

Bainbridge Township, Ohio
Board of Zoning Appeals
May 17, 2012

Pursuant to notice by publication and certified mail, the public hearing was called to order at 7:05 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Joseph Gutoskey, Mr. Todd Lewis, Mr. Mark Murphy and Mr. Mark Olivier.

Mr. Lamanna welcomed everyone to the regular meeting of the Bainbridge Township Board of Zoning Appeals. He then explained the hearing process and swore in all persons who intended to testify.

Mr. Lamanna stated that the applications will be taken out of order.

Application 2012-8 by Cynthia J. Vasu for property at 7290 Ober Lane - Continuance

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

The zoning inspector's letter dated April 19, 2012 was read.

Mr. and Mrs. William Vasu were present to represent this application.

Mr. Lamanna stated that the board had some concerns because of the issue of where in fact a house would be able to be placed on the proposed split lot without having to engage in granting a whole series of variances.

Mr. William Vasu referred to the site plan and testified that this was the original location here and they went out and got a new plot plan from Hess with fresh information and then went out and spotted a location which was outside the 100' circle and with minimum or no tree removal so that would be the proposed location and then this is a printout from Access Geauga with the straightened up lot split since the board said last time they could just square it up and use an easement on the driveway.

Mr. Murphy referred to the site plan and said the original placement of the house was in this corner.

Mr. Vasu said right it was with only the 50' setback because they got the wrong information from Hess but he thinks it was suggested last time that they draw a 100' circle from the closest right-of-way which is this telephone pole and so they drew that.

Mr. Gutoskey asked if that is the part where the right-of-way point comes like this.

Mr. Vasu said correct, yes.

Mr. Wrench asked about the riparian.

Mr. Vasu referred to the site plan and said here is the center and here is the setback. He said here is the center of the creek and these are the two setbacks.

The neighbors came up to the table to view the new site plan submitted by the applicant.

Mr. Vasu explained the new site plan and their plan is to restore this part (he referred to the site plan) back to nature.

Mr. Dale Kramer of 7681 Ober Lane testified that it needs to be defined where the township property ends because this driveway curves and if you go by the telephone poles, he was told when he bought his house that this driveway was on his property so he does not know without getting a surveyor out here, it may not be because it is where the culdesac ends.

Mr. Gutoskey said if that is your frontage then it is somewhere right here because this is a square culdesac.

Mr. Kramer said that is the question, what is the right-of-way. He explained the location of his property and asked where the culdesac squares out.

Mr. Olivier asked if there is a drive there now for the existing house.

Mr. Vasu replied yes.

Mr. Lamanna asked Mr. Kramer if he had a legal description for his property with him.

Mr. Kramer said no and if this is the actual culdesac then this is township property so the question is, is this accurate.

Mr. Murphy said it may be your question or your neighbor's question but it is not our question but according to them that is the corner of that square and his driveway is on county or township property.

Mr. Jim Brett of 7320 Ober Lane asked where the leach fields are.

Mr. Lamanna asked Mr. Brett if he was sworn in.

Mr. Brett testified by saying yes.

Mr. Kramer asked where the driveway will come in.

Mr. Vasu said it will swing around and meet this (he referred to the site plan) and the plan is to get access and restore the area near your house (Mr. Kramer) back to nature.

Mr. Lewis said and the other house will have access from the other parcel so this has nothing to do with your driveway so it relieves that issue we had discussed earlier.

Mr. Vasu said right.

Mr. Lewis said it will be a single driveway for a single dwelling and now the dwelling has been moved back and complies with the 100' front yard setback requirement and he thinks we just determined that there is no encroachment on the adjacent property with this portion of the driveway unless somebody brings in a survey of Mr. Kramer's property showing that it is not appropriate and that evidence suggests that there is no encroachment on the other property. He said he is seeing a clean right-of-way and access to the property and he is seeing the front yard setback clearance requirements. He said as far as the leach field, that is the Geauga County Health Department.

The board reviewed the site plan and proposed setbacks.

Mr. Vasu said if he understands, the last time it was said that it wasn't really necessary to segment this, they are asking for the split and go all the way to the property line.

Mr. Lamanna said okay, the easement is going the other way it is going from the front to the back.

Mr. Vasu said yes.

Mr. Lamanna said the plan is to square this off basically.

Mr. Vasu said one lot will be 3.00 acres and the other will be 2.92 acres and we had it surveyed so that is accurate.

Mr. Murphy said the board probably needs a fixed drawing before we approve anything.

Mr. Olivier said we are just approving the lot split now.

Mr. Lamanna said before the zoning permit is issued a plan will have to be submitted to the zoning inspector for approval. He said we now know a house can be built on the lot without any significant variances. He asked if anybody else had anything more to say on this application.

Mrs. Norma Bobbitt of 7295 Ober Lane testified that she wants to express her view point again and she lives across the street from this property, up from Brett but hers is the first house on the culdesac on the left-hand side so her kitchen window will be staring at that house. She said her concern is that it seems like this board is here only to generate tax revenue for the township.

Mrs. Bobbitt continued by saying the existing owner's concerns don't seem to matter and could they have a township person come out and look at Norbuta's property because before it was built they were told that it was probably an unbuildable lot because there was a shortage of water and it turned out that was true, Bretts and Kramers all lost water when two houses were put in. She said she didn't lose water because she happens to have two cisterns but they both lost water and the board's response was to drill deeper. She asked who pays for that and when Norbuta's house went in she had to pay \$3,000 to put up a hedge so she didn't stare at their garage door. She said then when the house in the ravine went in she has a driveway 20 yards from the corner of her porch and nobody seems to care how these variances affect the people who already live there and now you are creating another variance so we will have another eyesore staring at us right off the culdesac that no one in the neighborhood wants. She said you ask us to come to these meetings to express our disapproval, we are all here, we don't want this house and it means nothing. She said she has already suffered two houses, one on either side of her.

Mr. Lamanna asked if those were platted lots that existed when she bought her lot.

Mrs. Bobbitt said Norbuta's house was part of her property, the people they bought their house from came to the zoning board and said they wanted to split the lot because they wanted to build a house there, they didn't want to build a house, they wanted to sell another lot so when she bought her property, that lot was for sale for seven years, it stood for sale because it was supposed to be an unbuildable lot. She said she didn't have another \$60,000 to buy that property back but it was part of her property and now all of a sudden Norbuta's come in and they buy it and they build, the house down in the ravine, the same thing, we were told when we moved in it was an unbuildable lot and she had no idea who owned it.

Mr. Lamanna said nobody can make a representation that a lot is unbuildable and people can tell you all kinds of things but there is a property owner who owns that lot, they have a right to use that lot, the fact that some third party tells you or even some township official tells you they think this lot is unbuildable, you can't abrogate another property owner's rights.

Mrs. Bobbitt said but you can abrogate how the variance is affecting the people that are there and the variances that you allowed for the two houses that are already there have negatively affected all of us and now you are going to have more variances for a third house.

Mr. Lamanna said he doesn't know what variances, if any, were granted for the other houses, but property owners are entitled to variances based upon their particular circumstances and if they have a lot that for whatever reason has unusual circumstances, they are entitled to a variance, that is their legal right.

Mrs. Bobbitt asked if the board would want a driveway 20 yards from their back porch, that is what she has got, their driveway is 20 yards from her back porch.

Mr. Lamanna said that is 60' which is the side setback so there should be no expectation that it would be any farther away from that, that is what the zoning is.

Mrs. Bobbitt said she has been negatively affected by both houses and so if they all lose water, who pays for that when we have to dig deeper, it has a negative effect on the aesthetics of their homes and financially if it affects their water like those other two houses.

Mr. Lamanna said nobody knows how any one house can affect the water, generally one house is not going to affect the water and any one individual property owner can decide they are going to use twice as much water as they used to use anyway so within the variations of one or two houses, you can't make any prediction at all how that might impact somebody else's well and the fact that the houses have to be built and then they needed more water may or may not be related and could be a totally unrelated effect.

Mrs. Louise Foster of 7340 Ober Lane asked what variances the board are considering.

Mr. Lamanna said at the moment the applicant has proposed a lot and actually the lot will have frontage on Ober Lane and that lot will have no variances. He said the variance will be for the lot that will now have frontage on Chagrin Road and will now become a Chagrin Road address otherwise they may share a driveway out on Ober Lane but that front lot will have a variance of .08 acres so instead of being 3.0 acres it will be 2.92 acres so it is about a 2% variance on the lot size and that is the only variance we are talking about here.

Mr. Brett said the one house, the third house there, a number of years ago on the Chagrin side of the line, they built that entire development which is a lot and how many straws can you have on the camel's back before you break the back. He said he had to go down 300' – 400' looking for water.

Mr. Lamanna said he assumes that everyone in Chagrin is hooked up to municipal water there and unfortunately we don't have any control over what they do on the other side of the line and they are not tapping into the aquifer that you (Mr. Brett) might be in.

Mr. Paul Foster of 7340 Ober testified that he understands that address is a Chagrin Road address because that was never part of the Stoneridge Colony, that land that we are talking about abuts the Stoneridge Colony and that roadway coming out was put in arbitrarily into the Stoneridge Colony by somebody named Stanek who owned that property originally so if you are talking about this address, it is a Chagrin Road address because two years ago he checked and it was never issued by Bainbridge as an Ober Lane address, just for your information.

Mr. Lamanna said if they have a right-of-way, the street is a dedicated street that belongs to the township therefore if they have the requisite frontage on that street they can ask that that be the address, that is what determines it if you have frontage on the street and it meets the legal requirement, you can have your address designated there.

The board referred to the GIS and noted that the county recognizes it as Ober Lane.

Mr. Lewis said the Ober Lane lot is the 3.0 acres and the Chagrin Road lot is 2.92 acres.

The board agreed with the acreage on the two lots.

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

Motion BZA 2012-8 – 7290 Ober Lane

Mr. Lamanna made a motion to grant the applicant the following variance for the purposes of a lot split.

1. The applicant has requested to split his lot into an east and west section, the east section will be 3.0 acres and the west section will be 2.92 acres.
2. The applicant will submit a final survey drawing and legal description to the zoning inspector for approval to assure compliance with the board's requirements prior to the issuance of the zoning certificate.
3. With respect to this action the variance is for the second lot from the 3.0 required (west lot) to an acreage of 2.92 acres for a variance of .08 acres.

Based on the following findings of fact:

1. A practical difficulty exists because this is a very minor amount of variance from the total 3.0 acres lot size.
2. It will create two approximately 3 acre lots which are consistent with the other lots in the area and will not adversely change the nature of the lots in this neighborhood.
3. Regarding the new lot (the lot that will have a new house built on it) the applicant submitted plans showing that the lot can be used without additional variances and without placing the dwelling into areas that would be unsuitable for building.

Mr. Lewis seconded the motion.

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

Application 2012-7 by Dennis Barba for property at 8699 Chase Drive - Continuance

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

The zoning inspector's letter dated April 19, 2012 was read.

Mr. Bill Joyce was present to represent this application.

Mr. Joyce testified that he is speaking on behalf of the homeowner, Mr. Dennis Barba who is out of town. He said they are applying for a rear yard variance for the addition of a detached three-car garage on property located at 8699 Chase Drive.

Mr. Lewis asked Mr. Joyce if he is the builder.

Mr. Joyce replied yes and said with regards to this property, the house is set on the property with a 400' setback from the culdesac and the minimum setback of the lot is approximately the left-hand corner of the house so that is the predicament they are in. He said the septic system is in the front yard and also the requirements of the zoning do not permit us to build the building in front of their home so with that in mind he would like to place the three-car garage off of his driveway about 3' – 5' off of his present driveway tab which puts him about 58' off the rear yard boundary. He said they are making this application knowing that they need a variance here but the nice part about this property is being 400' off the road, the house is barely visible let alone this garage will be barely visible from the road and he backs up to lots that have no houses within 400' and in three cases of his immediate rear yard neighbors there are upwards of 900' of woods so the impact of the building would be minimal if any to the neighbors.

Mr. Lamanna asked where the lots front to.

The board referred to the GIS aerial photo and noted that the lots are off of Haskins Road.

Mr. Olivier asked if the garage is going to be off the rear of the pad.

Mr. Joyce replied correct. He referred to the site plan and showed the board the septic area and the location of a transformer and said it will be 3' – 5' off the pad to avoid the underground power.

Mr. Lewis said that Peppermill Chase has an architectural review board.

Mr. Joyce said yes and Mr. Barba has submitted the architectural plans to them but he has not yet gotten a response for this meeting so it would be contingent upon their approval of the building as well.

Mr. Lewis said okay.

Mr. Joyce said it is an unknown at this point but they may require them to attach the garage with some type of breezeway to the house to meet their housing requirements but he is not aware of their requirements yet.

Mr. Lewis said he lives in Peppermill Chase also and most of the requirements are in writing and he thinks the request was made to the board about six weeks ago.

Mr. Joyce said he is not aware that Mr. Barba has a formal response.

Mr. Lewis said he didn't know, it would come from the board. He said the board should talk about the structure since it is known where it is going to be located, such as the size and shape and how it is in proportion to the house and the existing garage at that end.

Mr. Joyce said yes.

Mr. Lewis said he is trying to get familiar with what this structure is actually going to present as. He asked Mr. Joyce if these are the drawings.

Mr. Joyce said these are the drawings yes. He said they patterned this garage from the existing attached garage and they put carriage type doors on it and separated it into three doors to create less door space and more of a carriage house look. He said the dormers that are in the roof are false dormers just to add window space and curb appeal from the driveway. He said the approximate pitch of the roofs are the same as the existing home and the ridge, he believes, is approximately 18" higher than the existing ridge on the garage of the existing home but 6' lower than the highest ridge of the home so it doesn't overpower the existing structure.

Mr. Olivier asked if there will be storage above.

Mr. Joyce said there will be no storage above, actually they will just put high ceilings in there, about the height of the dormer window line so there will be just skylights in the garage.

Mr. Lewis said he wanted to talk about the use of the garage and get some assurances that there will be no business use, no automotive repair business, no craft shops etc., no business activities.

Mr. Joyce said there will be no business activities and the reason for the high ceiling in the garage is to be able to throw a ball around inside of it, put a basketball court up inside as well as park cars in there and that is the reason for the second story and the additional daylight windows.

The board discussed the requested rear yard setback of 53'.

Mr. Lamanna asked if there is anybody else that would like to speak regarding this application.

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

Motion BZA-2012-7 – 8699 Chase Drive

Mr. Lamanna made a motion to grant the applicant the following variance for the purposes of constructing a detached garage in accordance with the plans the applicant submitted with his application.

1. A variance from the minimum required rear yard setback of 90' to 53' for a variance of 37'.

Based on the following findings of fact:

1. A practical difficulty exists because this is a long triangular lot where the applicant had to move to the back of the lot in order to have sufficient width on which to put the existing house therefore it was pushed to the back of the lot and closer to the rear setback.
2. Because of this unusual shape this variance will not affect the character of the neighborhood as houses are all well spaced and the abutting rear properties are extremely deep properties from Haskins Road and all of the houses are located near the front of the properties and there is more than 500' of distance between the rear lot lines and any dwellings on these properties so there should be no adverse impact on any of the neighboring properties.
3. The board notes for the record that this house is in Peppermill Chase and subject to the Peppermill Chase deed restrictions and the applicant must satisfy all of the requirements of those deed restrictions and the approval by this board.
4. The granting of this variance in no way implies the applicant does not have to comply with those requirements or supersede those requirements.

Mr. Lewis seconded the motion.

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

Application 2012-10 by R. Blake Frederick for property at 8535 Tanglewood Square, Unit T-8 Rear

The applicant is requesting a use variance for the purpose of establishing an indoor shooting range and retail sporting goods facility. The property is located in a CB District.

Mr. R. Blake Frederick was present to represent this application.

Mr. Frederick testified that the reason for his request is it is for a use variance and they are of the understanding that the use is permissible in other areas of the township but not particularly in the plaza that they are requesting. He said this is the back space of the former Medic Drug, catty-corner to the former Kmart so what they are trying to do is consume that back space and allow Tanglewood Partners then to have some smaller frontage spaces and he does believe the board has a layout in their packets of how this actually would be configured. He said they are going to consume somewhere around 6,800 sq. ft. to 7,200 sq. ft. depending on where the final line internally is drawn. He said there are some natural lines inside the building that should probably be readjusted so they looked at that and that space is generally vacant except for the tailor right now so they are internally looking at where they are going to put the walls so they are right about that 6,800 sq. ft. mark. He said the range will be oriented west to east while inside they will have concrete demising walls and then they would have about roughly 2,600 sq. ft. of retail space.

The board reviewed the plans that were submitted.

Mr. Olivier asked if the entrance will be where the Medic Drug entrance was.

Mr. Frederick said the entrance actually will be in the back where the old Medic Drug delivery door was. He said this was the emergency exit and this will be the actual entrance. He said Medic had the whole space and the difference is we are taking the back space that they had which was about 15,000 sq. ft. roughly.

Mr. Olivier said so the customers will come to the rear.

Mr. Frederick said exactly, they will be parking back where the fitness center is. He said they can park out front and walk through the archway or park in the back and there will be an emergency exit out the front or side.

Mr. Murphy asked if the back of the building property is actually the Giant Eagle store.

Mr. Frederick said no that is where the China Buffet was so there is still a buffer there, a sizable one in fact and he knows that Tanglewood Partners was looking at an option of getting another type of restaurant or something of that nature so they would be pushing back into where they have their kitchen which is that natural delineation that he was speaking about so they would push to that wall which is a natural wall so their space inside would be a little oddly configured but natural to the walls of the building internally and good for retail which is what that whole back side of our space would be.

Mr. Olivier asked if they engineer the walls for the calibers.

Mr. Frederick said you can engineer walls for almost anything but they generally engineer walls for 300 Win Mag, 8 millimeter and the lot. He said in the case for new construction with this particular opportunity it will be a very robust bullet trap, that is what they call bullet entrapment which catches the bullet, you can buy them and you can build them, they do the same thing so you can limit what you allow people to shoot and you can limit it based upon what you can capture or you can limit it based upon your desire. He said in their case they would limit it based on their desire to capture anything that can be shot and that is because they are building it from scratch so their bullet entrapment that they are going to build in this space is very fundamental, it is an indoor earthen mound, about 96" tall and it comes out about 16' and on top of that you have about 8" of what is called Shotcrete which is reinforced concrete that they make pools out of and on top of that there is about 20" of rubber, granulated. He said the rubber is what allows you to recycle and relay the projectiles and they do it two or three times a year in his current facility. He said you can shoot almost anything, especially when you start from scratch like they are going to do. He said the demising walls are concrete and they are just poured solid and then they have in addition to that, the stand-off wall, this one is on the front side and this would be the main entrance so it is pretty sizable and the range is encapsulated inside the building.

Mr. Olivier asked how many people can be firing at the range at any given time.

Mr. Frederick said you can have approximately in this configuration about 30 maximum, it is two per stall and what they are proposing is 12 lanes of shooting, you have a stall and a bench and typically two people will share that stall and they will trade back and forth but what they are proposing in addition to that is four bench rest ranges where people will sit and shoot and that will be for the rifle shooters and there is nowhere you can do that indoors in all of Ohio but we are going to build it here hopefully. He said the bench rest shooting will allow four additional lanes so those lanes are typically about 42" and the other lane is about 37" in width. He said the other lanes will have sidewalls so you really can't see who is to your left and who is to your right but the rifle lane will have benches where you would sit down and shoot.

Mr. Olivier asked if people tend to schedule times or do they walk in.

Mr. Frederick said no it is not scheduled, it is first come, first served, they are open seven days per week and they are open 10:00 AM to 8:00 PM Monday through Saturday and 10:00 AM to 5:00 PM on Sunday. He said the hours, he would propose, to be similar, not exact per say, they might open a little earlier here. He said he is from Burton and he lives in Novelty so Geauga County hours tend to be a little bit different than Lake County hours where his current business is operating but the hours will be close. He said a lot of that has to do with community times and things of that nature.

Mr. Olivier asked about the retail portion of the facility and what is going to be sold.

Mr. Frederick said retail will include firearms, ammunition, reloading supplies which includes from smokeless powder to black powder, they would sell a lot of other retail sporting goods such as fishing equipment, fishing poles, reels, lures, hard tackle, soft bait and things of that nature, air guns, BB guns, soft air, clothing, primarily gloves, vests, boots and they do a lot of belts and holsters. He said here they will probably expand that into a few different lines on the clothing side but that is primarily what they are about. He said they are heavily right now oriented into a lot of tactical products that they are probably well known for and they will do similar products here except they will expand in some lines that are moving different than they currently do especially things that deal with work wear that are still outdoor oriented.

Mr. Murphy asked if they are offering classes.

Mr. Frederick said they will offer a lot of education, they do basic rifle, basic pistol, they do tactical rifle training, they do concealed carry training, they do NRA basic pistol, home defense, they learn to shoot what they call the NRA first shot, they train even air pistols so they do a lot of training and it is usually almost every night of the week but it is not the same thing every night of the week. He said currently as an example they teach concealed carry twice a month or once a month depending on the time of the year and they teach NRA basic pistol on a first come, first served basis if they have a scheduled class or they do it by appointment. They do 90 minute instructionals by appointment, they do new shooters NRA first shot every Wednesday at 6:00 PM so that is the way they are currently oriented, they would see something similar here, it might not be as many classes the first year but it would probably be as many or more once they are up and running so they do a lot of education.

Mr. Olivier asked about the security for the building and securing the inventory.

Mr. Frederick said security is not ideal because nothing is perfect but he will point out to the board with this design that they put together is from a security standpoint, it is awesome because when you enter the building you have to walk nearly 65' before you are inside the store which is great, it is a wide hallway which is what we need for building requirements but it is a long distance which means for security purposes that is great because we can actually at night have that completely blocked off with a cage so by virtue of the way this building is designed they can fully isolate the retail store because it is deep into the building. He said he wanted the back space because it is more affordable instead of all of that front space and it is more secure so they can isolate the retail easily because it is all the way in the back of the building and they don't take special precautions at his current facility because they have a similar situation where in his case at Eastlake they are close to the road and it is hard, they had a break-in but it is hard to get in and you cannot prevent everything, their building is alarmed very well and they are always notified of anything but it is impossible to be 100% on anything. He said it is no different than a jewelry store or a liquor store.

Mr. Olivier asked if they will have interior doors.

Mr. Frederick said it will be an exit only with a grate that goes down at night and this is completely chained up.

Mr. Lamanna said before we go any farther with specific details, the board has a description of what the business is but his first question is why is this application before this board and not before the zoning commission to change the conditional or regular uses permitted in a convenience business district.

Mr. Frederick said because this is the application he was given.

Mr. Lamanna said he has been trying to pour through the variance and sundry permitted uses in here and unfortunately he does not see anything that this fits into and in fact if you look at what has happened to the CB district they have actually added in an indoor golf driving range and an outdoor miniature golf course as being permitted uses in recent history, game rooms have been added in so it is evident to him that in structuring this the zoning commission has decided that here are a number of uses that are permitted. He said if you are applying for this strictly on a use basis in this district there is probably virtually no way you can meet the criteria for obtaining a use variance. He said it is a fairly high bar and you couldn't use the property otherwise, the property would have no commercial value if it couldn't be used for this purpose but obviously there are 1,001 different permitted things in this district so the barrier would be very high for this and if the board was going to entertain variances for permitted uses it would have to be on the basis that this really fits into one of the categories that already exists but at the time they passed the ordinance they probably didn't anticipate this specific type or subcategory of the business but it really fits into one of the other things that has already been allowed and he really doesn't see that anywhere here. He said there is not an issue with the retail part of it, as far as retail sporting goods, that is a permitted use but when we get down to it what he would characterize, a recreational for the most part, operation of a shooting range, he doesn't see that that anywhere fits in what is permitted in a CB district and that it is really more appropriate that you take your issue to the zoning commission for a lot of reasons. He said one of which is they need to decide whether they think it is appropriate and what their concept of the CB district is which is really their prerogative under the way the zoning obligation or activity is divided. He said our job is not to legislate and when we start creating new things we tread very close to the line in legislating so it is the zoning commission's job to really decide whether or not they would want to permit it and secondly when they do it, they have the ability to decide whether it is a regular use or a conditional use, they may make it a conditional use which gives the board of zoning appeals the authority to establish various conditions associated with permitting that use in the district.

Mr. Lamanna continued by saying without that then we are on different grounds in trying to establish conditions and they may also themselves want to establish conditions if they were to permit this use and frankly it is their job to look into whether there are community impacts, safety impacts, they are set up to collect the kind of information that is necessary to make those decisions, we are not really in a position to do that very easily and we can't decide to call in expert witnesses to give us information on various things and it is really not the board of zoning appeal's job to do that so at least it is his inclination to table this application and send it to the zoning commission to make an application to modify the permitted items in the convenience business district to permit this type of use and this is a difficult call for somebody to make.

Mr. Frederick said he completed the application based on what was presented to him and what he was asked to do.

Mr. Lamanna said he understands and he is sorry but sometimes it seems difficult until the board actually hears everything and look at and study it to determine what to do and how should this be most appropriately handled. He said he thinks it is more appropriately handled through the legislative side and it is a matter of what you would have to establish to attain a use variance in a convenience business district. He said that is a very difficult hurdle to overcome.

Mr. Frederick asked how so.

Mr. Lamanna said because the standard is there is no other economic use of the property and in a convenience business district it is pretty hard to establish that there is not some other business with two pages of listed businesses here that would be viable for that property. He said it would have to be a very unusual set of circumstances and frankly he doesn't like a situation where it looks like this board is potentially stepping on the prerogatives of another group of township officials. He asked if anybody had any different thoughts.

Mr. Murphy said if the board were to try to squeeze it in, some way or another, are we going to call it a game room which it is not or call it an educational facility, there is nothing in the code.

Mr. Lamanna said technically even schools are not allowed in a convenience business district. He said he was looking over this to see if there was anything in the code.

Mr. Frederick said he went through it himself too at one point and half of the things in operation aren't listed so he didn't know the difference himself.

Mr. Lamanna said it is a difficult thing until you actually sit down and look at it carefully and understand exactly what the business is going to be and then finally reach a conclusion and decide that it doesn't fit in with the established ordinance and at the moment that is where he sees it and he thinks that really this is something that should be brought before the zoning commission and we wouldn't entertain this application until they rule on this one way or the other. He said if they don't want to act on it to him that says they don't want to allow this use and until somebody comes back and says they would like a use variance and the zoning commission declined to act favorably on a decision to allow it, this board would entertain it but understand that the legal hurdle you have to get over is going to be very high and very, very difficult to successfully negotiate. He said at this point he is inclined to table this application until such time as the applicant has presented a petition to the zoning commission.

Mr. Frederick asked what the petition is because it was the township that gave him the application to be here tonight.

Mr. Lamanna said there are separate request forms.

Mr. Frederick said but he did end up here by guidance of the township, he didn't come here because it was his idea.

Mr. Chuck Nichols asked if he could address this. He testified that he is on the zoning commission and this was not brought to the zoning commission in any way, shape or form. He said his question is why wasn't this gentleman directed to the right board from the very beginning, he has gone to considerable expense to come in front of this board, he has taken considerable time to do this and now you are asking that he go to another board to review this and in his opinion it is not our decision (zoning commission) and in his opinion it is a variance. He said he related to something that the BZA recently allowed a variance on with regards to a funeral home and he doesn't think there is a whole lot of difference there, maybe he is wrong, but in his opinion he doesn't see a whole lot of difference between the variance that was issued, the restaurant to become a funeral home.

Mr. Lamanna said a funeral home is a permitted use in the township, in the CB district and secondly that application as he told people in here was in here on a change of non-conforming use and there is a separate set of standards that apply to changes of non-conforming uses so it was not a use variance but what he is requesting here is a use variance.

Mr. Nichols said that is correct it is a variance and why wasn't he directed then in the right direction.

Mr. Lamanna said he does not know.

Mr. Nichols said in such a case he should be reimbursed for his total expenses for what he went through here because he was directed in the wrong direction.

Mr. Lamanna said you need to take that up with the Board of Trustees.

Mr. Nichols said he will because he feels he (Mr. Frederick) has been unjustly dealt with here and he thinks it is a slap in the face to us as a township to treat somebody that wants to come into this community and do something that would help the community all around and then treat him like this. He said he has lived here all of his life, longer than anybody here.

Mr. Lamanna said the board of zoning appeals has no control over this.

Mr. Nichols said when he finishes he will gratefully relinquish the floor to the board. He said in his opinion he thinks we have done a great injustice to this man because he operates a class operation out in Eastlake and for him to have been treated this way when he came to our township is a slap in the face. He said he thinks we have dealt with it entirely wrong, entirely wrong and in his opinion it is a decision to be made by this board, but he could be wrong. He said if this board wants to shoot it back to the zoning commission, we will address it and it just might be the case that we shoot it back to you (board of zoning appeals) so what are we doing, playing ball here. He said one or the other of us has to address it and it has never been brought to us (zoning commission). He said he assures you that if it comes to our board we will address it.

Mr. Lamanna said he thinks that is where it should be appropriately addressed. He asked Mr. Wrench what happened.

Mr. Wrench said he did get a call from Mr. Frederick and from Mr. Richard Katz and he told them there is nothing in the resolution in any district that mentions shooting ranges and at that point they had the location of Tanglewood picked out and he said they would need to pursue a variance because it is not a recognized use in the resolution.

Mr. Lamanna said these circumstances don't come up that often and this particular circumstance probably hasn't come up in several years and he doesn't think they have come up to Mr. Wrench as the zoning inspector so it is a difficult call and in several other cases people have come here and we have told them after looking at this thing and looking at what our charter is that we think it is more appropriate to be pursued in front of the zoning commission because this is really a change of zoning. He said the way he looks at this is variances are meant to deal with unique circumstances of a particular piece of property so if somebody has got an issue with their particular piece of property that is what the board is here to deal with.

Mr. Lamanna continued by saying when the question is generally applicable to all of the properties within the district and what you are wanting us to change is effectively something that affects potentially every property in the district and it is not unique to a single property or designed to deal with the problems of a specific property, that is where his view is and has been consistently as long as he has been on this board, that that then becomes a purview for a rezoning because it is generally applicable and he thinks that is consistent with how the people who review our actions which is the court system of the State of Ohio would also view that situation that we are here not to deal with general questions of zoning but to deal with particular issues that are related to individual pieces of property and that is how he comes to the demarcation line, it is not just that he arbitrarily thinks this board should handle this and the other board should handle something else and that is why sometimes it is a difficult call for the people in the office to make on an individual case and until the board hears all of the facts and everything, sometimes it is a difficult call for this board to make as well. He said if he had his druthers maybe we would have caucused on this beforehand, before a formal application was made and we could have said under the circumstances we think you ought to go this way.

Mr. Nichols said he doesn't disagree with your (Mr. Lamanna) thinking, he just happens to disagree with it and that is his prerogative also.

Mr. Lamanna said you can have a different point of view on this and you are welcome to it.

Mr. Nichols said perhaps the proper way would have been for us to consult back and forth as boards to decide where it should be and that is probably what should have been done but unfortunately we don't have that communication.

Mr. Lamanna said yes we could improve upon the communication. He said he agrees and when these cases come up there probably should be consultation between the chairmen of the two boards, looking at the circumstances and coming to a decision as to what we recommend. He said unfortunately these things come up about once every three to five years and usually by that time the people who were there before have forgotten about it and it is hard to establish procedures for something that comes up on an a really infrequent basis because by the time it comes up there is a new zoning inspector, there are new chairmen for the zoning commission and BZA and everybody forgets about that but he would agree, that would be the ideal way to handle it.

Mr. Nichols said there is no excuse for us handling it the way we did.

Mr. Lewis asked when the next zoning commission meeting is.

Mr. Nichols said they are held twice a month now so the next one is on May 29th and it will be held at the Burns-Lindow building.

Mr. Lewis asked to get on the agenda, is there a time in advance that the applicant has to file.

It was noted that the applicant would have to file before May 29th in order for the zoning commission to accept the application on that date.

Mr. Lewis suggested that at the zoning commission meeting, in trying to give the applicant a fast track to present, there is about a 10 day delay and we have to make sure that the applicant is receiving any assistance he needs with forms or applications to be sure that they are put on the agenda for that evening. He said if this board is tabling this application, if it does end up coming back to the BZA they are automatically on our next meeting.

Mr. Nichols said he concurs with the suggestion regarding getting them on the next agenda, he would welcome that.

Mr. Seliga asked what kind of training is allowed and isn't self-defense training permitted.

Mr. Lamanna said yes there is self-defense training.

Mr. Seliga said the question he has, he has looked at this whole thing and there are a number of us here who are shooters, why we are going to the range is to practice self-defense type techniques and we go there to get his classes on it, the only thing different is there are firearms involved in this so these are educational type classes, this is self-defense type and it is the reason most people are there or they are going there to practice to do things better. He asked is it the fact that firearms are involved that now makes it a different classification. He said if someone is doing self-defense it is okay but if you take the firearms to do the same thing he would think it would have to go to the zoning board. He said if they have sticks and they are using sticks in the training that is alright because it is in the training.

Mr. Lamanna said if it is a class yes, if it is all designed as a class it is different.

Mr. Seliga said with these classes these people go and practice their techniques and we have people from multiple communities here that do this who are looking to be able to go to these ranges and practice their techniques for self-defense and for other reasons. He said it is an educational thing to them.

Mr. Lewis said he would suggest that self-defense might be only one of the possible reasons as to whether it is for competition or it is for game shooting there is a lot more going on than what to do to defend me and that is where even if there was the avenue to rule on that element what this gentleman is trying to do with his business, he would receive about this much permitted approval on a huge scope of what he needs to get done in there. He said he doesn't like the delay anymore than anybody else does and he knows this gentleman wants to start his business and he is in a tentative understanding with the landlord.

Mr. Frederick replied yes.

Mr. Lewis said he thinks one of the matters at this point that might help things is that if the applicant can get before the zoning commission in 10 days that the zoning commission may be able to do what they can within reasonableness to fast track whatever their decision may be and get that over to the BZA.

Mr. Nichols said you have seen this at least several weeks ahead of tonight's hearing, why didn't someone at that point say this really shouldn't be coming in front of us, this should go back to the commission, we could have eliminated a lot of stuff here, just if somebody would have brought that question up when this was proposed.

Mr. Lewis said that is why we have a public hearing and we give the applicant a chance to present because while the application gives us some insight, the testimony and presentation and the use clarifies matters.

Mr. Lamanna said the information is not circulated to the board until about a week before.

Mr. Nichols said he was notified about this up here in the zoning office at least three weeks, why aren't you (BZA) given that stuff.

Mr. Murphy said the board gets their packets about five or six days ahead of the meeting and this is when it comes up in front of us.

Mr. Olivier said we listen to the applicant and we get a description of the uses and try to find a use that is conditional or an improved use and if we feel that that description doesn't fit a use then he thinks it is appropriate to let the zoning commission look at it, then it goes in front of the trustees, the people who are elected by the township to represent the township and it is a decision of theirs to add the use.

Mr. Nichols said he doesn't have a problem with that at all.

Mr. Lewis said the good news is in Chapter 177 it is not listed as a prohibited use so that does give the zoning commission an opportunity to look at it, make a decision on its appropriateness and then define a district if it is appropriate that it would be permitted.

Mr. Nichols said he welcomes that opportunity.

Mr. Murphy said he could see how it could be a business with classes or instruction in self-defense or self-improvement and from this gentleman we heard about you coming in and doing what you want to do about your own skill levels and that it is a business that offers a place for self-improvement and that is a permitted zoning certificate required use.

Mr. Lewis said it is tied with self-improvement and weight loss.

Mr. Lamanna said there has to be an instructive nature to it and people would have to be coming there for active instruction.

Mr. Murphy said you are allowed to practice.

Mr. Lamanna said that is fine, you could conduct classes but you couldn't allow people to just come in on their own to target practice.

Mr. Frederick asked what does that mean exactly. He said he is not sure he understands what was just said.

Mr. Lamanna said his understanding is people would just come and say they would like to practice.

Mr. Frederick said okay.

Mr. Lewis said he doesn't know if time slots will be sold.

Mr. Frederick said they don't sell by time slots.

Mr. Olivier said it would be like a driving range.

Mr. Frederick said it is all vacant and now Kmart is vacant so that is where they are.

Mr. Lewis said this could all be so easily clarified by the zoning commission.

Mr. Olivier said that is how the golf driving range was added in 1996 so here is something very similar but it was specifically defined by the zoning commission in 1996.

Mr. Lamanna said in an ideal world if he had gotten this application and looked at it carefully, if it was brought to him as a question, he would have probably sent it to the zoning commission, but the unfortunate thing is by the time he gets his packet he has other things to do and reviews it a couple of days beforehand but he wants to hear what the applicant has to say and maybe by the way this is structured he can find a way to fit it in but until he actually hears all of that it is hard to make a decision.

Mr. Lewis asked if there is an option on a lease right now.

Mr. Frederick replied yes it is timed.

Mr. Lewis asked what the time-out date is.

Mr. Frederick said he would have to look at it.

Mr. Lewis said it might be nice to know so that we can all be sensitive to that.

Mr. Olivier said this certainly is not an attempt to say the board is not interested in your (Mr. Frederick's) business, he does not think that is the board's intent, we are just going through the proper process, we are not trying to put you off.

Mr. Lewis said the retail part of it is okay, it is the practice range.

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

Motion BZA 2012-10 – 8535 Tanglewood Square, Unit T-8 Rear (Indoor Shooting Range)

Mr. Lamanna made a motion to table this application to allow the applicant to make application to the Zoning Commission for a re-zoning of the area to permit this use to be a more appropriate way to handle this. The board will hold the application pending the decision by the Zoning Commission on how to proceed.

Mr. Lewis seconded the motion.

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

Since there was no further testimony, the public hearing was closed at 8:42 P.M.

Respectfully submitted,

Joseph Gutoskey
Michael Lamanna, Chairman
Todd Lewis, Vice Chairman
Mark Murphy
Mark Olivier

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

Date: June 21, 2012

AUDIO RECORDING ON FILE

BZA PH 5/17/2012

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Bainbridge Township, Ohio
Board of Zoning Appeals
May 17, 2012

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 8:42 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Joseph Gutoskey, Mr. Todd Lewis, Mr. Mark Murphy and Mr. Mark Olivier.

Minutes

Mr. Lamanna made a motion to adopt the minutes of the April 19, 2012 meeting as written.

Mr. Lewis seconded the motion.

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

Applications for June 21, 2012

Application 2012-11 by Ed & Sue Speck for property at 8446 Lakeshore 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 2012-12 by Robert Cohen of Bravo Homes, LLC for Joseph & Tara Calvello for property at 17158 Woodmere 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.

The Bainbridge Township Board of Zoning Appeals set a public hearing on the above applications for June 21, 2012 at 7:00 P.M. at the Bainbridge Township Community Hall, 17826 Chillicothe Road, Bainbridge Township, Ohio and unanimously resolved to request the Bainbridge Township Board of Trustees to issue a purchase order for legal advertising.

Since there was no further business, the meeting was adjourned at 9:00 P.M.

Respectfully submitted,

Joseph Gutoskey
Michael Lamanna, Chairman
Todd Lewis, Vice Chairman
Mark Murphy
Mark Olivier

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

Date: June 21, 2012