

Bainbridge Township, Ohio
Board of Zoning Appeals
November 19, 2015

Pursuant to notice by publication and ordinary mail, the public hearing was called to order at 7:06 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Ted DeWater; Mr. Joseph Gutoskey; Mr. Todd Lewis and Mr. Mark Murphy. Ms. Karen Endres, Zoning Inspector was present.

Mr. Lamanna welcomed everyone to the regular meeting of the Bainbridge Township Board of Zoning Appeals and noted that Application 2015-17 will be heard at the end. He then explained the hearing process and swore in all persons who intended to testify.

Application 2015-30 by John Paglia for Dave and Diane Kater for property at 8172 Quarry Circle

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

Mr. and Mrs. David Kater were present to represent this application.

Mr. Kater testified that they are building a house on Quarry Circle and they have a covered terrace on the back and they are requesting a 2' to 2-1/2' variance in the very corner of that that goes into, he believes, a 50' buffer between the houses. He referred to the aerial that was displayed and said this is the corner and there should be a 50' buffer between houses and the corner of the terrace will go 2-1/2' into that 50' area.

Mr. Lewis said it is 4'.

Mr. Murphy asked to see the lot in relation to the neighbors.

Mr. Kater said it is on a culdesac and in the corner of that lot of that culdesac.

Mr. Murphy asked if that property across the property line is still Canyon Lakes.

Mr. Kater said it is all Canyon Lakes and they require about 50' in between everybody's property and the lot itself is a pie-shape.

Ms. Karen Endres, Zoning Inspector testified that this is the first house in this new subdivision (Quarry Circle).

Mr. Kater replied correct.

Mr. Lamanna asked what is driving the front yard setback of 115'.

Mrs. Kater testified that she thinks it has to do with Canyon Lakes and it is off of Northview.

Mr. Lamanna asked if there is a reason with that 115'.

Mr. Kater said it is because of the dimensions of the lot.

Mr. Gutoskey said the other reason is there is a 20' sanitary easement, sanitary, storm and water.

Mr. Murphy referred to the aerial photo and asked about the big clearing to that left back corner.

Mr. Gutoskey said it is a retention pond that comes up at the culdesac of Silica Ridge.

Mr. Murphy asked about the 50" tree.

Mrs. Kater said it is gone.

Mr. Lamanna said it is 4' on the corner of a pretty much right triangle, there is a 45° angle there. He asked if there is another lot behind this one or is it open space.

Mrs. Kater said both.

Mr. Kater said there is nothing going to the left.

Mr. Murphy asked if that homeowner is here tonight.

Mr. Kater asked behind them.

Mr. Murphy said the one your property is backing up to, the corner of the house that is there, this property line right here (he referred to the site plan) is the house, the retention pond is over this way. He said you have a green line around the retention pond.

Ms. Endres said she is not sure it is a retention pond.

Mrs. Kater said it is a retention pond.

Mr. Murphy said instead of possibly being 100' apart your house could be 96' apart and the people who own that house were notified.

Mr. Lamanna said he is not quite sure why it is 115' setback.

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

Motion BZA 2015-30 – 8172 Quarry Circle

Mr. Lamanna moved to grant the applicant a variance to the minimum rear yard depth from 50' to 46' with respect to the corner of the covered terrace that extends out beyond the 50' line as shown on the plans submitted with the application.

Based on the following findings of fact:

1. A practical difficulty exists because this is a pie-shape culdesac lot and because of the setback necessary to get to the building line it pushes the house back a little bit.
2. This is a very small variance and given the location of the house opposite the rear property line this will not adversely affect that adjacent property line.

Mr. DeWater seconded the motion.

Vote: Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye.

Application 2015-31 by South Franklin Circle for property at 16575 S. Franklin Street (corner of Rocker Road and Chagrin Road)

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

Mr. Bill Fehrenbach was present to represent this application.

Mr. Lamanna asked what the purpose of this sign is.

Mr. Fehrenbach testified that the purpose of the sign is to direct people who are traveling on Chagrin Road to know that S. Franklin Circle is at this intersection at the end of this road so it is important that we provide a main access point to S. Franklin to find their way into their property.

Mr. Lamanna asked about the property the sign is located on.

Ms. Karen Endres, Zoning Inspector testified that the sign is actually on the neighbor's property at 7395 Chagrin Road.

Mr. Lamanna asked Mr. Fehrenbach if he is aware the sign has to be moved.

Mr. Fehrenbach said yes the sign has to be moved.

Mr. Lamanna asked how far it is from Chagrin Road.

Ms. Endres said she thinks it is currently okay, she pulled the measurement from the pavement.

Mr. Lamanna said it doesn't look like there is a problem with the right-of-way from Chagrin Road.

Ms. Endres said the distance is more than 12'.

Mr. Lamanna said because of the radius of that turn, if you draw a radius 12' away his inclination would be to have it keep the 12' on the street side and not worry how close it is on the other side.

Mr. Gutoskey said there is probably a 12' utility easement along that right-of-way that is a 12' setback from the right-of-way so it is not being placed in a utility easement. He said he would agree with Mr. Lamanna if it can be outside of that 12' of the right-of-way and work it in between there and the property line, it makes a lot of sense.

Mr. Murphy said the approximate relocation suggestion is probably pretty close to where we want it.

Mr. Lamanna said probably in the corner of the little black box.

The board discussed the proposed location for the sign.

Mr. Lamanna said if we take that arc and go in 12' from that and trace another arc we will see the spot where it can be located and it will probably be between 6' and 8' from the property line but it is hard to know exactly where that right-of-way is turning there when you reach the 12' point.

Ms. Endres said the flag part of the sign should be out of the right-of-way by 12', it should be located as such that the entire sign is outside of the 12'.

The board was in agreement with Ms. Endres.

Mr. Fehrenbach said there is a swale there so you lose elevation.

Mr. Lewis said right now it is 11' tall above grade and he thinks our standard is 6'.

Mr. Gutoskey said the ditch is in the right-of-way so the sign should be outside of it.

Mr. Lamanna said the top and the stone could be reused and it should be lower anyway in case someone hits it.

Ms. Endres said she thinks it is going to require a variance on the sign height.

Mr. Murphy said the height has got to come down and it has got to be moved, it is supposed to be a ground sign so he thinks it would work just as well if it was lower.

Mr. Lamanna said if it is put on a 6" base it would be about 7' overall to the top of the sign.

Mr. Murphy said we still have to address the fine dining.

Mr. Fehrenbach said that will come off.

Ms. Mareen Wolfe of 7428 Chagrin Road testified that there are two things to consider, the Radius sign should come off and it is also lit.

Mr. Lamanna said the Radius will come off.

Mr. Gutoskey said the township is going to put a streetlight at that intersection.

Mr. Fehrenbach said they are taking the light off because the township is illuminating that intersection.

Mr. Gutoskey said he thinks it was more from the Police Department to light the intersection.

Mr. Norman Schultz testified that you can't see because of the mailbox from the guy next door, you can't see down that hill.

Mr. Murphy said the township is putting up a streetlight.

Mr. Schultz said that is not going to help, it is a terrible intersection, you can't get out of Rucker, a light will not help.

Mr. Gutoskey said the county engineer required a sight distance analysis for left and right turns so they would not have let them put the intersection there if it didn't meet county standards and it is actually ODOT based on the speed limit and the centerline profile.

Mr. Murphy said be careful at that intersection, we will have a streetlight sometime soon, the light won't be on the sign and he thinks we are moving in the right way.

Mr. Gutoskey said the sign will be pulled back a little bit so that will help with the sight distance.

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

Motion BZA 2015-31 – 16575 S. Franklin Street (corner of Rocker Road and Chagrin Road)

Mr. Lamanna moved to grant the applicant the following variances for the purposes of having an identifying sign for South Franklin Circle which involves the relocation of an existing sign onto the actual property, South Franklin Circle.

1. The sign will be located such that it is at least 12' off of the right-of-way of both Chagrin Road and Rocker Street but on the other side the board grants a variance to the 12' distance from the property line to approximately 8' which is what is estimated to be necessary to allow it to be 12' off the right-of-way side.
2. With respect to the height of the sign, the existing sign metal structure will be used but the base will be reduced to 6" above ground level so a variance is granted for an overall sign height of 7-1/2'.
3. The board notes that the applicant is also removing any references to the Radius Restaurant from the sign and is also removing any lighting associated with the sign because the intersection is going to be lit with an overhead light by the township.

Mr. Lewis seconded the motion.

Vote: Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye.

Application 2015-32 by Kevin Duffy for property at 7033 Pine Street

The applicant is requesting a use variance for the purpose of maintaining a multi-family dwelling. The property is located in a R-3A District.

Mr. Jordan Kahn, Mr. Ronald Kahn and Mr. Kevin Duffy were present to represent this application.

Mr. Ronald Kahn testified that he is Jordan's dad and Jordan is the property manager for this piece of property and Mr. Kevin Duffy is his friend and he is the owner of the property. He said when the property was purchased about four years ago, it was just the way it is now with three separate units and three separate entranceways. He said they had the Young team that were the ones that helped with the purchase of the property and he believes one of the Young's, either Jeff or Ryan Young and his other son Chad filled out the application for a variance and we weren't aware that it was a problem being a three-unit property, it is on a residential street and it was brought to our attention that it wasn't zoned for three separate units so that is why Mr. Duffy is requesting a variance. He said he is not sure how old the property is, probably 50 or 60 years old.

Mr. Jordan Kahn testified that it was constructed as a three-unit dwelling 50 years ago, the owner at the time built it to have his in-laws live in the units in the building and every owner since then has had non-family members renting the units. He said when we purchased the building a couple of years ago we just assumed it was a rental property and in fact it has been operating as that for the last 50 years. He said they recently had a potential buyer come in who on his own contacted somebody with the township and found out it was zoned residential and we were completely unaware of that so for us to sell the building we are requesting a variance.

Mr. Ronald Kahn said and nothing was done by us or Mr. Duffy as far as changing it, the condition it is now is the condition it was purchased in.

Mr. Jordan Kahn said other than some interior improvements.

Mr. Ronald Kahn said it has been three separate units and as far as we know it was built that way and he can't imagine a variance just for the purposes of family members being in there because it would be very difficult to redo this property with three separate units so that is what brings up our request for a variance to allow it to be continued to be used as a three-unit residence.

Mr. Gutoskey asked if they are saying when it was originally built, to their knowledge, it was basically a three-family.

Mr. Ronald Kahn said they were told that but they don't know for sure.

Mr. Jordan Kahn said he was told with certainty at the time that it was built by a gentleman who lived on the second floor unit with his wife and his mother and his wife's father were going to live in two separate studio units with separate entrances, separate fireplaces and they have all passed since then, and this goes back 50 years, multiple owners continued to rent to non-family members.

Mr. Gutoskey said but you are saying it was originally constructed for all family members.

Mr. Jordan Kahn said it was all family members at the time it was originally constructed as far as he knows.

Mr. Lamanna asked what our files show.

Ms. Karen Endres, Zoning Inspector testified that our files show that a permit was given for a single family home in 1958 for new construction and there was never any mention of apartments and that is all she can find in the file. She added that it appears that area of the township was never zoned for multi-family use either and she doesn't know what happened.

Mr. Jordan Kahn said there is also a foyer when you walk in with three separate entrances to three separate units.

Mr. Lamanna said one of the issues is the question of in-law suites and this is why we have such an issue with them because people just want to build an in-law suite for their parents and then we get into this thing and tell them that they have to understand if they do that they may be able to get by with relatives or parents living there, and does that violate the single family dwelling. He said occasionally when we get people that come before this board because they are asking for a variance to do that but we tell them they can do it but they have to understand that it only applies to this type of situation and anybody who comes in later must clearly understand. He said here he has a problem because the record says an application was made for a zoning certificate for a single family house in 1958 so that says somewhere along the line somebody did something that wasn't allowed by the zoning and they never got a zoning permit for it.

Mr. Ronald Kahn said so your thought is that after the construction it was made into three separate units or perhaps it was built as three separate units.

Mr. Lamanna asked if the 1958 application had the floor plans.

Mr. Endres said usually they did not get plans back then but what is happening now is when people go to banks for loans and they find these situations the appraiser will ask her if they can rebuild it if the house were to burn down and if she doesn't have documentation showing it was sanctioned as an apartment or a triplex or whatever she can't tell them that the township would allow them to rebuild that home as anything except a single family home and she is speculating that is one of the reasons they are here today.

Mr. Ronald Kahn asked if there wouldn't be any point of sale inspections.

Mr. Lamanna said there are no point of sale inspections here, no, there would have been no way for anybody to ever know.

Mr. Ronald Kahn said except you have three separate mailboxes and there has been a number of tenants in there.

Mr. Lewis said if it was originally built as stated as a single family house, even if there were partitions in the house separating quarters for your mom or dad, it is still immediate family.

Mr. Lamanna asked about the former complaint.

Ms. Endres said it was in 2009 regarding the fact that there were three apartments in there but the zoning inspector at that time couldn't prove anything one way or the other.

Mr. Ronald Kahn said if he would have walked into their foyer they would have clearly seen three apartments.

Mr. Lamanna said he can't just walk into the foyer.

Mr. Jordan Kahn said he has been in so many houses where there are in-law suites.

Mr. Lamanna said he could have gone to the post office to find out whether or not there are three different mailboxes and he thinks they would have told him.

Ms. Endres said the post office usually won't for residential and she ran into this where she used to work, they are not very sharing when it comes to residential, they share information on commercial but not residential. She said it is a challenge and to prove it you have to go there morning and night.

Mr. Lamanna said you only need a limited amount of information to go get a warrant from the court to enter their property to see what is going on.

Mr. Jordan Kahn said there are actual lease agreements in place and it goes back to tenants, when he did his due diligence originally when they bought the building there were multiple rent rules on tenants that were non-family members that probably goes back 10 years.

Mr. Lamanna asked if there was title insurance when the building was purchased.

Mr. Jordan Kahn said yes and he brought that up to his realtor but he guesses title insurance doesn't cover this so the realtor didn't know and since they were under the impression that it was built this way, they never thought twice.

Ms. Endres said this came from the applicant and has something to do with the adjoining property owners.

Mr. Murphy asked if every one of the adjoining property owners has more than one family living in it.

Mr. Jordan Kahn said they are single family homes.

Mr. Jordan Kahn explained the location of the house and the detached garage and his neighbor Linville and he is not sure of the other neighbors.

Ms. Endres said the document is just trying to show who the neighbors are, you are not showing that there are multiple families living in these homes.

Mr. Jordan Kahn replied no. He said there is an attached garage with two spaces and a detached garage with two spaces.

Mr. Lamanna swore in Ms. Noreen Bordonaro Kaseda.

Ms. Noreen Kaseda testified that she is the neighbor to the left, she owns 7025 Pine Street and she also owns the other parcel. She said she was the one who filed the complaint and she has watched the improvement to the property and that is important because she has over-improved her home and when she bought her home she thought it was a single family home and did not find out until after that. He said the previous landlord was pretty much a slum landlord so she is glad these guys bought it and did some improvements because it was a nightmare and she encourages more.

Mr. Jordan Kahn said they are the current owners.

Ms. Kaseda asked what their intentions are.

Mr. Jordan Kahn said to improve the property and to continue to operate it as a multi-family.

Ms. Kaseda said what she has been told, and it is just hearsay, that they did it under the radar of everybody so it is just kind of do what you want. She said if there was a point of sale the place would have been condemned and she sent in a letter complaining about rats and broken windows etc.

Mr. Ronald Kahn said they did a lot of work inside.

Ms. Kaseda said it is turning into all rentals and she does not like the rentals and she wants to know what their intentions are because if it changed zoning it would decrease the value of her property.

Mr. Jordan Kahn said it would be extremely expensive to convert it to single family.

Ms. Kaseda said she does not know what they are going to do, all she cares about is improving it and she does not want it to be used in the state it is in.

Mr. Jordan Kahn said since they have taken ownership, what she says is from his understanding, the previous owner told them he did not do a good job operating it as a multi-family, he evicted multiple tenants. He said they painted the house and did landscaping.

Mr. Lewis said the core problem is this is not a permitted use in that zoning district even though you are trying to do nice things, the core problem is it isn't supposed to be happening.

Mr. Ronald Kahn asked where that leaves Mr. Duffy at this point.

Mr. Murphy said he owns a single family home on Pine Street.

Mr. Lewis said yes, that is exactly what he owns.

Mr. Lamanna said obviously at this point we know there are multiple tenants in there, a zoning violation could be issued.

Ms. Endres said it is on the record now, the former zoning inspector couldn't prove anything one way or the other, it sounded like he started an investigation and couldn't get enough proof to satisfy the Geauga County Prosecutor, although she is speculating. She said we are on the record now that we do have a situation of three apartments in a single family home so we need some kind of a resolution as to what to do about that. She said these things come up because appraisers are trying to figure out what is going on and can they continue to use the apartment, her answer is no because most of the time these were never legal in the first place.

Mr. Gutoskey asked if there is enough room to get to that back garage without driving on the other property.

Mr. Jordan Kahn said yes the driveway is wide enough to get in and out.

Mr. Lamanna asked if there is an actual survey of the property.

Mr. Jordan Kahn said the driveway is shared but they don't know.

Ms. Endres said there was a fence there but her understanding is there is not much room to drive down that driveway.

Mr. Lewis said they did a fence back in 1987 and wonders if that is the separation of the driveway fence.

Mr. Jordan Kahn said people park in both garages and there is a total of four garage spaces so that is where the tenants generally park but he is not there every day, he did live down the street for a couple of years and that is why it was an easy property for them to maintain.

Ms. Kaseda said the next door neighbors used to use the garage for storage for their landscaping equipment.

Mr. Jordan Kahn said they did until he asked them to remove it all. He said the former owner allowed the Linvilles to keep their equipment in one of the garage spaces but when we took ownership he asked them to remove all of their equipment so the tenants could park in there and that is how it is been used for the last 1-1/2 to 2 years.

Mr. Lewis asked if there is an offer on this right now as a triplex.

Mr. Jordan Kahn said yes we have an offer on it now and that is why we found out when that gentleman called.

Mr. Lewis said and it is not a triplex.

Mr. Jordan Kahn said there are two units on the first floor, there is a two-bedroom on the second floor and there is a dormer unit above the garage.

Mr. Lewis said it is a single family house in Bainbridge.

Mr. Lamanna asked if this house has ever been inspected by the building department as a multi-family dwelling because there are totally different building codes.

Mr. Lewis said the realtors are commissioned sales people, they don't represent zoning or building.

Mr. Ronald Kahn said they should do their due diligence, we are going to put a claim in against the realtor, they sold the piece of property to Mr. Duffy.

Mr. Jordan Kahn said there was a title and an appraisal and an inspection done by the bank.

Mr. Lamanna asked if the former owner is still around and he would say you have a claim against the former owner and asked if a complaint was ever filed with the owner.

Mr. Jordan Kahn said he doesn't know how long he owned it.

Mr. Lamanna asked if the owner got a notice of the complaint.

Mr. Lewis said Mr. Joyce may not have pursued enough due diligence to prove it.

Mr. Lamanna said the interesting thing is if the prior owner knew a complaint had been made about having a multi-family dwelling it proves that he knew something that he probably should have disclosed prior to the sale of the house.

Mr. Murphy said this house was built in 1958 and we are talking about zoning regulations for single family homes and are those zoning regulations after 1958 or prior to 1958 and asked if this has been a three family home before our zoning regulations were in effect.

Mr. Lamanna said there was a zoning certificate issued for a single family home.

Mr. Ronald Kahn asked how many homes were there in 1958.

Mr. Gutoskey said the plat was filed in 1924 so it is an older subdivision.

Mr. Lamanna said we would have to have something from the building department that says that this structure actually met the building code for a multi-family dwelling and he doesn't know what they are going to say because it is pretty hard to say the board is going to grant a variance for a structure that doesn't meet the building code for the use you are talking about. He said he feels bad for the applicant because you are the guys that got stuck in a chain of people who obviously were ignoring what the law was.

Mr. Jordan Kahn said converting this to a single family home, it would have to be torn down.

Mr. Lewis said we appreciate that but you don't want to be in a position nor does the township want to be in a position of having you go through another sales transaction because you bought it as an investment property, you are going to sell it and get your rewards on it and we are going to have a non-conforming heavily zoning violation structure up there as a documented single family so you guys are right back in the jackpot again, it doesn't belong there.

Mr. Lamanna said the board is going to want to see a survey of the property, where everything is exactly, how much room there is, whether these driveways are encroaching, and whether people can actually get by without going onto the adjacent property because we don't want a situation where the only access is going on the adjacent property. He said we will want to see something from the fire department probably for them to go in and look at this and tell us that this thing is usable in a safe way as a multi-family dwelling and if they can get access to it and feel they can defend it in the case of fire and if people can get out in the case of a fire and we will want the building department to tell us that it meets standards for a multi-family dwelling because it was built as a single family dwelling and it doesn't appear along the line that anybody got a permit to do anything in there and they could probably tell us if any permits have been pulled for that property. He said there are three things the board is going to need and next if you want a use variance the standard for a use variance is totally different from the standards like the other variances we have already worked on tonight. He said you actually need to demonstrate that the property could not bring a reasonable rate of return as a single family dwelling as compared to a multi-family dwelling. He said if you go look at the legal standards and see what you have to prove in those cases it is not an easy task to do that.

Mr. Ronald Kahn said but you are leaving the door open for us.

Mr. Lamanna said if you want to go forward with the process and his guess is that you are here prepared to do that in this point in time. He asked if they have legal counsel.

Mr. Ronald Kahn said his neighbor does a lot of real estate law, he is an attorney so he thinks they will have to consult with him.

Mr. Lamanna said he would suggest consulting with somebody who is familiar with use variances so they can give you an exact idea of what you are looking at from a proof standpoint but right off the top of his head, those three things the board would require you to submit to use because all of them are relevant to the board's decision so it is not like we are just jerking you around, they are all relevant to the factors that the board has to decide so we would need those three things and then you have to prove on the economic side of it what is required for a use variance which is not an easy task and it is probably good if you consult with somebody as to what recourse you might have against the prior sellers of this property to you. He suggested that the board table this application to the next meeting so you can look into this and if it looks like you do want to go forward you will probably need additional time to get all of this stuff together and just let us know when you will be prepared to go forward and we will set a date for you. He said he is sorry but this is a tough situation, it is a classic case of somebody doing something under the table for a lot of years and now unfortunately it has surfaced now because everybody is just so much careful now, even in the last five or six years, the finance people and the banks, they are dotting their I's and crossing their T's because that is what they have got to do now.

Ms. Endres said she gets calls about non-conforming structures and non-conforming uses.

Mr. Lamanna said they are so much more particular now.

Ms. Kaseda asked if it is occupied now.

Mr. Jordan Kahn said yes, two of three units are occupied.

Mr. Lewis said that is a problem too because one thing is what we have to do on behalf of the township and zoning inspector and it does link to this, right now what is happening there is in direct violation of our zoning code and we have nothing on record other than a little bit this evening that the property owner has been informed or have they been informed that they are in violation.

Ms. Endres said she has not written a violation letter, no.

Mr. Lewis said violation is a really angry word but he is thinking on behalf of the township that the property owner should get a notification of non-compliance and site code and we need to get that on file. He said that by the way could assist the applicant in pursuing recourse with the previous owner.

Mr. Lamanna said as far as what is going on here it is really not going to change that and he thinks nothing is going to happen as long as there is a pending application, we are not going to take any enforcement action.

Ms. Endres said if you think the letter will help your cause he will send a letter and she can just leave it opened ended.

Mr. Lamanna said we should probably issue a letter and if nothing else, you can say you have gotten a letter from zoning that clearly states that this is wrong because you have some serious issues with the person that sold you the house. He said it is not like anything is going to happen as long as this application is pending.

Ms. Endres said typically what she will say is please bring this property into compliance and will leave it open-ended to a time limit.

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

Motion BZA 2015-32 – 7033 Pine Street

Mr. Lamanna moved to table this application to the next regularly scheduled meeting to be held December 17, 2015.

Mr. Gutoskey seconded the motion.

Vote: Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye.

Application 2015-33 by Bruce Vernyi for property at 16811 Savage Road

The applicant is requesting a use variance for the purpose of maintaining two dwellings. The property is located in a R-3A District.

Mr. Bruce Vernyi was present to represent this application.

Mr. Vernyi testified that he is the administrator of his mother's estate, she died last year and he found out that after she passed what he thought happened in 1968 didn't happen and that was his father had been to the zoning board of appeals in zoning meetings here to have a second building on the property turned in a residence and that is his recollection and his brother's recollection, there is no evidence in the zoning records at all except for one mention of him being here in September of 1971 to talk about a lot split and the zoning board of appeals minutes of the meeting say that he was sent away being told that his plan was not sufficient and that is the only mention of him ever being here but he bought the property in 1968 with the understanding as these other people understood that there were two residences on the property and that the second residence which is a caretaker's cottage 100 yards behind the main house was an occupiable property or occupiable residence.

Mr. Vernyi continued by saying it has its own separate septic system, its own separate plumbing, kitchen, bath and it was on the county auditor's records that way as two separate residences but it was built apparently in the 1950's as a chicken coop, there is a zoning application for a chicken coop so as a result, he remembers his father in 1968, his father finished the caretaker's cottage and his grandmother moved into it in 1969 and it has been occupied ever since. He said he just found out in the last 18 months that it is not legal so he has come to ask for a use variance to be allowed to keep two separate residences on the same property. He said there are precedences within two miles of the property, at least five other properties that have dual residences on a single lot and he has the addresses if the board would like. He said before he can do anything about the septic systems which now need replacing under state law he has to make sure that he has a legal residence there with which to put a septic system into.

Mr. Gutoskey said you have two separate septics now, one for each house, do you have to replace one or both of them.

Mr. Vernyi yes, both.

Mr. Gutoskey asked if there was any consideration given since you have to replace both septics to reconfigure the property and sell it as two lots.

Mr. Vernyi said it can't be done, he does not have enough frontage, he would have a flag lot that would be really difficult to access.

Mr. Gutoskey said we have done flag lots before though.

Mr. Vernyi said he has 240' of frontage and he thinks he can just squeeze in a drive to make a flag lot and that is the plan that his father had drawn up and he thinks you have a copy there that we show the main house on 1-1/2 acres of land and the second house on 7.049 acres of land.

Mr. Vernyi said he has 260' of frontage instead and this was drawn, his father drew this after a survey of the property in the late sixties so he doesn't have those records anymore, after his father passed his mother burned a lot of his records and he was happy to have found this much.

Mr. Lamanna said one of the things here too is he is reading a narrative about people inspecting and there is a difference between the county building department and zoning inspector. He said it is very possible that somebody got a permit from the building department but they don't enforce zoning and the farther back you go, now if they saw something that was a little questionable they work together but if you go back 20 to 30 thirty years they were separate and the two never talked so you could go and get a permit from the building department to build something that was prohibited by zoning.

Mr. Vernyi said there are gaps in the zoning records here, he spent many afternoons here going through zoning records and there are huge gaps in the records from that time that are just impossible to explain and it was his recollection and his brother's recollection that their father spent time with his lawyer here talking about this and getting this done, he wouldn't have proceeded in his mind knowing his father, he would not have proceeded unless he had all of his I's dotted and his T's crossed, he was a careful engineer who was aware of what he had to do and he was surprised at the time that what he bought was not what was in reality there and was his and his brother's recollection and we had the garage added to the house after the cottage was finished and his grandmother was living in it and it was his recollection as well that the zoning inspector had been out to inspect that as well and that may have been at that time it could have been the building inspector for all he knew.

Mr. Lewis referred to the chain of events and said your dad built a chicken coop.

Mr. Vernyi said no, the person who owned the house originally built the chicken coop.

Mr. Lewis asked who made the attempt to convert the chicken coop to a residence.

Mr. Vernyi said the original owner and he, apparently in 1959, was here at the zoning board of appeals and threatened a lawsuit in the common pleas court that Ms. Endres turned up that never went anywhere. He said the property changed hands again in 1961 going from the original owner to the secondary owner and his father bought it from the secondary owner in 1968 and at that time the county records listed it as two buildings or two residences on the property and it still does today.

Mr. Lamanna said the problem here is the county ties into the building department a lot of times so they look at the permits so the auditor adds it onto the records for taxes and if they know what is built they can adjust the property taxes accordingly so it is not surprising that that is the case and the other possibility too is that this thing ended up the same way, they are going to have their parents living in this property.

Mr. Vernyi said that was not his recollection and he was there and this was 45 years and he spent a lot of time with your zoning records looking for the records of his father's actions here but there is nothing there, the records are incomplete.

Mr. Lamanna asked incomplete in that what, there are missing applications.

Mr. Vernyi said missing applications, missing minutes of meetings and last summer he spent 6 to 8 hours going through the zoning records from the 1960s through the late 1970s and several occasions he was here.

Mr. Lewis said the application in 1959 clearly states that the use of that structure was for a caretaker so it was not an in-law suite, it was a non-family member.

Ms. Endres said and back then the zoning did allow for a caretaker, it wasn't denied because it was a caretaker it was denied because it was too small, it didn't meet the criteria for a house.

Mr. Murphy said according to you have seen through 1959 to November 15th it ended everything else from the attorney James Warner to the BZA, notice appeal to the common pleas court so there was a lawsuit filed, is there are record to what happened then.

Ms. Endres said it was dropped.

Mr. Lamanna asked if it was actually filed and was there a case number.

Ms. Endres said she could not find a case number, no.

Mr. Vernyi said he was at the common pleas court too looking for that and he did not find a word of it there either.

Mr. Lamanna said it was 1959.

Mr. Murphy asked Mr. Vernyi when his father bought the property.

Mr. Vernyi said 1968 and the completion of the cottage was done before 10/10/1969.

Mr. Murphy said the completion by your father.

Mr. Vernyi said yes.

Mr. Murphy asked Mr. Vernyi if his father put the second septic system or combined septic system in.

Mr. Vernyi said no, it was already there, and it is two separate 1,000 gallon tanks and by completion he means wallpapered and painted and made it cozy, the propane tanks were in back and the propane heaters were in place.

Mr. Lewis asked if there are renters there, who is living in the second house.

Mr. Vernyi said he is living in it.

Mr. Lewis asked who is living in the first house.

Mr. Vernyi said no one, it is empty, his mother passed away last year and it has been vacant, he has been cleaning it up ever since. He said there are similar properties with guest quarters in the barn at 7630 Chagrin Road, there is a house with a carriage house apartment, two buildings with one septic system at 7511 Chagrin Road, there is a duplex at 7845 Chagrin Road with one septic tank, there is a house with a 900 sq. ft. guest house built in 1956 at 8285 Lucerne Drive and there are side by side ranch houses at 17263 Catsden Road that has one septic system as well.

Mr. Lamanna asked what records are those from.

Mr. Vernyi said the county auditor but he is only bringing them up to show there is a precedence for having two residences on one lot in Bainbridge, those are all within two miles of his property.

Mr. Lamanna said there are two issues and one is you have to know when that was actually done because it could have possibly been something that was done that predated the zoning and where it was constructed and the second question may be they may all be out of compliance, none of them may be in compliance because you saw from the first one that people do a lot of things.

Ms. Endres said the banks are really cracking down on loans, the appraisers are looking for affirmation that a bank finances.

Mr. Lamanna said people are financing based on the rental income from the unit and they want to make sure that it is actually a legitimate usable rental income and not suddenly find out a year and one-half down the road that they can't use it anymore as a rental unit and all of a sudden their whole loan basis is blown up in their face.

Ms. Endres said if it predates zoning she will tell them that they are grandfathered in but if they don't predate zoning there is a problem and there could even be a problem if there are two houses on one lot and both houses burn down the expectation is that everything is rebuilt to conform with zoning so they would be here in front of the board of zoning appeals trying to determine whether or not we would allow two houses to be rebuilt on one lot.

Mr. Vernyi said that is why he is here ultimately.

Mr. Norman Schultz asked when zoning came in for a single home on a lot in Bainbridge, he knows it was on in 1956.

Ms. Endres said we had zoning in 1948 she believes and in Bainbridge it came in 1949.

Mr. Schultz testified that Wilson's house on Chagrin Road was prior to that and so is that big duplex that Paul Frohring used to own, that has been a duplex for 100 years. He said somebody rebuilt Paul Frohring's barn and asked if they had permits to do that, they put a bathroom and everything else in there.

Ms. Endres said that is agricultural and is a another problem.

Mr. Schultz said the barn can be rented out and asked Ms. Endres if she has looked at it.

Ms. Endres replied no.

Mr. Vernyi said that is one of the units he cited at 7630 Chagrin Road. He said he is asking the board to acknowledge what has been reality for the last 45 years.

Mr. Murphy asked if the original idea of a lot split is completely gone at this point.

Mr. Vernyi said he hasn't thought about that and doesn't want to if he doesn't have to, he would like to keep it as one property.

Mr. Murphy said it is a nine acre lot now.

Mr. Vernyi said yes.

The board discussed a proposed lot split.

Mr. Gutoskey asked how many bedrooms are in the houses.

Mr. Vernyi said the front house has four bedrooms and the rear house has two bedrooms. He said the problem with that driveway down there is that in the fifties they planted all of those White Pines that are huge and the whole side of the lot is White Pines that are still alive.

Mr. Murphy asked if the property is right across from the park.

Mr. Vernyi replied yes.

The board discussed the location of the driveway.

Mr. Gutoskey asked about the location of the garage for the front house.

Mr. Vernyi said it is behind those trees, it is a three car garage, side entry.

The board reviewed the aerial photo of the property.

Mr. Vernyi said unlike the previous three people who were here, we have been obviously and openly using that as a residence since 1969.

Mr. Gutoskey said but it was family too though.

Mr. Vernyi said yes absolutely, by my grandmothers and me.

Mr. Lamanna said that is what has happened in the past, it is a question of somebody saying because it was members of the same family they didn't make a big deal out of it although you are still supposed to only have one residence, you can't have your kids living in a separate house.

Ms. Endres said there is a little over 40' from the lot line to the house so there probably would be room for two driveways.

Mr. Gutoskey said you need about 30' for a side entry garage to get in and out.

Mr. Vernyi asked what the objection would be to having two residences on the same lot.

Mr. Lamanna said it is not allowed, it is like multi-family development on a single lot and once you went down that path everybody with a little extra would be wanting to build another dwelling on their property. He said with the acreage here the preferred way of resolving this would be to come up with some kind of a lot split, the sizes wouldn't be conforming but the use would be conforming. He said from the board's standpoint it is easier to deal with the area variance of creating a second lot here than dealing with multiple residences on a single property.

Ms. Endres asked about a shared driveway.

Mr. Gutoskey said that would be a problem at the county level.

Mr. Lewis said if one parcel gets sold you get potential complications.

Mr. Lamanna said you have to have a very clear shared use agreement that is recorded as an easement on both of the properties, if you buy the property it is just like buying into a homeowners association.

Mr. Murphy said but in fact if an extra 10' is needed conceivably the Cunningham's could gain some rear yard square footage and move that line too.

Ms. Endres said there is also a utility pole close by.

Mr. Murphy said you could offer the Cunninghams enough to get five extra feet so you could swing in to get to the garage, there is room in the backyard to trade to make this doable. He said the original drawing with the two acres in front and the seven acres in back, we don't like doing that because there are nine acres and each house could have 4-1/2 acres.

Mr. Lewis said he is favor of cutting it into two parcels.

Mr. Lamanna said create a five acre lot with the one and the other one would be the balance of the property.

Mr. Murphy said those are our thoughts and you, Mr. Vernyi, were thinking you were going to come in for a use variance.

Mr. Lamanna said for the standard approval it is just very difficult and it is the property owner's obligation to prove if he wants to claim a non-conforming use, it is his burden of proof to show that this was non-conforming. He said it is hard to be non-conforming unless you were there before zoning and again it is bad history if somebody applied for a zoning permit for this thing for one use and now it is another use.

Mr. Vernyi said clearly that was fraudulent but that person isn't with us anymore so it is a moot point.

Mr. Gutoskey said you are probably going need for the septic, because of the soils here, a mound or a drip system and it is probably going to be 180' long x 16' wide for the front and the house in the back you are going need about 90' long x 15' wide based on what the new regulations are so that gives you some latitude as far as coming up with a creative way to split the property into two lots so instead of selling one lot with two houses, you a selling two lots.

Mr. Lamanna said with a house each which is probably a better situation anyway and in the end it will be less work to figure out a way to divide this up than it is to prove or meet the standards for showing you are entitled to a use variance. He said in the end the property is going to be more valuable as two separate lots than is the one lot with two residences on it with a use variance and now there will be all kinds of restrictions because essentially it will be equivalent to a non-conforming use so anything that happens or any future owner will have the issue, if they want to expand, they may not be able to expand anything, you will counting on your hands any further development of the property with a use variance because you will be tied into what is existing there right now whereas if you have two lots, everyone has their own lot and house.

Mr. Gutoskey said the other thing too is if you just split it into two lots and only put a septic on the one and if you have a buildable lot, it might be worth more money instead of putting money into a septic for the other house.

Mr. Lewis said particularly all of the land on the rear portion which could be five to seven acres depending on how it goes, he would be talking about dumping the little house.

Mr. Lamanna said that is another possibility and the other possibility is to just divide the property.

Mr. Gutoskey said or turn it into a barn, put a septic in for the front house and turn the other building into a barn and split the acreage in the back and then sell the house with a buildable lot.

Mr. Murphy said the property backs right up to the creek.

Mr. Schultz said the sewer goes through the back.

Mr. Gutoskey said you could make the front lot three acres and the back six, it is three acre zoning and you would probably just need a variance for the flag lot and that makes it real simple because you are only buying one septic.

Mr. Lamanna told Mr. Vernyi that he might want to talk to somebody, a surveyor or real estate people and ask what makes the most sense here and what do people want and not want.

Mr. Lewis said that is the absolute cleanest way and it also gives this gentleman the most potential revenue and the most flexibility with the property with it minimizing today's investment, particularly trying to bring something to standard on the second lot.

Mr. Lamanna said the board will be flexible on any variances needed to divide this up to get rid of this other problem.

Mr. Gutoskey said this could be tabled and so we can come back to this.

Mr. Lamanna said the board could table this for three months and if it isn't ready in three months, then let the board know.

Mr. Gutoskey said he thinks those are good options to look at.

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

Motion BZA 2015-33 – 16811 Savage Road

Mr. Lamanna moved to table this application for three months.

Mr. Gutoskey seconded the motion.

Vote: Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye.

Application 2015-17 by Dennis Guritza for property at 17727 Lost Trail - Continuance

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

The applicant was not present.

Mr. Gutoskey said that he attended an HOA meeting for Pilgrim Village two weeks ago and this issue came up and he was asked to explain to all who attended what the deal is as far as how setbacks work and that the zoning code recognizes that we have parcels in the township that don't meet the three and five acre zoning and the zoning code gives us direction as far as minimably what the board can grant for a variance. He said we got the letter today but he doesn't understand where Mr. Guritza is going with this, he thinks he can go to the HOA and get the zoning changed, but he explained what the zoning code recognizes.

Mr. Lamanna said he didn't meet the zoning for what it was for those lots at the time.

Mr. Guritza said that several people mentioned that that was the best spot for it so that is where it should go.

Mr. Lamanna asked Ms. Endres if she has talked to him or he just sent the letter in.

Ms. Endres said no, she has not talked to him and she knows that the secretary sent him an email reminding him of this meeting.

Mr. Lamanna asked if there is an outstanding notice of violation on this property.

Ms. Endres said no, she has not sent anything yet, she was waiting to see how this is resolved.

Mr. Lamanna said we have two possibilities on this, we can either dismiss it with prejudice or without prejudice but either way he gets a notice of violation. If the board dismisses it without prejudice he can come in a refile again.

Mr. Murphy said if they rewrite the homeowner's association guidelines he may still not fit the township's zoning but if in fact the entire architectural board or homeowner's association may say this is fine in our world and then he may have a stronger leg to stand on in front of us, which is the one possibility.

Mr. Gutoskey said he doesn't see how that would hold any weight.

Mr. Murphy said he talked to everybody around him and he thought everything was fine and good.

Mr. Gutoskey said the problem he has is he presented an 86 page Power Point with all of his experience with things that he did, he knew what zoning is.

Mr. Lamanna said the real question is the board can effectively deny his application.

Ms. Endres said if the board denies the application then he goes into enforcement mode with her, that is when she will send him a zoning violation letter.

Mr. Lamanna said it also means that if the board denies the application, he will have thirty days to appeal it, if he doesn't appeal then it is res judicata. He said the other thing is the board can dismiss it without prejudice for failure to prosecute the application.

Mr. Gutoskey said the board asked him to refile at the last meeting which we didn't get.

Mr. Murphy said instead we got a request for a continuance.

Ms. Endres said her expectation was that he would come up with another location for the building.

Mr. Lewis said that is what he agreed to and we all discussed that it would be within 25' somewhere and he agreed to it.

Mr. Gutoskey said he would rather tear it down.

Mr. Lewis said he agreed to it in lieu of the fact the board was going to rule on it and probably deny it that night.

Ms. Endres said he agreed to the extension, to continue the meeting, unfortunately he didn't show up tonight, she was hoping he would come.

Mr. Murphy said you did say he might want to be here.

Ms. Endres said she sent him an email earlier in the week and she asked Linda to send him an email as well.

Mr. Lamanna said he didn't ask for a continuance in his letter, he said he was going to pursue other avenues and his inclination would be to dismiss this application for failure to prosecute the application and we could dismiss it without prejudice so he can come back again. He said we don't want to put him in a position where he has to appeal it in thirty days and if he doesn't appeal it then he is barred forever and he can't come back and seek a variance. He added that a zoning violation notice will be sent and he needs to know that it is not going away and if he wants to refile he has to start over again, no reviving this application, this application will be dead, it will be dismissed.

Mr. Gutoskey read from the BZA minutes from the previous month and added that the board did not receive anything from him regarding a new location.

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

Motion BZA 2015-17 – 17727 Lost Trail

Mr. Lamanna moved that the board dismiss this application for failure of the applicant to prosecute the application, a continuance was granted last month, he sent the board a letter where he indicated he was going to pursue other options, he did not request any further continuation/continuances of this application so the board is dismissing the application. The dismissal will be without prejudice in refiling but he will have to create a new application to go forward in this matter in the future and the board notes that the Zoning Inspector will be issuing a notice of violation with respect to this property since it is not in compliance and from this point on there will be no pending application for a variance.

Mr. Lewis seconded the motion.

Vote: Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye.

Since there was no further testimony, the public hearing was closed at 9:20 P.M.

Respectfully submitted,

Ted DeWater
Joseph Gutoskey
Michael Lamanna, Chairman
Todd Lewis, Vice Chairman
Mark Murphy

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

Date: December 17, 2015

AUDIO RECORDING ON FILE

Bainbridge Township, Ohio
Board of Zoning Appeals
November 19, 2015

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 9:20 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Ted DeWater; Mr. Joseph Gutoskey; Mr. Todd Lewis and Mr. Mark Murphy. Ms. Karen Endres, Zoning Inspector was present.

Minutes

Mr. Lamanna made a motion to adopt the minutes of the October 15, 2015 meeting as written.

Mr. Gutoskey seconded the motion.

Vote: Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye.

Applications for Next Month

Application 2015-32 by Kevin Duffy for property at 7033 Pine Street - Continuance

The applicant is requesting a use variance for the purpose of maintaining a multi-family dwelling. The property is located in a R-3A District.

Application 2015-34 by Rosemarie Althans, Trustee for property at 16995 Catsden Road

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

Application 2015-35 by Church of the Holy Angels for property at 18325 Chillicothe Road

The applicant is requesting a modification of a conditional use permit for the purpose of constructing a 5,000 sq. ft. storage building to replace the old barn that was destroyed. The property is located in a R-3A District.

Application 2015-36 by Geothermal Professionals Ltd. for property at 7395 Chagrin Road

The applicant is requesting a substitution of a non-conforming use for the purpose of engaging in the installation, repair, and maintenance of residential geothermal systems. The property is located in a R-3A District.

Since there was no further business, the meeting was adjourned at 9:50 P.M.

Respectfully submitted,

Ted DeWater
Joseph Gutoskey
Michael Lamanna, Chairman
Todd Lewis, Vice Chairman
Mark Murphy

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

Date: December 17, 2015