a public hearing on the above applications for February 19, 2009 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 9:20 P.M.

Respectfully submitted,

Joyce Hannum, Alternate
Michael Lamanna, Chairman
Mark Murphy
Mark Olivier
Lorrie Sass

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

Date: February 19, 2009