

Bainbridge Township, Ohio
Board of Zoning Appeals
August 16, 2001

Pursuant to notice by publication and certified mail, a public hearing was called to order at 7:33 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. John Kolesar, Mr. Todd Lewis, Mrs. Ellen Stanton and Mr. Donald Takacs. The following matters were then heard:

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

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.

The zoning inspector's letter dated August 10, 2001 was read and photos of the site were submitted.

Mr. Lamanna stated that the variance requested is for 1.25'.

Mr. Charles Rex, owner of the property, testified that after all was said and done, the house height was over by a foot a little because of the walkout basement.

Mr. Lewis asked if the house was up.

Mr. Rex replied yes.

Mr. Lamanna asked about the size of the lot.

Mr. Rex said the lot is 17.25 acres.

The board reviewed the site plan.

Mr. Lamanna said there is nothing unusual about this application and it looks like there is access to all sides of the structure.

Mr. Takacs said the walkout does not have a roof line.

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

Motion BZA 2001-34 - 18764 Brewster Road

Mr. Lamanna made a motion to grant the applicant's requested variance from the maximum height permitted of 35' to 36.25' for a variance of 1.25'.

Based on the following findings of fact:

1. It is a very minor variance.
2. The house is generally an ordinary style house.
3. The necessity of the variance is a walkout due to the sloping of the land on one side.
4. Looking at the pictures of the house there seems to be complete access for any emergency vehicles and the additional height does not create any added burden on any public services.
5. Due to the large acreage that this building is on there is not any nearby or adjacent buildings that would be affected by this small increased height allowance.

Mr. Takacs seconded the motion.

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

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.

The zoning inspector's letter dated August 10, 2001 was read and photos of the site were submitted.

Mr. Lamanna stated that the variance requested is 1'-10".

Mr. Robert Benjamin, property owner, testified that they want to push their kitchen out but what they would have spent would have been cost prohibitive so they improved the layout by adding a deck and by pushing out the kitchen 11" they gained 18% more space in the floor plan. He said there is a sufficient buffer between his house and the neighbor's house and he will leave the foundation and drainage system alone. He continued by saying that the width of the house is 17' and they are pushing the house out 2.5'. He submitted a letter of approval from his neighbor Mr. Jordan and said the Lake Association approved the addition. He referred to the rendering showing a cantilever roof and said the house was not square with the property line where the kitchen expansion will go. He added that he will tear off most of the roof and match it.

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

Motion BZA 2001-35 - 8646 Tanglewood Trail

Mr. Lamanna made a motion to grant the applicant's request for a 1' 10" variance from the required side yard setback of 15' to 13' 2".

Based on the following findings of fact:

1. The applicant is making a modest expansion to his house and in order to have a reasonable dimension for the expansion and due to the fact that his current house is slightly misaligned with the side yard setback line, it causes a part of the expansion to move into the setback area.
2. Furthermore the building on the adjacent property is over 40' from the property line so this small encroachment will not adversely affect the neighbor's property or otherwise be inconsistent with the other homes or uses in this area.

Mr. Takacs seconded the motion.

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

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

Mr. Lamanna explained that the applicant has requested a reconsideration and said he discussed this with the assistant county prosecutor and it is the appropriate right of the applicant to request a reconsideration as long as it is prior to the adoption of the previous month's meeting minutes. He continued by saying that this is a discretionary matter before the board because there was a rather peculiar situation with a two to one vote so it was treated as a denial. He said the applicant is seeking to have this matter reconsidered by the board of all five members and the board will hear new comments only because the minutes from the previous meeting will be part of the record. He also said that per the county prosecutor's office, the board will look at how this will be handled in the future because the one who votes no will have to enter the findings of fact into the record.

Mr. Lamanna made a motion to reconsider application 2001-33 by Frank Artino for property at

7395 Chagrin Road.

Mr. Takacs seconded the motion.

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

Mr. Lamanna stated that the board will allow the applicant to make a brief summary.

Mr. Dale Markowitz, attorney for the applicants testified by saying he and the applicants submitted a number of exhibits that were presented to the board at the last meeting and said that all the conditions in the motion are acceptable to the applicants and they can live with those requirements. He said some questions came up at the last hearing regarding the Brennans, so they brought Mrs. Brennan here tonight to testify. He said they are not here for a variance but for a substitution of a non-conforming use and the chairman put conditions on what the applicants proposed, but it is acceptable to them. He continued by saying that the property was rezoned from commercial to residential in 1979 and the Brennans operated a number of different businesses such as a garden center, wholesale and the sale of retail items, that is why they were allowed to keep operating. He said they sold containers, live plants and Christmas items and they did operate a retail and wholesale business on a twelve month basis. He said his clients, in addition to a retail business, would like a landscape business and Mrs. Brennan listed the uses and one was a landscape installation business. He said his clients thought they could have a landscaping business but they decided to give up some of the uses for the landscaping business to have flowers and a retail operation. He said, at the last meeting, they presented a video that showed the veterinarian's office across the street, the kennel to the west, dogs barking very early in the morning, trucks coming in early in the morning with stone, mulch, etc. and added that Mrs. Artino will operate the craft center and will sell Christmas trees and install them.

Mrs. Stanton asked Mrs. Brennan if she operated a retail business.

Mrs. Brennan testified by saying yes but said she was not always there, but made appointments with people and from Fall to Christmas people came in knowing she would be there. She said they sold candles, small gifts but never closed it because her husband was always there from 9 - 5 and ran the shipping part of it.

Mrs. Hendler asked Mrs. Brennan if they had bulk material such as mulch and stone.

Mrs. Brennan said they did some landscaping on the side and explained that they would plant trees and utilize peat moss, soil and fertilizer, etc.

Mrs. Hendler asked if it was stored in bulk on the property.

Mrs. Brennan said it was cheaper to buy mulch in bulk and said they had stone dropped off and added that they sold it with the jobs they carried.

Mrs. Hendler asked if there were ever any mounds of stone, mulch and pavers.

Mrs. Brennan said she did not understand the relevance to that question.

Mrs. Hendler said that Mr. Artino had asked to store bulk materials.

Mrs. Brennan said she and her husband ordered what ever they needed to do the job.

Mrs. Hendler asked if they ever had an order for a patio job.

Mrs. Brennan said she did not want to get into the legality of that.

Mrs. Hendler asked Mrs. Brennan if they ever had trellises and statues.

Mrs. Brennan said they sold certain items and changed the items but did not sell paving stones out the door as retail.

Ms. Julie Althans testified that Chagrin Road is a main artery and she has lived out here for 50 years and said we as citizens want to protect and preserve Chagrin Road because it is the prettiest road.

Mrs. Mary Ann Artino testified that they have no intent to make their property look horrible and they would not deface their property.

Mr. Frank Artino testified that they will have all organic materials and nothing hazardous on the property.

Ms. Kathy Pfouts asked what is allowable as far as burning materials.

Mr. Lamanna stated that burning is not allowed until a permit is obtained from the EPA.

Ms. Pfouts questioned why the Artinos burned in the beginning.

Mr. Artino said they found out they could not burn anymore.

Mr. Alan Begy of Chagrin Road, next door neighbor, testified that he has listened to what the applicants propose to do and does not have a problem with the substitution but does have a problem with what they are substituting. He said he imagined that all the pre-existing uses over 35 years are accurate, but what was relevant is what took place over the last two years.

Mr. Lamanna said the uses must continue on.

Mr. Begy referred to Breezewood and asked if it could become a trucking company because trucks come in and out and they store materials. He referred to the veterinarian's office across the street and said that he buys heartworm pills from the vet which is retail but said he does not consider them retail.

Mr. Lamanna said that is why this has been so difficult.

Mr. Begy stated that the business use was wholesale with a Christmas tree farm and those were the two businesses at the property when Arrowhead Garden Center failed and Heatherton Originals came in. He said Mr. Brennan was there because he was handling the wholesale business and asked how much retail and dollar value was there and said he suspects it was minuscule. He said there are two businesses that could be substituted and that is wholesale and a Christmas tree farm. He continued by reading from Chapter 165 of the zoning resolution regarding non-conforming uses and said that no such use shall be extended to occupy any land outside the building and referred to the part about a use being abandoned for more than two years and said he believes Arrowhead Garden Center was abandoned once the structure was no longer used for that purpose. He thanked Mrs. Brennan for attending the meeting and said she has been a nice neighbor for years, and maybe she can shed some light on this. He asked what the trade-off is and said if there is an existing wholesale use, then in order to bring in the landscaping, any existing retail has to go away. He said there was wholesale use and a Christmas tree farm but the gardening activity or substantial amount of retail has not taken place for many years. He referred again to the issue of the veterinarian selling heartworm pills and asked if that vet decides to leave that property can a new person sell retail on that property.

Mr. Lamanna said that a vet selling heartworm pills is so incidental but if there were a large room with pet supplies it would be a whole different business.

Mr. Markowitz said there is nothing legal to support anything Mr. Begy has said and added there was a wholesale and retail business and if the board denies this, the applicants can have any wholesale and warehouse business they want. He said that Mr. Lamanna's motion was very clear which totally eliminates the wholesale, there are limitations on the retail business and now there are no limitations on the volume, hours of operation cannot be regulated and added that this motion is a major benefit to the neighbors and the community. He said that the Ohio Revised Code says that people have a right to ask for a substitution of a use and the applicants are willing to exchange all of that for what the board granted.

Ms. Judie Bayless of Chagrin Road testified that her main objection to this business is the truck traffic and with the Brennans there was no traffic, it was very quiet there but all of the sudden there is all this commotion. She said she has no objection to what is going on inside and Mrs. Brennan did not perform the duties of a landscaper and there were no piles of topsoil or the like on the property.

Mr. Chris Pfouts testified that he has lived at Ardenberry Kennels all of this life and there were never piles of mulch and stone and the Christmas tree farm was 85% on his land. He said the Artinos have 1.4 acres and a couple of buildings which is not a Christmas tree farm.

Mrs. Brennan said she did have mulch.

Mr. Pfouts said the mulch was in bags.

Mrs. Brennan said they stored peat moss outside and they did have trucks.

Mr. Pfouts replied no.

Mr. Begy said if there was one-half million dollars of wholesale there was only \$1,000 worth of retail.

Mrs. Brennan said he did not really know her business.

Mr. Lamanna asked Ms. Bayless about the traffic that she mentioned.

Ms. Bayless said when the employees leave on their motorcycles there is a lot of noise and noise when they have lots of friends over, they are welcome, but do it in a more refined manner. She said the way they started out is unbecoming and added that she is not upset about the noise, but she did not appreciate it.

Mr. Lamanna referred to the motion made at the July 19, 2001 meeting regarding landscaping, storage of materials and parking.

Mr. Begy said he thought the issues relating to retail ultimately will increase the employees and traffic and added that he did not like the extent to which the board has compromised.

Mrs. Hendler gave Mrs. Stanton and Mr. Lewis a copy of the advertisement that appeared in the Chagrin Valley Times regarding renting space to a retail entity. She stated that on two occasions, the Artinos rented their space to other people, once to an antique business and to warehouse antiques but after the last meeting, they left the premises. She read the advertisement and said those buildings were not rented out to other people, the Brennans ran their business themselves.

Mr. Lamanna said the board cannot control who runs the business, the question is the permitted use and an antique shop would not be a permitted use if this motion is adopted. He said there is a list of uses and if it does not fit into the criteria, it is out and there has been a question of what is permitted and what has been permitted. He said they have attempted to conform their operation to the permitted uses and scaled back their operation and one of the advantages is once this motion is passed, there is a very specific list of uses.

Ms. Pfouts asked if antiques are related to landscaping and Mr. Begy asked if warehousing is

permitted according to the agreement.

Mr. Lamanna said no they are not permitted and not on the list.

Mrs. Hendler referred to warehousing and asked if that was for the storage of Mr. and Mrs. Brennan's own materials.

Mr. Lamanna said that storing materials for themselves is not the same as storage lockers.

Mr. Norman Schultz asked about the parking and said there is only 55' left for parking and they cannot get many cars in there. He asked who is going to police this parking.

Mr. Lamanna said that is one of the limiting factors and that is the point of this, it limits what they can do and it is limited in size to a small operation, it becomes self limiting and will not have cars streaming in and out like McDonalds.

Mrs. Hendler said there has been a "For Rent" sign and a help wanted sign posted and a truck was parked on the Begy's side of the property all weekend.

Mr. Lamanna said the board cannot police intermittent things that happen on the property and does not have the ability to control those types of things, only if it continues and persistently violates something that is not permitted.

Ms. Pfouts said the "For Rent" sign thing is the neighbors' biggest concern.

Mr. Lamanna said with this motion the use is restricted and selling antiques is not one of them.

Mr. Pfouts said Mr. Artino told him he could put in an FTD and run it 24 hours a day.

Mr. Lewis said the board has limited the hours of operation and if both parties agree to the resolution, the board can put the hours of operation into effect.

Mr. Takacs said now they can run their business 24 hours a day.

Mrs. Hendler said that screening was talked about at the last meeting and asked if Mr. Artino did not remove screening on the Pfouts side of the property.

Ms. Pfouts said they can work that out with the Artinos.

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

Motion BZA 2001-33 - 7395 Chagrin Road

Mr. Lamanna made a motion to incorporate into the record, the following motion, as it was reported in the minutes dated July 19, 2001, with one small clarifying change into the next to the last sentence where it begins "incidental incandescent lighting", the board will revise that to read "incidental low level incandescent lighting is permitted", and then continue on with the rest of that sentence for the 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.

Motion BZA 2001-33 - 7395 Chagrin Road - Continued

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 low level incandescent lighting is permitted, 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.

Based on the following findings of fact:

1. This board, with respect to this application, has heard numerous testimony that this property has been used for various and sundry retail and wholesale operations, the precise nature of which is very difficult to determine. For that reason, we find that these existing substituted usages are within the ambit generally of what has occurred there with respect to the retail side of it.
2. With respect to the landscaping business, certain aspects of that appear to have been previously conducted there, to some extent, and to the extent they are not it wouldn't be considered a substituted use. In overall consideration in looking at the new permitted uses with the prior uses that took place on a gross basis with respect to substitution under 165.09 it would appear that this would not increase the noise pollution or traffic in the area with a number of people using the property.
3. The sign area is not being allowed to expand and that these proposed uses are equally appropriate to the district and are really not a substantial change of the activities that have been going on there or would not adversely affect the adjacent neighboring property owners to any greater extent than the previously permitted uses would affect them.

Mr. Takacs seconded the motion.

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

Since there was no further testimony the public hearing was closed at 9:12 P.M.

Respectfully submitted,

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

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

Bainbridge Township, Ohio
Board of Zoning Appeals
August 16, 2001

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 9:12 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. John Kolesar, Mr. Todd Lewis, Mrs. Ellen Stanton and Mr. Donald Takacs.

Minutes

Mr. Lamanna made a motion to adopt the minutes of the board of zoning appeals meeting held on July 19, 2001 except for application 2001-33 whereby the board will only adopt the text of the hearing and the motion but not the portion of the motion where the vote was taken.

Mr. Takacs seconded the motion that passed unanimously.

Applications for next meeting

Application 2001-36 by Chagrin Falls Park Community Center for property at 16765 Bedford Street

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

Application 2001-37 by Six Flags Worlds of Adventure for property at 1060 North Aurora Road

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

Application 2001-38 by The Wembley Club for property at 8345 Woodberry Blvd.

The applicant is requesting a conditional use permit for the purpose of adding two platform tennis courts. 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 September 20, 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 9:20 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

