

Bainbridge Township, Ohio
Board of Zoning Appeals
June 19, 2008

Pursuant to notice by publication and certified mail, the special meeting was called to order at 6:35 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Todd Lewis, Mr. Mark Murphy, Mr. Mark Olivier and Ms. Lorrie Sass.

SPECIAL MEETING

Executive Session

Mr. Lamanna moved that the Bainbridge Township Board of Zoning Appeals go into executive session for the purpose of deliberating on BZA application 2006-33.

Ms. Sass seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye; Ms. Sass, aye.

The board of zoning appeals recessed its special meeting at 6:35 P.M. in order to go into executive session for the purpose of deliberating on BZA application 2006-33.

The board of zoning appeals returned from executive session after deliberating on BZA application 2006-33 and reconvened its special meeting at 7:34 P.M.

MINUTES

Mr. Lamanna made a motion to adopt the meeting minutes of January 24, 2008, February 13, 2008, April 10, 2008, May 15, 2008 and May 22, 2008 as written.

Mr. Lewis seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye; Ms. Sass, aye.

Mr. Lamanna opened the public hearing at 7:37 P.M.

PUBLIC HEARING

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.

The following matters were then heard:

Application 2008-10 by 8228 East Washington Street, L.L.C. for property at 8228 East Washington Street

The applicant is requesting a conditional use permit for the purpose of continuing an auto repair facility under new ownership. The property is located in a CB District.

Mr. Gus Budin and Mr. Richard Basta were present to represent this application.

Mr. Gus Budin testified that he is the owner of Colonial Auto but he sold off the repair part of his business to Mr. Richard Basta and they just want to be able to continue.

Mr. Lamanna asked if anything is going to change in terms of the operation and nature of the work that is going to be performed.

Mr. Budin replied no.

Mr. Basta testified that he is moving another business into the same building that he has done for 35 years, automatic transmission rebuilding business, which is automotive and along with the service work that Mr. Budin has done in the years past, it is all the same basic conditions, so if anything, they are offering more service to the community and added that he has been a Bainbridge resident for 20 years.

Mr. Lamanna asked if there is no additional outside storage or vehicles for repair.

Mr. Basta said no, if anything, there will be cleaner conditions, an upgrade.

Mr. Lamanna asked Mr. Michael Joyce, Zoning Inspector if there are any existing issues with non-compliances with any conditional use permit requirements for this property.

Mr. Joyce testified by saying no, he does not believe there is.

Mr. Budin said if anything, the back of the building was rented by a construction company so they had a lot of construction equipment and cement blocks and all the things that go along with a masonry business, they moved out so if anything, this should make it better.

Mr. Murphy asked if there was a neighbor or any public input on this application.

Mr. Budin said the neighbor to the right of his property is where the Timberfire property is and to the left is the property that the Dolan family owns that used to be part of Geauga Cable but he does not know what is in there now, so directly to the right and left there really aren't any tenants there at all and then the movie theatre is in the back.

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

Motion BZA 2008-10 - 8228 East Washington Street (Colonial Auto)

Mr. Lamanna made a motion to grant the request to continue the Conditional Use Permit for an auto repair facility to the new owner at 8228 E. Washington Street.

1. All and any conditions to that conditional use permit will continue to apply as will all of the general conditions set forth in Section 119 with respect to conditional use permits.

Mr. Lewis seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye; Ms. Sass, aye.

Application 2006-33 by Voproco Properties Limited for property at 16941 Savage Road
– Continuance

The applicant is requesting a conditional use permit with variances for the purpose of constructing single family cluster homes. The property is located in a R-3A District.

Mr. Lamanna stated that as you all know, the board has listened to many hours of testimony and the board has also spent a substantial amount of time looking over all of the exhibits, the minutes, the transcripts and information that has been presented in this case and the board members have had a lot to consider and to try to get their arms around and to try to digest, process and run the various applicable legal standards that bear on this case. He said, that being done, the board has tried to come to a conclusion that recognizes two aspects. Number one is the impact of the development on the adjacent property owners and how that would play out. Secondly is the considerations of the underlying reasons for the township zoning in the three acre district besides those related to the availability of sewer and water and how that should impact it and finally the board looked at the economic evidence of which there is a substantial amount to try and determine under what circumstances there would be a reasonable return to the property owner and to make sure that the property could obtain a reasonable rate of return. He said for the benefit of everybody here those are important because if the zoning doesn't satisfy the condition, one of affording the property owner a reasonable rate of return on his property or if the zoning does not have a proper public purpose the zoning can be overturned by the courts so that is one of the board's primary guiding principles here so basically the board has looked at a lot of this testimony and in terms of what is relevant here and the board thinks that in looking at the neighborhood the board needs to consider primarily the Tulip Lane neighborhood, it is the most immediately impacted, it is immediately adjacent and is quite relevant to look at the development of that area. He said the board also has to look at the existing development pattern to the south of the property along Savage Road which has already been laid out into building lots for development.

Mr. Lamanna said the other areas that were offered, the board has substantially discounted Lake Lucerne for example, it is not really a relevant example because it was developed before zoning came into existence, it was basically developed as a summer community with self contained services and undedicated roads so it was not a fair example to use, likewise Canyon Lakes is some distance away and is separated from this location by other areas where development has been to levels more close to the three acre zoning size. He said the board looked at some of these various issues in terms of the zoning such as drainage and run-off, maintaining the rural character, the characteristics of the adjacent land and the ability of the infrastructure support, police, fire, transportation and traffic as well as a primary basis for maintaining or supporting the three acre zoning and the board has looked at each of these issues to see how they would be impacted and whether or not it is appropriate to granting relief and if any relief is granted, at what point would that relief begin to adversely impact on any of these areas so all of those have been factored into the board's decision here and finally what the board looked at was the economic evidence and whether or not the applicant can gain a reasonable rate of return. He said the board looked at the various things that have been presented, the township has presented evidence, the applicant has presented evidence and the board has reviewed it all very carefully and the board finds that each side there has strengths and weaknesses in what they have presented to the board. He said the board also has a little bit of an issue with exactly how the board wants to approach this and continued by saying the applicant is entitled to a reasonable rate of return and what the applicant or what somebody else actually pays for the property or wants to get for the property is to a large extent not relevant, the board was provided a copy of the contract for this property although it was so heavily redacted the board could not come to any conclusions about it but ultimately decided that its importance was limited in what the board's final decision would be on this because the driving force on any analysis on whether the applicant can obtain a reasonable rate of return is what would be a reasonable value for the property, not what they happen to pay for it or what they might like to sell it for or what somebody might think they could buy it for if they can develop it the way they felt like developing it. He said basically the board members looked at the various analysis that were presented to them, they looked at the cost to develop each lot by looking at the various testimony that was presented, the board came to a consensus number for development looking at all of the various factors that have been presented. He said there was also a difference between the analysis in terms of what each lot could be sold for and the board again tried to come up with an intermediate figure that reflected the differing opinions of the experts of what the value of those lots might be. He said the board also looked at the two types of analysis that were presented, the primary difference between the experts appears to be the period over which they did their analysis, in one case over a five year period and the other case over a three year period and the board determined that the three year period was more appropriate. He said the board also has some issues on the basis of using a five year period and the basis of some of the comments made and by the applicant's expert that if you look at issues related to a difficult market and a longer period of time to sell out the development that those would actually indicate that the fair value of the property would be less than recent comparable sales.

Mr. Lamanna continued by saying the board felt that the three year would be a more accurate reflection if we were going to use the comparable recent values that were put forth and in each case the experts were not far apart in that the applicant's expert conceived that about \$22,000 an acre was consistent with recent sales and the township's expert indicated that \$24,500 per acre price was at the upper end of recent sales so the board was looking at those kinds of numbers as being reasonable. He said when the board took the revised numbers for the development costs which was a higher number than was originally in the township's analysis and slightly lower cost per lot that was the consensus of the two, the board determined that approximately that would cause a reduction of about \$350,000 to the value of the property as determined by the township's expert, therefore the board also then determined that what the approximate is under the analysis of the township's expert three year program how much an additional lot would generate in value and the board determined that each additional lot would determine about a little over \$70,000 in additional value and therefore five additional lots would restore the economic return to a number that was indicated to be at the high end of property sales in this part of Geauga County and which is significantly higher than a number that the applicant's own expert had also put out so basically the board feels that it has taken an analysis that is fair and reasonable and if anything gives the benefit of the doubt to the applicant, gives him at the higher side of what reasonably fair value is for property sales. He said the board would note that there was not a substantial amount of testimony on what that fair value was but in each case a number was put out there by the experts and the numbers are not far different from each other and therefore the board thinks it is appropriate to rely on those numbers and again this puts a value on the property of approximately 1.3 million dollars and certainly if we look back at what was paid for the property that still translates out to a not unreasonable annual rate of return from the date when it was purchased although that is certainly not a dispositive fact, it is certainly some evidence that the numbers put forth as sale numbers are in fact accurate so on that basis the board has decided that the appropriate level of development for this property would be 22 units and those units would be situated so that none of them would be located within the buffer zone required by the cluster development so they would all have to be located at least 100' from the perimeter line and that the board would not allow any side yard setbacks on the appearance of the extension of Tulip Lane in terms of the placement of the houses would be similar to that exists along Tulip Lane. He said as a point of reference this works out to one house per 2.27 acres. He said in the Tulip Lane entire development and if we add to what appears to be a 2.00 or 1.99 average lot size, and throw in roads and other miscellaneous pieces, that would bring those average lots up to somewhere around 2.15 acres figuring usually about 7% - 8% for roads etc. so that ends up with a total lot size that is fairly consistent with what exists at Tulip Lane. He said it is harder to draw a similar hard and fact example with respect to the Savage Road side because it is a little bit more ill-defined there, there are five acres on one side and there are some large lots and small lots so the board felt that it would maintain that same size consistently through the entire property and that by having a cluster and by not having any direct access to Savage Road by individual lots that it would not have any adverse impact on those properties.

He said and also the buffer zone would be maintained so the Quay properties to the south would not have any adverse impact and again so that any properties to the north, if they are subsequently developed, could be developed without having to worry about variances having been granted to the adjacent property which allowed houses to be closer to the setback line than would have been otherwise allowed. He said that distinctly describes the process the board went through and the conclusions the board came to and the members tried to consider all of the competing interests here including those of the property owner and applicant, those of the adjacent property owners who appeared and the board certainly appreciates all of their time and interests in coming to the various meetings and letting the board know what their concerns and impacts are so the board has tried to distill all of this and come to a decision that is fair, just, equitable for everyone and is consistent with the zoning and with the applicable law as best the board can. He said the board will reduce that decision to a specific motion with specific findings of fact but, will entertain any questions about the decision or what it means, the board is not going to argue the decision with anybody, but if anybody has any questions about the decision, the board will answer them but it is not here to change it, it is what it is now, but if anybody has any questions or any information they would like about what the board considered etc., he would be happy to answer that, if not, the board will move on and finish this with the actual motion.

Ms. Anne Myers of 7667 Chagrin Road asked if there will be two entrances on the property, one on Tulip Lane and one on Savage Road.

Mr. Lamanna said there will be one on each side and there will not be a connecting road through.

Mr. Mark Iacona of Preferred Development said based on the difference in numbers and the layout as submitted if he is not locked into that.

Mr. Lamanna told Mr. Iacona that he will have the opportunity to present a new layout consistent with the board's guidelines and it will be spelled out more particularly with the actual motion. He added that the motion will be made tonight but since some of it was drafted out and some of it will be by the seat of his pants and since the board just finished this up before starting this meeting, the board will review its final motion and make such changes as are necessary, so a little editing will have to be done on this because the board will probably want to site some various pieces of testimony and it will take a little while to look all of those up with the large pile of material the board has here, so once that is done the board will make available the draft copy but it will probably be a couple of weeks before it can be given out and that is the board's timeframe.

Mr. Joe Oberle of 8197 Tulip Lane said he was curious about the 22 homes and if the current zoning allows 16 homes, it was mentioned that there would be five additional homes.

Mr. Lamanna said it is six homes from the 16, it was not built on five over, it was built on the numbers and the numbers came to 22 so technically six more but the allowable is really 16-2/3, the board was always thinking the allowable number was 17, the board came to 22 and worked backwards.

Mr. Oberle asked if the board took into account the amount of property that is unbuildable, there are about ten acres that is not buildable.

Mr. Lamanna said the board tried to do that but the problem is nobody really gave them any specific testimony on numbers because every property that comes in here has wetlands on it and unbuildable areas on it and that is the nature of it and the board does not have any way of saying this has more or less than the typical property that has sold, if somebody does an analysis on it and came in and said the average property has 8% unbuildable land and this has 15% therefore it should be valued at 10% less than every other property, the board would consider that but the board does not have any context in which to put that where the board can make a specific adjustment and say we think you should get less because this property has this much and the idea of the cluster is to accommodate that, it is partially so that rather than have people say they will figure out a way to build on this or they will divide up the wetlands and put part of that on eight different lots and come up with some convoluted arrangement to do that but cluster is to leave the wetlands alone but if there is a property that is 60% unbuildable, there may be an issue with the value but a property that is 10% unbuildable versus 18% unbuildable, his guess is that a real estate expert would say there is not that much difference in the value of the property just on that alone it would have to be far more precise in terms in what it would look like. He continued by saying there would be so many factors you would have to try to look at, we would be here for another two sessions of testimony on that alone so we are going with the best evidence we have before us, we have probably given the applicant the benefit of the doubt on some of these issues but we would rather do that than leave a lot of opportunity for somebody to come in and quibble about it and in the end it would not have made much difference, it may have come out to 21 instead of 22 but he would rather be in a position where there is not a lot of room for somebody to come in and nit-pick what we did because it doesn't make that much difference so at some point, you can't get any finer, we have so much information, a ruler doesn't go down to a 16th of an inch, it only goes down to 1/8th of an inch and 1/4th and that is as fine as we can measure. He asked if anyone else has any questions and then proceeded with the conclusions and findings.

Motion BZA-2006-33 – 16941 Savage Road

Mr. Lamanna made a motion to grant a Conditional Use Permit for a Cluster Development with a Variance for the purpose of constructing 22 single family dwelling units on the property subject to the conditions set forth below and to deny the application for the Conditional Use Permit and Variances with respect to 33 single family dwelling units.

The following conditions will apply to the conditional use permit in order to satisfy the requirements specified in the ordinance for granting the conditional use permit and to ameliorate the potential impacts as set forth in the findings of fact.

1. Prior to any zoning certificate being issued the applicant must submit a revised plot plan meeting requirements set forth herein and all other information, plans and details of construction required by the cluster zoning ordinance and not previously submitted, including but not limited to those related to fire department approval.
2. Prior to any zoning certificate being issued, in order to demonstrate that water and sewer is actually available at the site, the applicant must present signed agreements with appropriate county entities indicating they will actually provide water and sewer services to the property and that all required tap-in or like fees for all the permitted lots have actually been paid. Nothing however in this decision will be deemed to be a finding by this board that the development is in conformance with the zoning of the township as that term is used in the Memorandum of Understanding between Bainbridge Township and Geauga County.
3. There are no variances to the side yard setbacks to the Tulip Lane side of the property but the board will consider if necessary side yard setbacks on the Savage Road side. The 100' buffer must be met on all sides.
4. No lot will have a driveway access directly to Savage Road or have any driveway or other structure in the 100' buffer to Savage Road and appropriate screening will be placed to shield the development from Savage Road.
5. The applicant has requested no variance to the road requirements. The board will find that the 24' road with curbs with defined depth or other method for piping storm water to the detention ponds from the roadways from the individual units to avoid any run-off issues.
6. The project will not exceed the 15% lot coverage and the applicant will establish deed restrictions providing a procedure for allocating lot coverage to the individual units to assure there is a process for dealing with requests for allocation of that lot coverage and that any requests for additional lot coverage can only be made by the association and not by the individual lot owners. In addition with respect to lot coverage, if the applicant seeks to have the detention ponds not considered part of the lot coverage, they must be designed to fully satisfy the requirements of the code and also there must be a provision in the restrictive covenants that requires the homeowner's association to properly maintain those ponds in conformance with the zoning and other applicable requirements.

Motion BZA-2006-33 – 16941 Savage Road - Continued

7. The applicant will comply with all of the applicable requirements of the Army Corps of Engineers with respect to wetlands and to the Geauga Soil and Water Conservation District with respect to run-off and other matters under their jurisdiction.

Proceeding actions based on the following findings of fact:

1. The applicant has not sustained its burden of proof to demonstrate that water and sewer are presently available to the site. The property is not located within the boundaries of the current sewer and water service areas and there is no assurance that in fact the service areas would actually be extended to the subject property and without such extension there would not be available water and sewers.
2. The board has looked at adjacent developments to determine their relevancy to this property. The Chagrin Knolls development is not relevant to this application as its circumstances are materially different, it is located on a major commercial artery of the township and is also located to and partially in an industrial zoned district and in close proximity to substantial commercial development. The character of the neighborhood around Chagrin Knolls is not comparable to that around this property. Likewise the Lake Lucerne development is not a relevant property for comparison. It was developed substantially before the zoning was in place. It was originally not developed as a residential community but as a summer community. It also provides its own services and the streets are not publicly dedicated. It also is only contiguous at one corner and is not connected by road or other direct access. Likewise the Canyon Lakes development is not an appropriate neighborhood to consider because of its remoteness, its significant distance down the street from the subject property. It is separate from the subject property by an area which is generally developed with large acreage lots or consistent with the three acre zoning where applicable and is therefore not an appropriate consideration for the property. The Tulip Lane neighborhood the board believes is appropriate to consider, it is immediately adjacent to the property and one of the accesses to the property will be from the current culdesac in that development. Therefore it is an appropriate area to consider in terms of the type of neighborhood. The board also considered the fact that across Savage Road on a diagonal is a Geauga County park area which needs to be considered and to the north there is currently a large undeveloped piece of property but to the south there is again, property developed more closely consistent with the required zoning.

Motion BZA-2006-33 – 16941 Savage Road - Continued

3. The board finds that the following factors need to be considered with respect to the three acre zoning district as highly important beyond the issues of sewer and water.
 - a. The character of the adjacent neighboring residential areas.
 - b. Drainage and run-off issues and the impact on neighboring areas and downstream riparian areas.
 - c. Overall infrastructure support – police, fire, transportation/traffic and other township services.
 - d. Protecting the rural character of the area and the integrity of the nearby parkland.
4. Any proposed development must not adversely affect these areas in order to be consistent with the zoning irrespective of the issues of water and sewer and the board finds that development at the proposed 33 unit level would adversely affect each of these four areas in a significant manner and therefore would be contrary to the zoning.
5. The board also finds that at the 22 unit level, the impacts as managed by the conditions would not be substantially adverse.
6. The 100' perimeter setback requirement if infringed would adversely affect the neighboring properties. The intent of the 100' buffer line is to separate cluster developments from adjoining properties. In this case, on the south side, there are specific lots that have been platted and the nature and shape of those lots are such that if development is allowed within that 100' buffer zone, it could be unreasonably close to future development of those platted lots. Likewise, on the north side, there is a large as yet undeveloped property and allowing residents closer than 100' would adversely affect the potential future development of that property and place those residences closer to future development on that property than would be reasonable. On the Savage Road side, again, failure to maintain the 100' buffer would be contrary to the purpose of the buffer in screening the cluster development from the major adjacent highway to that development and also from screening the parkland from that development. The board also finds that protection of the adjacent property owners and consistency with the purposes of the cluster conditional use requires that no individual lots have direct driveway access onto Savage Road.
7. Reducing the side yard setback requirements between the buildings so as not required by the code would create fire dangers and difficulties in fighting potential fires in the area. In addition, on the Tulip Lane side, they would create a look and feel that is different from and inconsistent with that in Tulip Lane and therefore should maintain setbacks that are consistent with those in the Tulip Lane area.

Motion BZA-2006-33 – 16941 Savage Road - Continued

8. The board also finds that consistency with the Tulip Lane level of development is reasonable and appropriate and necessary to prevent substantial adverse impact upon that neighborhood. Based upon the testimony before us and consideration of that, it would appear that the average lot size, when adding in any common areas and road right-of-ways, is approximately 2.2 acres and that the density of the development of the subject property should be consistent with that density.
9. The board finds that the 33 lot proposal would not be consistent with that but that the 22 unit approval would be consistent as it provides for an average lot size of 2.27 acres.
10. With respect to the expert testimony regarding township planning the board finds that the conclusions reached by Mr. Hartt are not determinative.
 - a. The board cannot distinguish between when he is speaking as an expert or when he is giving his advice making an advisory opinion based upon his concept of what desirable policy would be which is a purview of the elected officials of this township.
 - b. His testimony with respect to the deliberations of the township in which he participated as a consultant and which he commented upon the township's failure to develop a specific provision dealing with properties having sewer and water is found to be neither persuasive nor relevant.
 - c. It is within the purview of the trustees to decide how best to deal with these issues and it is within their purview to decide that they will be dealt with through application to the Board of Zoning Appeals if they so desire.
 - d. The board also finds that his selective testimony regarding his actions with the township do not go to whether or not the actions or the basis for the township zoning is reasonable or appropriate and the fact that it was one concern or a significant concern of the township in creating the three acre zoning for the ability to support septic and on-site water systems but that was not the only reason and that there are other substantial reasons which support that decision.
11. The board also finds that Mr. Hartt's opinions as well as other experts as to whether or not the various Duncan factors are satisfied for the most part not applicable since they are conclusory in nature about matters which are the task of this board to decide based upon evidence and opinions presented which need to be supported with facts or conclusions or opinions that relate to the underlying issues regarding those factors and not the conclusions to be ultimately drawn from them.

12. The applicant has alleged that the consideration of the economic return on this property should be based upon a proposed purchase agreement for 2.8 million dollars. The applicant has not provided the board with the details of that purchase agreement and only presented a nearly totally redacted version of the contract. The board has no way of knowing whether or not there are any contingencies, adjustments, conditions subsequent, possible modifications or other matters that could affect the ultimate value of such agreement so the board can give little weight to that agreement. Furthermore, the fact that a possible sale agreement exists is not clearly evident of the fair value of the property. A fair value of the property must be supported by more than a mere possible purchase agreement between two parties, there has to be other evidence regarding comparable sales or what a willing or unrelated purchaser and seller would enter a contract for that property. The board finds that there was scant evidence introduced by the applicant with respect to the actual fair value of the property although his expert did indicate that \$22,000.00 per acre was consistent with recent sales of such property. The board finds that the fair value of the property which must be considered in determining whether or not the property can generate a fair rate of return. The board also finds that it is relevant that there is currently a declining real estate market which was indicated by the applicant's own expert who also indicated that this may require a longer period of development and sale. The findings and conclusion from that is that that factor would reduce the value of the property from what it had previously been. The board has examined the economic evidence that was presented by the applicant and by Bainbridge Township witnesses. In each case the board has found that there are weaknesses and inconsistencies in their presentation of the appropriate numbers. The board had specific concerns with cost for utilities, cost for roads, cost to remodel the culdesac, total engineering expenses, total infrastructure expenses as presented by the applicant. The board also has concerns as to whether or not the township's expert included all of the reasonable costs that would be incurred in his proposed development. In considering all of the testimony presented, the board has determined that the applicant presented a cost of approximately \$54,000.00 per unit for his proposed 33 unit development and the township's expert a cost of \$33,000.00 per unit. The board has determined that a reasonable number to use for purposes of analysis will be \$43,000.00 per unit for development costs. The board has also looked at the difference in projected sale price where the applicant's expert has testified to an approximately \$150,000.00 per lot and the townships expert used a figure of \$175,000.00 per lot. The board finds that the appropriate figure to use would be approximately \$160,000.00 per lot. The board has also looked at the analysis provided by the two experts and find that the township expert approach is the better analysis in determining whether or not the applicant is receiving fair value.

Motion BZA-2006-33 – 16941 Savage Road - Continued

The board finds that using a three year approach is more reasonably based upon the numbers that have been presented all of which are based upon a slightly or on a much better real estate market than currently exists today. The board also notes that under current economic conditions, a 30% rate of return for a developer may be also unreasonably high which also argues more for using the three year analysis. The board also finds that using this similar three year analysis revising the proceeds from sales to reflect the \$160,000.00 average price per lot from \$175,000.00 and to increase the development costs by \$10,000.00 per lot would result in a value for the property which is less than the fair value. The board also finds that by allowing 22 lots, which is five additional lots from the analysis used by the township expert, that there would be an additional approximately \$350,000.00 return which would offset the other changes that were made to the project to an analysis of the fair value as shown on the township expert report of about 1.3 million dollars for as said in that report, a value per acre at the high end of recent sale of properties in western Geauga County. The board finds therefore that this would provide a reasonable rate of return to the applicant and that rate of return that is provided is at the upper end of the possible reasonable values for the property and would adequately reflect any additional value that might exist because of the availability of sewer and water.

13. The variances that were requested in the original application are substantial and that the requested unit variance is in excess of 100%. The side yard setback variances would be less than 2/3 of that required and a number of the buffer variances would be less than 50% of what was required. This factor weighs heavily against granting the variance on the proposed plan.
14. The permitted plan reduces the variance for a number of units to approximately 35% and eliminates the other variance requirements. The number of units in the proposed plan and their layout spacing would change the essential character of the neighborhood, is inconsistent with the spacing and level of development on the adjacent properties as well as the overall density and would adversely affect the adjacent property owners. The number of units in the permitted plan is consistent with the essential character of the overall neighborhood and would not cause undue damage to the adjacent property owners. The variances in the proposed plan would adversely affect the delivery of government services. The number of units in a close proximity to one another could create difficulties in fighting fires.
15. The road requirements of condition no. 5 are necessary to assure adequate access of firefighting equipment. The permitted plan would obviate the adverse impact and would have minimal effect on delivery of government services.

Motion BZA-2006-33 – 16941 Savage Road - Continued

16. The property owner purchased the property with knowledge of the zoning restrictions, the three acre requirement predates his ownership. The subsequent modifications allowing a cluster for relaxation of the requirements and mitigate the impact of the zoning and allow development to the lower cost than would be otherwise incurred under the regular three acre zoning.
17. The property owner's predicament cannot be obviated by a method other than a variance with respect to total number of units. However the applicant is only entitled to the minimum relief necessary to overcome the problem. The proposed plan seeks relief beyond that necessary to overcome the predicament. Any predicament proposed with respect to the other variances that were requested in the proposed plan are not imposed by the size, shape or topography of the property but could be overcome by developing with the number of units (22) allowed herein and in accordance to the cluster plan using good site design practices.
18. The spirit and intent of the zoning requirements will not be observed and substantial justice will not be done by granting the variance requested in the proposed plan. The requested plans and number of units and placement of those units are completely outside the intent of the zoning and its spirit. It would be a substantial deviation from what is permitted and from what actually exists in the area. It would not serve the purpose of cluster zoning and it would be too close to the adjacent properties. It would also adversely affect wetlands and riparian features which the cluster provisions are designed to protect.
19. There is no need to grant the number of units requested and their layout in order to provide substantial justice. The applicant is entitled to some relief within the spirit and intent of the requirements to provide substantial justice but only the minimum amount necessary. The applicant is actually able to obtain sewer and water that would be consistent with the spirit and intent of the zoning to develop this property to a similar density to that of Tulip Lane, namely the 22 units that have been approved. This level of density would also provide substantial justice to the applicant. It would increase the number of units to 35% more than permitted by the zoning resolution. The board has used assumptions that are favorable to the applicant in determining his rate of return so what he would acquire is more than reasonable and reflects the particular conditions of the property and the possible availability of sewer and water. Further units are not necessary to provide substantial justice and would have substantial adverse effect upon the neighboring properties and the township.

Motion BZA-2006-33 – 16941 Savage Road - Continued

20. The board also finds that all of the foregoing findings of fact are based upon and subject to the applicant's compliance with all of the conditions set forth above. All such conditions are found to be necessary in order to satisfy the requirements of granting the conditional use as provided for in the zoning resolution and be necessary for satisfying the criteria for granting of the variance including but not limited to those involving impact on adjacent properties, provision of governmental services, consistency with neighborhood and substantial justice.
21. The board finds absent the conditions, it would not have found facts in favor of the conditional use and variance granted herein.

Mr. Lewis seconded the motion.

Vote: Mr. Lamanna, aye; Mr. Lewis, aye; Mr. Murphy, aye; Mr. Olivier, aye; Ms. Sass, aye.

Mr. Lamanna noted that the board reserves the right to cover any items that were inadvertently omitted here in trying to assemble all of the various pieces and parts of this and also to probably add some specific references to documents and/or testimony that the board referred to in making its findings, the board may want to add some specific references so it is clear as to what the board is referring to in those statements.

Since there was no further testimony, the public hearing was closed at 9:25 P.M.

Respectfully submitted,

Michael Lamanna, Chairman
Todd Lewis, Vice Chairman
Mark Murphy
Mark Olivier
Lorrie Sass

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

Date: August 21, 2008

AUDIO RECORDING ON FILE

BZA PH 6/19/2008

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Bainbridge Township, Ohio
Board of Zoning Appeals
June 19, 2008

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 9:25 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Todd Lewis, Mr. Mark Murphy, Mr. Mark Olivier and Ms. Lorrie Sass.

Secretary's note: The minutes of the January 24, 2008, February 13, 2008, April 10, 2008, May 15, 2008 and May 22, 2008 were approved during the special meeting held earlier in the evening.

Applications for July 17, 2008

Application 2008-11 by Vocon (Michael DeMarco) for Key Bank for property at 8481 E. Washington Street

The applicant is requesting area variances for the purpose of constructing a new Key Bank branch bank. The property is located in a CB District.

Application 2008-12 by Joseph A. Dauria for property at 18789 Sharon Drive

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

Application 2008-13 by Greg Battaglia for property at 16805 Snyder Road

The applicant is requesting area variances for the purpose of maintaining a deck, relocating a pond and constructing a gazebo. The property is located in a R-5A District.

Application 2008-14 by Jozef Kofol (Northwoods Grille) for property at 16381 Chillicothe Road

The applicant is requesting to expand its Conditional Use by the addition of outside dining on a patio. The property is located in a R-5A District.

Application 2008-15 by John P. Williams for Bob & Kim Block for property at 16821 Snyder Road

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

The Bainbridge Township Board of Zoning Appeals set a public hearing on the above applications for July 17, 2008 at 7:30 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 9:42 P.M.

Respectfully submitted,

Michael Lamanna, Chairman
Todd Lewis, Vice Chairman
Mark Murphy
Mark Olivier
Lorrie Sass

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

Date: August 21, 2008