

Bainbridge Township, Ohio  
Board of Zoning Appeals  
May 4, 2006

Pursuant to notice by publication and certified mail, a special public hearing was called to order at 7:38 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Todd Lewis, Mr. Mark Murphy, Mr. Mark Olivier and Mr. Donald Takacs. The following matters were then heard:

Mr. Lamanna welcomed everyone to a special meeting of the Bainbridge Township Board of Zoning Appeals that is being held to accommodate applications due to the fact the board has cancelled a couple of meetings recently. He then explained the hearing process and swore in all persons who intended to testify.

Application 2006-10 by Kris Babetski of Archer Signs for Sky Bank for property at 8420 East Washington Street - Continuance

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

The zoning inspector's letter dated April 13, 2006 was read and photos of the site were submitted.

Mr. Kris Babetski of Archer Signs and Mr. Ray Wallenherst of Sky Bank were present to represent this application.

Mr. Babetski testified that two weeks ago he was on vacation so Mr. Steve Miller represented Archer Signs at the last hearing. He said their intention is if you are heading east on E. Washington, the sign cannot be seen on the front side of the building, so they have an application to install a sign on the canopy so when people are heading east it can be seen and they would like to see 18" letters rather than the 24" letters and added that he brought the new design for the board to review.

The board reviewed the variance request.

Mr. Lamanna said it will reduce the west façade sign down to 17 sq. ft. or 18 sq. ft. so it will be down to no variance at all because the ATM is a directional sign.

Mr. Babetski said that it was scaled down from 24".

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

Motion BZA 2006-10 - 8420 East Washington Street (Sky Bank)

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

1. A variance for an additional wall sign on the west face of the building.
2. A variance of 6 sq. ft. on the total signage area to 65.8 sq. ft.

Based on the following findings of fact:

1. The second wall sign is permitted because of the unusual orientation of the building with respect to the roadway and the inability to see the main sign when coming from one direction.
2. The small variance is granted to the total overall signage required due to the fact that it is a small variance and one of the signs is an ATM sign which is primarily directional in nature and without that sign it would not exceed the permitted limit.

Mr. Takacs seconded the motion.

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

Application 2006-1 by Carol M. Freebairn for property at 16760 Park Circle Drive – Continuance

The applicant is requesting area variances for the purpose of maintaining a storage facility. The property is located in a LIR District.

The zoning inspector's letter dated January 6, 2006 was read and photos of the site were submitted.

Mr. Dale Markowitz, Attorney for the applicant, Mr. and Mrs. Robert Freebairn, operators of Phoenix Associates, Mr. Chip Hess, engineer and Mr. Chris Everett, fire protection systems were present to represent this application.

Mr. Markowitz testified by thanking the board for accommodating his clients tonight because of the special meeting. He said that Mr. Freebairn, operator of Phoenix Associates is here, Mr. Chip Hess, who is an engineer and Mr. Chris Everett who will be installing the fire protection system in the building are here to testify on behalf of this application. He said that since they were here last time, he was at the site with his client and they took some photographs that he will hand out and they will help explain some of things they are going to talk about and some of them are similar to what the board has seen before.

Mr. Markowitz submitted the first photo and said it is a photo looking toward the west (inside the building) and noted that a lot of the area has been cleaned up and better defined than the last time they were here and added that there is a "No Smoking" sign at the far end and at the end, there is a new man-door that has been installed. He said when they were here last time, there was a suggestion that even though the fire department letter indicated that we needed to put in a new man-door on the east side, we decided to put in at least one more on the west side and it was put in already because the door was available. He said now there is a railing behind it that will be cut away and we are going to put platform stairs there and Mr. Chip Hess will show the board the design for that. He said he had his client take a photo of another fire exit door that is in the main facility so the board will be able to see what they are talking about regarding exit signs with strobe lights and a fire extinguisher and those are all clipped above the door and beside the door and that is what they will do with the new man-doors that were put into the addition. He said the letter from the fire department last time noted that there was a picnic table inside and the employees during a break would smoke in there so the owners constituted a no smoking policy where they cannot smoke in the building or even near the back there because it is a building with combustible materials, so no smoking signs have been put up in various places and in the addition as well. He said the next photo is a close-up of the new man-door that was installed on the west side which according to the fire department and building code it is not required but we thought that based on what the board had indicated last time that we should put in a man-door on each side. He also noted that they installed a no smoking sign up there as well. He said the next photo serves two purposes and it explains in Mr. Mark Menary's (fire inspector) most recent letter that some of you may or may not have seen that just came from Mr. McIntyre and he will review it, but when Mr. Menary was out there, they had some possible storage on the second level above the red line and it was less than two feet from the top which he told us that combustibles have to remain two feet from the top of the structure so those have been eliminated up there, but at the time they took the photo, they were too high. He said the other reason he took this photo is to show the board the overhead door at the far east side and they thought that door would be in compliance with the fire department's request to have an exit on the east side, but the fire inspector said we need to have a man-door there and originally they thought about putting it on the wall on the left side so that you could exit out on the north but realized that it did not make any sense, so the over-head door will be replaced with a man-door. He said the over-head door is not needed because they don't do deliveries through there so they will put the new man-door there within 10 feet of the door that exits out of the main building on the right side of the photo and then you would walk out onto the ground, where that picnic table was so they would be in compliance with the fire code requirements. He said the subject came up last time on whether sprinklers should be required for the building so he contacted Five Star Fire Protection and talked to Mr. Mike Mihalisin of the Geauga County Building Department and found the pertinent applications to this building which is a storage building falls into a group S-1, moderate hazard facility because we have combustibles and in order to be mandated to have sprinklers the storage area has to be 12,000 sq. ft. or more than two stories or the whole facility has to be more than 24,000 sq. ft. and this entire facility is only 13,000 sq. ft. including the addition and the addition itself is only 1,600 sq. ft. and all on one story so sprinklers would not be required.

Mr. Markowitz said when they had Mr. Menary on the site, he agreed with them that sprinklers were not required but he would say to you in his letter that it is a county building department call, not his and that is because the fire department doesn't enforce that provision during the planning process, the county building department does and so he is competent that Mr. Mihalisin, when he reviews their plans, will not require them. He said they have also been requested by Mr. Menary to submit their fire alarm protection system to the fire department which they have done and Mr. Chris Everett is here to speak on that tonight and he also requested that they get the building plan for the addition and submit that to the county building department which he did and when he talked to Mr. Mihalisin he said the plans submitted, show a roof snow-load bearing capacity of 25 pounds per square foot but Geauga County is contrary to the rest of the state and we have a 30 pounds per square foot requirement because we have extra snow out here, so he went back to American Steel and asked them to tell him whether or not the structure complied because he was told by Mr. Mihalisin that if it did not, they would have to put additional steel struts inside to give it more support, and he got an engineered report back from American Steel's engineer and their finding is that the actual snow-load is 35 pounds per square foot so it exceeds the requirements so he gave this to Mr. Mihalisin and Mr. Mihalisin confirmed that this does meet the requirements so there would not be any structural elements that would have to be added, because Mr. Menary said that if we had to put more steel struts in, we would have to stay two feet below that which would have lowered our storage capacity, but we met that requirement. He said when they were out at the site with Mr. Menary, they told him that they would have fire pulls by each of the man-doors and they have fire extinguishers and exit lights and would add a fire alarm system with heat detectors that will trigger an audible alarm and a digital alarm inside the building and it also has the ability to be connected to the Bainbridge Fire Department.

Mr. Takacs asked if the fire alarm would be for the whole facility or just the addition.

Mr. Markowitz said just the addition and added that Mr. Menary has been out here every few years because they do bi-annual inspections of all of the commercial buildings in the township and they have never been cited before and never had any issues and the building complies with all the codes and they have never had a problem with fire inspections. He said the building itself complies with the local codes as far as safety but we still have to go through the building permit process with the county which they will not do until after the variance is granted and then the county building department will come back and do an inspection on the building but he was advised by Mr. Mihalisin that based on the drawings provided by the engineer that the building design, engineering wise, complies with the code and in conjunction with that, the fire department comes back out and does an inspection. He said the fire department came out at their request and did an informal so that they all could understand what was being proposed. He said they got chided a little bit by Mr. Menary because they went ahead and put in the fire door before he came out there and told us what he wanted because what he really wanted was a door on the east end so he said we would not have had to spend the money but we tried to explain to him that this board thought there should be two exits out.

Mr. Markowitz said American Steel had a door and immediately came out and put it in. He added that they cleaned up the site substantially and removed some of the combustible materials and eliminated smoking from the area and that was one of the issues that Mr. Menary raised. He said that Mr. Robert Freebairn would like to speak along with Mr. Chip Hess and Mr. Chris Everett.

Mr. Robert Freebairn testified that he needed to explain to the board and he understands a question was raised about a variance he obtained in 1997 and he wanted to say that he was not present at that board of appeals meeting, someone from John Fay Architects was present. He said his contractor suggested that he hire an architect to obtain the building permits and he did not know that a zoning permit or a variance had been obtained at that time. He said when he first put the storage in, it was just going to be a cement pad with a railing around it as a safety measure, and his contractor, Mr. Chuck Campbell who is a friend and a retired school teacher hired a subcontractor to do the work. He said he and Mr. Campbell never discussed whether they needed a permit and he was not told by anyone that he needed a permit. He said the pad was put in, in the summer of 2005 and after the pad was put in and they stored some materials there with a tarp on it, they discovered that the material was getting wet and the tarp was blowing around in the wind. He said he looked around to see if there was something that would protect the material on the pad and then talked to Mr. Frank Lanza of Highway Garage, and Mr. Lanza has a number of structures on his property that seemed to be a possibility for him and he recommended the American Steel metal structure that he had installed at Highway Garage, so Mr. Campbell went to see the buildings there and ordered the structure from American Steel and it was installed in November of 2005. He said he realizes he made a mistake by not getting a permit and takes full responsibility and he is truly sorry. He said he does care about the safety of his employees and he will comply with the requirements of the fire department and the building department. He said his building has been inspected every few years by the fire department and he has never been cited. He said he has operated a safe business for 34 years in the industrial park and has tried to be a good neighbor and employer. He said after meeting with Mr. Menary he agreed to replace the overhead door at the east side with a man-door and he already added a man-door on the west side and will remove the railing there and install exit steps. He said he has authorized Five Star Fire Protection to obtain all of the fire safety equipment which Mr. Chris Everett will explain in detail. He said he did not add any employees to the addition, he simply needed more storage space for the existing business they do and by adding the area they have avoided the necessity of trucks coming in and out on a more frequent basis and they also avoid the need to have a place to park a truck.

Mr. Lamanna said he understands that in 1997 a citation was issued for this property, a violation letter, and asked Mr. Freebairn if he had any recollection of that.

Mr. Freebairn said no he did not and asked what it was for.

Mr. Lamanna said there was a violation letter by the zoning department.

Mr. Freebairn said he was not aware of any citation.

Mr. Markowitz said he was not aware of that and asked what the citation was for.

Mr. Lamanna said it was with respect to another addition that was made to the building and asked Mr. Freebairn if he put another addition on his building at that time.

Mr. Freebairn said no and said the main building is 3,200 sq. ft. and then they added the large building of 6,300 sq. ft. and that is it.

Mr. Markowitz said in 1997 they did come in for a variance for the front setback.

Mr. Lamanna asked why they came in for the variance and if it was because of the violation letter.

Mr. Markowitz said not that he was aware of and the only thing they know is that when John Fay Architects went to get a permit they were told that the office was in the front yard setback and they needed a variance and if there was a violation letter, he was not aware of it and he never saw it.

Mr. Lamanna asked Mr. Freebairn if he was not aware that they were applying for a variance on his behalf.

Mr. Freebairn said absolutely not.

Mr. Lamanna asked who the legal owner of the building is.

Mr. Freebairn said he and his wife.

Mr. Lamanna said this is one good reason why people should not be allowed to appear without authorization.

Mr. Markowitz said that John Fay did not even come, he sent a subcontractor.

Mr. Lamanna said that is why the board is cracking down on that because people come in here and claim that they don't know what is going on.

Mr. Markowitz said he looked at the application and it was signed by the architect for the variance.

Mrs. Freebairn testified that they trusted them to do their job.

Mr. Lamanna said the property owner is ultimately responsible for what happens and if they don't do what they are supposed to do then you have civil remedy against them if they don't perform their job.

Mr. Markowitz said the architect did the right thing.

Mr. Lamanna said yes, they applied for a building permit and came and got a variance and did what they were supposed to do.

Mr. Markowitz said the Freebairns did not know there was a variance obtained until this appeal came before them.

Mr. Lamanna said if someone hires an architect to do all the things that are necessary to get a variance, you can't then claim they did not know what was going on.

Mr. Markowitz said they are trying to use that as a justification, but it does not excuse the fact that his client should have gotten a permit this time as well.

Mr. Lamanna showed Mr. Markowitz a letter signed by Mr. Freebairn authorizing John Daniel Fay Architects to submit a zoning approval application on his behalf as his representative on the project.

Mr. Markowitz read the letter.

Mr. Freebairn said it is his signature.

Mr. Lewis asked if the structure was already up.

Mr. Markowitz said he was not trying to defend him but it was only for the zoning permit, it was not for the variance but he knew he was going in for a permit.

Mr. Lewis told Mr. Markowitz that now he knows the overall activity existed, then that is the point.

Mr. Markowitz said absolutely.

The board reviewed the letter by Mr. Freebairn.

Mr. Markowitz asked if the board was ready for Mr. Hess.

Mr. Lamanna said yes but asked what the purpose of this discussion will be.

Mr. Markowitz said at the last meeting there was a question about drainage regarding the addition.

Mr. Chip Hess testified that he is a registered engineer from Newbury and he was asked by the Freebairns to look at the property to review what was done and they looked at the county aerial photographs prior to the addition and there was a swale along the rear of the property. He handed out a drawing to the board and noted the location of a 15" concrete pipe running from the Roulan building to the north and said this swale also served as a drainage area for the main building prior to the pad addition where the downspouts came out. He said with the new addition or pad that was originally constructed there were pipes that were installed. He said a photograph of the north façade of the addition along the property line shows a piece of pipe that picked up the old downspout drains and other building drains and then takes it to the west to tie into a previously existing drain swale that then pulls south to Park Circle Drive. He said also, as seen in the photograph, there is stone that was used to backfill the pipe that also acts as energy dissipation for the water coming off of the metal structure because there is no gutter there so it flows off onto the ground and then it flows to the west.

Mr. Lamanna asked about the pipe.

Mr. Hess said that water comes out from underneath the building as well as into a footer type of structure and then daylights to the west side of the building.

Mr. Lamanna asked if the water all comes out in this area.

Mr. Hess said yes, it daylights out to the west.

Mr. Lewis referred to the drawing and asked about the floor drains and downspouts on the original structure.

Mr. Hess said those are downspouts from the original structure.

Mr. Lewis said they extended those underneath the pad to go to the perimeter.

Mr. Hess said he did not see the actual construction.

Mr. Lewis said we still don't have the contractor here so it is hard to ask some of these questions.

Mr. Markowitz said the contractor did not do that, the subcontractor did it.

Mr. Lamanna asked if there are floor drains in the concrete pad.

Mr. Hess said no, there are no floor drains in there.

Mr. Lewis said this drainage management is an extension of the downspouts off of the original structure.



Mr. Hess replied yes.

Mr. Lamanna asked if they are piped down beyond the building.

Mr. Hess said yes and looking at the survey that we did, the PVC pipe daylighted out and built into the previously existing swale that is actually a channel that runs to the south into a culvert that goes across Park Circle Drive. He said the addition did not affect the capacity of the existing swale, there is more than sufficient channel capacity to accept the run-off that was previously existing.

Mr. Olivier asked if the drains on the new structure are just surface drains, run-off off of the building etc.

Mr. Hess said correct and it is a rolled roof and it curls off the top.

Mr. Markowitz said the drainage from the Roulan property to the north is not impacted.

Mr. Hess said no, the capacity that was there is not impacted by the addition.

Mr. Lamanna asked what he meant by the capacity was not impacted.

Mr. Hess said there was an open channel there prior to the concrete pad being constructed and that open channel is more than adequate to mitigate any storm water that comes from the Roulan building.

Mr. Murphy asked what was there before the pad was built, was it grass, etc.

Mr. Freebairn said there was grass and trees.

Mr. Murphy said if there were woods and leaf matter, it slows down the flow of water and it retards the run-off of the storm water and it looks like a bunch of trees were there.

Mr. Freebairn said there was and it was not a good thing because all those leaves emptied down into the gutters and would cause the flat roof to flood and added that he had to have the flat roof redone with rubber.

Mr. Murphy said the trees aren't there anymore.

Mr. Freebairn said that is correct.

Mr. Markowitz said there are still trees there, just not as many as there were and referred to the photos showing that there are still some trees there.

Mr. Lewis said it looks like between the buildings that it valleys a little bit.

Mr. Hess said it always has.

Mr. Lewis said the run-off was caught for the original building in the downspouts under the addition pad and captured the drainage water from the original building.

Mr. Hess replied yes.

Mr. Lewis said there are no gutters and no way for the water to be trapped and there is no directive or containment of the water when it is sitting here, it is just water coming down and going wherever it wants to go and he understands where the property line is, but asked where the water is going from the addition because there is no way it is being trapped or routed that he can see.

Mr. Hess said the previous downspouts went to this area so there is probably less water than there was before.

Mr. Lewis said he wants to find out where the water is going from this addition.

Mr. Hess said it is splashing onto the stone and into the old swale on the property line and runs to the west, the same place as the old downspouts used to run.

Mr. Lamanna said the center of the swale is not on the property line it is now three to four feet farther over onto the neighbor's property and there used to be a big open space in between equally dividing the buildings and now it is no longer equally divided between the buildings, it is all on the neighbor's property. He asked what will happen if the neighbor comes in and he wants the same kind of building 2' from the property line on that side of the property and then there would be a major drainage problem.

Mr. Hess said the swale could be moved to the west and added that the addition is 16' and not a huge amount of water.

Mr. Lamanna said there is a substantial change from what was there before and it is a detriment to the people on the side and with a heavy rain, it will come off of this roof and will be landing on that property because it is so close and probably the gravel there infringes on their property.

Mr. Markowitz said the drainage from both the Roulan property and this property has to go to the same spot.

Mr. Hess said it all goes to the west, to the same swale.

Mr. Markowitz said that is probably why the Roulans had no objection because it is not interfering with the drainage.

Mr. Hess said their property drains just to the east side of the west corner.

Mr. Lamanna asked why this addition has no provision for collecting the rain water.

Mr. Markowitz said it is because of the way the building is designed and the rolled roof area and he does not know if Mr. Lanza's buildings have gutters on them.

Mr. Freebairn said they get a lot of rain that comes into the building and as a result he has to put the material up on skids.

Mr. Takacs asked if that is because it is a freestanding building and not tied into the other building.

Mr. Freebairn said yes it is a freestanding building and it comes down and runs back into the cement block sometimes.

Mr. Takacs referred to the photo and the space.

Mr. Murphy asked if the space could be caulked or sealed off.

Mr. Lewis asked if this is an addition or an accessory building because by definition it is not necessarily an addition.

Mr. Hess said he wanted to point out on the drawing that the fire department asked for an exit onto the west side and it shows a landing with steps with approximately 30" of rise from the concrete pad down to the grade and the steps will then lead to the south towards the road.

Mr. Lewis asked what materials will be used for the proposed walkway.

Mr. Hess said it is proposed to be stone.

Mr. Olivier asked if it is all within their property line.

Mr. Hess said yes on the northwest corner.

Mr. Lamanna asked if anyone investigated the possibility of putting in some kind of rainwater collection system.

Mr. Hess said he did not know if that building is made to have that and he does not know.

Mr. Takacs said a trough could be installed at the bottom.

The board discussed the property line and the exits.

Mr. Olivier said there are ridge lines that run along that corrugated steel and asked if there is any pitch to that roof along the back.

Mr. Takacs said he did not think there is.

Mr. Chris Everett from Five Star Fire Protection submitted the plan to the board that has been proposed for this building. He testified that the fire department stated that in lieu of a sprinkler system, he would go for a detection system as long as it was tied into a central monitoring station through a UL listed panel, either an MS 2 or MS 5024 and it also has the heat detectors and the pull stations and the signaling appliances in there so the proposed is a pull station by each man door within ten feet, two horn strobes, one on the inside of the existing building and one inside the addition, also extinguishers by the exits and an emergency light and two emergency lights should be required since the doors are so far apart.

Mr. Takacs asked if there will be one by each door, egress route.

Mr. Everett said yes because the egress route has changed a little bit since he first looked at the building so they can revise their plan if need be.

Mr. Markowitz asked where the heat detectors will be located.

Mr. Everett said they will be spaced out 30' on center, 15' apart, right on the ceiling 190° rate of rise and because there was an overhead type door in there and he thought a tow motor might be going in and out of there, but since they are just man-doors, they can always change that to smoke detectors, it just depends on the amount of smoke hazard in the area and heat detectors would react basically the same but that was a concern with dust in there.

Mr. Takacs asked if he will put two and two in there.

Mr. Everett said smoke detectors come with a rate of rise built into them, it would be between the customer and us and Mr. Menary said that heat detectors should be okay but things have changed since then.

Mr. Markowitz said over each door there is a fire exit sign, fire extinguishers, fire alarm system and pulls by each door.

Mr. Takacs said the exit sign should have a battery backup so people can get out.

Mr. Markowitz said it shows in the picture what we have.

Mr. Takacs asked Mr. Everett if he puts in the exit signs too.

Mr. Everett replied yes.

Mr. Takacs asked what the battery length is.

Mr. Everett said it is two hours on the new ones because they have LED lights now, little watch type batteries that are a lot more efficient than the old ones and the same thing with the emergency lights, they are also on LED so these will last about two years.

Mr. Lamanna asked if this will be automatically tied into the fire department.

Mr. Everett said it has a UL listed dialer in it that will go to a central station and they are changing over right now because they now have SAI, Security Associates International, and they will go with Painesville Security and also Osborne in Cleveland runs ADI which will call out within two minutes. He said they will get acceptance from the fire department when the system is done and they will call the monitoring company to see what the response time is.

Mr. Takacs asked if this is tested every year.

Mr. Everett said yes.

Mr. Takacs asked about the callout list.

Mr. Everett said there will be a callout list with five or six people on it.

Mr. Lamanna asked if there are flammable liquids or gases stored in there now.

Mr. Freebairn said no.

Mr. Murphy asked if the structure is heated.

Mr. Freebairn said no.

Mr. Murphy said with the information the board received, one part of the paperwork from American Steel said 25 pounds and the other one said 35 pounds and the same licensed engineer said the same building has two different group loads.

Mr. Markowitz said the explanation for that is they typically only send the ones that say 25 because 25 is always required normally and nationally and the snow problem here is a higher one and they over engineer the buildings and explained the process.

Mr. Murphy said the design note refers to maximum building models of 30' and asked if that also applies to the building.

Mr. Markowitz said they are talking about the span.

Mr. Murphy said span is always width and the length says 30' on this.

Mr. Markowitz said they designed it and sold it to us that way and he went to the building department and they advised him that it complies with the code. He said they cannot get their permit until after the variance is granted and the issue about span or width is part of the review process when they go to the building department.

Mr. Murphy said that two sets of papers were submitted and there was some confusion in that.

Mr. Markowitz asked if the board had any more questions.

The board reviewed the variance request.

Mr. Markowitz said in their application they indicated that part of the condition of the application is that it would only be used for storage and we were to amend that to include the requirements for a fire protection system that we presented as well as the requirement for the man-doors and the requirements that the fire department and building department required. He said his client obviously wants to make this a safe facility because he and his clients will be using it. He added that he did not think the drainage was a concern but if the board felt it was necessary to add a collection system at the bottom that is something they can do and they would of course cut the railing where the west door is and install a platform as shown on Mr. Hess's drawing.

Mr. Lewis asked about the size of the door that was just installed.

Mr. Markowitz said the height is 6' something but the east door is 36" x 7'.

Mr. Lewis asked about the west door.

Mr. Markowitz said the west door is 36" wide but less than 7' high but they can't get a taller door. He said the door on the west end was a door that they had available.

Mr. Freebairn said the door was made to go with the building.

Mr. Lamanna asked about the parking.

Mr. McIntyre said the parking requirements are in effect for M-1 zoning and the requirements are 10% for that storage area so they do meet minimum requirements.

The board reviewed the application and variance request.

Mr. Lamanna asked if anyone had any questions and if Mr. Markowitz had any closing statements.

Mr. Markowitz said help, and added that this is a first for him where he came in on one of those issues where it was built first and asked questions later and he wants to apologize for his client's behavior on that, he was wrong and knows it and it ended up costing him a lot more money because he has had to hire engineers and lawyers, cut doors in and do some other things so it was not something that he saved any money, it was an accessory for his business and he understands that it is not a practical difficulty but the practical difficulty on the site is because of the shape of the lot and the wide road impact and there is a very small portion of the lot available for the use of the building and only about 25% of the entire lot is devoted to the building including this addition which is not a significant percentage for the Knowles Industrial Park and there was actually no lot coverage requirement under the old M-1 zoning so to that extent he would not be in violation.

Mr. Lamanna said having said that you create a limitation on lot coverage.

Mr. Markowitz said because so much of the lot is taken up by the front yard there is not a whole lot of property there and if the neighbors to the north and to the west objected, he would have had greater concern for the willingness of the board to grant the variance. He said when driving through there, you can see that cars are parked on the road, over the property line and there are structures that are very close to property lines in that whole park and it is just the nature of the way they built the whole facility so it is not out of keeping with what else was built in that time although there is no one he knows of who built their building right on the line.

Mr. Lamanna said just because a place had bad planning does not mean you can't start at some point in time to improve this, as we go forward, the extent that we can.

Mr. Markowitz said in his view you can't get anything further put on this property and there is nowhere else to put it so there are no further opportunities to do that. He said he thinks the safety issues are dealt with and the board could impose conditions that we would agree to all of those to make sure it remains a safe facility and we certainly would not use it for anything other than storage.

Mr. Lamanna said one of the difficulties here is that there is real doubt that if this came before the board on a green field project that this would ever be approved because it is way too close to the line and it is unlikely that this would ever be approved. He said this is not the case where somebody built 30' off the side setback instead of 50' off and if they came in and asked for a variance in the first instance, there is a good chance that it would have been granted, but it is very unlikely that the board would ever have granted a variance like this.

Mr. Markowitz said he would have hoped that his persuasive powers would have carried the day and added that he appreciates what Mr. Lamanna is saying.

Mr. Lamanna said it makes it extremely difficult and if by all measures it is a major and substantial variance and fundamentally it creates a real problem for the whole issue for people to go out and build things first and say it is way out of whack with what the zoning permits but let them keep it there. He said he is having a hard time having a lot of sympathy for Mr. Freebairn because he has been down this road once before already and his contractor certainly should have known and he can't imagine putting up this building without a building permit. He said he can understand somebody not thinking about zoning but everybody knows you have to get a building permit when you are putting up a building.

Mr. Markowitz said he is not sure how they got to where they are either but he thinks it was the progression of it just being the cement pad first.

Mr. Lamanna said the cement pad for storage was not in compliance either and that is a structure and it was being used as a structure.

Mr. Takacs said that American Steel should have known that.

Mr. Markowitz said he does not think American Steel thinks about that.

Mr. Takacs said if they put it up, they know they need a permit.

Mr. Markowitz said they did not put it up, they just sold them the building.

Mr. Takacs asked who the contractor was that put it up.

Mr. Markowitz said Mr. Chuck Campbell.

Mr. Takacs said he should have known.

Mr. Lewis asked if he is a resident of Bainbridge.

Mr. Markowitz said yes, he is a part-time contractor and a retired teacher.

Mr. Lamanna said contractors should know that they need permits. He said it is not that the board is not sympathetic with the applicants plight here, we understand the issues and we are not trying to make life difficult for them to run their business, but this poses, for the board, a very difficult situation just from the standpoint of justifying this variance under standards the board is supposed to use and it is a real stretch to find a practical difficulty here. He said aside from the fundamental issue of whether or not this should have happened in the first place and what blame you bear for us sitting here now, that alone can be a sufficient basis to deny this, so this puts the board in a very difficult position to try to figure out what we should do with this thing. He said this is not like somebody built a cement block building, two stories high with a big truss roof and spent a half million dollars building it where it would be a tremendous economic hardship.



Mr. Markowitz said he thinks it cost about \$56,000.00.

Mr. Freebairn said yes.

Mr. Lamanna said you could probably take the building down and put it somewhere else, it is not quite the same as a more substantial structure and a financial hardship on the owner but to some extent will be considered.

Mr. Olivier said he agrees with Mr. Lamanna and appreciates the efforts the applicant has made and a sincere effort has been made to accommodate our issues but he is concerned about the precedent that it establishes for the board down the road without the hardship and agrees that it is a difficult situation but it could have been remedied with a little bit of foresight and planning.

Mr. Murphy said he builds things for a living and the first step is getting approval, a building permit is required anywhere in Ohio and once the applicant moves out tomorrow and leaves the structure there and the next guy will say since there was something there he can put up a two-story building because he thought it was grandfathered. He said he would feel very bad in saying it should be torn down, but would feel very bad in saying that it should stay there. He said he is familiar with a case in another town, where the applicant received a conditional use permit which required the entire structure to be removed at the end of the use of the property and does not know if it is an issue here in Bainbridge or a possibility and asked if a freestanding structure makes any difference.

Mr. Lamanna said there is no limit on the number of structures.

Mr. McIntyre explained that there is no limit on the number of structures but the setback is 20'.

Mr. Lamanna said it may only make a difference if there is a limit on the number of separate buildings that is permitted.

Mr. Lewis said it seems rather apparent that had this request gone through our regular process well in advance, it probably would have fallen short of receiving approval. He said tonight he has not seen anything demonstrated to his satisfaction with some of the water and drainage related things related to the new structure. He said it bothers him that even though the adjacent neighbor does not necessarily perceive any inconvenience or adverse effect on them, we have a structure that its sole purpose is to store flammable or easily flammable storage materials with the cardboard and the rubber products and regardless of what the neighbors may think it puts it in very close proximity of adjacent buildings and potentially poses some problems for our firefighters as well and that is the subjective piece of the opinion.

Mr. Lewis continued by saying what concerns him the most about this is he is not at all convinced and he believes the applicant, with earlier experiences with the township, has created an existing level of awareness of the general process that the township requires for structures, building, the addition, the location etc. and he is having a tough time buying off on “sorry I did now know I did something wrong” so the naïve applicant is not going over and he is not convinced real well on that but nevertheless where this building is, falls very short of what the township would have approved at any time and he thinks sets a really difficult precedent with going forward to this board for any of the other property owners in that district.

Mr. Takacs said as he looks at these pictures, it was said it was to store materials, but he sees tools in there too and it looks like there are some hydraulic cylinders and some kind of tank and asked the applicant if he plans to store other things too.

Mr. Freebairn said there is some obsolete equipment in there.

Mr. Takacs said according to the photo, there is some kind of tank and referred to another photo that shows some hydraulic cylinders.

Mr. Freebairn said he does not have any hydraulic cylinders.

Mr. Takacs asked if they are some kind of rollers.

Mr. Freebairn said they are dust collectors that they use inside the shop when they work with certain materials.

Mrs. Freebairn said they are two big suckers.

Mr. Markowitz looked at the photos.

Mr. Takacs questioned another item and said it looks like a transformer and asked if equipment will also be stored in there.

Mr. Freebairn said of course to get it out of the way from the main shop.

Mr. Takacs said the precedent that would be set with the close proximity to the property line is a concern of his and added that a lot of his thoughts have already been mentioned by the rest of the board and he concurs with them.

Mr. Lewis said he had one other comment that while he realizes that the applicant has made some efforts to modify the structure in advance of the board of zoning appeals ruling, he does not want those efforts to be construed as attainment of some compliance when there has not been a ruling yet, like putting the cart before the horse, although he appreciates the efforts, but he thinks he probably would have preferred to have the applicant make his efforts parallel whatever the board's ruling may or may not have been inclusive of what may very well appear to be and even if there is approval there may already be an undersized door, etc.

The board reviewed the application and paperwork submitted.

Mr. Lamanna asked if there was any support for this variance.

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

Motion BZA 2006-1 – 16760 Park Circle Drive

The applicant is requesting a variance from the minimum side yard requirement from 20' to approximately 1' – 2'.

Mr. Lamanna made a motion to deny the applicant's request for a variance to maintain the existing structure.

Based on the following findings of fact with respect to this application and basis for its denial:

1. The property in question will yield a reasonable return. Without the variance it has been operating for a long number of years with the existing structure.
2. The variance is substantial. Side yard setbacks in this district are small to begin with and this would reduce the existing side yard setback to less than 10% of that which is required. It is a variance of over 90% which is substantial.
3. The character of the neighborhood would be somewhat altered by allowing a building this close to the setback lines, it would make an area where the buildings are already fairly close susceptible to having buildings almost immediately adjacent to each other and could create a detriment to the adjoining property owner by channeling additional water from this building onto the adjacent property owner's property and reducing the separation between the existing buildings.
4. The variance could adversely affect the delivery of fire protection services by creating an additional structure in an area that is not easily accessible by the fire department and by creating a storage area where flammable and combustible materials could be stored that would be even closer to the existing adjacent neighboring structures.

Motion BZA 2006-1 – 16760 Park Circle Drive - Continued

5. The property owner has owned this property for awhile and there is no reason to indicate that he should not have known of the existing zoning restrictions. He has previously put up an addition that required the application for the obtaining of a variance from the zoning requirements and it does not appear that he carefully selected the contractors putting up this building to assure that they would satisfy the requirements of obtaining building and zoning permits.
6. The property owner's predicament could be obviated by some other means than a variance. The property owner could have selected a different location for the pad and structure or could have modified his existing buildings to provide additional storage space.
7. The granting of this variance would violate the spirit and intent behind the zoning requirement which is intended to maintain a reasonable separation between buildings and property lines and thus maintain a reasonable separation between the adjacent buildings and to allow for appropriate access and drainage between those buildings.
8. The denial of this variance would not deny substantial justice to the applicant.
9. The board finds that because this is a freestanding, pre-fabricated style building that it is a structure of less permanence and the financial hardship on the applicant to remove it would not be inequitable.
10. By granting this variance, the board would derogate from the general purposes of the zoning regulations and land use plan with respect to this district because allowing development to the edge of property lines would substantially change what was intended and could increase substantially the overall coverage in the district.

Mr. Lewis seconded the motion.

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

Application 2006-4 by Robert and Ann Chaney for property at 17131 Cats Den Road - Continuance

The applicants are requesting area variances for the purpose of constructing an addition. The property is located in a R-5A District.

Mr. Mark Murphy recused himself from this application.

Mr. Lamanna noted for the record that Mr. Murphy has recused himself from consideration of this application because he is an adjacent property owner.

Mr. and Mrs. Robert Chaney were present to represent this application.

Mrs. Chaney testified that they came before the board last month with a request for a variance and they were asking to come out 30' from the existing property line which is already non-conforming and since then they have revised that request down to 7'. She said they are requesting this variance because they would like to add a kitchen, a couple of bedrooms and a bath onto the house because it is a small 1,370 sq. ft. structure. She said the reason why they have to go to the front of the property is because it is a very difficult site because they have large boulders behind the property and there are two streams by the property and there is also a side setback issue if you are looking at the house on the left-hand side so that is why we are requesting a variance.

The board reviewed the variance request.

Mr. Lewis said he is checking his information packet and has a floor plan to get a concept of what the original proposal was and reviewed with the applicants what they are proposing as opposed to the prior proposal. He asked if the original structure is a single-story.

Mrs. Chaney replied yes.

Mr. Lewis asked Mrs. Chaney if she has a front elevation of what is proposed.

Mrs. Chaney said no, they did not go ahead and have it drawn up.

Mr. Chaney testified by saying they did the drawings themselves.

Mr. Lewis asked if they are still dealing with a single-story structure or if they are going up.

Mrs. Chaney said they are going up with the addition.

Mr. Lewis said because it is going up and the close proximity it is to the street, the height of the structure has a more significant impact just because of the close proximity, so if they have a front elevation, even if it is rough, he would really enjoy being able to see it.

Mrs. Chaney said it is not that much different except now there is going to be a garage door facing the street as it is now so it pretty much looks the same.

Mr. Takacs asked if it stays the same.

Mrs. Chaney explained what part of the house was removed with the new plans that were submitted and said her husband may have some drawings in the car. She said the garage is going to be 5' wider and explained the location of the garage door, there will be a window above and all of the rest will stay the same.

Mr. Takacs asked if the floor plan will stay the same.

Mrs. Chaney said no, the garage goes away and the floor plan changes a lot and explained the location of the proposed kitchen.

Mr. Takacs asked about the location of the main entrance.

Mrs. Chaney said the main entrance is still in the same place, explained the location of the kitchen and laundry area, the garage which will be a 2-1/2 car garage and the existing will stay and above there will be two bedrooms, a bath and an open exercise area and explained the areas that will stay the same.

Mr. Olivier asked about the two bump-outs on the plan and if one of them is the garage.

Mr. Takacs said one is the garage and one is a kitchen.

Mrs. Chaney said the reason why the garage has to come forward is because there is no storage here so in the back of the garage, that 7' they are asking for is really not going to become a corridor for storage, it has the water treatment in that area.

Mr. Chaney showed the board the street elevations and explained the layout of the kitchen, mudroom, storage room, two car garage, etc.

Mr. Takacs asked if this house is on a slab.

Mrs. Chaney said yes.

Mr. Lewis asked if the house is not higher than 35'.

Mr. Takacs said no it is not really more than 25'.

The board reviewed the height and proposed roof pitch of the house.

Mr. Chaney said he did not want a large elevation.

Mrs. Chaney said yes because of being a ranch it would be out of scale if they went too high.

Mr. Lewis said it really appears profoundly tall because of the elevation and 25' off the road is a more dramatic of an impact on what is going on with the adjacent properties than your proposed 47' or 50' off the road. He asked how far they are coming forward with the house.

Mrs. Chaney said they will come forward 7' with the house from the garage corner and the house sits on an angle.

Mr. Lewis said it will be coming forward 7'.

Mr. Chaney said he personally does not like to see garage doors and that is why he was trying to put the doors on the side.

Mr. Lewis told Mr. Chaney that his heart was in the right place and it could be rotated and have side entry into the garage and in any other circumstances if it was not in such close proximity to the road. He said they have some letters from the adjacent neighbors from the original proposal and he does not see them in the audience tonight.

Mrs. Chaney said they don't know who the letter writers are but she did speak to the woman right next to them, Doris, and she came up and saw the property and she claimed she had no issues with it so she knows she is not one of the letter writers so she does not know who they are. She asked if she could have an opportunity to see the letters.

Mr. Lewis said that question should be directed to the chairman.

Mr. Lamanna said yes certainly, it would be part of the file and public record.

Mr. Lewis said the concern was a 2-1/2 story structure 25' off the road but now we are dealing with a setback variance modification of only 7'.

Mr. Takacs said when you drive down Catsden Road there is not a lot of consistency but he thinks what was proposed before was kind of massive and excessive but he does not think this is bad.

Mr. Lewis said he does see it as an improvement to the street and he likes seeing folks refreshing residences and for every \$10,000 of improvement, the adjoining property benefits by \$1,000 so there is a direct benefit to the entire neighborhood.

Mr. Lamanna said if people don't come and appear, the board has no obligation at all to consider anything that someone sends in a letter and if they want to come and say something, they have to come and say it otherwise if someone sends us a letter, the board cannot cross examine that information and technically we don't give them a whole lot of weight. He explained that they may call some things to the board's attention and ask if the board can please consider something and the board can look at a picture that someone has given the board or if they have another way of ascertaining what the state of facts is, yes they may look at that state of facts.

Mr. Takacs asked about the side they are coming out to expand the garage and asked what is there now.

Mr. Chaney said it is just grass.

Mrs. Chaney said they are not taking down any trees.

Mr. Takacs said he could not see what was in that area.

Mrs. Chaney said there is a pine tree there, but with this plan, they won't have to take that out.

Mr. Lewis asked if there is anything going on, on either side of the residence as far as additional clearings etc.

Mrs. Chaney said no absolutely not.

Mr. Takacs asked to see the pictures of the property.

Mr. Olivier said yes but there are none of the house, only the surrounding vegetation. He asked if the stream flows in a heavy rain.

Mr. Murphy testified that rain does not have anything to do with it, it is all spring water and very little run-off adds to that.

The board reviewed the floor plans of the proposed addition.

Mrs. Chaney explained the location of the kitchen, garage, corridor and library and said the second floor will have bedrooms. She explained the location the bathrooms and exercise room.

Mr. Lewis said he likes to see people improve residences and it is good for everybody.

Mr. Lamanna said there are two riparians and asked if the existing house is 57' back.

Mrs. Chaney asked if that is from the right-of-way.

Mr. McIntyre said it will be 54' from the right-of-way and it will come out 7'.

Mr. Takacs said it has got to be 54'.

Mr. Lamanna asked if there are two 15' riparian setbacks.

Mr. McIntyre explained the riparian setback areas, permitted encroachments and that the springs fall into the category even though it is not a collector.

Mr. Lamanna said obviously there is a limited amount of flow in the riparian area.

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



Motion BZA 2006-4 – 17131 Catsden Road

Mr. Lamanna made a motion to grant the applicant the following variances for the purposes of constructing additions and/or modifications to an existing dwelling in accordance with the plans submitted by the applicant:

1. A variance from the minimum required front yard setback of 75' to 47' for a total variance of 28'.
2. A variance to the required riparian setback in Section 160.04 (B, 3) from 25' to 10' for a variance of 15'.
3. A variance to Section 160.08 (A) to allow the modified dwelling to be in a riparian setback area.

Based on the following findings of fact:

1. A practical difficulty exists due to the severe terrain on this property.
2. There is limited area in which to build without encroaching in either the front setback or the riparian areas.
3. The existing structure is already at a setback of 54' so it only effectively increases the non-conformity by 7'.
4. This small change will not be inconsistent with the neighborhood or adversely affect the neighboring properties.
5. With respect to riparian setbacks, due to the topography and nature of the lot, it would be a great difficulty to be able to find a way to build without encroaching upon setbacks and/or riparian setbacks.
6. The house being proposed is modest and a reasonable size for the property.
7. The nature of this riparian right-of-way is that it is collecting a spring primarily and it is not subject to substantial flow so the granting of this variance should not adversely affect the riparian right-of-way.

Mr. Takacs seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Olivier, aye; Mr. Takacs, aye.

Since there was no further testimony, the public hearing was closed at 9:33 P.M.

Respectfully submitted,

Michael Lamanna, Chairman  
Todd Lewis, Vice Chairman  
Mark Murphy  
Mark Olivier  
Donald Takacs

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

Date: May 18, 2006

AUDIO RECORDING ON FILE

BZA PH 5/4/2006

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Bainbridge Township, Ohio  
Board of Zoning Appeals  
May 4, 2006

The special meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 9:33 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Todd Lewis, Mr. Mark Murphy, Mr. Mark Olivier and Mr. Donald Takacs.

Proposed Bainbridge Township 208 Committee

Mr. Lamanna reported that the township trustees are forming a 208 Plan committee to review the existing 208 Plan for Bainbridge Township.

The board was in agreement for Mr. Lamanna to represent the board of zoning appeals on the committee.

Since there was no further business, the meeting was adjourned at 9:45 P.M.

Respectfully submitted,

Michael Lamanna, Chairman  
Todd Lewis, Vice Chairman  
Mark Murphy  
Mark Olivier  
Donald Takacs

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

AUDIO RECORDING ON FILE

Date: May 18, 2006