

Bainbridge Township, Ohio
Board of Zoning Appeals
July 19, 2001

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

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

Application 2001-28 by Robert A. Erison for property at 8526 Beacon Hill Drive

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

Secretary's note: This application was withdrawn prior to the hearing.

Application 2001-29 by Sabrina and Harson Abdullah for property at 16800 Dayton Street

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

The zoning inspector's letter dated July 13, 2001 was read and photos of the site were submitted.

Mr. Harson Abdullah was present to represent this application.

Mr. Abdullah testified that he wants to build a two story single family home, on six lots, just shy of 2,700 sq. ft.

Mr. McIntyre testified that the print shows 28' to the rear yard setback and 30' to the front yard setback but the house will be shifted 2'.

Mr. Lamanna asked what was currently behind his lots.

Mr. Abdullah said nothing and he wants to purchase those six lots behind his and two to the right.

Mr. Lamanna asked Mr. Abdullah if he is building his house on his own or through the CDC.

Mr. Abdullah said he is acting as his own contractor.

Mr. Lamanna asked about the maximum height of the house.

Mr. Harson said the house will be 26' high.

Mr. McIntyre said the house scales out at 26'.

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

Motion BZA 2001-29 - 16800 Dayton Street

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

1. A variance from the required front yard setback of 100' to 30' for a variance of 70' on Dayton Street and a variance from the required front yard setback of 100' to 40' for a variance of 60' on Lewis Drive.
2. A variance from the required rear yard setback of 90' to 28' for a variance of 62'.
3. A variance from the required side yard setback (right side facing the front of the house) of 50' to 40' for a variance of 10'.
4. A variance from the maximum lot coverage of 10% to 18.6% for a variance of 8.6%.

Based on the following findings of fact:

1. A practical difficulty exists.
2. The applicant owns six pre-existing lots of record in Chagrin Falls Park.
3. The setbacks being requested are consistent with the setbacks granted in this area including the lot coverage.
4. It is somewhat a larger house than others that have been built, but it is also being situated on a parcel that is also larger than the normal total parcel being required and it would be impossible to build any reasonable structure on these lots without granting these variances.

Mr. Takacs seconded the motion.

Vote: Mr. Kolesar, aye; Mr. Lamanna, aye; Mr. Takacs, aye.

Application 2001-30 by Paddle Partners LLC for property at 8345 Woodberry Blvd. (The Wembley Club)

The applicant is requesting a conditional use permit for the purpose of a change of ownership. The property is located in a R-3A District.

The zoning inspector's letter dated July 13, 2001 was read and photos of the site were submitted.

Mr. David Herr and Mr. Marc Duvin were present to represent this application.

Mr. Herr testified that he is representing the Wembley Club Limited Partnership regarding the sale to Paddle Partners for a full service twelve month tennis club.

Mr. Marc Duvin, proposed new owner, testified that he is requesting a transfer of the conditional use permit and is intending to run the club the same as has been up to today.

Mr. Lamanna read the current conditional uses that exist and asked if they are currently in compliance.

Mr. McIntyre testified that they are in compliance as of 3:30 P.M. today per the assistant zoning inspector. He added that the setback is being maintained and they are in compliance with the conditions set forth.

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

Motion BZA 2001-30 - 8345 Woodberry Boulevard

Mr. Lamanna made a motion to grant the change of ownership with respect to the property and the conditional use permit with respect to that property and allow that conditional use permit including all of its conditions and terms to be transferred to the new owner as indicated on the application.

Mr. Takacs seconded the motion.

Vote: Mr. Kolesar, aye; Mr. Lamanna, aye; Mr. Takacs, aye.

Application 2001-31 by Kevin A. and Sandra L. Bock for property at 8483 Trillium Drive

The applicant is requesting an area variance for the purpose of constructing a residential accessory building. The property is located in a R-3A District.

Motion BZA 2001-31 - 8483 Trillium Drive

Mr. Lamanna made a motion to postpone this application at the request of the applicant.

Mr. Takacs seconded the motion.

Vote: Mr. Kolesar, aye; Mr. Lamanna, aye; Mr. Takacs, aye.

Application 2001-32 by Byron Heath for property at 17666 Stockton Lane

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

The zoning inspector's letter dated July 13, 2001 was read and photos of the site were submitted.

Mr. Byron Heath was present to represent this application.

Mr. Heath testified that he is having a problem meeting the rear yard setback (east lot line) with the current regulations to have the address on Stockton Lane and this is probably the best building spot on the lot because of a creek and two ponds. He said it is all marshy up in the corner and he would run into the same situation, if he placed the house facing Bainbridge Road, of not being able to meet the rear yard setbacks.

Mr. Takacs asked if the ponds were there now.

Mr. Heath replied yes.

Mr. Lamanna asked what is on the adjacent lot to the rear.

Mr. Heath said there is a dwelling and a barn which appears to be abandoned.

Mr. McIntyre testified that there is a small structure that is getting ready to be auctioned at a Sheriff's sale.

Mr. Lamanna asked about the width of that lot.

Mr. McIntyre said it is approximately 150'.

Mr. Heath said there is a considerable elevation change of between 12' and 15' in the front of this lot.

The board viewed the site plan and photos of the site.

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

Motion BZA 2001-32 - 17666 Stockton Lane

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

1. A variance from the required rear yard setback of 90' to 60' for a variance of 30'.

Based on the following findings of fact:

1. The board notes in this case, that although this is designated as a rear yard setback, in fact this is a corner lot. This is a designated rear yard but in fact looking at the lot configuration it is more akin to a side yard and the 60' exceeds the normal required side yard setback of 50' so this will not adversely affect the development of the adjacent property.
2. In addition there is a practical difficulty on this lot due to the existence of two ponds and a creek which limits the reasonable buildable area and requires positioning of the house in this location.

Mr. Takacs seconded the motion.

Vote: Mr. Kolesar, aye; Mr. Lamanna, aye; Mr. Takacs, aye.

Application 2001-33 by Frank Artino for property at 7395 Chagrin Road

The applicant is requesting a variance for a substitution of a non-conforming use. The property is located in a R-3A District.

The zoning inspector's letter dated July 13, 2001 was read and photos of the site were submitted.

Mr. Dale Markowitz and Mr. Mark O'Brien, Attorneys and Mr. and Mrs. Frank Artino were present to represent this application.

Mr. Markowitz presented an overview of the property and testified that the Artinos bought the property from the Brennans who operated a craft and garden center for 30 years which was zoned commercial but in 1979 the property was re-zoned back to residential but has continued to be used for that purpose. He said the Artinos acquired the property but only after receiving a letter from the Brennans and the zoning inspector and one of the prime uses was for Mr. Artino to keep equipment on the property as well as have a garden center operation including a tree farm run by his wife called Briar Hill Landscaping. He said that a short video tape will be shown (Exhibit #7). He submitted a letter from Heatherton Originals to Mr. Michael McIntyre, dated March 9, 2000 (Exhibit #3) which represents the uses they were engaged in. He said one of the uses was a garden center and Mr. Artino thought he could operate his business under the interpretation of a garden center but he provides installations from his garden center and we believe it is in conformance with that use.

Mr. Markowitz said they met with Mr. McIntyre and agreed to come to the board for a substitution of use and referred to non-conforming uses and said the standard is set out in Chapter 165.09 of the zoning resolution. He referred to a letter from Mr. McIntyre (Exhibit #4) and said they would like to substitute three of the of uses. He continued by saying that the Brennans had a substantial wholesale business and

would like to substitute that with the sale of silk and dried flowers and landscaping with two conditions which they will self impose, that with regards to Mr. Artino's business, only two other people will be employed and by limiting the time of year and the number of employees they will be in compliance with Chapter 165.09 of the zoning resolution. He said there was a variance granted at one point to expand the building. He exhibited photos of the site which are marked Exhibits 1A, 1B, 2A and 2B and explained the photos and noted that there is a substantial stand of trees to the east from the kennel and showed a photo of a wider area showing screening on the east side and said they propose that all the landscaping activity will come from the west side or kennel side and all of the equipment will be stored inside the building, only mulch and stone would be stored outside.

Mr. Markowitz presented the video (Exhibit #7) which was taken at 7:00 A.M. on July 3, 2001, dogs barking in the background, and said this would be about the time the landscape materials would be coming to the site. The video also showed a view of the veterinarian office across the street. He noted there is residential to the east, a veterinarian across the street and a kennel to the west.

Mr. Lamanna asked Mr. Artino what the structure was on the right side of the property.

Mr. Artino testified that it is a trellis for trees, grapevines, hanging baskets, etc.

Mr. Markowitz continued showing the video taken on July 6, 2001 at 6:59 A.M. He stated that the vehicle is Mr. Artino's vehicle that he uses for his business.

Mr. Artino said when he purchased the property, there was a dilapidated semi-truck covered with weeds that he pulled out and got rid of. He continued by saying that they (the Brennans) were in the process of listing the property with Realty One and he lives in Tanglewood and was looking for something in the area where they live so he put a note on the door saying he was interested in the property because it would be perfect for him from the start. He said they took him through what they stored there when it was Heatherton Originals, but what struck him was the garden center with crafts, silk flowers, tools and trees. He said he made an offer on it and it was a very quick process.

Mr. Markowitz asked Mr. Artino if when he purchased the property if he had a letter from Mr. McIntyre.

Mr. Artino said there was an addendum to purchase the property only if there was approval from the Bainbridge Township zoning and a few weeks later we received a letter stating the property was pre-existing, non-conforming so we thought it was a green light to proceed.

Mr. Markowitz asked Mr. Artino if he saw any products there.

Mr. Artino replied by saying he saw an estimated value of \$750,000.00 worth of products.

Mr. Markowitz asked Mr. Artino what he was planning on doing with the property.

Mr. Artino said he was getting set up to proceed with a garden center and was fixing up the outside and inside and was planning on opening that end of the business in a few months and the landscaping business will coincide.

Mr. Markowitz asked Mr. Artino if he will grow trees and install them as part of the garden center.

Mr. Artino replied yes.

Mr. Markowitz asked Mr. Artino if he has a landscaping business if he will give up the wholesale dried flower business.

Mr. Artino replied yes.

Mr. Markowitz asked Mr. Artino if there will be only two employees plus himself.

Mr. Artino said yes.

Mr. Markowitz asked Mr. Artino if the property will be used for only an eight month period all year.

Mr. Artino said yes, the end of March to the end of October because there is not much use for a garden center from January to March.

Mr. Markowitz asked Mr. Artino if he is not willing to give up the sales if he would have more or less employees.

Mr. Artino said he would probably have more employees.

Mr. Markowitz asked Mr. Artino if the landscaping business is denied, if he will continue to use the property for wholesale sales.

Mr. Artino said he would have to.

Mr. Markowitz asked Mr. Artino how the landscaping business will impact the neighbors.

Mr. Artino said he knew the business would not be louder than the kennel or the three veterinarians across the street because they generate a lot of cars.

Mr. Markowitz asked Mr. Artino if with the landscaping business there will be a lot of customers.

Mr. Artino replied no and added that the landscape business will be directed to the west toward the kennel.

Mr. Markowitz asked about the property to the south.

Mr. Artino said the property goes all the way to Chagrin Falls Park, about 1/2 mile and there is a dense cover of trees. He showed the board the back of the property on the photo and said the hours would be 8:00 A.M. to 5:00 P.M.

Mr. Markowitz asked what materials will be stored.

Mr. Artino said he will have mulch, topsoil, rocks and stuff for installation purposes.

Mr. Markowitz asked if there is a warehousing business, what type of vehicles would be involved.

Mr. Artino said there would be a lot more traffic for pick ups and deliveries which will include semi-tractor trailers.

Mr. Markowitz asked about the number of times per year materials will be delivered.

Mr. Artino said the materials would be delivered in March and April.

Mr. Markowitz submitted photos of other landscaping businesses in the area that are in residential districts and asked Mr. Artino about the screening.

Mr. Artino said the screening is pretty dense and is appropriate to block any views on both sides.

Mr. Markowitz asked about the deed restriction on the property.

Mr. Artino said there is a deed restriction disallowing any residential dwelling on the property as long as Mr. Pfouts or his son is operating a kennel next door because they did not want any noise problems.

Mr. Markowitz read the following from the deed: "This property is subject to the restriction that Grantee, its successors and assigns, shall not build a residence on the property conveyed herein above so long as Dennis Pfouts, son of Grantors herein, shall reside and operate kennels on the contiguous property to the northeast, said restriction being set forth in original Land Contract dated October 5, 1970 and recorded at Volume 522, Page 512, January 19, 1971."

Mr. Lamanna referred to the proposed garden center and asked what type of operation is being planned.

Mr. Artino said that Mrs. Artino will have the most influence on that.

Mrs. Mary Anne Artino testified that she is planning on staying within the same lines that Mrs. Brennan had with containers, plantings, gifts and one of a kind designs.

Mr. Takacs said they had a Christmas shop before.

Mrs. Artino said it will be pretty much the same as Marie Brennan's.

Mr. Takacs asked if the trees will be brought in.

Mr. Artino said some will be brought in.

Mrs. Artino said it will be a gifty garden shop.

Mr. Lamanna asked about the hours of operation.

Mrs. Artino said she will be open from 9:00 A.M. or 10:00 A.M. to 5:00 P.M. but she has to make it profitable. She said that Mrs. Brennan sold many seasonal items at Easter and Halloween and small gift items and little containers.

Mr. Lamanna asked Mr. and Mrs. Artino if they looked at any of the business records regarding annual sales, etc.

Mr. Artino replied no because they were not interested in purchasing the business.

Mr. Lamanna said that the previous owners might have been engaged in certain activities but they were fairly modest and if this would turn into another Breezewood, all of a sudden there could be a constant stream of traffic.

Mr. Markowitz said that would be true, it doesn't matter what the level is, but Mrs. Artino's intent is to be similar to Marie Brennan's.

Mrs. Artino said she thought the landscaping would mesh nicely with this.

Mr. Lamanna asked if fertilizer will be sold.

Mr. Artino said they do a little bit of that now.

Mr. Lamanna asked how much is stored regarding pesticides and hazardous materials.

Mr. Artino said not much.

Mr. Lamanna asked how it is stored.

Mr. Artino said it is mostly dry applications.

Mr. Lamanna asked if it will be stored inside.

Mr. Artino replied yes.

Mr. Takacs asked about the number of vehicles.

Mr. Artino said he has two trucks.

Mr. Takacs asked if there will be lawn cutting.

Mr. Artino said he does some of that.

Mr. Kolesar asked if mulch and stone is stored.

Mr. Artino replied yes.

Mr. Kolesar said he has a concern about increased truck traffic and asked if other landscaping companies store bulk material.

Mr. Artino said he did not know.

Mr. Lamanna asked about the truck traffic with the previous owner.

Mr. Markowitz said they had trucks there on a regular basis.

Mr. Kolesar referred to the letter from Michael McIntyre, dated May 12, 2000 regarding future changes of use.

Mr. Lamanna referred to the letter written by Mrs. Brennan dated March 9, 2000 and asked if the items listed are the non-conforming uses.

Mr. Markowitz said they saw them (the Brennans) doing all those things the time the Artinos bought it except they did not see fresh flowers or a wire service.

The board reviewed Mrs. Brennan's letter.

Mr. Markowitz asked the board to include the five photos and the video in the exhibits.

Mr. Ed Sullivan of Chagrin Road testified that his wife is involved in the Geauga Humane Society and he lives next to the kennel and feeding time is 7:00 A.M. and the July 4th holiday week is when the kennel is the most full. He continued by saying that Chagrin Road is a country road and the township and the county have been in court. He said the park district donated property to remain as it is. He referred to Chapter 165.01 of the zoning resolution and said it is to permit the continuation of non-conforming uses, not to encourage their survival. He said no doubt the Artinos want to have a successful business but the zoning is to discourage businesses in a residential area and now they want to have two businesses at this location and they want to rent part of the place out according to an advertisement in the newspaper.

Mrs. Norma Hendler submitted a copy of the advertisement to the board.

Mr. Sullivan asked about the landscaping business at the end of Chagrin Road.

Mr. McIntyre said it is two different issues and it may be run illegally.

Mr. Sullivan said it is a reason to run this business.

Mr. Markowitz said he had no knowledge of whether it is legal or illegal.

Mr. Alan Begy of Chagrin Road and adjacent neighbor testified that he had several personal comments and pictures tell a thousand words but not necessarily the truth. He said his home is directly behind the trees, 45' from the edge of their building. He said his eleven year old son noticed the lights on at 11:00 P.M. one night because they were moving a substantial amount of antique furniture into the warehouse and the property is not screened as good as it seems. He continued by saying that he is concerned with the accuracy of the application and the site map is inaccurate but presumes it was submitted in good faith. He said they are saying their building is 45' from the property line, but it is only 25' from the property line and according to the letter Mrs. Brennan had on file, there are no predetermined uses of the property approved by the township and Mrs. Brennan could have written anything. He said the Brennans did not have a landscaping business and someone should spend some time analyzing what the Brennan's business really was because he did not think the seven items on the list really happened.

Mr. Lamanna asked why that is.

Mr. Begy said his biggest concern is Item 5 in Mrs. Brennan's letter (5. a garden center including annuals, perennials, shrubs, trees, seeds, fertilizers, pesticides and tools plus landscaping installations) because no equipment was ever stored outside on the property. He said the garden shop was a wholesale operation and retail only one month a year and 90% of the business was wholesale and it surprised him that

the contents were \$750,000.00 because the sale was under \$100,000.00. He continued by saying that he does not think anybody represented by the township took the time to find out what the uses really were.

Mr. Lamanna said this letter obviously was written by a party of interest and they have to show they were engaged in the uses the year the change occurred and continued to do the same up until the time they sold the property.

Mr. Takacs said they would have been granted variances.

Mr. Begy said the only variances were for the buildings and there were no variances to expand the use of the building.

Mr. Lamanna said the variance for the building indicated they were engaged in that business at the time.

Mr. Begy said he understands this business will have two trucks and who is to say someone else will not come in and use it to its fullest.

Mr. Lamanna said that limitation will continue with that use until they come back to the board for a change of use.

Mr. Begy read from the zoning resolution regarding non-conforming uses and said the traffic related to Marie Brennan's craft and business/garden center was a UPS truck once a day and there will be a considerable amount of traffic with a retail use.

Mr. Takacs asked about Christmas time when there were more than trucks there.

Mr. Begy said the unknown is scarier than the known and he referred to the advertisement in the newspaper to rent out space that was not mentioned and the warehouse is currently being used to store antique furniture and the real concern is what the true uses of the property are going to be.

Mr. Markowitz referred to the permit history and testified that in 1980 permit #4961 was issued for a storage building for a garden center, in 1978 permit #3730 was issued for an addition for storage of inventory/office and work area, in 1977 permit #3694 was issued for an addition for storage of inventory, in 1976 permit #3332 was issued for an accessory building for storage of farm equipment and inventory and in 1971 permit #2678 was issued for a commercial addition to be used as a shelter for nursery plant stock and materials.

Mr. Markowitz continued by saying that his clients testified that they observed the same uses being operated except for the fresh flowers and Mr. Begy corroborated and agreed that the uses continued and would like to see some compromise and perhaps some screening would be necessary. He said there are

substantial trees but we could provide more screening and added that his client is willing to do that. He continued by saying that per the Ohio Revised Code, the township has to provide a substitution for non-conforming uses and on two sides there are non-residential uses and the landscaping will not negatively impact the neighborhood and the equipment will be stored inside the building. He said he understands Mr. Sullivan's point but this a commercial pocket and a landscaping business is less intrusive than a retail business could be.

Mr. Begy said that there is little understanding of what the actual use was and his primary concern has to do with the retail operation and what they propose here is an increase.

Mr. Artino said that his wife is a registered nurse by trade and we are looking for someone to help us out to show us how a retail craft store is to be run.

Ms. Paula Triscaro of Chagrin Road testified that she has a lot of pride with Chagrin Road but her concern is how busy the road is and the truck traffic. She said she is glad she does not have any neighbors worrying about when she turns her lights on at night and she is proud of what the Artinos have done to this place. She said she thinks it will be a really great place but the traffic is there and is always there and these people are not in it to take advantage and what they want to do with it is not out of context and too much of an issue is being made of this.

Mrs. Norma Hendler of Brigadoon Drive testified that there is an addendum to the zoning certificate application and it is not addressed. She questioned the storage and asked if this does not represent an expanded use of the property and asked about the time-frame for continued use of the property.

Mr. Lamanna explained that they have to continuously operate the business for two years and sell related types of things or types of products from time to time to not change the type of use. He said bulk sales of material is different than selling plants and seeds from an inside location and a garden center is a variety of what that can be.

Mrs. Hendler referred to Mrs. Brennan's letter and said there is nothing mentioned of bulk materials, statues, rocks, etc. and asked if the definition of a garden center was different 30 years ago from what it is today.

Mr. Lamanna said a garden center could run the gamut from Breezewood to someone selling plants from their house.

Ms. Nancy Burrows of Chagrin Road testified that she has lived here all her life and went to school with Kathy Brennan. She said Mrs. Brennan did a wholesale business, all wholesale, and only UPS trucks came into the property and there was a chain across the driveway a lot of the time and it was pretty much empty except for Christmas time. She said the trellis was for Christmas trees and added that Chagrin Road is extremely dangerous and there is not enough parking. She said retail will use more water because of the

bathroom situation and there is a house right next door which is part of the kennel. She said there will be noise with trucks backing up and beeping and there will be a smell from the mulch and adding retail and increasing the amount of business is nothing of what it used to be.

Ms. Kathy Pfouts of Chagrin Road testified that she thought it would be a simple lawn maintenance that was going in there and she was surprised that a retail store was going in that will be involving other people that are totally non-related.

Mrs. Hendler said those buildings were never rented out by the Brennans.

Mr. Lamanna said the use is what is relevant.

Mr. Mark Olivier of Merry Oaks Trail testified that his only concern is that if this is not allowed, someone could run the business to the maximum, but Mr. Artino will be limiting his employees to three and you have to look beyond his uses and what would go in there down the road.

Mr. Ted Seliga referred to the non-conforming uses and the broad scope of a garden center and asked if there were specific uses.

Mr. Lamanna said that only the Brennans could tell us what they actually did there.

Mr. Scott Burrows of Chagrin Road testified that he has a concern of the use going from selling Christmas trees to being open 8 - 9 months a year.

Mr. David Orr of Chagrin Road testified that he has lived here for 34 years and the Pfouts family operated what is known as Arrowhead and you practically never saw a car in the parking lot and never saw a retail operation, there were no dump trucks and no machinery. He said perhaps this is an allowable use, but it is increasing and should not be allowed to grow.

Ms. Burrows asked if there will be three employees on the entire property or more if Mrs. Artino starts her own business along with who is leasing the space there and said the board needs to talk about the people using the property.

Mr. Jim Muggleton of Chagrin Road testified that that part of the road has a blind hill and semi trucks drive through the area.

Mr. David Griffith of Samuel Lord Drive testified that he has lived here for 34 years and asked for the definition of tools because tools could mean garden tractors, mowers, rental equipment, etc.

Mr. Brian Winovich of Lake Forest Trail testified that he lives in Tanglewood among 300 houses and the Artinos were the only neighbors who came to his house to welcome his family into the

neighborhood. He said this will not be another Breezewood and we are lucky to have them as neighbors.

Mr. Markowitz said that there will be two employees plus Mr. Artino for the landscaping business and he has no idea beyond that what Mrs. Artino has planned for the garden center but there is a pre-existing lawful, non-conforming use for the craft supplies and silk and dried flowers.

Mr. Lamanna said he did not think you can substitute piece meal, you have to substitute one for one, it goes with the package and you cannot keep the garden center.

Mr. Markowitz said that is not acceptable so his clients will withdraw the application.

Mr. Lamanna said they can make application for a garden center or a landscape business.

Mr. Markowitz said he disagrees but does not have a problem with it and it does not mean they have to give up everything.

Mr. Lamanna said if they want a substitution, it must be the whole package, they cannot pick and choose and they cannot carry on all these uses at once. He said either wholesale or retail but they cannot conduct both uses at once.

Mr. Markowitz said all those uses were continued throughout the years, but they will do what will have the least amount of impact on the community and added that these are pockets of commercial use.

Mr. Ed Sullivan said it is not a pocket of commercial use because of the vet office and the kennel.

Mr. Markowitz said if his clients have a garden center with a landscaping business, it has to be something viable and if not they will withdraw their application and let someone else determine what the use is.

Mr. Norm Schultz of Chagrin Road asked if the property is 1.4 acres or 2 acres.

Mr. Lamanna said the property is 1.46 acres per the county records.

Mr. Schultz referred to the buildings, parking lot and septic system and said he has a concern where the mulch will be stored.

Mr. Brian Winovich testified that Mr. Artino purchased the property based on the letter he received from the owners.

Mr. Muggleton said the property was purchased with an addendum and the Artinos should have

checked with the zoning board to see if they can expand.

Mr. Artino said he can't expand.

Ms. Kathy Pfouts testified that she likes the Artinos very much but she just wants it to stay a reasonable business operation on Chagrin Road.

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

Motion BZA 2001-33 - 7395 Chagrin Road

Mr. Lamanna made a motion to grant the following substitution for all of the pre-existing non-conforming uses permitted on this parcel which will be subject to the additional conditions described herein.

1. The use of the property for conducting a landscaping service business as well as landscaping installation incidental to the retail sale of products as later described herein. The landscaping business will have all equipment stored indoors and will be conducted as to minimize any unnecessary vehicle noise and may have bulk storage of landscaping materials up to 3,000 sq. ft. of space located behind the existing pole barn building used for storage of equipment provided that that area will not extend beyond the side limits of the main building on the property. No individual pile of bulk material will be greater than 12 feet high and reasonable precautions will be made to prevent run-off of these materials into any adjacent properties. The business will be limited to the owner plus two other people in terms of those who would come to the premises during the work day for purposes of parking their cars and taking out equipment to perform the business and appropriate parking spaces will be provided for those persons.
2. The retail sale of the following types of materials: annuals, perennials, shrubs, trees, seeds, fertilizers and pesticides in small consumer quantities, and hand tools related to gardening, floral arrangements and designs for fresh and dried flowers, artistic containers for floral arrangements, theme crafts and materials for holiday and calendar events, seasonal gift items, ornamental garden items, landscape design services. The retail sale will not include bulk materials or large items such as boulders or the like.

All materials for retail sale will be stored inside of the building except that living plants or cut trees such as Christmas trees may be displayed either in the notched in area in front of the main building or in the little courtyard area between the main building and the pole barn behind the main building.

No materials will be stored in the strip of land running along the side of the property to the east within the distance that the existing main building is off the property line which is approximately 25 feet and on the other side of the property no materials will be stored or displayed on the property otherwise used for the purpose of carrying on any of these businesses in the same 25 ft. setback

from that property line. With respect to the parking area, parking will be limited to an area whose width is no greater than the width of the main building and will not extend beyond the side limits of the main building nor will parking be permitted within 30 feet of the right-of-way of Chagrin Road.

On the east side of the parking area, restraints such as railroad ties and the like will be placed so that cars may not be parked beyond the aforesaid limits of the parking area. With respect to hours of operation, the retail business will not open before 9:00 A.M. nor operate any later than 8:00 P.M. except on Sunday, hours of operation will be limited to 11:00 A.M. to 6:00 P.M. maximum.

Note: Existing signage will be maintained, there is no change or increase in signage permitted by this substitution and in addition with respect to lighting, there will be no area lighting provided on the property except upon further application to the board with specific plans for any lighting that would be required with the intent that there will be no lighting on this property that would impact upon the neighbors or create a large amount of light spill-over or light pollution in this area. Incidental incandescent lighting is OK, what the board does not want is large quartz lighting, halogen lighting, high pressure sodium or that type of lighting in the parking area. Any lighting that is permitted will only be during actual hours of operation.

Mr. Takacs seconded the motion.

Vote: Mr. Kolesar, nay; Mr. Lamanna, aye; Mr. Takacs, aye.

Motion fails because under the rules of the board, with only three members present, it is required that there be unanimous approval of the request.

Since there was no further testimony the public hearing was closed at 10:55 P.M.

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

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

Secretary's Note: The board only adopted the text of the hearing and motion for 2001-33 but did not adopt the vote portion. See minutes of August 16, 2001 meeting for explanation.

Bainbridge Township, Ohio
Board of Zoning Appeals
July 19, 2001

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 10:55 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. John Kolesar and Mr. Donald Takacs. Mr. Todd Lewis and Mrs. Ellen Stanton were absent.

Minutes

Mr. Takacs made a motion to approve the minutes of the June 21, 2001 meeting as written.

Mr. Lamanna seconded the motion that passed unanimously.

Applications for next meeting

Application 2001-34 by Charles Rex for property at 18764 Brewster Road

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

Application 2001-35 by Robert A. and Nancy C. Benjamin for property at 8646 Tanglewood Trail

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

Application 2001-33 by Frank Artino for property at 7395 Chagrin Road

The applicant is requesting a reconsideration for a variance for a substitution of a non-conforming use. If the application for reconsideration is granted, the board will make such reconsideration at the meeting. The property is located in a R-3A District.

The Bainbridge Township Board of Zoning Appeals set the public hearing on the above applications for August 16, 2001 at 7:30 P.M. at the Bainbridge Community Hall, 17826 Chillicothe Road, Bainbridge Township, Ohio and unanimously resolved to request the Board of Trustees to issue a purchase order for legal advertising.

Since there was no further business, the meeting was adjourned at 11:00 P.M.

Respectfully submitted,

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

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

