

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

Pursuant to notice by publication and certified mail, the public hearing was called to order at 7:07 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Ted DeWater; Mr. Joseph Gutoskey and Mr. Todd Lewis. Mr. Mark Murphy was absent. Ms. Karen Endres, Zoning Inspector was present.

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.

He announced that the agenda items will be taken out of order tonight.

Application 2015-3 by V & V Lakeshore, Ltd. for property at North Market Place Drive and Giles Road

The applicant is requesting a review and renewal of a conditional use permit for an existing shopping center. The property is located in a CR District.

Mr. Vince Fond, Jr. and Mr. Vince Fond, III were present to represent this application.

Mr. Fond, III testified that they are requesting a setback variance for additional parking on Sublot 3A at the Shops at Marketplace.

Mr. Lamanna suggested starting with application 2015-3 which is for the review and renewal of a conditional use permit.

Mr. Fond, III testified that they are requesting a renewal of the conditional use for the Shops at Marketplace as there has been a change of ownership at the center which they acquired in October of 2010 and since this is the first time they are actually appearing before the BZA for a purpose it seemed like a very good time and in speaking with Ms. Endres it was something that needed to be done.

Mr. Lamanna said the board has been working on trying to get the conditional use permits all up to date. He asked Ms. Endres if there are any open issues that she is aware of.

Ms. Endres testified that she is not aware of any problems.

Mr. Lamanna asked if there are any outstanding complaints or non-compliances.

Ms. Endres replied no, she has had no complaints on any of the businesses there.

Mr. Lamanna asked if there are any open issues with any of the conditions.

Ms. Endres said she is not aware of any and believes that most of the conditions were satisfied at the time the shopping center went in. She added that she provided the board with the history and all of the minutes. She said she recalls that one of the conditions was that the street going out to Depot Road and she is not sure how appropriate it is and it is something the board might want to talk about, people make left-hand turns there all of the time and she thinks one of the conditions was no left-hand turns, right-turn only and asked the board if they might want to review this.

Mr. Gutoskey said he doesn't know that it is an issue.

Mr. Lamanna said at least at this point in time it is not creating a traffic problem.

Mr. Gutoskey said Geauga Lake is not there anymore but if that area is developed it may be a concern.

Mr. Lamanna said there is not a lot of traffic going down Depot Road.

Mr. Gutoskey said when something starts happening at Geauga Lake it may have some influence on it but right now he doesn't see it being an issue but they may want to leave it in there for the future.

Ms. Endres said she doesn't think the Police are citing people for turning left there.

Mr. Lamanna said he is not sure that it really matters much anymore because if you are really going out to Pettibone Road it is a lot easier to go out the drive and then turn onto Pettibone than to go down and make that horrible turn up over the railroad tracks and then over Geauga Lake Road so his guess is most of the people doing that are heading over towards Brewster Road or that area.

Ms. Endres said she has not seen any traffic problems there and it is just an observation that she had.

Mr. Lamanna said the board was concerned about that but over the years as he goes through there he has watched to see what is happening in that area and it does not seem to be an issue. He said he doesn't know if it makes sense to continue that.

Mr. Norm Schultz of 7440 Chagrin Road testified that he was here when they were going through the process of putting that shopping center in and if you take a look at the construction of the road, the road comes out of the shopping center at a funny angle so you could not make a left turn and it is still that way, it is not a good angle to make a left turn and it was for safety reasons.

Mr. Gutoskey said he didn't see it being an issue because of how big the intersection is and the traffic volume.

Mr. Fond, III said the striping is set to accommodate that right-turn only so if it is restriped.

Mr. Gutoskey said the intersection is large enough and the site distances are good.

Mr. Lamanna said the traffic is metered pretty well from the light at Route 43 so if you want to restripe it.

Mr. Fond, III said they planning on restriping it.

Mr. Lamanna said if there is a good reason for it it will be fine.

Mr. Lewis said as far as the overall development he does not have a problem with it.

Mr. Gutoskey said the use of the different methods for the storm water and quality control he is not sure who is responsible for it but the ponds that are in front of Home Depot are looking pretty shabby and probably need to be cleaned up a little bit.

Mr. Fond, Jr. stated that the one in front of Home Depot is a bio-swale and that is Home Depot's responsibility and we have even tried to get involved and they haven't responded.

Mr. Gutoskey asked if work was done on the one on the opposite side.

Mr. Fond, Jr. said yes, Target did work on those.

Mr. Gutoskey said that is something that we should point out to Soil & Water because they need to be maintained every so often because it is taking all of the silt and everything off of the parking lots and letting the water filter down through catching the silt.

Mr. Lewis said it is slowly filling in.

Mr. Gutoskey said they need to be maintained every so often because there is a maintenance agreement with the county Soil & Water.

Ms. Endres said she will contact Soil & Water and ask them to take a look at it to see if it is in compliance.

Mr. Gutoskey said every so often they need to be cleaned out and replace the filtering media.

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

Motion BZA 2015-3 – Property at North Market Place Drive and Giles Road (V & V Lakeshore, Ltd.)

Mr. Lamanna made a motion to renew the conditional use permit for five years commencing on the date when this decision of the board becomes final.

1. All of the existing conditions will remain in effect except for the conditions with respect to the exit onto Depot Road.
2. The prescription of left-hand turns on Depot Road will be removed based on there really not being any traffic issues at that intersection.
3. The applicant can restripe it and change the signage so that left-hand turns are permitted in the future at that location.

Mr. Gutoskey seconded the motion.

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

Application 2015-4 by V & V Lakeshore, Ltd. for property at 7040 Aurora Road

The applicant is requesting an area variance for the purpose of additional parking for a two-tenant building. The property is located in a CR District.

Mr. Vince Fond, Jr. and Mr. Vince Fond, III were present to represent this application.

Mr. Fond, III testified that subplot 3A is the lot they will be focusing on today. He referred to the display slide and stated they have an overall site plan of subplot 3A and what is marked in the gold color for Phase I is what they are currently developing, Phase II is the proposed development which they have not submitted yet for zoning, they are not focusing on that right now. He said they are looking at an additional eight parking spaces at the northern end of this lot which in this instance Route 43 is generally to the south and North Market Place is to the north and they are both treated as front setbacks so we are looking at the front setback variance on the rear of the lot so that they can add additional parking and generally even though they meet the requirements with what is existing they are looking at addressing any potential overflow situations with the neighboring BW3 and also the proposed Aldi down the road, overflow from them and also for potentially having a clean parking design that is what they are envisioning for the overall development of the lot. He referred to the next slide and said you can see exactly here with the eight spaces, they are looking at a 21' setback from North Market Place Drive which again is something that in the past, previously with the prior developer the setbacks on the private roads were not taken into consideration with zoning and in many cases like the neighboring BW3 the setback is 9-1/2' but they are looking at 21' so basically it is just a change in the interpretation of the zoning.

Mr. Lamanna said so you are doing just a partial development of this subplot.

Mr. Fond, III said correct, at this time.

Mr. Lamanna said you are the owners of the subplot right now and you still hold title to that.

Mr. Fond, III said correct.

Mr. Lamanna asked if they are planning to continue to hold title to that.

Mr. Fond, III replied yes.

Mr. Lamanna said and develop it in three phases.

Mr. Fond, III said correct and they are still finalizing the terms with Aldi so when that is done Aldi will be Phase II.

Mr. Gutoskey said a parking variance would be required for Aldi because it looks like you want to continue the scheme of the drives and the parking.

Mr. Fond, III said that is correct, we will be continuing the same 21' all the way across to the future proposed entrance across from the existing Target intersection, so you can drive directly straight from Target into the area they are developing to access Aldi and this subplot so there will be two points of ingress.

Mr. Lamanna said regarding this additional parking, it is not required for the Phase I development.

Mr. Fond, III said no it is not but just for cleanliness and paving etc.

Mr. Lamanna said you are just planning ahead so it makes sense to do it.

Mr. Fond, III said correct.

Mr. Fond, Jr. said also in the past he is sure everyone has noticed that for years there have been barriers in the front and that was to accommodate the overflow parking for BW3 where they designed this with the parking fill closest to North Market Place and would accommodate the BW3 which is also in their property.

Mr. Gutoskey asked if there will be a cross-easement with Steak n Shake.

Mr. Fond, III said yes.

Mr. Gutoskey asked because of how close that parking is going to be to the street, will there be any landscaping or mounding.

Mr. Fond, Jr. said currently it is pretty level and he doesn't think there is any mounding there.

Mr. Fond, III said there is no mounding in the whole Market Place, they were planning on continuing the scheme with the Maple trees and landscaping but they were not planning on any grading changes.

Mr. Gutoskey said because of how much of the parking is in the setback, it needs to have a little more landscaping.

Mr. Lamanna said the whole situation is a little weird because the history is what happened here is that there is a common development plan for the whole thing and then the board allowed them to divvy up individual lots in there because some of the tenants wanted to own their own lots so we have been looking at it as internal roads are really kind of invisible but he thinks the point is well taken and it has become a regular thoroughfare now and it would be nice to maintain the kind of look with some kind of landscaping along the edge of the road.

Mr. Gutoskey said when you drive through there now except for the little section of BW3 the parking is far back from the road.

Mr. Lamanna said because of the way those front lots are it is a little tougher.

Mr. Lewis asked if these are overflow spots for adjacent tenants that just happens to be on the same property that you own but you don't have the tenant for it yet. He said so we are making accommodations not for this business but for the future.

Mr. Lamanna said but eventually the parking will eat up the lot coverage, when the lot coverage is gone, it is gone.

Mr. Fond, Jr. said they realize that.

Mr. Lamanna said whether there are more places to develop or not if you use it up here it is forever gone.

Mr. Fond, III said they gave Ms. Endres the latest calculations.

Mr. Lamanna said what the board would most like to see is some landscaping put in there, a line of trees and some lower shrubs in between and it will enhance the look.

Mr. Gutoskey said as you go down through there, instead of just a line of cars, maybe every 15 to 20 spaces you throw in an island just to break it up, however it works out with the driveways or how the buildings lay out.

Mr. Fond, III said there will be 17 spaces in total and it is Phase II also.

Mr. Gutoskey said maybe it could be broken up in the middle with an island somewhere so it is just not a strip of parking parallel with the road or however it works with the drive isles.

Mr. Lamanna said the board would like to see when you want to go and extend that maybe at the end of this one to put a little 3' grass island in there and it would break up the continuous expanse of the parking.

Mr. Gutoskey said realistically you could take one whole space and pull it over and keep the same amount of spaces, there is enough room to get another space there.

Mr. Lamanna said they can do it in the next phase because this is half of it so they can break up those two sections into a couple of smaller sections. He said this site plan does not need to be changed because it can be put in Phase II. He said they can just plan for it. He asked what the lot coverage will be on this subplot.

Mr. Fond, III said it is still subplot 3A.

Mr. Lamanna said you are not going to be at 40% of the subplot.

Mr. Fond, III said correct.

Mr. Fond, Jr. said as far as the coverage for the whole shopping center it is the total.

Mr. Lamanna said but for the board's purposes since this is being treated as a separate lot the board has to grant a variance for whatever the actual coverage is, if it exceeds 40%.

Mr. Fond, III said he thinks they are around 30% and it is on the sheet.

Mr. Lamanna said this is okay for this one but since we are maintaining them as separate lots we have to give whatever variances are necessary as if it was a separate lot and the board doesn't care what the separate lots are the board still has to do it administratively and grant a variance but you also have to meet the overall requirements.

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

Motion BZA 2015-4 – 7040 Aurora Road (V & V Lakeshore, Ltd.)

Mr. Lamanna made a motion to grant the applicant an area variance for the purposes of placing the proposed eight parking spaces 21' from the right-of-way of North Market Place Drive rather than the 70' normally required.

Based on the following findings of fact:

1. The shopping center is treated as a single entity and although Market Place Drive is a road for internal purposes it is not considered that all of the requirements need to be met for setbacks because of the way the lots were originally created.
2. It is perfectly consistent with the development plan of the shopping center.

With the following condition:

1. The applicants will continue their line of Maple trees along Market Place Drive at that point and also add between those trees some smaller shrub plantings to obscure it to some extent the part closest of the parking to the road.

Mr. Gutoskey seconded the motion.

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

Application 2015-2 by Tom and Jan Radkowsky for property at 8466 Lakeshore Drive

The applicants are requesting area variances for the purpose of constructing a new single family dwelling (tear-down and reconstruction). The property is located in a R-3A District.

Mr. and Mrs. Tom Radkowsky, property owners and Mr. Timothy Savage, builder, were present to represent this application.

Mr. Radkowsky testified that they are planning on demolishing their existing structure and rebuilding a new one.

Mr. Lamanna asked if it will be on the same foundation.

Mr. Radkowsky said no, the footprint does not exactly match the old one.

Mr. Lamanna asked if the driveway is going to be in the same place.

Mr. Radkowsky said very close but they are going to a three car garage but it is going to be pretty much the same except maybe a little wider than it is now at Eastview, a little wider because of the three car garage. He said if you look you can see the old house and old driveway on that drawing (new site plan).

Mr. Timothy Savage testified that the family presented the plans to the Lake Lucerne Architectural Review Board. He stated that they will be connecting to the existing utilities, there will be no changes there.

Mr. Lamanna asked how many square feet the house is going to be.

Mr. Radkowsky said just under 4,000 sq. ft. and he believes the area coverage and footage are on the drawings.

Mr. Lamanna asked what the exterior footprint is of the new structure, and there is the first floor, a front porch and a garage.

Mr. Savage stated that this is a beautifully designed home and as a resident of Lake Lucerne it will be a focal point coming in off of Lakeshore right at the intersection, it is just a gorgeous home.

Mr. Lamanna said it is a very nice looking home but his only question is it is a very large home sitting on a very small lot, it goes back to pretty close to the existing house behind it that is only 10' off the property line.

Mr. Savage said they understand those points and the architectural review board in Lake Lucerne looks at that carefully because that is an issue.

Mr. Lamanna said we are a separate entity here, separate rules and separate consideration. He said you have to independently satisfy both of us and there are two front yards here.

Mr. Gutoskey said what he looked at was not so much relative to the right-of-way but more to where the edge of the pavement is because these are really narrow right-of-ways and then the garage is pretty much the same but this front porch up in here moves way closer to the road than where the existing house is. He asked Ms. Endres to bring up REALink and zoom out to view the house to the left. He said it looks like there is a monster house on the other side of the house there.

Mr. Radkowsky said that house on the other side there is approximately 4,600 sq. ft.

Mr. Gutoskey asked if that was built recently.

Mr. Savage said he was the builder of that home and said it has been two years now.

Ms. Endres said it has roughly a 3,000 sq. ft. footprint.

The board viewed the other houses in the area via REALink.

Mr. Savage said the new home they built there is almost and very close to the footprint of the original home, very close and actually used the same driveway for that new structure but it is quite a bit smaller lot also.

Mr. DeWater asked if the neighbors know what is going on.

Mr. Radkowsky said the neighbors behind them know, they really didn't discuss it but the neighbor adjacent to them actually, came and reviewed the plans and are pretty excited. He said they looked at the drawings, but in the rear, they haven't discussed it with them, but they know we are building, they just haven't seen the plans, but they are aware of it.

Mr. Gutoskey said he doesn't think it affects them as much though and asked if anyone in the audience had any comments.

Mr. Lamanna asked what was the criteria for where you decided to put the house as far as the distance from Lakeshore Drive after it made the turn there.

Mr. Radkowsky said basically the footprint is what Lake Lucerne required which is 20' from the right-of-way and 10' from the property line and it fit in. He said it is not much closer than the existing structure to Lakeshore, maybe the screened-in porch is and we have a patio there that is going to take the place of the screened-in porch. He said it may be more visible on the larger site plan and the screened-in porch is the only portion of the structure that is closer to Lakeshore, within several feet.

Ms. Endres said that uncovered porches and steps are permitted encroachments, per Chapter 161 in the current zoning resolution if they are not within 15' of any side or rear lot line nor within 25' of the front lot line.

Mr. Lamanna said the porch is covered.

Mr. Radkowsky said the steps are not covered.

Mr. Lamanna asked what the elevation is going to be to the next lot, is it up hill or downhill.

Mr. Radkowsky said it is low but we are going to pick the house up slightly to keep it level. He said the neighbor's house is higher by about 18", maybe 2' above our finished floor, the one to the west. He said the neighbor to the north is probably 5' above our finished floor.

Mr. Gutoskey said this might be the right spot if you look at how the three houses stack up. He said it looks like the architect took that into consideration and it looks like the house is rotated with the intersection.

Mr. Radkowsky stated that it is, it is more rotated with the other houses, it was tipped back to face the lake to get a much better view of the lake, pretty much parallel to the one to the west.

The board discussed the elevations of the proposed house.

Mr. Lamanna asked where all of the drainage will go.

Mr. Radkowsky said the same place it goes now, right to the south, the ditches drain across into the lake, everything comes down and goes around the house which it does now and most of it will go to the west between the two houses and that is what it does now, it comes right between the two houses along the fence line and then half of the lot probably drains to the east where there is another ditch that comes underneath the existing driveway into a 12" culvert and then right at the little curve at the bottom is pretty much the culvert that goes across and then eventually drains into the lake.

Mr. Lamanna asked what the existing lot coverage is.

Mr. Savage said the new lot coverage is something like 32%.

Mr. Lamanna said the old lot coverage looks like it is probably 20% - 24%. He said you are adding a lot of lot coverage here and also pinching off the area where water can get between the two houses which is quite a bit less than it used to be and his concern is that we could create some drainage problems here with all of the additional run-off.

Mr. Gutoskey asked how the downspouts will be handled and will they be piped to the ditch. He said what he thinks Mr. Lamanna's concern is are you going to pipe the downspouts to the ditch in the front.

Mr. Radkowsky said yes, everything will be connected.

Mr. Savage said actually that will improve what exists there now and what is being used now is just old clay tile that isn't as efficient so they are paying careful attention to that to make sure they pay attention to water drainage.

Mr. Lamanna said what we don't want is all of the drainage that used to be going alongside your house now ends up going down along your neighbor's house because you built your house all the way over to the edge.

Mr. Radkowsky said that won't happen.

Mr. Lamanna said you can say it won't happen but.

Mr. Gutoskey said they may have to put a swale to the north of the house and just intersect that drain and bring it out to the street just north of the garage and then there will be hardly any drainage between the houses.

Mr. Lamanna asked if they will have to do a soil and water plan for this.

Ms. Endres said when a hearing is involved she doesn't send them there first just in case there is a site plan change but they will have to get a sediment control plan before she issues the permit.

Mr. Lamanna asked if they will be looking at those kinds of issues as to whether or not they are interfering.

Ms. Endres replied yes.

Mr. Gutoskey asked if there will be a topographical plan for the site.

Mr. Savage said yes one was done.

Mr. Gutoskey asked if they have a copy of that.

Mr. Radkowsky said yes but they just got it today and he thinks it is in his car.

Mr. Lamanna said people put stuff in and the next thing you know they have effectively redirected the run-off to their neighbor's property and they come in screaming at the board as to why we let them build it in the first place.

Mr. Gutoskey said these are smaller lots in Lake Lucerne versus with a three or five acre lot you would have a place to put it.

Mr. Savage said they do have an electronic copy if they are able to link to his email, it was forwarded to them yesterday.

Mr. Lamanna said his concern is given what we are doing here, we are pushing it on terms of lot coverage and spacing between the houses.

Mr. Savage referred to a topo and explained the drainage for the proposed structure and where the water will be flowing.

Mr. Lewis questioned the 6' landscape wall because a dam will be created.

Mr. Gutoskey said that is going to be a problem with the swale.

Mr. Lewis said in the front of the house along Lakeshore on the left side on the property line the 6' landscape wall, you will have a dam.

Mr. Gutoskey said you only have 4' to try to get a swale in there. He said the worst thing would happen is the water would go in your house but looking at the way the contours are it won't get into the other house.

Mr. Lamanna asked what the lot coverage is on the other new house.

Ms. Endres it is roughly 6,000 – 6,300 sq. ft. and is .38 acres, under one-half acre.

Mr. Gutoskey said 38% lot coverage.

Mr. Savage said he doesn't know the accuracy of that because there are a lot of variations on the properties in Lake Lucerne.

Ms. Endres pulled the Board of Zoning Appeals meeting minutes from the file for the newer house on the street.

The board reviewed the minutes and noted that a variance of 40% was granted for the lot coverage.

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

Motion BZA 2015-2 – 8466 Lakeshore Drive

Mr. Lamanna made a motion to grant the following variances for the purposes of constructing a house in accordance to the plans submitted with the application.

1. A variance to the maximum lot coverage from 10% to 32% for a variance of 22%.
2. A variance to the minimum front yard setback to 70' on the Lakeshore Drive right-of-way side and 22.8' on the Eastview Drive right-of-way.
3. A variance to the minimum rear yard setback to 43.32' from 90'.
4. A variance to the minimum side yard setback to 10.03' from 50'.

Based on the following findings of fact:

1. There is a practical difficulty because of the small size of the existing lot.
2. The setback for the side yards and rear yards are consistent with what has been permitted in Lake Lucerne.
3. The front yard on the one side, because of the lot, width has a practical difficulty because there would not be buildable room left on the lot if the full setback requirement of 100' was maintained.
4. The setbacks match other houses in the area so it will not from that standpoint adversely affect the neighboring properties.
5. The lot coverage is consistent with other lot coverages in the immediate vicinity and has been approved by the Lake Lucerne Architectural Review Board.

With the following condition:

1. In order to prevent this from having an adverse impact upon the neighboring properties the applicant is required to assure that their reconstruction and the final property contours are such that the run-off through the property is not diverted onto the neighboring property or adversely affect the neighboring property.

Mr. Gutoskey seconded the motion.

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

Application 2015-5 by Stephen Ciciretto, AIA, Architect for Robert and MaryAnne Klank for property at 8460 Lucerne Drive

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

Mrs. Maryanne Klank, property owner and Mr. Steve Ciciretto, architect were present to represent this application.

Mr. Ciciretto testified that this addition is 330 sq. ft.

Mrs. Klank testified that they are not tearing down the house.

Mr. Ciciretto said that this house is a little different situation because it is set pretty far back off of Lucerne Drive to the north and basically it is a small kitchen addition and a screen porch so they are looking for a variance for lot coverage and it totals out at 28%. He said the new addition and the porch is 330 sq. ft. so it is pretty small. He said the kitchen addition is actually built over an existing deck so they are taking away some of the deck, the screen porch is over a grass area so you won't see it from the street and you can hardly see the house from the east and the house to the east is right on the edge of the banks of the ravine so they won't have any vision of it from there. He said the front porch will have a little curb appeal with the extension.

Mr. Lewis asked if this requires Lake Lucerne ARB.

Mr. Ciciretto said explained that it is not consistent. He said the ARB standards say that you have to get variances etc. taken care of first and technically they are supposed to come here first so it is consistent with the ARB guidelines and under their lot coverage and under their setbacks. He said they haven't gotten any closer to the side yards and rear yard and added that the stone patio is already there.

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

Motion BZA 2015-5 – 8460 Lucerne Drive

Mr. Lamanna made a motion to grant the applicant the following variances for the purposes of adding some small additions to the house and to cover a currently non-permitted deck and patio.

1. A variance to the maximum lot coverage of 10% to 28% for a variance of 18%.
2. A variance to the minimum required side yards of 50' to 10' 4" and 14'.

Based on the following findings of fact:

1. A practical difficulty exists because of the existing lot size.
2. It would be impossible to build within the side yard setback requirements or the lot coverage requirements.
3. This is a relatively small addition to the existing house.
4. It is also consistent with the neighboring properties and will not adversely affect the character of the neighborhood.
5. The other lot coverages are very similar to this.
6. The board also notes that all of the additions are being made within the confines of the existing shoulders of the house so it will not give the appearance of a larger structure.

Mr. Lewis seconded the motion.

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

Application 2015-1 by South Franklin Circle for property at 16575 South Franklin Street

The applicant is requesting a review and renewal of a conditional use permit for an existing retirement community. The property is located in a R-3A District.

Mr. Bill Fehrenbach was present to represent this application.

Mr. Fehrenbach testified that he is the Vice President of South Franklin Circle, representing S. Franklin Circle tonight. He said they are asking for a review and renewal of their conditional use permit. He said he was a consultant in the beginning, putting the team together to design the building and now he is running it, he was the owner's representative and the project manager for Judson. He said when they went into construction and half-way through the construction they decided to offer to hire him and finish the project from inside the company.

Mr. Lewis said so you were there for the original approvals and all of the conditions.

Mr. Fehrenbach replied yes, every one of them.

Mr. Lewis said it is good that you have familiarity.

Mr. Fehrenbach said he still has the scars. He said the total from start to finish to get the zoning permit it was probably three years of work.

Mr. Lamanna asked the Ms. Endres to report on any open issues there might be with S. Franklin Circle.

Ms. Endres said she has not had any written complaints on S. Franklin Circle but there have been questions over the years regarding the use of the restaurant and the use of the swimming pool as it pertains to the original conditions under which the development was approved. She said she has been there and there is a restaurant there and she understands that it is open to the public not just to the Judson residents, and the swimming pool, she understands is open to the general public at certain times also. She said that Mr. Fehrenbach can explain their uses and the board can go through the conditions in which they are operating just to verify that the spirit and intent in which they were implemented are still being carried out.

Mr. Fehrenbach said with regards to the restaurant we do use the restaurant and it was talked about being open to the public for the purposes of marketing and showing off our community. He said they use the restaurant for primarily the members, the residents who live there are referred to as members, they invite guests, they invite the family and those people come back periodically on their own which we encourage to come in and experience the community and to get to know it. He said as a practical matter they may get four or five people a day who eat at the restaurant or the bistro that are not actually living there but most of those people are guests or relatives of the members who live there. He said also, especially in the breakfast and lunch portion of that they are people who come in who are community members to our wellness facility which is the swimming pool and the workout facility. He said this was pursuant to their development agreement that we could use this again as a marketing technique to offer their wellness areas for older adults who are contemplating a move to S. Franklin Circle or another retirement community in general, hopefully theirs, to come in and to experience what they talk about on being their mission and that is to keep people physically, mentally and emotionally more active and more engaged so again to offer it as another reason why moving to S. Franklin Circle is an attractive alternative. He said they have roughly in their community members, is what they call people who use the facility, that is just the fitness facility, they have 135 members on their roster, 59 of those are Bainbridge residents or 44% of those are Bainbridge residents and they are offered a 25% discount off the \$70 a month fee that they charge to use the pool so that is \$52 per month that Bainbridge residents pay for that. He said their development agreement says that on average daily they can't have 100 people using the facility in this way but he can assure the board that they have never even approached 100 people, their swimming pool doesn't hold that many nor does the fitness center so they are never in jeopardy of pushing the limits of that. He said also 97 of those people are on a different tier in that they can only use the facility after 11:00 so the mornings are preferred times for their members to use it so it is never a situation where they are over-run and have a big traffic problem with too many people coming onto the property which is he believes is the spirit in which that prescription was put.

Mr. Lewis asked if this is a general membership that anybody can buy.

Mr. Fehrenbach said anyone over 18 years of age, they don't offer families and their purpose is to attract older adults who are over 18. He said they have a couple of people that they had to make an accommodation for and some people who wanted to have a family membership and bring their kids, teenagers etc. and we said that can't work, we don't want that to happen so we have a couple of people who have older grandchildren that live with them in the community and they have a separate membership and they are 18.

Mr. Lewis said but they are residents, it is not a non-resident.

Mr. Fehrenbach said a non-resident could be 18 years of age.

Mr. Lewis said so his kid could buy a membership tomorrow.

Mr. Fehrenbach replied yes.

Mr. Lewis said he is trying to understand how that supplements and lures residency there as a marketing aid to attract seniors to be there, it is a rec center format.

Mr. Lamanna asked how many residents live at S. Franklin Circle now.

Mr. Fehrenbach said he believes 225 people, they have 170 plus units.

Mr. Lamanna said and you have 135 swim members. He said it is a pretty high percentage even considering the fact that of the 225, being generous, maybe 150 actually use it.

Mr. Fehrenbach said he doesn't have that statistic of how many of their members use it.

Ms. Endres said page two of the settlement agreement goes over it.

Mr. Gutoskey said it says all resident and non-resident members shall be required to have a signed physician authorization form to enroll in any health or wellness program.

Ms. Endres said that is a little different than what the board originally approved.

Mr. Fehrenbach asked doesn't the development agreement supersede the settlement agreement.

Ms. Endres replied yes. She said it is in paragraph 7.5, on page six and it is an amendment to something previously attached and amended to read as follows: “Judson may conduct a health and wellness program to be designed for both residents and older people in the surrounding communities who may have health needs similar to Judson residents. All resident and non-resident members shall be required to have a signed physician authorization form before enrolling in any health and wellness program. The focus of the program shall be on the health maintenance, chronic disease management, special therapeutic needs of the older individuals and shall promote functional independence. The facilities and equipment for the program shall be geared for the special group identified above. The pool, for example, shall be a therapeutic, warm-water pool. The equipment is designed to be user-friendly and appropriate for older persons. The staff shall be specially trained to work with this special older group. Judson will provide to residents of Bainbridge who qualify for the program a twenty-five percent (25%) discount membership fee. The average daily number of non-resident participants shall not exceed 100 once the campus is fully developed and occupied.” She said that is still in effect, she does not think there is anything after that that supersedes it.

Mr. Lamanna said he thinks the idea was, from his recollection, that this was kind of a specialized facility not a sort of general pool and workout facility.

Mr. Fehrenbach said that is how it is used. He said the people who apply to become a wellness member have to go through and submit their application to our wellness vice president who reviews that with them and sees that they have a need or desire to and some of them or a lot of them have surgery and want to come in because it is a warm water pool and the equipment is specially designed for older adults or people who are going through rehab because their wellness staff works with people who are coming out of therapy and want to do continuing work so it is a huge minority, he thinks they have two or three people who are younger than 50 years old and that is because they have a relationship with another member and it is convenient for them and they want to be together and work out, swim etc. He said they don't swim laps, the pool is too hot for that, it is not a community pool, it is not a comfortable place to swim if you are a very aggressive lap swimmer because you would get overheated so it is used for the spirit for what it was intended and that is either you have an active disease or an ailment that you are seeking relief from or you get into their wellness system to stay out of that situation and remain healthy so it is still an attractive thing for them to demonstrate their mission to stay healthy and live longer and that is what the purpose of this is.

Mr. Lewis said so a membership for a youth could not be granted unless they can demonstrate a medical reason for you to allow them.

Mr. Fehrenbach said yes or have a relationship with someone else who is applying for the same reason. He said many times these younger people drive the older person to it and they just come to work out and be with them, it is a very small number of people who do not fit that older adult classification.

Mr. Lewis asked if they are advertising memberships.

Mr. Fehrenbach said no, right now they are discouraging memberships because it is complicating the members who want to use it and they are filling up so they haven't gotten a new member in quite some time so he is hoping some attrition happens so they are not taking any new applications. He said with that being said, if someone puts a deposit down on a unit and wants to be a member he would make an exception for that and grant them until they move in in six months if they want to use the fitness facility and they make a deposit on an apartment or a home he would do that.

Mr. Lamanna said the board wouldn't have a problem with that. He said the way it is described it sounds like it is consistent with what the board's intent was that this facility is there first primarily for the residents and secondly obviously if you want to use it as a marketing tool and you have people who are interested in moving into the facility. He said what the board is concerned about is this becoming an unrelated commercial enterprise but it sounds to him that if there is only 100 people per day and if there are only 135 members it is highly unlikely that 100 people would show up on a single day.

Mr. Fehrenbach said that would be impossible and they would not have a good experience and to your point, the spirit that you want to protect is in their best interest too because if it turns into something that is another enterprise, he will have a lot of unhappy members who have invested in the place and so it is not to their self-interest to populate this with people who don't live there.

Mr. Lamanna asked what is the full capacity.

Mr. Fehrenbach said they have 199 independent living units and they have sold 131 of those, they have 40 assisted living and those are all full so he expects that when they are at full capacity they will approach somewhere in the vicinity of 275 – 280 people. He said the velocity of converting these 135 people into residents is happening with a little more rapidity, things are filling up and these people have experienced this wonderful facility and have said yes, they really do like it and have literally dipped their toe into this and they like it.

Mr. Lamanna said so you are getting people who are non-resident members who are becoming residents.

Mr. Fehrenbach replied yes so it is having an effect.

Ms. Endres said she wasn't here when all of this started and asked if there are three phases of development.

Mr. Fehrenbach said two, the second phase is on a master plan that was submitted here and what you see on that photograph is Phase I, the only thing in Phase II is building #9, #10 and six townhouses that probably never will be built and all of the electrical, sewer, gas and water is in place underneath the ground, Phase II would only be digging the holes and building the buildings.

Ms. Endres said she sees in the minutes from the April 21, 2005 hearing they talked about traffic studies and asked if that is all done already.

Mr. Fehrenbach said no they would have to submit another traffic study as he understands it to monitor how traffic is behaving with the first Phase so the board is comfortable with an additional seventy some units that would be built.

Mr. Norman Schultz of 7440 Chagrin Road asked what the temperature of the pool is.

Mr. Fehrenbach said is 87.5 degrees.

Mr. Lewis asked if we can talk about the restaurant a little bit.

Mr. Fehrenbach said sure.

Mr. Lewis said the restaurant is for the residents, the guests of the residents and a little bit from time to time to encourage people to use it so you can showcase your property which you would think would be people coming to it that would be eligible to be residents.

Mr. Fehrenbach said correct.

Mr. Lewis said he is hearing there is print advertising from time to time on this restaurant.

Mr. Fehrenbach said that is true.

Mr. Lewis said which seems to be pretty broad, it is like there is no hook, there is no 50 and over, you have got to go on the tour, it is being advertised just like any other restaurant in Northeast Ohio and he was on the board when it was put through and very much like the pool it was a spirit of that, it was never meant to be general restaurant to service Northeast Ohio so he is thinking that it might have extended the bounds in which this board was really granting and going into the agreement with that portion of it.

Mr. Lamanna said the wellness center is one thing because it is specialized and people have to make a commitment to become a member and it is a lot easier to control what is going on because of that but here with a restaurant you have people coming in and out and obviously the residents come and the residents bring guests, we don't care about that, if people come and want to look at the facility, people are legitimately there to view the facility and that is sort of an ancillary thing. He said he thinks the problem comes with the advertising, if the restaurant is being advertised or promoted as a separate operation in any way that gives us heartburn. He said an occasional person may walk in off the street or hears about it from somebody or a resident says you ought to try the restaurant and they wander in because they heard about it word of mouth from one of the residents, okay, we aren't going to be overly anal about that sort of incidental occurrence but if it starts showing up with advertisements in the Chagrin Valley Times then stories are starting to be written about it, now we are kind of getting out of where we want to be on this. He said now we have gone beyond what the reasonable envelope is and it is starting to look like a separate commercial enterprise at that point in time. He said he thinks that is where the board has a little bit of a struggle over this.

Mr. Fehrenbach said the reason it probably is giving you heartburn is you are analyzing South Franklin Circle as if it was a normal and regular retirement community and from the very inception of South Franklin Circle we made it our business to design and execute this as not your grandmother's retirement community and part of that was as a demonstration that they wanted to dispel the myth that you are moving into a retirement community and isolating yourself and that there is nothing normal about it, it is insular, it is protected and it is a care model of living and we were very interested in making sure that our perspective members view this as a freedom model and gains control by moving to a place like this and it looks and feels and acts like the rest of the world, it just has a different flavor and has a level of security in it that is not available if you are living out in a single family home in the rest of the world so in order to support that we think that it is important to demonstrate that this is as good a restaurant that you will find anywhere else, it is a normal place to eat that is intergenerational, lots of different people eat in this restaurant just like out in the real world so it is very important to their mission that they be able to demonstrate that in every level and facet of what they do. He said that is the explanation of what we do and we are not going to split hairs and we are not going to kick sand in the face of the zoning people.

Mr. Lamanna said he would agree from a model, that is great idea and he thinks it is a very sensible thing to do and a nice goal to strive for but the problem is you run up against what we have to enforce which is the zoning code and it is built in a certain residential district and therefore that constrains to a certain extent some of the things that can happen there. He said that is why we are saying we are willing to be reasonable about this in terms and at least so far we don't see evidence of a problem now and we don't want to see it creeping, with a restaurant and then a shop and the next thing you know there are five or six things there, so if we are willing to cut some slack on the restaurant we would allow an expansion of other retail or service type operations such as a hair salon or spa, we don't want to see a mission creep and have more and more of these types of services/facilities coming in and then opening up to the outside as well.

Ms. Endres asked Mr. Fehrenbach if there is a hair salon for the residents.

Mr. Fehrenbach said yes there is a room where they cut their hair and whatever.

Ms. Endres said that is a service to its residents but it is not advertised.

Mr. Fehrenbach said yes, it is true, he knows that there are some employees that have their hair cut there.

Mr. Lamanna said he is not worried about employees or if they have dinner at the restaurant, they are already there.

Mr. Lewis said he has a problem with promoting the restaurant to non-eligible potential residents because now it just becomes a business being marketed to the community as a restaurant and it actually jumps outside of the scope of your vision. He said from his point of view he would like to see it get toned down a little bit and if you are going to your database for your seniors and you have a newsletter and you are running things okay, but my twenty-two year old kid is not eligible and neither is his date, that is how he looks at it.

Mr. Lamanna said if people come in on word of mouth or that sort of thing he doesn't think you have to turn them away but he thinks where the board would draw the line is actively promoting it to the public generally. He said if you don't do that, the board is not going to have a problem but once it starts showing up in the Chagrin Valley Times or whatever else, that is where we have to draw the line. He said he wants something that we can easily understand what the boundary line is, it is not complicated, it is not hard to enforce, it is a very clear understanding, this is okay, this is not okay and this has a nice bright line test, we see advertising showing up, they are easy to spot and very easy to know you shouldn't have done this. He said it doesn't require a lot of effort on the part of the zoning inspector to keep track of what is going on.

Mr. Norman Schultz of 7440 Chagrin Road asked how they got permission to put the sign up on Chagrin Road.

Mr. Fehrenbach asked where Rocker and Chagrin is.

Mr. Schultz testified that they put a sign up there on the corner of that road plus there are lights on it in a residential neighborhood and you can't have light on a sign in a residential neighborhood.

Mr. Fehrenbach said the sign and location was part of their submitted package.

Mr. Lamanna said so the sign has been there since.

Mr. Schultz said no, not from the beginning but it has been there for a while.

Mr. Lewis said the access drive began as a construction access drive and it evolved into connecting Rocker out to Chagrin Road so it served a dual role but the initial part was a service road.

Mr. Fehrenbach said when the Rocker extension was dedicated that sign was up and when the county took the road over.

Mr. Lamanna asked if anybody complained about the sign.

Mr. Schultz said it is in a residential neighborhood and he lives right there.

Mr. Lamanna asked if the lights bother him.

Mr. Schultz said it doesn't belong there, it is the law of the township, if he has to follow the law, then they have to follow the law.

Mr. Lamanna said maybe they got a variance for it. He said when people are driving down the road at night, we want people to be able to see it to avoid accidents.

Mr. Lewis asked Mr. Schultz if he is talking about a business sign.

Mr. Schultz said it is a Judson sign.

Mr. Lewis said he will have to look back to see what was agreed to as far as an entry sign there.

Mr. Schultz said the sign is not that old and it has a brick bottom.

Mr. Lewis asked if it is illuminated.

Mr. Fehrenbach said they put some solar lights on it after the fact.

Mr. Gutoskey asked if there is a street light at that location.

Mr. Fehrenbach said no and his members have said they can't see the intersection.

Mr. Lamanna said it is a conditionally permitted use sign so they are permitted to have illumination on their sign. He referred to the zoning code and said it is a permanent sign for an entranceway to a residential subdivision and it is a conditionally permitted use, for example, churches can have illuminated signs. He said every intersection in the township is illuminated.

Mr. Lewis said he has a question on economics, is your organization current with the monies to Bainbridge Township every year.

Mr. Fehrenbach said yes, to his knowledge it is.

Mr. Lamanna said the only issue is with the restaurant and the board would like it not to be generally advertised but otherwise in terms of the way it is being used, members and their guests and people coming to legitimately look at and for the random sole who wanders in there by a word of mouth recommendation, the board is not going to worry about it. He said as far as he has seen there is not a traffic problem around there, there are not a lot of extra cars coming in there that are creating a lot of extra traffic in the area, at least in his journeys around through there it doesn't seem like there is a significant increase.

Ms. Endres said she was given a very nice tour and there were a couple of people dining.

Ms. Maren Wolf of 7428 Chagrin Road testified that the advertisements are in the Plain Dealer every week and it is competing with the other restaurants, it is a profit making entity.

Mr. Lewis said we appreciate you validating our observation.

Ms. Endres asked if the traffic study was ever done, there is a provision from the 2005 hearing regarding a traffic study once Phase II was 18 months into it.

Mr. Lamanna said at this point in time there is not a traffic issue, maybe when we go to the next phase though.

Mr. Fehrenbach said there was another condition from Bainbridge Township is that the residents were given an opportunity to work at South Franklin Circle and just wanted to add to the record that they have 85 full-time equivalent employees at South Franklin Circle and 21 of them are from Bainbridge.

Mr. Lamanna said he could say overall he thinks this has been an asset to the community and makes a nice presentation and as far as he heard he just really hasn't seen any significant complaints about any of the operations in his travels in the area.

Ms. Endres asked Mr. Fehrenbach if he has any idea when the next phase will start.

Mr. Fehrenbach said with their current philosophy, with their agreement with their lender, they can't pull the drawings out of the drawer until they are able to sustain 85% and at their current philosophy they expect that to be in two years.

Ms. Endres asked the board, when that time comes, do they need to come back for a review.

Mr. Lamanna said yes it is a modification of the conditional use.

Mr. Lewis said he thinks at that point it activates the requirement for a current traffic study, we have a catalyst in place.

Mr. Fehrenbach asked if this renewal is good for five years.

Mr. Lamanna replied yes unless you go into Phase II.

Mr. Fehrenbach said the practical matter is Phase II is probably going to have to be modified, the market has told us that we have learned a lot in these years so there are going to have to be some changes that have to be made so he knows for sure they will be coming back to the board.

Mr. Lamanna said this is approved for five years and once we start Phase II, we can roll the whole thing over and start the clock again. He said if you are in here doing a major change, we might as do a total review then.

Ms. Endres said she just wanted to make sure everyone was on the same page regarding the renewals.

Mr. Fehrenbach said it is five years unless there is a significant change.

Ms. Endres said yes unless you break ground for Phase II.

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

Motion BZA 2015-1 – 16575 South Franklin Street (South Franklin Circle)

Mr. Lamanna made a motion to grant an extension to the conditional use permit for South Franklin Circle for a period of five years commencing upon this decision becoming final. The existing conditions on the property will continue for that period.

With the following clarification:

1. With respect to the restaurant being operated on the facility and to be consistent with the spirit of the original conditions there will not be any general public advertising of that restaurant in the newspapers, media and other similar areas.

Based on the following findings of fact:

1. The applicant has operated generally in accordance with the previous conditions and continues to satisfy the requirements for having a conditional use for its stated purpose.

Mr. DeWater seconded the motion.

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

Since there was no further testimony, the public hearing was closed at 9:30 P.M.

Respectfully submitted,

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

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

Date: _____

AUDIO RECORDING ON FILE

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

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 9:30 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Ted DeWater; Mr. Joseph Gutoskey and Mr. Todd Lewis. Mr. Mark Murphy was absent. Ms. Karen Endres, Zoning Inspector was present.

Minutes

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

Mr. Lamanna seconded the motion.

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

Organizational Session

Election of Chairman

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

Mr. Gutoskey seconded the motion.

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

Election of Vice Chairman

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

Mr. DeWater seconded the motion.

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

Sunshine Law

Mr. Gutoskey made a motion to adopt the Ohio Sunshine law (ORC).

Mr. DeWater seconded the motion.

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

Meeting Schedule

Mr. DeWater 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 its motion.

Mr. Lewis seconded the motion.

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

Zoning Secretary

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

Mr. Gutoskey seconded the motion.

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

By-Laws

Mr. Lewis made a motion to adopt the Bainbridge Township Board of Zoning Appeals By-Laws and Procedures, effective January 18, 2007 and amended on January 15, 2009.

Mr. DeWater seconded the motion.

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

Applications for Next Month

None.

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

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

Date: _____