

Bainbridge Township, Ohio
Board of Zoning Appeals
August 21, 2003

Pursuant to notice by publication and certified mail, a public hearing was called to order at 7:35 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Todd Lewis, Mr. Mark Olivier, Mrs. Ellen Stanton and Mr. Donald Takacs. The following matters were then heard:

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

Application 2003-31 by Bainbridge Land Development, LLC for property at 7185 Kent (Aurora) Road

The applicant is requesting an area variance for the purpose of constructing a retail building at the Marketplace at Four Corners Shopping Center. The property is located in a CR (Commercial Recreation) District.

The zoning inspector's letter dated August 20, 2003 was read and photos of the site were submitted.

Mr. Dale Markowitz, Attorney for the applicant, Mr. Alan Bellis and Mr. Ronald Shaw were present to represent this application.

Mr. Markowitz submitted copies of a site plan and testified that the original site plan was modified for additional tenants and explained the area where there was going to be a Home Depot and a Circuit City and said that Circuit City is back in the picture and the site plan was reconfigured for truck access. He said they have not exceeded their permitted lot coverage and they had substantial storm water retention areas installed to take into account the surface water from across the street and they also built storm water systems to retain their water and the additional off-site water for Lake Avenue and it was also reviewed by the Geauga Soil & Water Conservation District. He explained areas A, B, and C and said they meet all the criteria of Chapter 161.13 except for one and that is the 6:1 slope. He explained that there is less of an impact with a 3:1 slope and said they have a practical difficulty because it is impossible to utilize a 6:1 slope and if the ponds are not counted they are at 45.66% lot coverage and if the variance is granted for a 3:1 slope on the detention basins, they could be counted as part of the green space and we can apply it to build an additional building. He said with the basins counted into the lot coverage, the coverage will be 49.2% so they would like the board to grant the variance to the 6:1 slope. He indicated on the site plan where the conservation easements are as per the settlement with the Ohio EPA and added that there is no where else to build and said they do have letters from the Geauga Soil & Water Conservation District and one from the traffic consultant based on more square footage.

Mr. Alan Bellis testified that in terms of the out lots, Home Savings Bank is under construction and Ruby Tuesdays is scheduled to start next month. He said after the Home Depot fell out, we had put in the prototypical size boxes and we worked out a deal with Circuit City and we have a home improvement store interested in the larger box space. He said as far as the traffic, URS looked at the property and said the increase in size will not affect the traffic study. He submitted a copy of a letter from URS, dated August 21, 2003 regarding traffic and a copy of a letter from HzW Environmental, dated May 29, 2003, regarding the development of the conserved portion of Wetland L at the Marketplace at Four Corners. He said it talks about the 6:1 slope and how this portion of the township is in a large clay valley and it acts as an impervious layer and a lot of research has been done by the EPA and it has been found to be little or no recharge in that area because of the clay but our ponds were designed with a mixture of plants to filter the water. He submitted photos showing the ponds and grasses and said the smallest pond is located behind Kohl's and the other pond is behind Walmat and Marshalls. He said the last photo is of the space where we will construct the 9,100 sq. ft. building with different views and the grassy area at this time.

Mr. Ronald Shaw testified that Mr. Bellis pointed out the three stormwater management areas A, B and C. He submitted a copy of a letter from Carmella Shale of Geauga Soil and Water Conservation District, dated August 20, 2003 regarding the Revised Stormwater Management calculations. He continued by explaining the 6:1 slopes versus 3:1 slopes and said with a 6:1 slope, some of the pond bottom is lost and 3:1 slopes are fairly typical in northeast Ohio.

Mr. Markowitz explained the four criteria stated in Chapter 161.13 and said they comply with all but the 6:1 slope.

Mr. Shaw said that a 3:1 slope is a very safe slope and the water will fill up for 24-48 hours and then it goes back to a dry pond. He said they oversize the ponds so they more than met the requirement of Geauga County and made the ponds larger to accommodate additional run-off to reduce the flooding problem down stream.

Mr. Markowitz said a 3:1 slope is better for sediment control.

Mr. Shaw said a 3:1 slope is a bigger bottom for the pond.

Mr. Lamanna stated that the applicant is talking about asking for a variance from a provision that is a criteria, it is a benefit and not a requirement.

Mr. Markowitz said he did not agree.

Mr. Lamanna said you cannot get a variance from something that is not a requirement, it is a measuring tool.

Mr. Markowitz said we are asking the board to not count all of the stormwater retention basins on this site.

Mr. Lamanna said the problem is that this variance was approved previously with the storm water retention basins and we need to look at this as it was approved.

Mr. Markowitz said when the lot coverage was established, the provision did not exist.

Mr. Lamanna said we had a prior application based on a plan and now we have a different plan and we need to go back and consider it on the basis that they are counted as part of the lot coverage.

Mr. Markowitz said at the time the variance was granted, no one knew the exact size of the retention basins.

Mr. Lamanna said we need to look at this on an apples to apples basis and approach it on the lot coverage.

Mr. Markowitz said if they could meet the 6:1 slope, they would not be here.

Mr. Bellis gave an explanation on the 6:1 slope versus the 3:1 slope.

Mr. Markowitz said it is not a standard ratio used for construction.

Mr. Lamanna asked about the number of parking spaces for this proposed 9,100 sq. ft. building.

Mr. Markowitz said there will be 71 spaces.

Mr. Lamanna asked if the additional 71 spaces are required per the code or if they need it.

Mr. Bellis said the required parking is 2,428 spaces.

Mr. Markowitz said they have 2,637 spaces.

Mr. Lamanna asked what the lot coverage is now.

Mr. Bellis said it is a little under 48% and explained that they are looking at the specific users now but cannot reveal the names.

Mrs. Stanton asked for an explanation of the location of the proposed building.

Mr. Bellis said it will go behind the trees and all the trees will stay.

Mrs. Stanton said the trees will be right up to the curb.

Mr. Bellis said yes and explained that it is still being engineered.

Mr. Takacs said access is needed behind the building for the fire department.

Mr. Bellis said yes.

Mr. Takacs said if there is 360° access, you will have people cutting through there.

Mrs. Stanton asked where the dumpsters will be located.

Mr. Bellis said it is still with the architects and added that they counted the islands, but not the landscaping up against the buildings.

Mr. Takacs asked how they arrived at 71 parking spaces.

Mr. Bellis said the 71 spaces are for a potential restaurant and added that there may be some spaces taken out and landscaping put in.

Mr. Lamanna asked if all of the other parking is developed.

Mr. Bellis replied yes.

Mr. Takacs asked about the parking for Kohl's.

Mr. Bellis said it is getting busier there but explained that the parking is in place for a Walmart Super Center.

Mr. Lewis asked why not put the building in an area where parking spaces are already established and asked if the board is being asked to approve a structure without a tenant when we already approved a building with no tenant.

Mr. Bellis explained that it will be a stand-alone structure.

Mr. Lewis asked if the structure will be their own personal structure or part of the center.

Mr. Bellis said it will be part of the center.

Mrs. Stanton asked about the wildlife.

Mr. Bellis said the area is considered high quality wetlands and we will not impact the conservation area negatively. He said the EPA wanted it preserved because of the quality of the wetlands and the EPA felt the impact of the shopping center will not be a detriment to the wetlands and it will not change.

Mr. Takacs said if 2,428 parking spaces are required and there are 2,637 spaces, there is an extra 209 spaces.

Mr. Lewis said they are asking for 71 spaces on top of that.

Mr. Bellis explained that there is an industry standard for restaurants and added that the Home Savings Bank scaled back to 41 parking spaces.

Mr. Takacs asked how many spaces could be deleted to not change the lot coverage.

The board discussed reallocating the parking spaces.

Mr. Markowitz said they cannot be reallocated because of the separate parcels.

Mr. Bellis referred to the Home Savings Bank and explained that they showed more coverage, but they did not need as much parking and added that every tenant defines their parking field.

Mr. Lamanna asked if all of the parking is actually developed.

Mr. Markowitz said yes, all except the out parcels.

Mr. Takacs said the board would rather see less parking.

Mr. Lewis said if this is a self induced entrapment because they committed parking to the lessees, he is not sure he sees it as the board's burden.

Mr. Olivier asked if they are confirming that no further variances to lot coverage will be sought.

Mr. Markowitz replied yes.

Mr. Lewis asked if they will accept that as a condition.

Mr. Markowitz said yes.

Mr. Lamanna said they were not expecting to re-visit the lot coverage issue.

Mr. Markowitz said there is no percentage maximum for lot coverage on the Memorandum of Understanding, only on the actual buildings.

Mrs. Stanton asked if the parking spaces were recalculated for Circuit City and the home improvement store.

Mr. Markowitz said the configuration was changed for the loading areas in the back.

Mr. Bellis said that is why they pulled the application from the BZA hearing last month because of the two new tenants.

Mr. Lamanna referred to the Memorandum of Understanding and said the applicant needs to go to the board of township trustees first to modify the site plan for an increase in lot coverage before the board of appeals can go forward with this.

Mr. Markowitz said they will consult with the township trustees to amend the Memorandum of Understanding and added that they did not ask for any formal approval to the change.

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

Motion BZA 2003-31 – 7185 Kent (Aurora) Road

Mr. Lamanna made a motion to table this application until such time as either the applicant has obtained approval of the township trustees to a modification of the development plan in accordance with the memorandum of understanding dated October 16, 2000 or as to such other time as this board determines, after consultation with the township and the board's legal advisors, that such approval is not required.

Mr. Takacs seconded the motion.

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

Application 2003-32 by Mark E. & Jennifer Fleming for property at 18024 Harvest Drive

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

The zoning inspector's letter dated August 15, 2003 was read and photos of the site were submitted.

Mr. Mark Fleming was present to represent this application.

Mr. Fleming testified that he wants to put a front porch on his house and added that he has lived there for 18 years and the house will extend out and into the 100' setback area.

Mr. Lewis asked if the original builder of the house was the first occupant.

Mr. Fleming said yes and there is a stoop there and he does have a deck in the back.

Mr. Lamanna asked if the porch will run the full length of the house in the front.

Mr. Fleming said yes.

Mr. Olivier asked if the stoop is in the setback area.

Mr. Fleming said the stoop infringes on the setback.

Mr. Takacs asked about the rear setback.

Mr. Fleming said he has 600' plus to the back.

Mr. Olivier asked if the other houses on the street have the same setback.

Mr. Rick Beal of 18038 Harvest Drive and neighbor testified that he lives to the south and they all have the same stoop. He added that it will be a nice addition.

Mrs. Stanton asked if the porch will be open or closed.

Mr. Lamanna said the porch will be open as shown on the plans.

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

Motion BZA 2003-32 – 18024 Harvest Drive

Mr. Lamanna made a motion to grant the applicant a variance of 8' to the permitted front yard setback for a structure for the purposes of adding an open porch. Such porch to be in accordance with plans as submitted to the board. That porch to be an open porch and on the condition that it will not at a later time become a closed-in porch or other closed-in part of the structure.

Based on the following findings of fact:

1. A practical difficulty exists because there is an existing structure which was built right at the front setback line.
2. The variance requested is small and will not adversely affect the neighbors.

Motion BZA 2003-32 – 18024 Harvest Drive - Continued

3. The houses are spaced reasonably distant and most of them are at approximately the same setback so the small increase in the forward projection of this house will not adversely affect any of the neighboring properties.

Mr. Takacs seconded the motion.

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

Application 2003-33 by Nancy J. Kelley for property at 7080 Cedar Street

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

The zoning inspector's letter dated August 15, 2003 was read and photos of the site were submitted.

Ms. Nancy Kelley was present to represent this application.

Ms. Kelley testified that she needs a variance because she cannot meet the setbacks to the north and west and would like to place the garage 3' from the rear property line.

Mr. Lamanna asked if there is a garage there now.

Ms. Kelley said she has a 24' x 11' attached one-car garage on the east side of the home.

Mr. Lamanna asked her if she is going to make that a part of the house.

Ms. Kelley said yes eventually, but for right now it is being used to store the lawn mower, etc.

Mr. Olivier asked Ms. Kelley if she has two parcels.

Mr. McIntyre testified that it is a parcel and one-half.

Ms. Kelley explained that she has a patio with an aluminum roof over it.

The board discussed this application and the requested variance.

Mrs. Stanton asked if the hedge is on the property line.

Ms. Kelley said it is on the far edge of the adjacent neighbor's property line.

The board discussed the parcels.

Mr. Lewis asked how much room there is in the back.

Ms. Kelley said it is 76' back from the street.

Mr. Lamanna asked about the neighbor's garage in the back.

Ms. Kelly said it is right on the property line next to the hedge.

Mr. Lamanna asked if it is a recent construction.

Ms. Kelley said she has not been there long enough to know.

Mr. Takacs asked if her present garage is a single car garage.

Ms. Kelley said yes and a work room.

Mr. Lamanna asked if any neighbors were present and there were none present.

Mr. McIntyre said the neighbor's garage to the rear is 10' off the property line.

Ms. Kelley said no, that she owns most of the hedge and it is on her property.

Mr. McIntyre said the rear yard setback, in that district, is 5' traditionally.

Ms. Kelley said her property line is 12' back and ¾ of the hedge is on her property.

Mr. Lewis said to the other side of the hedge is 12'.

Ms. Kelley said yes, the hedge will be very close.

Mr. Olivier asked how the hedge will be maintained.

Ms. Kelley said she is concerned about that.

Mr. Lamanna suggested putting a double door in to get to the back yard.

The board discussed the placement of the proposed garage.

Mr. Olivier asked Ms. Kelley if there is a reason she cannot attach the garage to the house.

Ms. Kelley said because of the entry into the bedroom, the inside of the house would not flow well.

Mr. Lewis said with 5' off the back, she could still maintain the structure and hedge with no additional landscaping needed.

Mr. Takacs said there would still be 8' between the back of the house and the garage.

The board discussed the setbacks, property lines and depth of the lot and was in agreement to allow 5' (maximum) off of the back property line.

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

Motion BZA 2003-33 – 7080 Cedar Street

Mr. Lamanna made a motion to grant the following variances for the purposes of constructing a detached garage in accordance with the plan submitted by the applicant.

1. A variance from the required minimum side yard setback of 50' to 8' for a variance of 42'.
2. A variance from the required minimum rear yard setback of 90' to 5' for a variance of 85'.
3. A variance from the maximum lot coverage of 10% to 48.8% for a variance of 38.8%.

Based on the following findings of fact:

1. This is a substandard size, pre-existing lot of record.
2. The applicant is adding a two-car garage consistent with what has been done with other houses in this area.
3. In order to be able to construct such a garage, it would require a substantial increase in the lot coverage which is already exceeded by the structure owing to the small lot size.
4. Also, owing to the small lot size, with the position of the existing building, the applicant could not meet the setback requirements and the board notes the existing house is only set back 12' from the rear lot line and the total lot depth is only 100'.
5. The board also finds that this is consistent with the development in this neighborhood which is comprised of fairly densely developed houses with detached or semi-attached garages.
6. The lot coverage is substantially similar to other houses on the same street and on South Street to the back of the property.

Motion BZA 2003-33 – 7080 Cedar Street - Continued

7. In addition, this proposed garage will substantially line up with an existing garage on the parcel to the rear which garage is also a similar distance from the rear property line so it will not adversely affect the rear property owner.

Mr. Takacs seconded the motion.

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

Application 2003-34 by Chris W. Brown for Prestige & Premier Co. for property at 8260 Wembley Court

The applicant is requesting an area variance for the purpose of constructing landscaping, a pool and patio. The property is located in a R-3A District.

The zoning inspector's letter dated August 21, 2003 was read and photos of the site were submitted.

Mr. Chris Brown of Prestige Homes, Mr. Romanini, future owner of the proposed home and Mr. Perry Perlman of Anthony Sylvan Pools were present to represent this application.

Mr. Brown testified that since he made application for the house, a pool with a patio has been requested and we have exceeded the maximum 15% lot coverage for one lot because it is at 25% lot coverage with the pool and patio. He submitted photos of the site and proceeded to explain the photos. He said the first photo shows the wooded area looking west behind the house. He said the second photo is of the rear of the property looking easterly toward the mound and the third photo is of a view looking from the actual first floor elevation. He said this is in a R-3A District, all clustered lots and consists of 206 acres.

The board discussed the cluster zoning requirements with Mr. McIntyre.

Mr. Brown said of the 68 lots surveyed, Prestige applied for and received permits for 41 of the lots and they are all under the 15% maximum lot coverage. He explained that he took the 41 lots and calculated it out times the maximum 15% to find out how much he had left per lot.

Mr. Lamanna said it would be like putting the house on a three acre lot.

Mr. Lewis asked if variances have been requested on particular lots.

Mr. Brown said this is a special situation that came up.

Mr. Takacs asked what the gross average is for all of the homes.

Mr. Brown said 1.088 acres is the average lot size.

Mr. Takacs asked if there is 25% open space.

Mr. Brown said that 58% of the site is currently open space.

Mr. Lamanna asked about the back line or edge of the development.

Mr. McIntyre said there is an additional 50' of buffer with a mound.

Mr. Lamanna said there is a 90' perimeter setback.

Mr. McIntyre said that is correct.

Mr. Lamanna said they are within that and there is no dwelling within that area.

Mr. McIntyre said correct.

The board discussed the setbacks per the cluster regulations.

Mr. Lamanna said as he read the regulations, no variance is necessary and there is no violation and this question should be referred back to the zoning commission. He said there should be some consideration for setback requirements on structures other than houses.

Mr. Marty Mulholland of 1110 Sheerbrook Drive, S. Russell, asked if there is a definition of a total cluster development because his interpretation is that it is a gross track area. He testified that these are one acre lots that they are putting 7,000 sq. ft. of structures on and now they are asking for 10,000 sq. ft. of structures, up to 23% lot coverage.

Mr. Takacs said it is 15% on the total development, not each lot.

Mr. Lamanna said the total cluster development includes roads, lots and common areas.

Mr. Mulholland said there should be a definition of total cluster developments and they are using every linear inch.

Mr. Lamanna asked about the setbacks in S. Russell.

Mr. Mulholland said they are approximately 50'.

Mr. Lamanna said this is not even a structure and it is 65' from the property line.

Mr. Tom Meyer of 1106 Sheerbrook Drive, S. Russell, testified that back in 2001, we (residents) were supposed to have a substantial buffer.

Mr. Lewis said there is no intrusion on the buffer.

Ms. Sandra Meyer of 1106 Sheerbrook Drive, S. Russell, testified that when sound travels over the buffer area it is different than over a pool. She added that they (S. Russell residents) offer trees to this subdivision.

Mr. Tom Meyer testified that they have had significant flooding recently and this mound is nothing like the mound on Rt. 306.

Mr. Lamanna said the board is dealing right now on whether a variance has to be obtained and we are looking at a lot coverage issue not a setback issue.

Mr. Bob Meyer of 1104 Sheerbrook Drive, S. Russell, testified that he is not a relative to Tom and Sandra Meyer but he lives next door to them. He said the drainage onto his property never existed before and he had to tear up landscaping because of the silt that ran onto his property and it never happened in the 28 years he lived there. He asked if there are other issues other than lot coverage that needs to be addressed.

Mr. Lamanna said the threshold question that needs to be addressed is if 15% lot coverage applies to the whole area and if yes, no variance is needed.

Mr. Mulholland asked if they can talk about setbacks.

Mr. Lamanna said no, that is not on the agenda.

Mr. Mulholland asked for a definition of the setback.

Mr. Lamanna said it is 90' from the rear yard setback just for dwellings. He added that the board of zoning appeals does not make the rules.

Mr. Craig Cunningham of 1092 Sheerbrook Drive, S. Russell, asked where the residents go from here.

Mr. Lamanna said if there is a problem with this application or the development, it should be taken up with the zoning inspector.

Mr. Cunningham asked who is the zoning inspector and said that he is the person who encouraged this application.

Mr. Lamanna said it was the zoning inspector's interpretation based on the application.

Mr. Cunningham testified that they were together as concerned citizens.

Mr. Lamanna said the zoning inspector asked the applicant to come to this board.

Mr. Cunningham said they get no answers from anyone in Bainbridge Township.

Mr. Bob Meyer said if the residents are concerned about water run-off, who do they go to, to get answers.

Mr. Lamanna said if they are creating a nuisance, it is a civil case against the property owner and they have to comply with the cluster regulations.

Mr. McIntyre said due to the recent heavy rains, he has been meeting with Mr. and Mrs. Meyer on their property.

Ms. Sandra Meyer asked if the mound will ever get finished and said we offer 100 trees and they offer us a 6' mound.

Mr. McIntyre said he has offered to talk to the residents about that.

Ms. Meyer said she could put noise and lights on her property but it is not a neighborly thing to do.

Mr. Lamanna said that beauty is in the eyes of the beholder and the property owner can do within what the code says.

Mr. Mulholland read from the application and said this variance request does not answer the question.

Mr. Lamanna said the application is totally moot if a variance is not needed in the first place.

Mr. Mulholland said that is correct but the total cluster development is not defined here and told the board they will agree to concessions and not give a hoot about us.

Mr. Lamanna said the minimum land area for cluster development is 15 acres and that is the intent here.

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

Motion BZA 2003-34 – 8260 Wembley Court

Mr. Lamanna made a motion to dismiss this application based on the fact that the board has determined the application is unnecessary and in as much as the board has examined the provisions applicable to cluster developments in terms of the density requirement and that the limitation makes the interpretation that the limitation of 15% of the total cluster development means just that, the total amount of land area in the cluster as it was approved in the original conditional use permit approving that cluster and that the applicant in this case has demonstrated and the zoning inspector agrees that the proposed plan will not reach that point.

Mr. Takacs seconded the motion.

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

Application 2003-35 by Bainbridge Associates, Ltd. for property at 16765 Chillicothe Road

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

Application 2003-36 by Bainbridge Associates, Ltd. for property at 8564 E. Washington Street

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

The zoning inspector's letters dated August 15, 2003 were read and photos of the site were submitted.

The board was in agreement to hear applications BZA 2003-35 and BZA 2003-36 together.

Mr. Jim Doerr of Ellet Signs, Mr. Cliff Hershman, applicant and Mr. Tim Olland, architect, were present to represent this application.

Mr. Doerr testified that they are requesting a 40 sq. ft. sign and five feet in overall height to replace the existing ground sign of similar size and the variance is to allow Sherwin Williams to advertise on that sign which is a new tenant in the Market Square Shopping Center. He said the sign must be on both lots owned by the same owner.

Mr. Lamanna said the same issue is for application BZA 2003-36.

Mr. Doerr said at the last minute they were able to remove the area variance on BZA 2003-36 and the only variance they are requesting is the off-site issue.

Mr. Tim Olland testified that he is the architect for the project and they laid the building out so there would be very little impact on the E. Washington Street side so this part of the building has visibility fronting on E. Washington Street but the large street frontage is on the west side. He said all the signage will be on the west side of the shopping center and the intent of most zoning is to protect the road side so there will be no signage on the road side, so with very little impact on the traffic driving by, we want to use the ground sign to advertise to the public. He added that the building will not face the street.

Mr. Lamanna asked if both the proposed signs are for off-premises variances.

Mr. Hershman replied yes.

Mr. Olivier asked why the parcels cannot be consolidated.

Mr. Hershman said it is the same owner for the parcels, but different bank financing.

Mr. Lamanna said it is a unique situation and are under common ownership.

Mr. Hershman said they look the same.

Mr. Olland explained that they have a very short frontage on E. Washington Street and a longer frontage on the west side and if these ground signs are approved, there will be one sign on the building for Sherwin Williams and the ground sign will totally fill up the signage based on the zoning code, per the frontage calculations.

Mr. Hershman said the Movie Gallery will open up tomorrow but cannot put up their sign.

Mr. Lamanna suggested coming back to the board to ask for wall signs on the building.

Mr. Hershman said that is fine.

Mr. Olland said they asked Mr. McIntyre if they could put up the Movie Gallery sign in lieu of the ground sign and come back to the board for more signage.

Mr. Lamanna said that is OK if you don't install the ground sign.

Mr. Olland said they are 50% leased and they can estimate how much signage they will need.

Mr. Hershman asked if they are OK with getting the Movie Gallery sign.

Mr. McIntyre told Mr. Hershman to check with him tomorrow.

Since there was no further testimony, these applications were concluded.

Motion BZA 2003-35 – 16765 Chillicothe Road and BZA 2003-36 - 8654 E. Washington Street

Mr. Lamanna made a motion to grant a variance on each of these applications for the purposes of having a sign that is technically an off-premises sign. The board notes that the applicant is modifying the sign request of BZA 2003-36 to be in conformance with the size requirements.

Based on the following findings of fact:

1. These signs are located on two adjacent properties.
2. The properties are owned by a single owner even though they are not merged together. In addition, the applicant in securing approval of the property at 8654 E. Washington Street, constructed and organized that particular project so that it operated for traffic flow purposes as a single development with the adjacent property so that traffic can freely move from one to the other in order to improve the overall traffic flow in that area of the township and therefore this presents a unique situation.
3. For practical purposes, these signs are not really off-premises signs, they are really each located on a property that is part of the overall development project to which they are a part.

Mr. Takacs seconded the motion.

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

Application 2003-37 by Eric Gifford for property at 7180 Chagrin Road

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

The zoning inspector's letter dated August 18, 2003 was read and photos of the site were submitted.

Mr. Eric Gifford was present to represent this application.

Mr. Gifford testified that he has an existing, small non-conforming lot and he is requesting a variance in order to build a garage. He said when the house was built, a garage was never built because there needed to be access to the septic tank until he got permission to tie into the sewer.

Mr. Lamanna asked if the drive was on the adjacent property.

Mr. Gifford said yes and he has a joint easement which the board talked about two months ago.

The board discussed the variance request.

Mr. Lamanna asked about the rear yard setback.

Mr. McIntyre explained the variance request and said it is a .25 acre lot built in the 1930s.

Mr. Gifford said the house fronts on Chagrin Road.

Mr. Lamanna said the applicant is asking for a 3' variance.

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

Motion BZA 2003-37 – 7180 Chagrin Road

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

1. A variance from the required rear yard setback of 50' to 47' for a variance of 3'.

Based on the following findings of fact:

1. A practical difficulty exists because this is a pre-existing lot of record that is only .25 acres with an existing house and this is an attached garage being added to an existing house.
2. Due to the short lot depth available, there would be insufficient room to add it on without a variance.
3. It is a very small variance and due to the layout of the adjacent property, it would not affect the use or development of the adjacent parcel.

Mr. Takacs seconded the motion.

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

Since there was no further testimony the public hearing was closed at 10:13 P.M.

Respectfully submitted,

Michael Lamanna, Chairman
Todd Lewis
Mark Olivier
Ellen Stanton
Donald Takacs, Vice Chairman

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

Date: September 18, 2003

Bainbridge Township, Ohio
Board of Zoning Appeals
August 21, 2003

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 10:13 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Todd Lewis, Mr. Mark Olivier, Mrs. Ellen Stanton and Mr. Donald Takacs.

Application 2003-29 by Gene Melen for property at 7466 Samuel Lord Drive

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

The board discussed this application and the previously granted variance, with Mr. McIntyre, at the request of the applicant.

Motion BZA 2003-29 – 7466 Samuel Lord Drive

Mr. Lamanna made a motion to amend the minutes with respect to BZA 2003-29 to reflect that the side yard setback variance will be from 50' to 30' for a variance of 20'.

Mr. Takacs seconded the motion.

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

Amended Motion BZA 2003-9 - Judson Retirement Community for property between Franklin Street, Rocker Avenue and Chagrin Road in Bainbridge Township (Phase I and Phase II)

With respect to motion 2003-9 Mr. Lamanna moved to make the following changes to the minutes:

Section III, Part 1. – Access Road - Add the following additional paragraph: 6. “Since the access road will benefit the public, the financing and design of the access road will be subject to an agreement between the applicant and the township trustees.

Section #6. - “Traffic Study Prior to Phase II” – At the end of the paragraph, the following will be added “as a result of the Residential Care Facility.”

Paragraph #7. - Residential Care Facility – Add to item #4. - “The applicant may provide services to non-residents on a promotional trial basis for persons of bona fide potential residents of the Facility in the near future”.

Item 5 – under subparagraph 7 – Residential Care Facility - add “For a period of two years from the date the Facility opens, the health and wellness facility and its programs may be made available to older persons who are suffering from health problems associated with aging or typical of the persons of the age of the residents of the Facility. This will be limited to persons who are participating for therapeutic purposes. A reasonable fee may be charged to cover operating expenses and the cost of trainers, therapists, etc. No more than 50 such non-residents of the Facility will be enrolled in active programs at any one time.

NOTE: These changes are being given to the secretary in written form for inclusion to the minutes.

Mr. Takacs seconded the motion.

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

The following is the adopted motion and findings of fact for application BZA 2003-9 - Judson Retirement Community for property between Franklin Street, Rocker Avenue and Chagrin Road in Bainbridge Township (Phase I and Phase II) in its entirety.

Mr. Lamanna made a motion to amend the motion for BZA 2003-9 to reflect the modified motion which further clarifies the findings of the board with respect to the record on this case.

The record in this case being considered by the board will include all of the filings that are in the official file of the application and such other documents that have been added from time to time as exhibits. The board will also include the briefs and reply briefs that have been filed by the applicant and the other interested parties including the exhibits thereto, the various traffic studies, the bound descriptive booklet on the Judson Retirement Community and everything else in the folder which will be marked as an Exhibit.

I. The Board makes the conclusion of law that the project as proposed by the applicant, including the free standing independent living units meets the definition of a residential care facility (“RCF”) as that term is used in the zoning resolution and the Ohio Revised Code. This conclusion is based upon the facts set forth below, and in particular on the following findings:

- a. This project is being operated as a unitary operation and that people can move from independent to assisted living.
- b. The residents obtain no specific legal right to any unit. Judson remains the single owner of the property (which is not divided in any way).
- c. The term ‘facility’ as used in many contexts, including other regulatory ones, means collections of buildings which are engaged in a single enterprise.
- d. The definition of RCF contemplates that there will be independent as well as assisted living units within the same facility.

This finding is subject to the applicant's adherence to the conditions set forth below.

II. The Board concludes that the facility proposed by the applicant is a permitted conditional use in the district in which it is to be located under Section 135.06 of the Zoning Resolution, and makes the following findings of fact:

1. The proposed residential care facility will be bordered on at least one side by a professional office district, convenience business district or commercial recreation district.
2. The minimum lot size has been satisfied as it exceeds five acres.
3. The proposal meets the ratio of beds to resident bedrooms.
4. The proposal also meets the requirements on bedroom space, parking spaces, site plan and the requirements of 135.06 subsection 6, 7, 8, and 9, provided that these are continuing conditions that must be complied with.
5. It meets the area, yard and bulk requirements and the maximum lot coverage is not exceeded at 20%.
6. There has been the appropriate and satisfactory review by the fire department in conformance with 135.06(12).

The determination and findings are subject to the following conditions being satisfied, and no zoning certificate will be issued until compliance with the requirements in items 3, 4, and 5 have been satisfactorily demonstrated to the zoning inspector and/or the county prosecutor.

1. The POD screening regulations set forth in Chapter 141 (g) with respect to adjacent residential areas shall be complied with and final plans will be subject to review to assure compliance with those requirements.
2. The requirements set forth in 135.06 subsections 13, 14, 15, and 16 will be continuing conditions applicable to this conditional use permit.
3. With respect to the requirements as to connection to a public water system, the board finds, because of the nature of this facility, that it must be connected to a public water system, it cannot be served by a well system due to the existing water concerns in the area and the size of the facility and its layout. Therefore, the applicant must obtain a binding legal written commitment for the supply of such water.
4. Likewise, the board finds that this proposed facility must be connected to a public sewer system and no alternate on site treatment would be acceptable due to site conditions and potential impact on neighboring properties. Therefore, the applicant must obtain a binding written legal commitment for sufficient sewer capacity.

5. The applicant will have obtained legal title to some or all of the existing Metroparks land dividing their parcels such that their parcels will be contiguous and applicant will be able to build its structures where shown on the drawings in conformance with all applicable setbacks. Applicant will complete a merger of all parcels forming a part of the RCF or its access.
6. The applicant will comply with all applicable governmental requirements with respect to stormwater runoff and wetlands.

The board finds that these conditions are consistent with the past practices of the board regarding compliance with these types of requirements, are a reasonable and practical method of addressing serial governmental approvals and will assure that the applicant fully complies with all of the requirements for this conditional use.

The board also finds that this facility will provide a good transitional use from professional office district to a residential district which is one of the purposes of this conditional use. In addition, it will also transition from a more densely developed residential to less densely developed residential areas. This based on the following findings of fact:

1. This property abuts residential areas of the township that are densely developed for historical reasons and a POD district.
2. The lot coverage ranges from 40% - 50% in these areas.
3. This particular facility will have a lot coverage of 20% which will provide a good transition to the remainder of this residential district where lot coverage typically is 10% or less.

In addition to the specific requirements for the conditional use set forth in 135.06, there are other general standards and requirements for conditional uses. The board makes the following findings with respect thereto:

1. This use is harmonious with the purposes of the zoning regulation which permits this type of use and is also providing the transitional situation that this use is intended to promote and also the arrangement and design of the project are generally harmonious with the residential design and residential character.
2. The operation and design is primarily residential in nature and does not change the essential character of the neighborhood.
3. It is not a hazardous type of operation or have other emissions or the like that could be disturbing.

4. The board has examined carefully and in great detail the provision of public services (police, fire, rescue, etc.) and finds that with an access road from Chagrin Road into the facility and into the adjacent areas of the township, principally Rocker Avenue and Franklin Street, as provided in the conditions below, public services can be provided to this facility in an efficient and safe manner, without undue burden and with timely response. This occurs because the access road will lessen the burden in providing services to those adjacent areas.
5. There will not be an unreasonable increase in demand on those services and (subject to the conditions) a burden from the cost of providing such services.
6. Based upon the residents and activities at the facilities, the number of employees and the various traffic studies, this facility will not substantially increase traffic or adversely affect traffic in the area in a material way.
7. The board also finds that the access road should reduce the flow of traffic on lower Chagrin Road and in the Cedar, Pine area and will reduce the need for emergency vehicles trying to reach areas off Franklin Street from having to use that part of the highway.
8. Additional information with respect to the actual traffic flow generated by the facility and further study may be required before the second phase is actually built to determine whether additional modifications or conditions would be required to manage that traffic flow.
9. The board has examined the vehicular approaches to the access road including pictures of the proposed entrance and testimony on site lines at that point of access. We find that this is a suitable point of access that the site lines appear to be quite adequate and will not create any undue hazards on Chagrin Road at the new intersection.
10. The board would also note that there is a set of specific criteria regarding conditional uses set forth in Chapter 117.13 (b) that are operational in nature including such things as the 100' limit from property lines, certain restrictions on lighting, on access roads and the like. The applicant must comply with all of those specific requirements.

III. In the course of the testimony, numerous valid concerns have been raised by the residents concerning the potential impact of this facility upon their property, upon the use of Chagrin Road and upon the provision of township services to this area. Based upon that testimony, we find that a number of conditions need to be applied to this proposed facility in order to ensure that any adverse impact is ameliorated to the greatest extent possible. We find that these conditions are necessary to ameliorate the adverse effect and we also would find that absent these ameliorating conditions that these adverse effects could be such as to otherwise cause this board to deny this application. Therefore we find that satisfaction of these conditions is mandatory in order for this application to have satisfied the requirements for granting this conditional use.

1. Access Road

1. An access road be provided from Chagrin Road into the facility with connection to Rocker Avenue and/or Franklin Street.
2. The access road will be built to appropriate county standards for the type of use of the road.
3. The access road will be available to emergency and non-emergency vehicles.
4. Any lighting on this road will be done in a way so it does not adversely impact the neighboring properties, especially as it approached Chagrin Road. The lighting on the road will be subject to review by the zoning inspector to assure that there is minimal light pollution.
5. Where the road goes upon the so called Begy property and approaches Chagrin Road, berthing, fencing and/or landscaping will be provided to provide a buffer between the road and the adjacent property owner to the east so as to reduce the amount of noise and also to prevent headlights from shining into the property at night. The applicant will provide appropriate design of that for review and approval by the zoning inspector.
6. Since the access road will benefit the public, the financing and design of the access road will be subject to an agreement between the applicant and the Township Trustees.

2. Lighting

Lighting at the facility will be done so as to minimize upward spillage and minimize lighting adjacent areas. No light will be permitted to shine directly into any adjacent dwelling. Street lighting on the independent free-standing units will not be more than 16 feet high with minimal intensity.

That lighting will be designed to minimize spillage onto adjacent property and to prevent this facility from becoming a light island in the middle of the existing residential areas.

3. Signage

The applicant will meet all of the existing requirements and limitations on signage applicable to the district and this particular facility.

4. Construction of the Facility

1. The applicant will take appropriate measures to regulate the number and flow of construction vehicles so as not to impede local traffic.
2. Construction will take place during reasonable hours, not sooner than 7:30 A.M. nor later than 5:00 P.M. for outside work or 8:00 P.M. for other work and not on Sundays and not on Saturdays after 1:00 P.M.
3. All construction will be done in a way to minimize dust and dirt and contractors will be required to keep any of the adjacent roads which they use clear of mud and other debris from the construction of the facility.
4. The access road will be substantially built and improved (other than paving) prior to major site construction and will be maintained so as to minimize dust coming from the access road which could be an annoyance to the neighbors.

5. Taxes

1. The board specifically finds that if this facility does not fully pay its taxes to the County of Geauga and the Township of Bainbridge, that it would create an undue financial burden upon those governments due to the cost of the additional public services required for the facility without having additional revenue. Therefore to the extent that all or any part of this facility becomes exempt from taxes, the applicant will be required to pay to the county and to the township 'in lieu of taxes' an amount that would be equal to the amount of taxes that would otherwise be due on such exempt portion with respect to levies or assessments with respect to providing services that benefit generally or specifically this facility including but not limited to police, fire, road, general administration, library, health services and the like. These funds would have the effect of defraying such burden.

6. Traffic Study Prior to Phase II

Prior to commencement of Phase II, the applicant will perform a traffic study with respect to the actual traffic patterns on the property and adjacent roads to evaluate the impact of Phase II. This study will be submitted to the board for review at public hearing to determine whether additional conditions or signage or directional devices or limitations are needed to prevent adverse traffic consequences as a result of the Residential Care Facility.

7. Residential Care Facility

1. This facility must actually be operated in the way it has been represented in the record; namely that it is run as a unified complex.
2. The residents will acquire no ownership or similar rights in any of the living facilities. The applicant will retain all ownership and there will be no subdivision, condominium creation or tenancy rights with respect to the units.
3. The applicant will continue to use a service agreement substantially similar to the one which is part of the record. The residents of the facility will be only those people who have a reasonable expectation within a reasonable time of using the specialized services that are being provided by the RCF by reason of age or physical or mental impairment.
4. With respect to any services being provided, the services shall be provided only for residents and their bona fide guests. The applicant may provide services to non-residents on a promotional or trial basis for persons who are bona fide potential residents of the Facility in the near future.

5. No outside persons will be allowed to receive services on any type of fee or commercial basis. For a period of two years from the date the Facility opens, the Health and Wellness Facility and its programs may be made available to older persons who are suffering from health problems associated with aging or typical of the persons of the age of the residents of the Facility. This will be limited to persons who are participating for therapeutic purposes. A reasonable fee may be charged to cover operating expenses and the cost of trainers, therapists, etc. No more than 50 such non-residents of the Facility will be enrolled in active programs at any one time.
6. With respect to non-commercial activities that may be open to the public such as meetings or speakers and the like, the applicant will be limited to no more than two such events per week and will use all reasonable efforts to control the number of outside persons who are unrelated to residents to no more than 25 people for each such event.
7. The board notes that this condition is subject to future amendments based upon review of actual issues regarding traffic, parking, and impact on neighboring properties, to determine whether or not these are creating any undue burden and whether or not a more flexible approach is warranted on those considerations.

8. Annexation

The applicant has stated that they will not seek annexation of the facility. The applicant will provide an agreement to the township within a reasonable time that they will not seek annexation of the facility and its property to the Village of Chagrin Falls.

9. Ratio Between Assisted Living and Independent Units

Because consideration of issues relating to the provision of public service and traffic consideration were based upon an assumed ratio of 80 to 20 independent to assisted, and higher assisted living could adversely affect those matters in a way not considered on this record, the number of assisted living units (assisted living being those where a resident is receiving a substantial amount of the personal care services) will be no more than 25% of the total units.

The board notes that this is subject to the future adjustments based upon a review of the actual experience of the RCF with respect to emergency calls and other situations to determine whether there would be an adverse impact either on the township or on the local residents if there were a higher percentage. Since the findings are based on the above assumption, a change would require further review of those issues to determine what the impact would be and to ensure that it would not be substantially adverse.

VARIANCE REQUEST

Mr. Lamanna made a motion to grant the variance for the purpose of constructing a three story building as shown on the plans submitted by the applicant and grant a height variance of 9' for a total of 44' for the height of the building.

The board makes this decision based on the following findings of fact:

1. One of the primary purposes of the height limitation is that of safety considerations. The testimony of the fire department is that they are able to adequately serve with their current equipment the configuration and structure of the proposed buildings.
2. The building will be sprinklered which substantially reduces any hazard from the additional height and makes the fire hazard less than other, less tall, buildings in the township.
3. Although they are three story, 44' high structures, they look like residential buildings, and they are located in most cases, substantially distant from the residential areas. Therefore, the added height will not adversely affect these areas by creating an appearance that is imposing or substantially impairing line of site.
4. The buildings are located in a low area where they will blend with the topography and will not be highly visible from the higher residential areas. Much of the residential area is separated from these buildings by the free standing units.
5. Shorter hallways are necessary for efficiently providing services to residents who need them by reason of age or infirmity.
6. The variance is not substantial based on the fact that certain other areas of the township permit buildings to be three stories or 45' and this is a similar type of use to that which might be permitted in that area.

7. The additional height will not change the character of the neighborhood to any greater extent than would a two story building. Most of the residences are far from the taller buildings. Those that are closer are in an area of very dense residential development and thus would not be adversely affected.
8. An additional story will not impact the delivery of government services. Any additional time required to go from a second to third floor, one flight of stairs will be minimal in terms of the overall time of response by the fire department.
9. The spirit and intent of this particular provision would still be observed with this higher building and it would give substantial justice to the applicant.
10. The variance would not derogate from the purposes of the zoning regulations in as much as it permits this type of use in this area.
11. Other factors are not significantly relevant to this variance.

With the following condition:

The applicant must satisfy any fire department requirements with respect to equipment access to these buildings such as hard surface access areas.

Mr. Takacs seconded the motion.

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

Minutes

Mr. Lamanna made a motion to adopt the minutes of the July 17, 2003 meeting with amendments to the motions to application 2003-29 and application 2003-9 which the board has previously made this evening.

Mr. Takacs seconded the motion.

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

Applications for next meeting

Application 2003-38 by Edward G. Pierson, III for property at 7049 Cedar Street

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

Application 2003-39 by Gary & Michele Motyka for property at 9130 Old Meadow Drive

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

Application 2003-40 by Troy Oaks Homes for property at 16776 Elyria 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.

Application 2003-41 by McMillon Construction for property at 16755 Bedford 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.

Application 2003-42 by Bainbridge Land Development/Heritage Development Company, LLC for property at 7555 Market Place Drive

The applicant is requesting area variances for the purposes of creating a lot. The property is located in a CR District.

Application 2003-43 by Thomas A. and Adelaide W. Linton for property at 19105 Snyder Road

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

Application 2003-44 by Jeffrey E. Baum for property at 18200 Chillicothe Road

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

Application 2003-45 by Kerry Jones for James and Erma Cooke for property at 8381 E. Washington Street

The applicant is requesting a conditional use permit for the purpose of adding two self wash bays to an existing lube station. The property is located in a CB District.

The Bainbridge Township Board of Zoning Appeals set the public hearing on the above applications for September 18, 2003 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,

Michael Lamanna, Chairman
Todd Lewis
Mark Olivier
Ellen Stanton
Donald Takacs, Vice Chairman

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

Date: September 18, 2003