

Bainbridge Township, Ohio
Board of Zoning Appeals
May 16, 2002

Pursuant to notice by publication and certified mail, a public hearing was called to order at 7:30 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. John Kolesar, Mr. Todd Lewis, Mrs. Ellen Stanton and Mr. Donald Takacs. Mr. Takacs arrived at 7:50 P.M. The following matters were then heard:

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

Application 2002-15 by Chagrin Falls Park Community Center Corp. for property at 16755 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 May 14, 2002 was read and photos of the site were submitted.

Ms. Deanna Fairchild was present to represent this application.

Ms. Fairchild testified that the proposed house will be a single family, two story home on the corner of Bedford and Woodland and added that the previous home on the property that was demolished was a one story home with a basement and a garage. She continued by saying that the Chagrin Falls Park Community Corp. owns the land which consists of 10,000 sq. ft. or five parcels.

Mr. Lamanna said there is a 15' setback from the road which seems a little short and it is centered on the lot but there is a road right-of-way.

Ms. Fairchild said they have zoning for two lots south of this, they just need variances and added that this home will face the model home.

The board viewed photos of the site.

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

Motion BZA 2002-15 - 16755 Bedford Street

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

1. A variance from the required front yard setback of 100' to 15' for a variance of 85'.
2. A variance from the required side yard setback of 50' to 29.5' for a variance of 20.5' on both sides.

3. A variance from the required rear yard setback of 90' to 38' for a variance of 52'.
4. A variance from the maximum lot coverage of 10% to 17.98% for a variance of 7.98%.
5. A variance from the required lot size of 3 acres to .23 acres for a variance of 2.77 acres.
6. A variance from minimum lot width from the required 200' to 100' for a variance of 100'.

Based on the following findings of fact:

1. A practical difficulty exists in that this proposed building site consists of five previously platted lots of record.
2. The size of the lot is consistent with other building sites in this part of the community.
3. These setbacks will provide setbacks that are consistent with the other dwellings in this area and therefore will not adversely affect the neighborhood.

Mrs. Stanton seconded the motion.

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

Application 2002-23 by Lelia Huckabee for property at 16716 Geneva Street

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

The zoning inspector's letter dated May 14, 2002 was read and photos of the site were submitted.

Mr. Eddie Huckabee was present to represent this application.

Mr. Huckabee testified that he is requesting a variance to build a 16' x 20' (1-1/2 car) garage.

Mr. Lamanna said this is a narrow lot to start with.

Mrs. Stanton asked about the house nearby.

Mr. Huckabee said that house will be torn down and the garage will be used for storage.

Mr. Lewis asked which one will come down.

Mr. Huckabee showed the board, on the site plan, which one will be torn down and said his mother also owns the adjacent three lots.

Mr. Lamanna asked what are the plans for these lots.

Mr. Huckabee said there is not anything they can do with them.

The board discussed the surrounding lots per the aerial photo.

Mr. Lamanna asked since the lots are all owned by the same person if they can be combined.

Mr. Huckabee stated yes, they could be combined.

Mr. Lamanna said that 5' from the side property line is really too close.

Mr. Huckabee said he is trying to keep it in line with his existing driveway.

Mr. Lamanna asked if the driveway is paved.

Mr. Huckabee said no, it is gravel.

Mr. Takacs asked if the property consisted of three lots.

Mr. Huckabee said yes, but they have an additional two lots.

Mr. Takacs asked how far the house is from the road.

Mr. Lamanna said it is 22' or 10' - 12' from the pavement.

The board discussed the setbacks.

Mr. Lewis asked if the other house that is going to be demolished is occupied.

Mr. Huckabee replied no.

Mr. Lewis asked when the house will be demolished.

Mr. Huckabee said when the garage gets built.

Mr. Lamanna said it is a little tight on the rear property line, but the applicant also owns the property in the rear.

Mr. Takacs suggested attaching the garage to the house.

Mr. Huckabee said that people would have to go through the garage to come into the house if it was attached.

Mr. Takacs asked if people could use the front door.

Mr. Huckabee replied yes.

Mr. Lamanna said the garage could be moved forward a little bit.

Mr. Huckabee said he could move it up a little but would have to apply for another variance.

Mr. Lamanna said no, the drawing can be adjusted.

Mr. Huckabee said he just did not want to bring it up to that door.

Mr. Lamanna explained the alternate location for the garage.

Mr. Huckabee said he can move it up.

Mr. Lamanna said the board has been trying to maintain a 35' setback for backyards and if the garage is moved up, there will be about 39' with 8' between the house and the garage.

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

Motion BZA 2002-23 - 16716 Geneva Street

Mr. Lamanna made a motion to grant the following variances for the purposes of building a 20' x 16' detached garage.

1. A variance of 50' on the side yard requirement so that the proposed garage can be built right up next to the adjacent lot line.
2. A variance from the required rear yard setback of 90' to 38' for a variance of 52'.
3. A variance from the maximum lot coverage of 10% to 24.5% for a variance of 14.5%.

Based on the following findings of fact:

1. A practical difficulty exists because the property consists of three lots of record.
2. There is very little room to add this detached garage.
3. There is not an existing attached garage on the house so it is reasonable to add a detached garage to the property.
4. The reason for granting the side yard variance is based upon the existing property owner also owning the adjacent two lots on which there is some structures that will be torn down in the future thereby clearing the way for that lot.
5. Since the adjacent two lots are insufficient for independent development, this variance is premised upon those lots being combined with the existing three lots to form a single usable parcel and based on that configuration, this will be consistent with the other setbacks of dwellings in this area and therefore will not adversely affect the adjacent property owners or the character of the neighborhood.

Mr. Takacs seconded the motion.

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

Application 2002-24 by James Zella for Jamestowne Builders, Inc. for property at 18801 Brewster Road

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

The zoning inspector's letter dated May 14, 2002 was read and photos of the site were submitted.

Mr. Jim Zella of Jamestown Builders, Mr. David McGee, Counsel for the applicants and Mr. and Mrs. Nicholas Federico were present to represent this application.

Mr. Zella testified by explaining the placement of the proposed house on the lot, the location of the waterfall and the rear elevation. He said that remodeling was not feasible but he did not realize that by taking down the structure it would be a problem.

Mr. Takacs asked about the size of the original structure.

Mr. Zella said he guessed it was 2,800 sq. ft. - 3,000 sq. ft.

Mr. Takacs asked about the size of the proposed house and if it was going to be approximately 4,600 sq. ft.

Mr. Zella replied yes, 3,200 sq. ft. is visible without the basement.

Mr. David McGee submitted an applicant's brief to the board and testified that this application falls under Chapter 165.12 because the house was built under the old 1-1/2 acre zoning code and said Mr. Zella is wanting to comply but there is a question as to whether this variance is necessary.

Mr. Lamanna said this variance is necessary because that section does not apply to this case. He said it is not intended to address situations whereby someone tears down their entire structure.

Mr. McGee said the code uses the term "rebuilt, repaired" etc. and it states in this instance that a home can be rebuilt to any manner without increasing the 20' setback. He said the original home had a 15' side yard setback and this plan proposes to bring the house into compliance. He referred to Ohio law and added that Chapter 165 mandates that it has to favor the homeowner.

Mr. Lamanna said it is talking about exceptions to the zoning.

Mr. McGee said the applicants are trying to accommodate and it is obvious we are here to address

the concerns that the board has.

The board reviewed photos of the site and the elevation and floor plans of the proposed structure.

Mr. Zella said he had photos of the former structure.

Mr. McGee said the proposed house will be 7' further away from the property line than the former house.

Mr. Lamanna asked about the adjacent lot.

Mr. Zella said the applicant owns both parcels.

Mr. Takacs asked if they were two lots of record.

Mr. Zella said yes, there were two parcels with 160' of frontage and added the lot is heavily treed and you cannot see it.

The board discussed the requested side yard setbacks and reviewed a GIS printout of the two lots.

Mr. Takacs asked where the waterfall is located.

Mr. Zella said it is located on the property behind this one but the owners of it cannot see the waterfall.

Mr. McGee said the proposed house is situated to take advantage of the view.

Mr. Lamanna questioned the 29' side yard setback and said this is a very wide house which is one of the problems.

Mr. Federico and his wife Carol testified that they hopefully can build this house.

Mr. Lamanna asked Mr. and Mrs. Federico if they own the adjacent parcel and what their plans were for it.

Mr. Federico said they plan to build a house for their daughter. He continued by saying that it is all woods and the house cannot be seen in the winter time.

Mr. Lewis asked about the placement of the adjacent house on the other lot.

Mr. Zella said it is in line with the other house and added that they have to have a septic field and a replacement field so they will need the room in the back on the other lot.

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

Motion BZA 2002-24 - 18801 Brewster Road

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

1. A variance from the required lot width of 200' to 167' for a variance of 33'.
2. A variance from the required lot size of 3 acres to 1.63 acres for a variance of 1.37 acres.
3. A variance from the required side yard setback of 50' to 22' and 29' respectively for variances of 28' and 21' respectively.
4. A variance from the maximum lot coverage of 10% to 14.6% for a variance of 4.6%.

Based on the following findings of fact:

1. This is a pre-existing lot of record in a former 1-1/2 acre district.
2. Due to the practical difficulty on the lot size and width, it would be impossible to meet the current standards there.
3. With respect to the side yard variances, the lot is somewhat narrower than normal width and would be difficult to build on with those side variances.
4. On the one side (the 22' side yard variance) the adjacent home on the adjacent property is a very wide lot and the existing dwelling is a substantial distance from the property line and therefore would not be adversely affected by that.
5. On the closer side, the board also notes in this case that the applicant is the owner of the adjacent undeveloped parcel and the 29' is within the prior 20' side yard setback requirements for the 1-1/2 acre district and also if there should not be an adverse effect on that adjacent lot, but if there is an adverse effect, the property owner will himself suffer that effect so the board would minimize the importance of that potential adverse effect from that side.
6. With respect to the total lot coverage variance, in this case, due to the unique nature and structure of this lot and the fact that there was an existing dwelling located far back on the lot, there was a substantial driveway because the house is positioned so deep in the lot and due to the rather large area of the driveway and access necessary for the garage and parking, it would be impossible to meet the ten percent lot coverage variance with that deep setting of the house.
7. In general, the board also finds that this is consistent with the local neighborhood and given the nature and size (height) of this house, it is only a single story on the front, it should not, even though there are some side yard variances, be obtrusive to the adjacent properties.

Mr. Takacs seconded the motion.

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

Application 2002-25 by McMillon Construction for Darryl and Demateress Richards for property at 16714 Lorain Street

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

The zoning inspector's letter dated May 14, 2002 was read and photos of the site were submitted.

Mr. Cedric McMillon was present to represent this application.

Mr. McMillon testified that he is building a house for Mr. and Mrs. Richards on six lots on Lorain Street in the Chagrin Falls Park area. He said it will be a Cape Cod style home with three bedrooms and 2-1/2 baths.

The board reviewed the site plan and the requested setbacks.

Mr. Lamanna stated that the proposed setback from the street is 20' and the last application was 15' back. He said the board is trying to get a little more room in the back yard, at least 35' and added that a lot of the other houses have a 15' front yard setback.

Mr. McMillon said this house is situated at 20' back but he can relocate it.

Mr. Lamanna said the board likes to maintain a little more room in the back and there would still be enough room to get a car off the street. He added that this looks like a very nice layout.

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

Motion BZA 2002-25 - 16714 Lorain Street

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

1. A variance from the required front yard setback of 100' to 15' for variance of 85'.
2. A variance from the required side yard setbacks of 50' to 37' and 37' respectively for a variance of 13'.
3. A variance from the required rear yard setback of 90' to 31' for a variance of 59'.
4. A variance from the required lot width of 200' to 120' for a variance of 80'.
5. A variance from the required lot size of 3 acres to .275 acres for a variance of 2.72 acres.
6. A variance from the maximum lot coverage of 10% to 23.4% for a variance of 13.4%.

Based on the following findings of fact:

1. This parcel consists of six previously platted lots of record in Chagrin Falls Park.
2. This is one of the larger building sites in the area.
3. The number of lots is consistent with the size of the house being constructed on that and the setbacks are similar to or greater than those currently common in the neighborhood so they

are both consistent with the neighborhood and will not adversely affect any of the adjacent property owners.

Mr. Takacs seconded the motion.

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

Application 2001-37 by Six Flags Worlds of Adventure for property at 1060 North Aurora Road
(Continuance) - Zebra Exhibit

The applicant is requesting a conditional use permit for the purpose of developing an area to create a uniquely themed section of the park that features exotic land and water animals and attractions that compliment the other "worlds" of rides, water park and marine life. The property is located in a CR (Commercial Recreation) District.

The zoning inspector's letter dated May 14, 2002 was read and photos of the site were submitted.

Mr. Rick McCurley and Mr. Patrick McCafferty were present to represent this application.

Mr. McCurley testified that they will be adding two zebras to the park. He showed the board on a site plan the location of the barn area and said the pole barn will be ventilated, heated and will have automatic waterers.

Mrs. Stanton asked for a clarification of the location of the red house.

Mr. McCafferty said the red house is north of where the zebras are going to be located and explained the location via an aerial photograph. He presented an artist rendering and said they will be enclosed in nine gauge galvanized fencing.

Mr. McCurley said the containment fence meets AZA standards.

Mrs. Stanton asked if they will be housed at night.

Mr. McCurley replied yes.

Mr. Kolesar asked where the closest residence is.

Mr. McCafferty said the closest residence is on Brewster Road.

Mrs. Stanton asked if Six Flags owns the property on the other side of the tracks.

Mr. McCafferty replied yes.

Mr. Lewis asked if the tracks are elevated because the prevailing winds are out of the west and

zebras and horses have the same by-product, so chances are the by-product will carry out of the park, not into the park.

Mr. McCafferty said the area is heavily wooded so that will cut down on a lot of the wind.

Mr. Lewis said he is sure the neighbors will let them know if their housekeeping falls below par. He then asked how noisy zebras are.

Mr. McCurley said they are similar to horses, by whinnying and nickering and they use their tails and ears to communicate.

Mr. Lewis said he has observed zebras in Africa at watering holes and they were loud, although there were 150 of them. He also referred to a behind the scenes tour involving a lion attack on a female employee at a well established park and said the community and the employees are heavily trusting you in your animal care because accidents are caused by human error, etc.

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

Motion BZA 2001-37 - 1060 North Aurora Road (Zebra Exhibit)

This is a further request by the applicant for specific approval of the development of a zebra exhibit as shown in drawings submitted with the application.

Mr. Lamanna made a motion to include in the conditional use permit the zebra attraction as so proposed.

Based on the following findings of fact:

1. The board finds that this is consistent with its previous discussion and evaluation of this general conditional use permit with respect to animal display areas.
2. This particular attraction would not derogate from the findings the board previously made or present any undue impact on the surrounding property owners.

Mr. Takacs seconded the motion.

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

Application 2002-8 by Tanglewood Partners for property at 8505 Tanglewood Square
(Continuance)

The applicant is requesting a conditional use permit for the purpose of establishing a coffee shop and/or ice cream parlor at the Tanglewood Professional Building. The property is located in a CB (Convenience Business District).

The zoning inspector's letter dated May 14, 2002 was read and photos of the site were submitted.

Mr. Sheldon Berns, Attorney for the applicant and Mr. Mark Schwartz were present to represent this application.

Mr. Lamanna stated that this is an application for an amendment of the previously granted conditional use for the professional office building and the board did not exam these uses originally.

Mr. Sheldon Berns testified that the previous application for these uses resulted in a tie vote of the board which amounted to a denial so he filed an appeal. He said these uses are permitted uses in this district but the owner does not want to pay his lawyer for this adjudication. He continued by saying that the concern of the board was the effect of this use on the adjacent condominium owners, but if this use is granted, the owner has agreed to plant and maintain a buffer of 20 white pine trees not less than 6 feet in height or a row of American Arborvitae not less than 5 feet in height. He explained that all of the pastries, etc. will be prepared off-site, the hours of operation would be from 6:00 A.M. to 11:00 P.M. and there will be no drive-thru. He asked the board to grant the amendment to the conditional use permit.

Mr. Takacs asked where this space is located in the building.

Mr. Schwartz testified that it will be located at the southwestern corner of the building.

Mr. Lamanna asked how the building interior is laid out.

Mr. Schwartz said other than a couple of walls there is no change.

Mr. Takacs asked about the access.

Mr. Schwartz said there will be only access from the outside.

Mr. Lamanna asked about the hallway access inside the building.

Mr. Schwartz said the public could not access the retail use by going through the interior hallway.

Mr. Lamanna asked about the portion of the building that sticks out.

Mr. Schwartz said that is the rear entrance of the building.

Mr. Berns said all the retail must enter from the front of the building.

Mr. Lamanna asked if there will be an outside eating area.

Mr. Berns replied by saying no, there will be no outside service, maybe only a bench to sit on to eat an ice cream cone.

Mr. Lamanna said then there will be no tables like at Arabica.

Mr. Schwartz said the potential tenant is not seeking that at this time.

Mr. Lamanna said he does not want to see a place that encourages congregating in the rear of the building.

Mr. Takacs asked if there will be an interior access.

Mr. Schwartz said that the employees may enter from inside the building but the customers will be able to only access it from the front of the building and it would not make any sense to have the customers in the rear.

Mr. Lewis referred to the hours of operation as 6:30 A.M. to 11:00 P.M. and asked if the employees will arrive at 5:00 A.M. or will they only be there during the retail hours.

Mr. Berns said they will only be there during the retail hours.

Mr. Lewis asked if the deliveries will only be during the hours of operation.

Mr. Schwartz said he has no problem with limiting the deliveries to the hours of operation.

Mr. Berns said he agreed, that is not a problem.

Mr. Lewis asked about the signage for this use.

Mr. Lamanna said there is an existing sign out front.

Mr. Schwartz said it will be consistent with the signage but he does not have any information at this time regarding their request for signage.

Mrs. Stanton asked if there will be any lighting changes.

Mr. Schwartz said there is none at this time and cannot foresee the user requiring any special lighting.

Mr. Kolesar asked if the neighbors were notified of this hearing.

Mrs. Linda Zimmerman, secretary to the board, replied yes.

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

Mr. Lamanna made a motion to modify and amend the conditional use permit with respect to the Tanglewood Professional Office Building to permit the use for a coffee shop and/or ice cream parlor with the following conditions which have been proposed by the applicant:

1. No food other than ice cream and beverages normally served at coffee shops and ice cream parlors would be prepared on the premises.
2. All pastries and other food products normally served at coffee shops and ice cream parlors will be prepared off the premises.
3. The hours of operation including any deliveries to the coffee shop or ice cream parlor shall not begin earlier than 6:30 A.M. or end later than 11:00 P.M. seven days a week.
4. No drive-thru service will be permitted for the coffee shop or ice cream parlor.
5. There will be no outside seating or table areas in the rear or side of the building.
6. So long as it is used for a coffee shop or ice cream parlor, a row of 20 white pines not less than 6' in height or a row of American Arborvitae not less than 5' feet in height will be planted and maintained generally in accordance with the drawing which has been submitted by the applicant.

Based on the following findings of fact:

1. With these conditions, this obviates any of the potential concerns that the board previously had which was the basis for the limitations contained in the original conditional use permit.

Mr. Takacs seconded the motion.

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

Application 2002-20 by Bainbridge Associates Ltd. for property at 8550/8564 E. Washington Street (Continuance)

The applicant is requesting a conditional use permit with area variances for the purpose of establishing a shopping center. The property is located in a CB (Convenience Business) District.

The zoning inspector's letter dated May 14, 2002 was read and photos of the site were submitted.

Mr. Cliff Hershman and Mr. Tim Olland were present to represent this application.

Mr. Hershman testified that he and Mr. Olland went back and incorporated every single request by the board.

Mr. Olland testified by explaining the new site plan and stated that the Cactus Moon drive will be eliminated, there will be more parking spaces and he moved the building back and connected the service drive.

Mr. Takacs asked about the parking in the back and if anyone can park there.

Mr. Hershman said the employees park in the back.

Mr. Olland said the green space was expanded.

Mr. Hershman said they changed the parking arrangement at Market Square also.

Mr. Takacs asked about the number of proposed parking spaces.

Mr. Olland said they have 31 plus 55 spaces.

Mr. Takacs said the parking is not an issue.

Mr. Hershman replied by saying right.

Mr. Lewis questioned the parking requirements for the day care center.

Mr. Olland said they are in good shape for the day care center and added that they staggered the building so it will not be in a long line.

Mr. Kolesar said the day care center is not just a normal in and out situation and asked if the driveway is long enough to accommodate the cars.

Mr. Lamanna said there is almost 300' to queue up the cars so ten cars could back up there.

Mr. Kolesar asked if the Retail South C extends an additional 65' closer to the street.

Mr. Hershman replied yes but it is still within the setback.

Mrs. Stanton asked about the setbacks.

Mr. McIntyre explained that per Chapter 117 of the zoning resolution under conditional uses, no building can be located within 100' of the right-of-way.

Mr. Takacs suggested installing an island at an angle on the driveway.

The board discussed the entrance width.

Mr. Hershman said he can stripe the driveway and added that there will be two lanes out and one lane in.

Mr. Lamanna said a sign could be installed that says "Keep Right" so people won't chop off the corner.

Mr. Kolesar asked about the forest of huge pine trees between this and the Cactus Moon building.

Mr. Hershman said his goal is to keep the rows of pine trees along side of the Cactus Moon.

Mr. Takacs asked about the adjacent parcel.

Mr. Hershman said it goes to the Bainbridge Township parcel and added that they can't go up to the CVS line anyway.

Mr. Lewis asked Mr. Hershman and Mr. Olland if they were OK with the truck route right-of-way.

Mr. Hershman and Mr Olland replied yes.

Mr. Takacs asked about proposed signage.

Mr. Olland explained the proposed signage and said they want directional signs that say Market Square East and they would like to be able to put a sign on the corner.

Mr. Takacs asked about the number of tenants.

Mr. Hershman explained the tenant situation.

Mrs. Stanton asked if the facade will look like Market Square.

Mr. Olland said yes, the existing front of the Ethan Allen store will be treated similarly to the other Market Square retail because we will add some arches.

Mr. Hershman and Mr. Olland presented proposed renderings of what it will look like.

Mr. Kolesar commented that if under the present configuration of the drive off of E. Washington for drug pick-up becomes tricky, if maybe CVS could be persuaded to reconfigure their drive.

Mr. Hershman said the island is so people will have to choose right or left.

Mrs. Stanton asked if all the parcels will be combined.

Mr. Olland explained that the partners are not the same, they are just allowing each other to use the parcels and we do not have to combine them but, if Bainbridge Associates owns all the parcels we would do a lot consolidation, otherwise we will do a cross-over easement.

Mr. Lamanna asked about the lot coverage for Ethan Allen.

Mr. McIntyre said it is close to 80%.

Mr. Hershman said there is 8% green space.

Mr. Olland said they met with CEI regarding their poles and they will install the electrical underground.

Mr. Lewis asked about the loading dock spaces.

Mr. McIntyre explained the loading dock requirements.

Mr. Lamanna asked about the lighting plan.

Mr. Olland said the lighting will be kept on the parcel.

Mr. McIntyre asked about the landscaping plan.

Mr. Hershman explained the landscaping and seeding plans.

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

Motion BZA 2002-20 - 8550/8554 Washington Street

Mr. Lamanna made a motion to grant a conditional use permit for the purposes of a strip shopping center and to grant the following variances with respect to this requested shopping area:

1. A variance from the required front yard setback of 70' to 30' for a variance of 40'.
2. A variance from the required side yard setback of 20' to 10' for a variance of 10'.
3. A variance from the required rear yard setback of 50' to 0'.
4. Maximum lot coverage from 40% to 50.06% for a variance of 10.06%.
5. A requested front yard variance on that of 30' and a rear yard variance of 100'.
6. A variance of one loading dock under Chapter 169.07 from the three required to two actual loading docks.

Based on the following findings of fact:

1. There is an existing retail area on one of the three parcels that would be combined to form this shopping center.
2. There is also a restaurant building located on one of the other parcels and the third parcel is currently unoccupied. These parcels will be combined to form a single parcel that will become the center and for that reason the variances on setbacks to the front are consistent

- with those that currently exist for the existing buildings.
3. In addition the existing lot coverage for the major existing retail area is approximately 90% and the existing restaurant building is on the order of 45% or so and that when combined that will reduce the overall lot coverage of the two existing areas by bringing all of these parcels together with the development plan shown by the applicant so it will end up with a smaller lot coverage than would have otherwise existed with an independent development of the currently undeveloped parcel and the existing development of the two parcels that have been developed.
 4. The reason for granting the area variances are due to the current existing development on these properties.
 5. There is limited room because of the existing retail building or parking and in addition by building this an additional buffer zone will be created between the commercial business district and the adjacent residential district.
 6. Also in addition, the parcel backs onto an existing retail area that is owned by a related party and who is willing to accept the reduction in the setback requirements for the buildings and parking areas and because of the fact that there is existing retail areas with parking and other retail operations, the failure to have the full setback in these areas will not adversely affect any adjacent residential district and will not adversely affect the adjacent commercial operations.
 7. With respect to specific conditions in addition to those general conditions that are applicable to all conditional use permits, the applicant will have a reciprocal easement or other agreements or common ownership agreement so as to have an outdoor play area on the adjacent Market Square retail center property for any day care center occupying the parcel at the subject of this application and also will provide the right to use the service drive as shown on the applicant's proposed plot plan for ingress and egress to the rear of the Market Square retail center.
 8. The applicant will also berm the area and berm and landscape the area between the parking that abuts E. Washington Street so as to screen that parking from the street. No such requirement is necessary for the area between the front of what is shown as Retail South C on E. Washington Street since there is only extremely limited parking in that area.
 9. The applicant will also provide a small island to delineate the ingress and egress lanes of the main drive from the center onto E. Washington Street. All of the lighting will be consistent with that at the Market Square retail center so as to contain to maximum extent practical, all of the light onto the grounds of the shopping center and to minimize any spill over of light to any adjacent areas.

Mr. Takacs seconded the motion.

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

Application 2002-21 by Laughing Coyote, Inc. (Scorchers) for property at 8370 E. Washington Street (Continuance)

The applicant is requesting an area variance for the purpose of constructing a courtyard in the front yard. The property is located in a CB District.

Mr. Lamanna noted that this application was withdrawn.

Motion BZA 2002-21 - 8370 E. Washington Street

Mr. Lamanna made a motion to dismiss this application at the request of the applicant without prejudice.

Mr. Lewis seconded the motion.

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

Application 2002-26 by Ivan Jozef Inc. for property at 16381 Chillicothe Road

The applicant is requesting a use variance for the purpose of establishing a health and beauty spa. The property is located in a R-5A District.

The zoning inspector's letter dated May 14, 2002 was read and photos of the site were submitted.

Mr. Tom Reitz, Attorney for applicant, Mr. Ivan Kofol, representative of Ivan Jozef Inc., and Ms. Catherine Posavec, manager of the proposed spa, were present to represent this application. Ms. Laura Pavlik, Court Reporter, was in attendance for the applicant.

Mr. Lamanna swore in Mr. Kofol.

Mr. Reitz submitted a series of exhibits to the board and the original to the secretary. He testified by saying that he noticed that his application for a use variance is on the agenda but said he also filed an application for a substitution of a non-conforming use.

Mr. Lamanna asked if the board did not previously hear a substitution for a non-conforming use under application 2002-5.

Mr. Reitz replied yes on February 21, 2002.

Mr. Lamanna said that application was denied.

Mr. Reitz said there was no question that it was denied, but the board was unsuccessful in denying it or rendering a decision because the minutes were not provided to his client. He questioned the administrative proceedings of the board.

Mr. Lamanna said it is a decision whether or not this application is res judicata and the board will

need to investigate this from a legal standpoint.

Mr. Reitz said this proposal is not identical as the one filed in February because there is a reduction in the number of tanning beds, previously ten beds were proposed and now there are five tanning beds proposed.

Mr. Reitz asked Mr. Ivan Kofol when this property was purchased.

Mr. Kofol testified by saying it was purchased in 2000 with Bongiorno's Restaurant, the former Willow Bay furniture store space and a co-op antique store.

Mr. Reitz testified that the restaurant is open 4:00 P.M. - 10:00 P.M. daily, is closed on Mondays and it has a liquor license. He referred to Exhibits 11 and 12 regarding liquor permits and said there have been no complaints on the restaurant, nor the antique store which is open 10 A.M. - 4:00 P.M. daily.

Mr. Reitz asked if the owner had received any complaints about the furniture store at the time of purchase.

Mr. Kofol said they reupholstered and sold furniture and left the Fall of 2000. He added that the Willow Bay portion has been vacant.

Mr. Reitz asked Mr. Kofol to view the exhibits and identify them.

Mr. Kofol identified Exhibit 1 as photos of the former Willow Bay, the antique store, the restaurant on the property, the church on the north side of the property and the church parking lot.

Mr. Kofol identified Exhibit 2 as two photos of the small house on the south of the property.

Mr. Kofol identified Exhibit 3 as a photo of the church on the south side of the property (Fellowship Bible Church) including a copy of the May 2002 calendar of events for the church and a copy of a schedule of the Worship Service dated April 28, 2002.

Mr. Kofol identified Exhibit 4 as a photo of the church on the north side of the property (The Federated Church Family Life Center) and a photo of their sign.

Mr. Reitz stated that attached to Exhibit 4 is an affidavit from John Bourisseau, the Director of the Family Life Center which categorizes the number of events, the activity and the average number of attendees that occur at the Family Life Center.

Mr. Lamanna stated that the board cannot take that affidavit into testimony because it cannot be cross-examined.

Mr. Kofol identified Exhibit 5 as two photos of Route 306.

Mr. Kofol identified Exhibit 6 as two photos of Route 306 looking south

Mr. Kofol identified Exhibit 7 as three photos of Route 306 looking north.

Mr. Reitz asked Mr. Kofol if when Willow Bay exited the premises if other tenants were sought.

Mr. Kofol said they looked around but were unable to find anyone.

Mr. Reitz asked if doctors, etc. were considered.

Mr. Kofol said they were not considered because they did not want to expand.

Mr. Reitz asked if any other prospective tenants were being considered other than this applicant.

Mr. Kofol replied no.

Mr. Reitz asked why this substitution is desired.

Mr. Kofol said there will be no expansion of the building.

Mr. Reitz asked Ms. Catherine Posavec what her involvement will be in the spa.

Ms. Posavec said she will manage the spa.

Mr. Reitz asked how many people will be using the tanning bed area.

Ms. Posavec said originally there were going to be ten beds but they have been reduced to five and the average time is 20 minutes or ten per hour at full capacity.

Mr. Reitz asked Ms. Posavec if she anticipates full capacity.

Ms. Posavec replied no.

Mr. Reitz asked if there is a high demand for tanning.

Ms. Posavec said no, the popular time is right before Christmas, before Prom, vacations and summer.

Mr. Reitz asked where the tanning beds will be located.

Ms. Posavec said they will be on the second floor and the first floor will be for the manicures, pedicures and hair salon.

Mr. Reitz asked how long a customer will stay.

Ms. Posavec said a woman could stay a couple of hours to have her hair done.

Mr. Reitz asked about the hours of operation.

Mr. Posavec said the hours will be between 9:30 A.M. to 8:00 P.M. or 9:00 P.M. in the evening.

Mr. Reitz asked about the proposed traffic.

Ms. Posavec said the maximum capacity, if everything was being used, would be 15 cars but she does not think that would be the case. She said the hours between 5:00 P.M. - 7:00 P.M. will be slower but the hours between 7:00 P.M. - 9:00 P.M. is a better time for people. She added that there are 115 spaces in the lot and she would be lucky to have 15 people.

Mr. Reitz said there was a concern about toxic chemicals and he asked Ms. Posavec if there will be any toxic chemicals.

Ms. Posavec replied no.

Mr. Reitz asked if there will be large trucks.

Ms. Posavec said there is not much to the deliveries, only UPS, other than putting in the original tanning beds.

Mr. Reitz referred to Exhibit 8 which is a list of uses at this facility signed by Joe Orłowski, Assistant Zoning Inspector.

Mr. Kolesar asked if the beauty shop will be the only tenant in this building.

Ms. Posavec said yes, in the Colonial Spa.

Mr. Kolesar asked if the building is properly equipped in dealing with fumes.

Mr. Reitz said should it require any adjustments, they will be made.

Mr. Lamanna asked to view the actual floor plans.

Mrs. Stanton asked if the plans show how many hair stations there will be.

Ms. Posavec said there will be four stations and the right side will be for hair and the left side will be for manicures/pedicures.

Mr. Takacs asked if the tanning beds will be upstairs.

Ms. Posavec said yes and they will be doing massages and facials upstairs also.

Mr. Lamanna asked what changes are made from the prior application.

Mr. Reitz said originally they had 10 tanning beds but reduced them to five because of the board's concerns.

Mr. Lamanna asked what the rest of the area will be used for.

Ms. Posavec said there will be a waiting area for people to relax.

Mr. Lamanna asked if the rest will be the same.

Ms. Posavec replied right.

Mr. Lamanna asked about the maximum capacity at this facility at one time.

Ms. Posavec said if every single tanning bed was used there would be 15 people in a course of one hour.

Mr. Takacs asked about the potential number of employees.

Ms. Posavec said there will be herself, a person for the manicures/pedicures, and one or two people for the hair which would amount to five employees including herself.

Mr. Lamanna asked Mr. Kofol about the furniture store, if they also did reupholstering there or if they sent the furniture out to another shop for that.

Mr. Kofol said he did not know.

Mr. Takacs asked what will happen to the other portion of the building.

Mr. Kofol said the restaurant is in the back and the remaining portion of the building will not change.

Mrs. Stanton said she is concerned about the traffic being increased because she thought Willow Bay had 30 or 40 people per day but if you have 15 per hour you are talking about 80 cars per day.

Mr. Reitz said they will be people from the neighborhood anyway and it would not create any more traffic.

Mrs. Stanton said with her experience it is done by appointment only.

Ms. Posavec said there will be drop-ins and said when she has her hair done it can take two hours to perm, color, or high-light.

Mr. Lamanna asked what efforts have been made to rent out this premises.

Mr. Kofol said they talked to other tenants but some would like to expand the building.

Mr. Lamanna asked if this was advertised with a major realtor.

Mr. Kofol said nothing panned out.

Mr. Kolesar asked if this is approved if they would be amenable to cleaning up the landscaping.

Mr. Reitz replied yes.

Mr. Lamanna asked Mr. Reitz if he was going to divide his approach, substitution of a non-conforming use and a use variance.

Mr. Reitz said under a substitution of a non-conforming use, the code requires the same kind of character, but the board simply looked at the section of the building that was formerly a furniture store.

Mr. Reitz referred to Exhibit 10 - Case filed in the Court of Appeals in Ohio, Seventh Appellate District. He continued by saying that this area was zoned CB in the past and referred to Exhibit 8 (history of property compiled by Joe Orłowski, Assistant Zoning Inspector).

Mr. Reitz referred to Exhibit 9 and a case review from 1967 which was won for the same reason and said we have no way of knowing what the noise or traffic was from Willow Bay furniture store. He continued by saying that a traffic study was done by NOACA between Chagrin Blvd. (old Rt. 422) and Rt. 306 with an excess of 15,000 vehicles and between Rt. 87 and Rt. 306 there was an excess of 11,000 vehicles and the subject property falls between those two measurements.

Mr. Reitz said that Exhibit 4 contains additional information about traffic which is attached to the office schedule for the Family Life Center and said the bold faced items are the ones that take place at the Family Life Center (120 events) which is immediately north of the property owned by Ivan Jozef Inc. He said seventeen events have more than 400 people and a number of them are in the 200 range. He continued by reading from Chapter 101.02 of the Bainbridge Township Zoning Resolution (Declaration of Purpose) and added that this proposed use will not adversely affect the neighboring properties. He referred to Exhibit 1 - the property itself, Exhibit 2 - subject property facing south, cannot see a house there with substantial foliage, Exhibit 3 - photo of the church itself (Fellowship Bible Church) with 200 parking spaces and the worship service schedule, Exhibit 3 and 4 - Federated Church Family Life Center with 160

parking spaces, Exhibit 5 - Woods of Wembley with very nice houses but not on Rt. 306 and the second photo shows an additional buffer directly across the street, Exhibit 6 and 7 - photos of Rt. 306 taken on Friday, AM of typical traffic at that location facing south and north (note truck traffic) and said that the proposed use would not adversely affect the neighboring properties. He added that he believes that all of the elements of a substitution of a non-conforming use have been made.

Mr. Reitz referred to the use variance and said the character will be residential in nature, it will be a service provided to the residents, it is zoned residential but surrounded on both sides by community type facilities, the spirit will be observed and added that he did not know what the spirit of the zoning resolution is, he said he looked and could not find it. He said it is a lawful use which may be continued and substantial justice will be done and said this will not be contrary or derogate from the general purposes of the zoning resolution. He thanked the board members for their time and consideration.

Mr. Lamanna asked Mr. Reitz if he happened to know on the referred to court case, if their zoning ordinance is the same as our zoning ordinance.

Mr. Reitz said he did not know but it was a case from 1957.

Mr. Kolesar asked what court he was talking about.

Mr. Reitz said Portage County.

Mr. Lamanna said the board does have a threshold issue here on whether it has a previous decision on the same matter and not sure that what was presented before is materially different and he thinks the board would be forced to defer its decision until the next regularly scheduled meeting and with that being the case he sees no point in addressing the use variance. He suggested that the board defer this so it can examine the testimony that was raised and said there is no need to recapitulate.

Mr. Reitz asked if he should provide the Director of the Family Life Center.

Mr. Lamanna said it is not necessary.

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

Motion BZA 2002-26 - 16381 Chillicothe Road

Mr. Lamanna made a motion to continue consideration of this application to the next regularly scheduled meeting to be held June 20, 2002 in order to further investigate certain questions of fact that have been raised by the applicant.

Mr. Takacs seconded the motion.

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

Application 2002-27 by Colonial Auto Sales & Service, Inc. for property at 8228 E. Washington Street

The applicant is requesting a conditional use permit for the purpose of the reconfiguration of a used car lot. The property is located in a CB (Convenience Business) District.

The zoning inspector's letter dated May 14, 2002 was read and photos of the site were submitted.

Mr. Gus Budin testified that he will be taking away part of the existing used car lot and adding more to the east side of the property where the Timberfire is.

Mr. Takacs asked if the cars will be more visible.

Mr. Budin said they are closer to the street than they used to be because they widened the street and added that he was given a zoning permit for a little building out front but decided not to build the sales office.

Mr. Takacs asked if he will be filling in the back with gravel.

Mr. Budin said he will be getting rid of the gravel and putting more grass in.

Mr. Lamanna questioned where the Timberfire outdoor patio is located.

The board viewed photos and an aerial photo of the site.

Mr. Budin asked how the Timberfire patio affects him.

Mr. Lamanna said they don't affect you, you affect them and the fact that you are putting something in the front that was not there before.

Mr. Takacs asked if he was going to park cars on the grass.

Mr. Budin said in the summer-time.

Mr. Lewis asked if the cars are all outdoor.

Mr. Takacs replied yes.

Mr. Lewis said we are already looking at the cars.

Mr. Budin explained about the cars in the back.

Mr. Lamanna said the board held Timberfire and other people to their lot coverage.

Mr. Budin said the Timberfire is all asphalt.

Mr. Lamanna said they are at 40% and said if we hold this lot coverage to the same amount, he won't have a problem.

Mr. Budin explained the drive and said if he has to cut it, he will cut it.

Mr. Lamanna asked what the lot coverage was.

Mr. McIntyre explained that the lot coverage was at 50.5% with the office space that was going to go in.

Mr. Takacs asked if he was going to eliminate the stone and fence.

Mr. Budin said he will put some stone in because it is so hard to cut the grass.

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

Motion BZA 2002-27 - 8228 E. Washington Street

Mr. Lamanna made a motion to modify the existing conditional use permit to permit a new asphalt pavement area in the area as shown on the applicant's drawing.

With the following conditions:

1. The lot coverage total amount will remain at the 50.5% granted in BZA 96-42 so the applicant will have to reduce other lot coverage to the extent necessary to compensate for the new asphalt pavement area and will submit for the approval of the zoning inspector appropriate plans showing such coverage.

Mr. Takacs seconded the motion.

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

Application 2002-28 by Frank Remington Robinson for property at 7170 Chagrin Road

The applicant is requesting a substitution of a non-conforming, pre-existing use for the purpose of substituting a non-conforming printing company for a non-conforming professional office building. The property is located in a R-3A District.

The zoning inspector's letter dated May 14, 2002 was read and photos of the site were submitted.

Mr. Frank Robinson, Architect and Mr. Dwight Milko were present to represent this application.

Mr. Robinson testified that they attempting to obtain a lesser use for this property because it currently has been a light industrial or commercial use and we would like to make it a business use.

Mr. Milko testified that they are proposing a professional office use that will reduce the amount of activity and the type of equipment used and will also do a major restoration to the building.

Mr. Robinson said they are only adding a vestibule to comply with building code requirements. He presented a site plan to the board.

Mr. Lamanna asked about the current lot coverage.

Mr. Robinson said it is at 19% but before the county gave the land in the front it was at 41% lot coverage.

Mr. Lamanna asked if there will be additional parking.

Mr. Robinson said there will be no additional parking.

Mr. Milko said there will be six offices with myself and four employees.

Mr. Lamanna asked if there was room to add parking if they need to.

Mr. Milko replied yes.

Mr. Robinson said this property used to be a light industrial, pre-existing commercial building now zoned residential. He added that the neighbors are all in agreement with this.

Mr. Kolesar asked if a portion of the printing shop will be maintained.

Mr. Robinson replied no, it would make it difficult. He showed the board photos of the existing building.

Mrs. Stanton asked if there any landscaping plans between the residence and the building.

Mr. Milko said there is not really any room and said his neighbor cuts his grass.

Mr. Takacs asked what will be stored.

Mr. Milko said there will be shelves for forms etc.

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

Mr. Lamanna made a motion to grant the substitution of a pre-existing non-conforming use from a print shop to a professional office use and to permit the addition of a vestibule as required by building code and to grant a variance from the required ten parking spaces of the new use to the six that currently exist.

Based on the following findings of fact:

1. This substitution is equally or a more appropriate use of the property.
2. It is a less intensive use.
3. It takes it from a light industrial use into a professional office use.
4. In addition, the township has professional office districts which are designed to be buffers between non-residential and residential areas and this will help provide such a buffer to the adjacent residential area in its new use.
5. In this particular use there will not be any increase in traffic or any other adverse effects to the adjacent property and there will be actually less pollution and should be no increase in the use of the property and less noise so it is appropriate that this change be made.
6. As mentioned before, it is also consistent with the spirit of the zoning and with creating buffer zones with professional office areas.

Mr. Takacs seconded the motion.

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

Since there was no further testimony the public hearing was closed at 11:04 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
May 16, 2002

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 11:04 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. John Kolesar, Mr. Todd Lewis, Mrs. Ellen Stanton and Mr. Donald Takacs.

Minutes

Mr. Lamanna made a motion to approve the minutes of the April 18, 2002 meeting as written.

Mr. Takacs seconded the motion that passed unanimously.

Applications for next meeting

Application 2002-2 by Mary A. Briggs for property at 16790 Bedford Street (Continuance)

The applicant is requesting area variances for the purpose of constructing an agricultural building incidental to an agricultural use. The property is located in a R-3A District.

Application 2002-26 by Ivan Jozef Inc. for property at 16381 Chillicothe Road (Continuance)

The applicant is requesting a use variance for the purpose of establishing a health and beauty spa. The property is located in a R-5A District.

Application 2002-29 by Steven B. Huckabee for property at 7087 Rocker Avenue

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

Application 2002-30 by Fifth Third Bank (Dennis Green) for property at South East Corner of East Washington St. & Park Circle Drive (8355 E. Washington Street)

The applicant is requesting area variances for the purpose of constructing a bank. The property is located in a CB District (Convenience Business).

Application 2002-31 by Fifth Third Bank c/o Brilliant Electric Sign Co. for property at South East Corner of East Washington St. & Park Circle Drive (8355 E. Washington Street)

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

Application 2002-32 by The Fellowship Bible Church for property at 16391 Chillicothe Road

The applicant is requesting a conditional use permit for the purpose of constructing an addition. 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 June 20, 2002 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 11:24 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

