

Bainbridge Township, Ohio  
Board of Zoning Appeals  
February 28, 2001

Pursuant to notice by publication and certified mail, a special public hearing was called to order at 7:34 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. John Kolesar, Mr. Todd Lewis, Mrs. Ellen Stanton and Mr. Donald Takacs. The following matters were then heard:

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

Mr. Lamanna stated that this meeting is being held in an attempt to consider a larger number of applicants on the docket this month.

The board was in agreement to hear the non-Heritage related applications first.

Application 2001-5 by Chagrin Falls Park Community Center for property at 16765 Bedford Street

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

The zoning inspector's letter dated January 12, 2001 was read and photos of the site were submitted.

Ms. Deanna Fairchild of Chagrin Falls Park Community Development and Mr. Mike Miller of Cook Paving were present to represent this application.

Ms. Fairchild testified that this is a continuance from the February 15, 2001 meeting and that they re-submitted the site plan.

Mr. Miller showed the board the parcels in question on a tax map from the Geauga County Auditor's Office and testified that a fifth lot has been added for 100' of frontage. He explained the railroad easement (Metroparks Trail) and said they are working on acquiring more lots. He said that the map shows delinquencies and said they positioned the house on the lot the best they could. He stated that it will end up with a real nice backyard.

Mr. Lamanna asked what will be behind the house.

Mr. Miller said they will never be able to acquire any land from the Metroparks.

Mr. Lamanna said a park could go in that area.

Mr. Miller submitted a revised site plan.

Mr. Lamanna said that everything looked consistent.

The board reviewed the variances requested.

Mr. Lamanna asked about the overall height.

The board discussed the proposed height which is 35'.

Ms. Fairchild said it is higher because of the bonus room.

Mr. Lewis asked if the bonus room will be built.

Ms. Fairchild said they are considering it, but not sure.

Mr. Lamanna said this could dwarf a smaller house with a smaller side yard.

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

#### Motion BZA 2001-5 - 16765 Bedford Street

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

1. A variance from maximum lot coverage of 10% to 30.1% for a variance of 20.1%.
2. A variance from the required front yard setback of 100' to 15' for a variance of 85'.
3. A variance from the required side yard setbacks (on each side) of 50' to 15' for a variance of 35'.
4. A variance from the required rear yard setback of 90' to 32.5' for a variance of 57.5'.

Based on the following findings of fact:

1. The structure is being built on five pre-existing lots of record.
2. The setbacks being provided are consistent with those currently existing in the Chagrin Falls Park area and surrounding this property and therefore they would not have an adverse affect on the neighborhood.
3. Without these variances, it would not be possible to build a structure on this property.

Mr. Takacs seconded the motion.

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

Application 2001-7 by Richard Backos for property at 19045 Riverview Drive

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

The zoning inspector's letter dated February 21, 2001 was read and photos of the site were submitted.

Mr. Richard Backos, homeowner, testified that he built the carport there because there was no other place to put it since the garage is 20' from the property line.

Mr. Lamanna asked how he came to this situation.

Mr. Backos said that his truck would not fit in his garage.

Mr. Lewis said it looks like the drive is paved up to it and asked what type of construction was used.

Mr. Backos said he used four by fours.

Mr. Takacs asked what was in front of it.

Mr. Backos said a fence is in front.

Mr. Lamanna said it is not a very attractive looking structure.

Mr. Backos said it does not bother the neighbor.

Mr. Lewis asked if the neighbor was present.

Mr. Backos replied no.

Mr. Takacs asked Mr. Backos how long he has lived there.

Mr. Backos replied since 1985.

Mr. Lewis asked if the house sits all the way to the back of the lot.

Mr. Backos said no, his property goes all the way to Haskins Road.

Mr. Kolesar asked if there were photos showing how close this structure is to the neighbor's property.

Mr. Backos replied no but said the house sits 120' from the road and the driveway is on the right of the house. He said his neighbor's lot is like a pie, more narrow at one end.

Mr. Lamanna asked if the garage was modifiable.

Mr. Backos replied no, it would cost more money.

Mr. Lamanna said that cost is not to justify granting a variance.

The board discussed the variance request.

Mr. Lamanna explained that this structure is encroaching in the side yard and front yard setbacks. He continued by explaining that the house can be extended forward, but a separate structure cannot be built in front of the house.

Mr. Kolesar asked Mr. Backos what prompted him to come to the board.

Mr. Backos said he received a certified letter.

Mr. Joe Orłowski, Assistant Zoning Inspector testified that it was a drive-by inspection.

The board discussed the possibility of Mr. Backos relocating the structure to the rear of the property within the existing side yard of his house as an option with a variance granted from the 50' side yard requirement.

Mr. Lamanna said the application could be modified.

Mr. Kolesar asked Mr. Backos if the existing carport came down, if he would have room to park his truck in that space.

Mr. Backos replied yes.

Mr. Lamanna asked Mr. Backos if he was interested in doing that.

Mr. Backos said he did not know.

Mr. Lamanna asked Mr. Backos if he would want to withdraw his application.

Mr. Backos replied yes.

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

Motion BZA 2001-7 - 19045 Riverview Drive

Mr. Lamanna made a motion to accept the applicant's withdrawal of his application for a variance for this property.

Mr. Takacs seconded the motion.

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

Application 2001-8 by Stephen Fugedy for property at 7060 Country Lane

The applicant is requesting area variances for the purpose of constructing a new residential single family dwelling. The property is located in a R-5A District.

The zoning inspector's letter dated February 21, 2001 was read and photos of the site were submitted.

Mr. Lamanna stated that the applicant is requesting a side yard variance of 20'.

Mr. Stephen Fugedy presented a large color coded drawing of his property and proposed house and testified that he bought the property six or seven years ago and it had a two car garage that was falling over and at that time he had the intention of adding onto the old house so he built a garage on the existing foundation. He said he found the house was worthless so it will be torn down. He said he had new plans drawn up and it would be awkward to move the driveway over because of a slope on the property.

The board reviewed the variance request.

Mr. Lamanna said that the plans show 65' on one side and 30' on the other.

Mr. Kolesar asked if he was proposing to take the house down and leave the garage.

Mr. Fugedy replied yes.

Mr. Lamanna said that the driveway is 18' wide.

Mr. Fugedy said with a 16' driveway, barely two cars can be parked and there is no parking

allowed on the street.

Mr. Takacs asked what would happen if the house was moved over.

Mr. Fugedy said it is convenient to pull a car up and go into the side of the house.

The board viewed photos of the site.

Mr. Lamanna said that a 10' jog could be put in the drive and the house could be moved over.

Mr. Fugedy said that seems like too drastic of a turn looking from the street.

Mr. Lewis said that 55' is almost two car lengths.

Mr. Lamanna explained the setbacks permitted and referred to setbacks on Franklin Street.

Mr. Fugedy said he has a sidewalk proposed for the front of the house that could be eliminated.

Mr. Lamanna said if the house were moved over, there would be 45' on one side and 55' on the other side.

Mrs. Stanton said the driveway could be narrowed from 18' wide to 16'.

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

#### Motion BZA 2001-8 - 7060 Country Lane

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

1. A variance from the side yard setback requirements of 50' to 40' for a variance of 10' so the house will be 40' off the side yard rather than the 30' as shown on the applicant's drawing.

Based on the following findings of fact:

1. This is only a 150' wide lot, so it would be extremely difficult for the applicant to maintain a 50' setback on both sides of this property.
2. With maintaining 40' off of the property line of the adjacent lot, it would not adversely affect the adjacent property owner at the time a structure is built on that lot.

Mr. Takacs seconded the motion.

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

Application 2001-9 by Kevin Heisey for property at 18777 Brewster Road

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

The zoning inspector's letter dated February 21, 2001 was read and photos of the site were submitted.

Mr. Kevin Heisey testified that when he started to build the garden shed, he researched to see if he needed a building permit but said he did not know that he needed a zoning permit. He said he tried to tuck the shed into the existing trees and said it sits 30' from the property line. He continued by saying that it would be a hardship to move the shed because he would have to remove existing trees and a swing set. He said it is not on a permanent concrete foundation and if he were to move it, he would lose a nice size tree and he would have to move the swing set.

Mr. Lewis asked how far it is from the swing set.

Mr. Heisey said it is about 4' and showed a photo of the placement and the existing swing set. He said it is more than a shed, it has a porch and will be stained green to match the house.

The board reviewed the setbacks for the house.

Mr. Takacs said the side yard setback is 63'.

Mr. Heisey said if he moved the shed straight back, it would not be as pleasing as it is tucked in there right now. He said he is not sure if he would have to take out some trees to move it and it is heavier than most sheds because it is custom built.

Mr. Lamanna said it sets back 275' from the street.

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

Mr. Takacs asked about the woodpile in the photo.

Mr. Heisey said that belongs to his neighbor. He added that he measured the pitch of his roof to get the same pitch for the shed.

Mr. Takacs asked if trees were cut down to put up this shed.

Mr. Heisey replied yes, but he tried to minimize it. He showed on the photos the trees he would have to cut down if the shed were moved.

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

Motion BZA 2001-9 - 18777 Brewster Road

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

1. A variance from the required side yard setback of 50' to 30' for a variance of 20'.

Based on the following findings of fact:

1. The applicant cannot easily move an existing shed due to its location in a treed area.
2. The shed is located approximately 275' from the road.
3. It is well behind the area of the neighbor's home by more than 100' and is not easily visible from the neighbor's property.
4. It is located in an area that is wooded on both of the properties and therefore would not have an adverse impact upon the neighborhood or upon the immediate adjacent property owner.

Mr. Takacs seconded the motion.

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

Application 2000-60 by Heritage Development Company aka Bainbridge Land Development, LLC for property located on S. R. 43, south of Pettibone Road and bounded by Lake Avenue to the south (Portage County) and Solon to the west (Cuyahoga County)

The applicant is requesting an area variance for the purpose of creating a lot split (Remaining Open Space With Retail ). The property is located in a CR District.

The applicant is requesting the following variance to Chapter 151.03:

1. A minimum side yard required of 20', providing 0' (building line) for a variance of 20'.

Note: The overall lot coverage does not increase for the originally granted variance.

Application 2000-61 by Heritage Development Company aka Bainbridge Land Development, LLC for property located on S. R. 43, south of Pettibone Road and bounded by Lake Avenue to the south



(Portage County) and Solon to the west (Cuyahoga County)

The applicant is requesting an area variance for the purpose of creating a lot split (Kohl's). The property is located in a CR District.

The applicant is requesting the following variances to Chapter 151.03:

1. Maximum lot coverage permitted = 40%, requesting 70.9% for a variance of 30.9%.
2. A variance from the minimum side yard required of 20', providing 0' (building wall) for a variance of 20'.

Note: The overall lot coverage does not increase for the originally granted variance.

Application 2000-62 by Heritage Development Company aka Bainbridge Land Development, LLC for property located on S. R. 43, south of Pettibone Road and bounded by Lake Avenue to the south (Portage County) and Solon to the west (Cuyahoga County)

The applicant is requesting an area variance for the purpose of creating a lot split (Wal-Mart). The property is located in a CR District.

The applicant is requesting the following variances to Chapter 151.03.

1. Maximum lot coverage permitted = 40%, requesting 91.3% for a variance of 51.3%.
2. A variance from the minimum side yard required of 20', providing 0' (building wall) for a variance of 20'.
3. A variance from minimum rear yard required of 50', providing 0' for a variance of 50'.

Application 2000-63 by Heritage Development Company aka Bainbridge Land Development, LLC for property located on S. R. 43, south of Pettibone Road and bounded by Lake Avenue to the south (Portage County) and Solon to the west (Cuyahoga County)

The applicant is requesting an area variance for the purpose of creating a lot split (Home Depot). The property is located in a CR District.

The applicant is requesting the following variances to Chapter 151.03:

1. Maximum lot coverage permitted = 40%, requesting 84.1% for a variance of 44.1%.
2. A variance from the minimum rear yard required of 50', providing 0' (building line) for a variance of 50'.
3. A variance from the minimum side yard required of 20', providing 0' for a variance of 20'.

Note: The overall square footage of the original plan does not increase for the shopping center.

Application 2000-64 by Heritage Development Company aka Bainbridge Land Development, LLC for property located on S. R. 43, south of Pettibone Road and bounded by Lake Avenue to the south (Portage County) and Solon to the west (Cuyahoga County)

The applicant is requesting an area variance for the purpose of creating a lot split (Out Parcel 1). The property is located in a CR District.

The applicant is no longer requesting this variance.

Application 2000-65 by Heritage Development Company aka Bainbridge Land Development, LLC for property located on S. R. 43, south of Pettibone Road and bounded by Lake Avenue to the south (Portage County) and Solon to the west (Cuyahoga County)

The applicant is requesting an area variance for the purpose of creating a lot split (Out Parcel G). The property is located in a CR District.

The applicant is requesting the following variance to Chapter 151.03:

1. Minimum rear yard required = 50', providing 0' for a variance of 50'.

Note: Concrete pad for pump station only. Can be considered a public utility. No variance therefore is required. Paperwork done for overall lot area only. Overall coverage does not increase from original variance granted.

Application 2000-66 by Heritage Development Company aka Bainbridge Land Development, LLC for property located on S. R. 43, south of Pettibone Road and bounded by Lake Avenue to the south (Portage County) and Solon to the west (Cuyahoga County)

The applicant is requesting an area variance for the purpose of creating a lot split (Out Parcel C). The property is located in a CR District.

The applicant is requesting the following variances to Chapter 151.03:

1. Maximum lot coverage permitted = 40%, requesting 57.9% for a variance of 17.9%.
2. A variance from minimum rear yard required of 50', providing 10' for a variance of 40'.

Note: Overall coverage does not increase from original variance granted.

Application 2000-67 by Heritage Development Company aka Bainbridge Land Development, LLC for property located on S. R. 43, south of Pettibone Road and bounded by Lake Avenue to the south (Portage County) and Solon to the west (Cuyahoga County)

The applicant is requesting an area variance for the purpose of creating a lot split (Out Parcel D). The property is located in a CR District.

The applicant is requesting the following variances to Chapter 151.03:

1. A maximum lot coverage permitted = 40%, requesting 64.7% for a variance of 24.7%.
2. A variance from minimum rear yard required of 50', requesting 2' for a variance of 48'.

Note: Maximum lot coverage for overall project does not increase from original variance granted.

Application 2000-68 by Heritage Development Company aka Bainbridge Land Development, LLC for property located on S. R. 43, south of Pettibone Road and bounded by Lake Avenue to the south (Portage County) and Solon to the west (Cuyahoga County)

The applicant is requesting an area variance for the purpose of creating a lot split (Out Parcel E). The property is located in a CR District.

The applicant is requesting the following variances to Chapter 151.03:

1. A variance from maximum lot coverage permitted = 40%, requesting 66.4% for a variance of 26.4%.
2. A variance from minimum rear yard required of 50', requesting 2' for a variance of 48'.

Note: Overall lot coverage does not increase from original variance granted.

Application 2000-69 by Heritage Development Company aka Bainbridge Land Development, LLC for property located on S. R. 43, south of Pettibone Road and bounded by Lake Avenue to the south (Portage County) and Solon to the west (Cuyahoga County)

The applicant is requesting an area variance for the purpose of creating a lot split (Out Parcel F). The property is located in a CR District.

The applicant is requesting the following variances to Chapter 151.03:

1. A variance from maximum lot coverage permitted = 40%, requesting 65.7% for a variance

of 25.7%.

2. A variance from minimum rear yard required of 50', requesting 10' for a variance of 40'.

Note: Overall lot coverage does not increase from original variance granted.

Mr. Dale Markowitz, Attorney for the applicant and Mr. Alan Bellis were present to represent these applications for Heritage Development Company.

Mr. Lamanna stated that this is a continuous hearing on these applications to subdivide an existing parcel into a multiple number of parcels but they will be considered as a whole and it would not change the original application to construct the proposed development. He continued by saying that the applicant and the Assistant Geauga County Prosecutor, who is legal counsel to the township and board of appeals came up with the deed restrictions to ensure that no individual parcel could make a request to develop on their own instead of as a whole. He said the board arrived today with a document acceptable to each side and the assistant county prosecutor has advised that the document proposed ensures that each parcel is subject to the overall development plan.

Mr. McIntyre took the time to put the agreement on the overhead projector.

Mr. Markowitz testified that the proposal originally submitted was to create separate parcels for tax purposes for the individual tenants. He said there is 127 acres and originally two parcels but wanted to create ten parcels. He said they moved the Home Depot so they picked up three more acres so the lot coverage is down to 46.42% with 66.831 acres of green space. He said there will be five parcels out front and the last parcel will have a lift station for the sanitary sewer with no building but there will be a concrete pad. He said the variances are all related to creating the separate parcels. He continued by saying that the variances are less in number now because two parcels are being combined into one and said the deed restrictions state that we will not enter onto another street without the permission of the township trustees. He continued by explaining the declaration and said it defines the various parcels such as Kohl's, Home Depot and Walmart and said each parcel is subject to the Geauga County Subdivision regulations. He said that the county and township wanted to have the Memorandum of Understanding attached to this document to be recorded and it will be an exhibit to the document.

Mr. Lamanna explained parcel versus property.

Mr. Markowitz said this document gives the township the right to enforce the deed restrictions.

Mr. Lamanna said it is clear that the township will benefit and the township is the beneficiary as well as the property owners.

Mr. Markowitz said that the lot coverage is as defined in the zoning regulations today, so if it ever

changes, this won't change. He explained each section of the deed restrictions, paragraph by paragraph and said it includes all the conditions to the variances, the memorandum of understanding and the revised site plan. He said that no one can construct any improvement that would exceed the lot coverage without approval from the township and said only the declarant can ask for a lot coverage variance. He said if the declarant dissolves, one would need the consent of the other parcel owners if there are any changes in the site plan and they would need approval from Bainbridge Township. He added that no changes can be made to this document without the consent of the township and declarant or the consent of all the parcel owners. He said that no one can sue the township and get a damage claim. He explained that paragraph J in the miscellaneous provisions gives the township power of attorney to re-file these deed restrictions.

Mr. Lamanna publicly thanked Mr. John Tremsyn, Geauga County Assistant Prosecutor for the many hours that he put in working with Mr. Markowitz drafting this document.

Mr. Markowitz said he re-did this document eleven times and every time, Mr. Tremsyn would look at it and find something else.

Mr. Takacs asked how this document would be affected if the township would become a city.

Mr. Markowitz said what ever municipality it would be would have jurisdiction.

Mrs. Stanton asked why they would have to go to the trustees and not the board of appeals.

Mr. Markowitz explained that they don't have power to enter into an agreement with anyone but the trustees and that the board of appeals is the only board that can grant variances.

Mr. Lamanna said that the trustees cannot grant variances, only the board of appeals.

Mr. Takacs asked about the lot coverage.

Mr. Markowitz said they are still entitled to 48% lot coverage even though it has been reduced to 46%.

Mr. Sam Desiderio, Bainbridge Township Trustee referred to paragraph J and asked if there were any measures for the deed restrictions to be automatically filed.

Mr. Lamanna said no, that someone has to actually re-file them.

Mr. James Vaca of Moneta Avenue, Aurora, Ohio and Councilman for the City of Aurora, referred to the egress shown onto Lake Avenue and testified that he wants it put in the deed restrictions that there will be no egress onto Lake Avenue forever and ever.

Mr. Markowitz said it is forever unless they get permission from the township trustees.

Mr. Vaca said he wants to know that there will be no access onto Lake Avenue and California Street forever and ever.

Mr. Desiderio said that would mean an increase in lot coverage and it would require a variance.

Mr. Lamanna said nothing can be added without a variance.

Mr. Markowitz said he had no objection to adding that specifically.

Mr. George Mazzaro of Aurora, Ohio testified that if you look into court records, very few deed restrictions are enforceable and said that 90% are non-enforceable.

Mr. Lamanna asked Mr. Mazzaro where he got those figures from.

Mr. Mazzaro said he got them from current records and said a commitment has been made that you won't be able to control. He said he is concerned that these statements are not totally true and referred to a letter dated October 17, 2000 regarding the 200' buffer around the property.

Mr. Lamanna said he did not have a copy of that letter.

Mr. Markowitz said the buffer zone is that we cannot build within the 200' zone.

Mr. Mazzaro asked if Walmart builds their own buildings.

Mr. Markowitz said they have to comply with the laws.

Ms. Mary Lombardo of Lake Avenue, Aurora, testified that she has a concern about being assured that there will be no access onto Lake Avenue and California Street and asked if they can assure there will be no construction vehicles on Lake Avenue.

Mr. Markowitz said he has no control over that, only the City of Aurora does but he said that Heritage can tell their contractors that only vehicles are allowed on Rt. 43.

Ms. Lombardo said she did not want trucks coming down her street.

Mr. Markowitz said that there is no benefit for a truck to come down Lake Avenue.

Mr. Lamanna said he sympathizes, but that needs to be taken up with Aurora because they have jurisdiction over that road and they can control it.

Mr. Markowitz said that signs can be posted at the construction site not to use Lake Avenue or California Street.

Mr. William Preston of Geauga Lake Road asked why this meeting is being held tonight when they don't have a permit.

Mr. Markowitz said they have a permit.

Mr. Preston asked if they had a permit from the EPA.

Mr. Lamanna explained that the applicant is entitled to apply for the variances but before they can proceed, they must comply with applicable government agencies that have jurisdiction.

Mr. Kolesar asked if this request for lot splits is part of the memorandum of understanding.

Mr. Markowitz explained that the memorandum of understanding will be incorporated into the deed restrictions to be filed at the Geauga County Recorder's Office.

Mr. Takacs asked about the lot splits requiring frontage on the road.

Mr. Markowitz said that each lot must have individual frontages.

Mr. William Hershey of Lake Avenue, Aurora asked if there will still be a sound barrier.

Mr. Markowitz replied yes.

Mr. Bellis said they have to come back for the final landscape approval.

Mr. Vaca said that since the township has control over the landscape, he suggested that a barrier like the ones on the freeways be used instead of a mound because a mound will take out a lot of the trees.

Mr. Markowitz said that the people who have to look at it would rather have mounds.

Mr. Vaca said there are only 35' of trees left and the mounds will go where the trees are because you cannot put them under the power lines. He said if the trees were left, they would cover the wall eventually.

Ms. Lombardo said she would rather have trees than mounding.

Mr. George Mazzaro said that these variances are in direct conflict with Chapter 117 of the zoning

resolution. He read from Chapter 117 regarding practical difficulties and hardship and referred to Chapter 101 and Chapter 131 and said that these types of services are to serve primarily local patrons and said this is in direct conflict with the zoning resolution and the Guide Plan 2000.

Mr. Lamanna said that all of these issues raised have been previously addressed by the board.

Mr. Mazzaro said he is just reminding the board of their codes.

Ms. Nicole Funk of Reminderville testified that they need something that says they will never put an access road onto Lake Avenue and asked about the lot coverage.

Mr. Markowitz said that permitted lot coverage is 40%.

Ms. Funk said that Heritage has gone back and forth and what is to say they won't put a road in ten years from now.

Mr. Lamanna explained that there is no absolute certainty that things won't change in the future but they cannot build an access road unless the appropriate governing authority says so.

Mr. Lenny Rogers of Moneta Avenue, Aurora testified that the only thing that anyone is getting here is Heritage.

Ms. Funk said they should try to get along with their neighbors.

Mr. Markowitz said that Heritage has agreed to restrict the use of their land that the zoning cannot control.

Mr. Bellis said they are prohibited from having roads onto Lake Avenue.

Ms. Lombardo said that she heard that it is in Walmart's contract to have a road onto Lake Avenue.

Mr. Markowitz said that Heritage agreed as a good neighbor to put this in the deed restrictions and they are giving up a valuable right as a property owner.

Mr. Lamanna said that Heritage is going beyond what they would have to under the normal zoning code and you are getting an extra level of protection that you would not normally have.

Mr. Vaca said he has to agree with what they are saying that they have to some degree been up front but is leery as to what is going on.



Mr. Markowitz said he can write into the deed restrictions that it will never change.

Mr. Vaca said they can put a guardrail across the road.

Mr. Lamanna said that would have to be an agreement with the City of Aurora.

Mr. Kolesar said he wanted to commend the two representatives from Heritage but said first there was the threat of annexation, then the sign variances, now the lot splits, then the board was told the deed restrictions were not ready so we had to hold a special meeting tonight. He asked if the board grants these variances if it will be over with or is there more?

Mr. Markowitz said that he apologizes because it was his fault for delaying the meeting. He said they thought they could improve the plan and come up with less lot coverage and a better product. He said it did take eleven drafts and was reviewed by a lot of different people from the township side and reviewed by his client. He said these are pretty tough provisions and the Home Depot said it is pretty tough. He said he knows of no other variances needed for this project, but said a tenant could come along next year and ask for something.

Mr. Bellis stated that they are 90% leased.

Mr. Lamanna said that other conditional uses could come into play.

Mr. Lewis asked if the master plan is set.

Mr. Markowitz said that the revised plan dated February 22, 2001 is the final plan that is being presented now but said they may come back to the board if they find more green space or somebody could make a mistake and find more lot coverage, but said he did not know of anything else that will change on the overall development plan.

Mr. Kolesar said that by the very fact of splitting these lots, it allows for each tenant to come back.

Mr. Bellis explained the architectural scheme and the reciprocal easement and said it locks in the look.

Mr. Lamanna said that no individual parcel can come back on its own.

Mr. Markowitz said that they must have the trustees' approval and we don't want anybody coming back.

Mr. Takacs said that he commends everyone for what has been done but does not want to see anymore either.

Mr. Lamanna stated that he was quite involved with the county prosecutor's office and a lot of thought went into this agreement so that this piece of property will continue to be evaluated as a single development. He said it accomplished that and said that Heritage was extremely cooperative and conceded to most of the requests that were made and this gives the township additional legal muscle over and beyond the zoning ordinance to ensure this development to be what the township wants and agreed it to be. He said he would like to thank all the people here tonight and at the previous meetings who expressed their interests and thanked them for their concerns. He continued by saying that the assistant county prosecutor looked at all of the issues and it is his opinion that this will be enforceable and that these were freely negotiated restrictions that were imposed. He said they went through and looked at the criteria and made sure all the criteria will be satisfied and compared it to other deed restrictions that have failed. He stated that he did not want to count up the number of hours that Mr. John Tremsyn put into this.

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

#### Motion BZA 2000-60 - 2000-69 - Heritage Development Corporation

Mr. Lamanna made the following motion:

With respect to the applications that have been presented by Heritage Development Corporation, due to the fact that these applications are all essentially subject to the same findings of fact and conclusions of law and the same standards of decision and the same conditions will apply to all of them, they will be considered together as a group.

The specific variances requested for each of the particular applications, that have been requested, will be inserted into the record as they have been prepared by the zoning inspector on February 27, 2001 that reflect the new site plan.

All of these variances pertain to the particular set of parcels that would be created and are particular to the parcels and are the result of the those parcels not complying with the normal requirements for development in this particular district.

Secretary's Note: A copy of the Zoning Review Work Sheet, dated February 27, 2001 and letter dated December 13, 2000, for each parcel to reflect the new site plan, as prepared by the zoning inspector, is attached to, and becomes a permanent part of these minutes.

Based on the following findings of fact:

1. The principal fact in granting this variance is that when compliance with the condition, that a deed restriction, substantially in the form as will also be attached to these minutes, is executed, it will result in no change to the overall previously approved development plan

- for this piece of property.
2. When considered as a whole, as the deed restrictions will require the parcels to be considered, the development will comply with all of the previously approved development requirements, variances, and other applicable provisions of the township zoning ordinance as they may have been modified in the previous variance approvals.
  3. As a result, upon completion of the board's action, there will be no material change to this development or to its effect upon the township or the adjoining property owners.
  4. Since the total effect of granting this variance will be negligible, there is no reason not to grant the variance and no basis for not conceding to the request of the applicant.
  5. The applicant has agreed, again, as a condition of granting this variance and without which such condition, this board would not make the preceding findings of fact that will require this project and all of the parcels that will be created to be considered as a single development, to follow all of the restrictions and agreements that have been attached to this development and to otherwise comply with the overall lot coverage which has been previously approved.

Mr. Takacs seconded the motion.

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

Secretary's Note: A copy of the Declaration of Covenants, Conditions and Restrictions for The Marketplace at Four Corners Shopping Center is attached to, and becomes a permanent part of these minutes.

Since there was no further testimony the public hearing was closed at 9:55 P.M.

Respectfully submitted,

John Kolesar  
Michael Lamanna, Chairman  
Todd Lewis  
Ellen Stanton  
Donald Takacs, Vice Chairman

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

Bainbridge Township, Ohio  
Board of Zoning Appeals  
February 28, 2001

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 9:55 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. John Kolesar, Mr. Todd Lewis, Mrs. Ellen Stanton and Mr. Donald Takacs.

Applications for next meeting

Application 2001-10 by Mark Schecter for property at 17457 Traymore Drive

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

Application 2001-11 by Wald and Fisher, Inc. for property located at Bainbridge Road and

Chillicothe Road

The applicant is requesting an area variance for the purpose of installing a ground sign. The property is located in a PO District.

Application 2001-12 by Scott and Laura Jerpbak for property at 17075 Sunset Drive

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

Application 2001-13 by Judson Retirement Community for property located at the Northwest corner of Washington Street and Haskins Road

The applicant is requesting a conditional use permit with variances for the purpose of establishing a residential care facility. The property is located in a R-5A District.

The Bainbridge Township Board of Zoning Appeals set the public hearing on the above applications for March 15, 2001 at 7:30 P.M. at the Bainbridge Community Hall, 17826 Chillicothe Road, Bainbridge Township, Ohio and unanimously resolved to request the Board of Trustees to issue a purchase order for legal advertising.

Since there was no further business, the meeting was adjourned at 10:09 P.M.

Respectfully submitted,

John Kolesar  
Michael Lamanna, Chairman  
Todd Lewis  
Ellen Stanton  
Donald Takacs, Vice Chairman

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

