

Bainbridge Township, Ohio
Board of Zoning Appeals
September 22, 2005

Pursuant to notice by publication and certified mail, a public hearing was called to order at 7:40 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Todd Lewis, Mr. Mark Olivier and Mr. Donald Takacs. Mrs. Ellen Stanton was absent. The following matters were then heard:

Mr. Lamanna explained that this meeting is a continuation of the September 15, 2005 meeting.

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

Application 2005-45 by Timothy W. Bloxson for property at 16809 Geneva Street

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

The zoning inspector's letter dated August 24, 2005 was read and photos of the site were submitted.

Mr. Tim Bloxson was present to represent this application.

Mr. Bloxson testified that he had to place the shed in the southeast corner because the water drains to the northeast corner of the lot and that is a wet and soggy area.

Mr. Takacs asked if he had the shed built.

Mr. Bloxson said it was brought out to the property on 4' x 6' skids and that is the reason why he is asking for the variance.

Mr. Lamanna asked which side his house sits on Geneva Street.

Mr. Bloxson said it sits on the east side of Geneva Street.

Mr. Lamanna asked where the house is on the parcel and the location of the street on the site plan.

Mr. Bloxson said it is at the bottom and the north is to the left. He said the shed is on the east side in the northeast area and noted that his neighbor's property swales down to that area and falls off to a ravine.

Mr. Olivier asked what is behind the house.

Mr. Bloxson said there is a ravine behind the house that drops off and it goes down to a ravine area and the shed is 10' away from the ravine area. He said the whole northeast area drops off considerably and right after the deck, it starts to drop off.

Mr. Olivier asked if this is the most level part where the shed was placed.

Mr. Bloxson replied yes.

Mr. Takacs asked what the distance is from the back of the house to the shed.

Mr. Bloxson said it is maybe 30'.

Mr. Lamanna asked what the overall dimension of the lot is.

Mr. Bloxson said it is close to 200' x 200'.

Mr. Lamanna asked who owns the adjacent property.

Mr. Bloxson said the Geauga Park District.

The board viewed photos of the site.

Mr. Lamanna said the shed could have been built a little closer in.

Mr. Takacs said this gives a little more backyard and the other side is closer to homes.

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

Motion 2005-45 - 16809 Geneva Street

Mr. Lamanna made a motion to grant the applicant the following variances to the setback requirements for the purposes of maintaining an existing 8' x 12' shed.

1. A variance from the minimum required rear yard setback of 90' to 38' for a variance of 52'.
2. A variance from the minimum required side yard setback of 50' to 36' for a variance of 14'.

Based on the following findings of fact:

1. A practical difficulty exists because this is a pre-existing lot that is substantially smaller than that in the zoning district.
2. The distance from the side yard setbacks are consistent with or greater than those typically found in the Chagrin Falls Park area.
3. The adjoining area to this parcel in the area where the shed is located is a ravine and part of the Geauga Park District so there will be no adverse effect on any neighboring property owners.

Mr. Takacs seconded the motion.

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

Application 2005-46 by William H. Splete, IV for Clifford N. Gorski for property at 17627 Northview Drive

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

The zoning inspector's letter dated August 24, 2005 was read and photos of the site were submitted.

Mr. William Splete and Mr. Cliff Gorski were present to represent this application.

Mr. Splete testified that he is the builder and represents Mr. Gorski. He stated that the house burned down and they are replacing it.

Mr. Lamanna asked if they were going to start all over on the same lot.

Mr. Splete said yes because there was more than 60% damage.

Mr. Lamanna asked if the house was totally gone.

Mr. Splete said yes.

Mr. Olivier asked if the front building is gone too.

Mr. Splete said that is correct.

The board reviewed the site plan submitted.

Mr. Takacs asked if they are going to build the new house in the same configuration as the one that burned down and if the garage will be in the front.

Mr. Splete said yes with access on the site.

Mr. Lamanna asked why there is a 91' setback and not a 100' setback and if they are going to use the same foundation.

Mr. Splete said they are not using the same foundation but that is where the house was.

Mr. Lamanna asked if they could move the house back another 9'.

Mr. Splete said there is no reason they cannot move it back.

Mr. Takacs asked if there will be a basement.

Mr. Splete said no, a crawl space.

Mr. Lamanna said there is a drive that exists to the back.

Mr. Splete said yes.

Mr. Olivier asked if they had any desire to pull the house further away from the freeway.

Mr. Splete said it is up to the homeowner.

Mr. Lamanna asked if the homeowner was present.

Mr. Splete replied yes, Mr. Gorski is present.

The board discussed centering the house on the lot.

Mr. Lamanna asked the owner, Mr. Gorski, if there was any problem with moving the house back 9' for a 100' setback.

Mr. Gorski testified by saying none whatsoever.

Mr. Lamanna asked if they are going to use the existing driveway.

Mr. Splete said yes.

Mr. Lamanna asked if the house could be moved over and said it would be a practical matter to move the house to reduce the variance.

Mr. Splete said yes.

Mr. Takacs asked what the distance is from the barn to the side yard.

Mr. Lamanna said it looks like 55'.

The board discussed the setbacks and shifting the house 8' over for a 40' side yard instead of 32' and the house back 9' for a 100' setback instead of 91'.

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

Motion BZA 2005-46 - 17627 Northview Drive

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

1. A variance from the minimum required side yard setback of 50' to 40' for a variance of 10'.
2. A variance from the maximum lot coverage of 10% to 16.2% for a variance of 6.2%.
3. The applicant is withdrawing his request for a variance from the front yard setback and agreed to modify his requested side yard variance to 40'.

Based on the following findings of fact:

1. A practical difficulty exists because it is a pre-existing lot of record, approximately two acres, and smaller than that permitted in the district.
2. The side yard setback is consistent with the other houses on the street.
3. Due to the fact that the house on the adjacent lot is off-set to the same side of their lot, the respective distance between the structures is maintained so there should be no adverse effect on the neighboring property.
4. With respect to the lot coverage, the applicant has an existing barn farther back on the property so the additional lot coverage is created by the need for a driveway of substantial length.

Mr. Takacs seconded the motion.

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

Application 2005-51 by Dinallo & Wittrup Homes, Inc. for property at 17509 Chagrin River Road

The applicant is requesting a conditional use permit with variances for the purpose of establishing a residential cluster development. The property is located in a R-5A District.

The zoning inspector's letter dated August 24, 2005 was read and photos of the site were submitted.

Mr. Ronald M. Rua from Rua Reporting Services was present on behalf of the applicant.

Mr. Lamanna noted for the record that the applicant will be providing a court reporter for this application and the board will permit the transcript to be part of the record at the applicant's expense and said the board also made a motion regarding this subject at the last meeting.

Mr. Lamanna swore in seven more persons who had just joined the meeting that were going to testify regarding this application.

Mr. Dale Markowitz, attorney for the applicant, testified that he is representing Dinallo and Wittrup, Inc., owner of the property and that he will be presenting a series of maps. He said there will be the following witnesses that will be testifying on behalf of the applicant: Mr. Rick Dinallo, property owner, Mr. Kenneth Hejduk of Hejduk-Cox and Associates, Inc., Consulting Engineers and Surveyors, Mr. Jason Kekic, Engineer and Mr. Charles Ritley, Real Estate Appraiser and Consultant.

Mr. Markowitz continued by saying that the applicant has two requests, a conditional use permit for a cluster development and a variance for the lot area to allow on 47 acres, 15 sublots versus nine which is the maximum for five acre zoning and they want to utilize the site for three acre development. He explained the site plan and the existing house, the garage behind the house and the barn and noted that the barn is partly within the 100' perimeter setback.

Mr. Takacs asked about the access to the house and barn.

Mr. Markowitz said the drive goes to the house and accesses the barn.

Mr. Takacs asked if the drive goes all the way to Chagrin River Road.

Mr. Markowitz said yes and referred to the aerial view that shows where the driveway is. He continued by explaining the aerial photo and noted the location of the house, driveway and pond and said the driveway follows pretty close to the property line but it is lost in the trees. He said looking north it shows the barn structure and the bluish-white area on the photo are clouds and showed the demarcation line from the 100' buffer setback. He pointed out Flintlock Ridge and the new street that is close to the rear end of the property and it shows Lookout Drive and the culdesac that abuts our property from Canyon Lakes and the other area is the recreational fields to the south and part of Bainbridge River Development. He said across the street is the county owned land and McFarland sewer plant, by the E on the compass on the aerial photo, and the sewer plant is 1,000' from our property. He said this site is not in the County's 208 Plan but we made a request to the county for water and sanitary sewers and the water service has been granted to include our property and additional properties but the 208 Plan is pending in front of the Geauga County Commissioners because they want us to come to get the zoning approval from the township first. He said they will present the soil study if they were to go with septic systems and continued by saying that some of the properties in the area do not have water and most of them have cisterns and added that the township park does not have water and the sewer plant trucks in water.

Mr. Markowitz referred to the Meldon property and the 14 acres east of Canyon Lakes Drive and said that his property was influenced by Canyon Lakes because it is surrounded in the rear and we have the same issue with our property as you can see from the aerial photo because the back end of the property virtually abuts Canyon Lakes. He submitted a copy of the minutes of the March 17, 2005 board of zoning appeals meeting regarding the Tony Meldon property where he was granted a variance for 12 units on 14 acres which is consistent with the overall density of Canyon Lakes but we are not asking for that density, we are asking for three acre density. He said they already know they will have public water supply and we have access to water now which is less of a reason to support five acre zoning on this property. He said they had a soil analysis done and the county would be more amenable to sewers because of the likelihood of septic systems failing on this property and we have no objection to making it a condition that we tie into the sewer. He said they have water and believe they will get sewer opportunity. He said the 14 lot plan was not viable so we came up with a 15 lot plan and that is the minimum number he can develop and get any kind of return and 15 lots on 47 acres would be a viable use.

Mr. Takacs asked why not 14 lots.

Mr. Markowitz said it is not economically viable with 14 lots and he will present a reason. He described the site plan and said there are riparian corridors, there is an existing home and we need it to make it viable and most of the houses are only going on one side of the street and added that they believe it cannot yield a reasonable return on only nine lots. He said Mr. Dinallo will tell you that it is not a good way to develop and we would lose money on nine lots and would make it even more expensive to develop. He said the ORC was amended a couple of times regarding general welfare and you can only consider health and safety and there is no way to impose health and safety with the improvements on this property. He said that cluster zoning was a very smart thing the township did and it gives the ability to stay away from streams, slopes and areas that should not be developed. He referred to the site plan and said the darker green area will remain treed and the green area will remain a heavily vegetated area and we will create open space to have a perimeter buffer of open space with no structures within the 100' setback. He said some structures will be further back from the road and they will also be able to impact less than 1/2 acre of wetlands and if they were not able to cluster, they might have to impact more wetlands but with the cluster, they were able to impact very few wetlands. He said the Army Corps of Engineers walked the property and they said there will be very little impact. He said a few streams will be impacted but they will handle them with crossings per the Army Corps of Engineers and we have much more of a compelling case with the tie-in rights to water and the containment of all water on the site and there is much less density than on the Meldon property and we will preserve the natural resources, ponds, woods and streams. He referred to the aerial photo that shows what exists today and said there will be very little impact to the site and all boundary buffers will remain.

Mr. Takacs asked if the existing house and garage will stay.

Mr. Markowitz replied yes and said there will be a substantial amount of open space and all subplot owners will have direct access to the open space and going with this kind of layout offsets any adverse effect to the surrounding properties and Canyon Lakes won't mind because they will be larger lot sizes, buffers, etc. He noted Mr. Martin Giel's home on the site plan and said the home still under construction belongs to Mr. Richard Berris. He said the deed restrictions will be the same as the Fine Alpaca Conservation Subdivision and there is no problem that the board require that we put the deed restrictions in place. He said that Mr. Meldon was seeking approval for more site coverage and we are asking for 13.8% and he had an issue with parking and we will have extensive driveways, three car garages, a dedicated road built to county standards, we had no problem providing a soil survey, the hydrants will also be available to the park and Mr. Giel's property and they will maintain a treed buffer on the border and they are very sensitive to the site. He said the board may ask why we did not secure three acre zoning through the zoning commission but the county commissioners told us to get the three acre zoning first and the board of zoning appeals has the authority to grant three acre zoning approval.

Mr. Rick Dinallo of Dinallo and Wittrup testified that he has been a developer and builder since 1973 and has developed subdivisions since 1981 in Solon, Macedonia, Glenwillow and Auburn but this is the first time in Bainbridge Township. He said he has developed 400 – 500 lots and was aware of the five acre zoning on this property. He said he was also aware that the property was not a good condition for water but is anticipating a loop from the Canyon Lakes Subdivision so he looked at the property with the slopes and ground conditions and learned the ground conditions were severe. He said they had time to obtain water and the treatment plant is within 1,000' of the property and added that they did not want to build near the ravines and wetlands. He continued by saying that Canyon Lakes surrounds this property with much smaller lots with sewer and water and up the street, less than ½ mile, is Hawksmoor Subdivision with three acre lots with sanitary sewer. He said with the sewers, it does not allow us economically to develop with nine lots. He said within the 14 lots, five lots are severe and the lot that has the existing house on it is severe but they had to allow a septic system.

Mr. Takacs asked if the house will stay on the septic system.

Mr. Dinallo said no, they will put it on sanitary sewer and water, the septic will be removed and added that the new drive for that home will come off the dedicated road. He referred to the proposed sublots and said that sublots #1, as well as #3, #4, #5 and #12 (house) were rated to be not feasible for septic systems and #2 and #11 were rated severely restricted by Fincham Soil Investigations so it is a no brainer to obtain sanitary sewers for the 15 lots and keep with the three acre subdivision and the county was waiting for the outcome of this board of zoning appeals meeting regarding the sewers. He said that some of the homes on Chagrin River Road are on cisterns and that includes the Giel property as well as the old home and added that muddy water was coming into the house from the cistern.

Mr. Dinallo continued by saying the county approved the water for this subdivision and for the park and said that there have been many sewered areas added to the County 208 plan including Chagrin Knolls, the Weils, Woods of Wembley and the Lanza office property were all brought into the sewer district. He said on the day the Katrina storm came to Cleveland, the Army Corps of Engineers came out and could not discover any other wetlands except for .007 acres. He said they did not find any more stream impacts and added that Mr. Todd Crandall of Davey Resource Group walked the property with the Army Corps of Engineers and said there is no reason to not allow a Nationwide Permit. He said the boundary on the streams supersedes the riparian setback regulations that Bainbridge has and added that he also had an economic analysis done on the property and that he bid it out and they will give you their report and it did show that 14 lots would not be a viable subdivision. He said he will be building a home on subplot #5 and did want to move back to Bainbridge Township, and on this property, and he will make sure everything is attended to and added that even on 15 lots, most developers would not risk their return. He referred to the chart stating the cost estimate of improvements on this property regarding the engineering cost, survey, soil analysis for septic systems, clearing, permits and inspections, grading, waterline installation, storm seeding and staking, sanitary sewer & laterals, paving, water taps and permits, electrical underground, gas line underground, electrical trenching and signage and landscaping.

Mr. Takacs asked what the cost of the water will be for each lot.

Mr. Dinallo said the cost will be \$11,000.00 per lot. He continued by saying that the cost per lot with nine lots will be \$112,744.00 and the cost per lot with 15 lots will be \$94,120.00 and this is not including the land costs.

Mr. Takacs asked what the cost of the lots will be.

Mr. Dinallo referred to Mr. Ritley.

Mr. Charles Ritley testified that there is a breakdown or total cost per lot.

Mr. Dinallo said there is no viable use for the property at nine lots and the most we can hope for is 15 lots and we are willing to develop the property with three acre density. He referred to the Hawksmoor property and said there is very little water, they have deep wells and our land is bounded by Canyon Lakes, the township property and county property and said they would like to retain the barn.

Mr. Takacs asked if the barn is in the open space.

Mr. Dinallo said the barn is within the 100' buffer and it could be used for cars, probably not for horses because the ground is too steep and added that the barn would have to be rehabbed.

Mr. Takacs asked about the property to the north.

Mr. David Mitchell, attorney, testified that he is representing the property owners to the north, Ms. Inga Schmidt and Mr. Bruce Lindsay.

Mr. Dinallo explained the location of the Canyon Lakes culdesac which is against the property, up against the house. He said the floodplain map shows the location of Canyon Lakes the best and referred to the Berris property and said it has severe slopes. He said there will be a buffer of 300' away from Ms. Schmidt's land and the trees cannot be taken down and nothing built there. He said the largest depth is Block A that has an existing man-made pond, not for retention, and most of our retention will be in the southern lower part of Block A with none in the north. He said the pond will stay as it was built and has a dock for fishing and the pond will not be touched, it will be an asset to those lots. He said mostly everything up against those lots will be retained and the wetlands are along the roadway. He said there will be crossings over subplot #5, his lot, D-1, E-3 a crossing at E-4 and a crossing at E-6 that is part of a wetland and they need to get to subplot #7 and we only have small areas and it is well under what we need for a National Permit. He said that Mr. Ken Hejduk will explain the layout of their design and they did not want a multitude of homes around the pond. He said the smallest lot is 1.3 acres and the largest lot is 3.4 acres. He said that Mr. Hejduk and he sat down and used aerial photos and designed each lot to not impact the ravines, they kept it as far away from the township park area as possible and we kept all of the natural resources that were important and there will be a buffer and they will protect the streams and the sanitary sewer will protect the streams.

Mr. Lamanna asked about the proposed road.

Mr. Hejduk said the right-of-way will be 60' with 20' of asphalt paving.

Mr. Dinallo said they swapped some land with Mr. Richard Berris to obtain more frontage for the landscaped area and a 45' x 100' piece of land was added to his lot and added as a buffer for Mr. Berris.

Mr. Hejduk testified that he is with Hejduk-Cox and Associates and has been a registered surveyor since 1977 and in 1979 formed his own business. He said that Hejduk-Cox Associates are land surveyors and engineers and we work on residential subdivisions and small commercial sites and recently we worked on the Winbury Professional Center, Marketplace at Four Corners, Shops at Marketplace, Judson, and we did work in Solon, Aurora (Barrington), Beachwood and a cluster in Hiram. He said they have done extensive work especially in the area with subdivisions and we have done quite a few lot topos approaching 2,500 homes since 1979. He said he has been in touch with Mr. Gus Saikaly of the Water Resource Department and a waterline will be coming down Chagrin River Road and added to the district. He said the waterline will have adequate pressure and the McFarland Wastewater Treatment Plant is under construction for expansion to 1.8 million gallons per day and has an excess of 600,000 gallons per day. He explained that the McFarland plant is 50' lower than our proposed roadway and our road climbs so it is anticipated that there will be no problem getting our sanitation from the rear of the property down to the plant.

Mr. Hejduk continued by saying they designed a nine lot subdivision and the road is essentially the same with a 60' right-of-way and a 20' asphalt pavement built to county standards and many of the sites were in the same area as the 15 lot subdivision and we still needed to get to the existing house so we needed to run the road to the back of the property so economically the costs are great with a nine lot subdivision.

Mr. Takacs asked what the costs would have been for nine lots with a sewer system.

Mr. Hejduk said the costs are almost the same because there would be nine laterals versus 15, the sewer line would have to run up Chagrin River Road at the same cost, it would only be 6 less lateral connections. He said the basis for nine lots or 15 lots is to preserve as much as we could and still have good building sites proposed along an area of topography not too steep, with large drainage areas and fewer culvert crossings to minimize the impact. He referred to the Davey Resource letter and said looking back at the preliminary wetlands map, the wetlands are .007 acres and referred to the visit on August 31, 2005 from Mr. Todd Crandall of Davey Resources, Mr. Rick Dinallo and the Army Corps of Engineers regarding the wetlands. He explained the categories and wetland areas and said five wetlands will be impacted for a total wetlands impact of 0.370 acre and 221 linear feet of ephemeral drainage way and 104 linear feet of intermittent drainage way will be impacted. He said the stream impact will total .044 for a total wetland and stream impact of 0.414 acre and should be listed on the table.

Mr. Lamanna asked about the street drainage.

Mr. Hejduk referred to the site plan and said the drainage will move in a northwesterly direction but overall in a westerly direction.

Mr. Lamanna asked if there will be drainage ditches or catch basins.

Mr. Hejduk said for the most part they are anticipating ditches that will have to meet Geauga Soil & Water requirements and would be treated before entering a riparian corridor but they will work with Geauga Soil & Water.

Mr. Lamanna asked about drainage for the houses.

Mr. Hejduk said the water will go essentially in the same direction. He explained the drainage areas and displayed a map of the riparian corridor as per the Bainbridge Township requirements shown in blue on the map and prepared by Davey Resources based on the riparian setback guidelines and said the area of wetlands is green on the map. He referred to the site plan for the 15 lot subdivision and said they are anticipating some clearing for the roadway and houses and the existing house and garage area is already cleared and they will keep the wooded area around the buffer and to the surrounding properties and an attempt was made to minimize the amount of impact on the wooded areas.

Mr. Hejduk said when they looked at the proposed house placements, they picked sites on fairly flat slopes away from ravines and drainage areas and they made the drives a little longer than normally allowed for an extra turn-around for potential fire trucks and the area coverage takes into account the roads etc. and one of the reasons we feel that sanitary sewers are needed is based on the Fincham soil report because the soil would be a problem for many of the septic systems so the better solution is to use sanitary sewers. He said that 15 homes will fit well on this property as shown on the site plan and the variance for the additional lots does not offend the health and safety issue. He said there will be a dedicated roadway and traffic will not be a problem and this is in line with the comprehensive plan. He said the ground water in the area is less than three gallons per minute but we have a proposed 12" waterline.

Mr. Jason Kekic testified that he has worked with Mr. Hejduk for the last ten years and is registered in the State of Ohio and will work with the roadway design for the site regarding cluster and safety issues and is responsible for designing the utilities. He said the water pressure will be more than adequate and the sewer treatment plant is 1,000' away, we will run the line uphill to the rear of the property and we anticipate grinder pumps for some of the homes. He explained the retention areas located throughout the site and we will work with the Geauga Soil & Water to come up with the best plan. He said with only 15 lots and Chagrin River Road being a low volume road, a stop sign at the street will be the only traffic control with no turn lane needed. He said the homes will be on the flattest area of the lots and added that the soil is clay. He said they are not finding any unusual soil types but the road will require cement stabilization and it is typical of other areas in the county. He said he is confident they will get the wetland permit and added that there is a 275' site distance at the road so they don't envision any safety problems from traffic issues. He said they are providing over 12 acres of open space that will be accessible to all the homeowners and referred to the floodplain map that is the last map in the packet and said there will be minimal flooding and there will be no need for specific flood insurance and no adverse health and safety issues. He said the road grade will be very gentle, 1,900' long and won't make an excessive burden on the safety forces. He said the five acre zoning makes sense with lots that need septic systems and wells but we are asking for 15 lots and most of the limitations in the comprehensive plan don't apply.

Mr. Charles Ritley testified that he is a real estate appraiser and a real estate investor and explained his experience and said he just finished a 605 acre development analysis in Raleigh, NC for investment purposes. He said that this property has a problem and that is the cost of developing nine lots versus 15 lots and Mr. Dinallo provided a breakdown of the costs of the development and added that they use the Marshall Swift National Publishing Cost Manual and the cost they (applicant) provided does align with the cost in the Marshall Swift manual. He said the road has to run this way (referred to the site plan). He said the cost will not change with the existing residence in the back and the road needs to be here whether there are nine or 15 lots and it is not economical to not have lots on both sides of the street but the road has to be located where it is because of the topography and wetlands. He said they analyzed the costs based on the lot sale price of \$185,000.00 and the lots close to Chagrin River Road will be less and the lots in the back will be more.

Mr. Ritley said the lot prices will be comparable with Hawksmoor and added that lot prices don't significantly change with five acres. He said if you look at the cost breakdown provided by Mr. Dinallo, the sanitary sewer cost will be \$321,000.00 and the only difference would be the laterals, basically adding over \$30,000.00 to the cost of the lot versus \$94,000.00 for 15 sublots. He said in addition to the land costs, there is financing and overhead.

Mr. Takacs asked what the land cost initially.

Mr. Ritley said they analyzed selling the 15 lots based on four years as follows: five lots the first year, three lots the second year, four lots the third year and three lots the last year. He said over time, they will have to be discounted and they used 12% overall. He said that Mr. Dinallo did not include supervisor and contingency costs and added that they have not allowed for development costs fewer than 15 lots and said there would be \$953,200.00 left over after dedicated costs of improvements. He said with nine lots and a three year selling time, they would sell five lots the first year, three lots the second and one lot the last year and said it is barely not feasible to develop this property with 15 lots and he would not do it. He said the actual cost of the land was \$1,215,000.00 and they took out \$250,000.00 for the value of the residence. He said he has been involved with the community and with Canyon Lakes and Hawksmoor and was a lot owner in Tanglewood but never built on it and currently lives in Auburn Lakes. He said he is familiar with development here and was also involved in Bainbrook and Laurel Springs and has been involved with development in Geauga County. He said they looked at what else could be done on this property and it could be used for public use or a church but churches need large flat parcels and added that there is no demand for industrial.

Mr. Takacs asked about the cost of the proposed homes.

Mr. Dinallo said the homes will cost \$650,000.00 - \$900,000.00.

Mr. Takacs asked if it excludes or includes the land.

Mr. Dinallo said it includes the land.

Mr. Ritley said this is not a negative and Mr. Dinallo's work is quality and added that this is near playing fields in the park and the homes on Chagrin River Road will be enhanced.

Mr. Markowitz asked why not 14 lots versus 15 lots.

Mr. Ritley said the \$953,000.00 on a 15 lot basis allows for \$20,000.00 per acre and when you take out \$250,000.00 for the house, this number is strictly land costs and really not a developer profit and if you take out one lot, you take out \$185,000.00 losing upwards of \$200,000.00.

Mr. Markowitz said they weren't trying to make it a hardship on the price of the land.

Mr. Ritley said the 15 lots do make sense and it will be an attribute to the township.

Mr. Markowitz asked the board if all of the documents that were submitted to the board, would go into the record.

Mr. Lamanna acknowledged that the following documents submitted by the applicant be entered into the record.

1. Report from Fincham Soil Investigations, dated January 17, 2005.
2. Memorandum of Understanding between the City of Cleveland and Geauga County, dated August 2, 2005. RE: Fifth Expansion of Service Area – Water.
3. Bainbridge Township Board of Zoning Appeals Meeting Minutes, dated March 17, 2005. RE: Application 2005-3 by Anthony S. Meldon for property at 8133 Chagrin Road.
4. Color area map of subject property.
5. Color Site plan of Reserves at Brighton Park Estates prepared by Hejduk-Cox and Associates, Inc.
6. Preliminary Wetlands Map for the Reserves at Brighton Park Estates prepared by Hejduk-Cox and Associates, Inc.
7. Estimates of Improvements at Chagrin River Road, dated September 16, 2005.
8. Nine Sublot Concept for Reserves at Brighton Park Estates prepared by Hejduk-Cox and Associates, Inc.
9. Copy of letter to Mark Gronceski, U.S. Army Corps of Engineers from Todd Crandall, Davey Resource Group, dated August 31, 2005. RE: Data Sheet for small area near the pond (wetland determination).
10. Copy of letter to Alan Sisselman, U.S. Army Corps of Engineers from Todd Crandall, Davey Resource Group, dated July 5, 2005. RE: Department of the Army permit application (wetlands impacts).
11. Appendix K – Wetlands Boundaries, Acreages, and Sample Point Locations for subject property prepared by Davey Resource Group.
12. Site plan of Bainbridge Township riparian corridor (setbacks) for Reserves at Brighton Park Estates prepared by Hejduk-Cox and Associates, Inc.
13. Access Geauga Flood Plain Map from the Geauga County Auditor's Office, dated September 20, 2005.

Mr. David Mitchell, attorney, testified that he is here on behalf of Ms. Inga Schmidt and Mr. Bruce Lindsay and that they own property to the northwest portion of this property and asked why this has not gone to the zoning commission for re-zoning from five acre to three acre and said the applicant is not here asking for a variance on one or two or three of these lots, they are asking for a variance on 47 lots so it should be submitted to the zoning commission.

Mr. Mitchell referred to cluster zoning and said the entire 47 acres have been developed over with the exception of some bordering and cluster is meant to maximize preservation. He read from the cluster regulations and said the whole concept is to put homes in less sensitive areas and he is not seeing it happening here. He referred to Mr. McIntyre's analysis and said regarding the Duncan Factors and Chapter 117.10, not all of the factors have been satisfied. He said the applicant is realizing the costs are significant and he purchased the property and took a risk and now he wants the board to fix it. He said the variance request is very substantial, there are no reports from the police or fire departments, the applicant knew of these restrictions and assumed the risk that it would be accommodated by this board and he is not sure why there is not a contingent purchase here. He said there has been no testimony as to how many gallons of sewage there will be per day and how much capacity of the sewer plant will be used.

Mr. Kekic said less than 10% will be used.

Mr. Mitchell said there should be deed restrictions that prohibit the removal of trees and a traffic study done that is typically required by this board.

Mr. Lamanna asked Mr. Mitchell if there will be any particular harm done to his clients and if his clients will suffer from this.

Mr. Mitchell said they would prefer status quo and added that the storm water will go into a natural riparian and his clients are downstream and they have issues with that.

Mr. Markowitz said the water goes both west and north.

Mr. Hejduk said the majority of the water goes northwest to the Berris property and then to the west.

Mr. Markowitz referred to the topo map and said a small amount of drainage goes that way.

Mr. Lamanna said it looks like it is heading toward the river by the sewage plant.

Ms. Inga Schmidt of 17421 Chagrin River Road testified that when she purchased her property it was surrounded by large lots with five acre zoning and she made a decision to live in a rural area. She said she has 60 acres and her neighbor has 50 acres and if he can do a subdivision on three acres, the next person will want one acre zoning. She continued by saying this is a fundamental change to the zoning and it will make it easier for the next developer to develop at a higher density.

Mr. Lamanna explained the higher density all around and said this is not attached to three acre zoning and it is across the street from the wastewater treatment plan, the township park on one side and Canyon Lakes on the other side with a much higher density.

Mr. Takacs asked Ms. Schmidt where her house is.

Ms. Schmidt said it is well off the property line.

Mr. Olivier asked if most of her land is behind her house.

Ms. Schmidt said yes, fundamentally.

Mr. Martin Giel of 17525 Chagrin River Road asked if the entire road will be dedicated.

Mr. Markowitz said yes and it will all be owned by the township.

Mr. Giel testified that he has a drainage pipe across that driveway with an easement and he doesn't want them to cut it off, so he wants to make sure the pipe continues on.

Mr. Markowitz said Mr. Dinallo's title to the property does not show an easement.

Mr. Giel stated that the Berris property is all ravines and goes into the Chagrin River and he wants to make sure the township gets full dedication of the road and if there are sewers, he may be forced to connect to the sewer.

Mr. Markowitz said the township property will tie into the sewer also.

Mr. Lamanna told Mr. Giel that if he wants to tie into the sewer, to talk to the developer now.

Mr. Markowitz said usually when a whole project ties in, they go to the neighboring properties also.

Mr. Lamanna asked Mr. Giel about buffering in that area.

Mr. Giel said he is already buffered with pine trees but it does not hurt to have more pine trees and added that when they put the road in, they may have to take out some trees.

Mr. Markowitz said the county is not favorable to keeping trees because of the roots in the utilities, etc.

Mr. Kekic said the sanitary sewer line will be on the south side and the water will be on the north side.

Mr. Takacs asked Ms. Schmidt about her land.

Ms. Schmidt said she owns 65 acres, it is a T-shaped lot and she started with a long narrow piece and bought one that goes to Country Lane. She said it is three lots altogether with a 50' driveway and she explained the 60' cut through to Country Lane and said it is a large open lot.

Mr. Olivier asked the applicant if there is some reason they don't factor in the cost of the home.

Mr. Ritley said that land development is one business and home building is another business.

Mr. Markowitz referred to judges saying that there is no way to ever project the profit of the homes because the size determines the cost etc. and referred to the varied prices of the condos in Canyon Lakes.

Mr. Ritley said in Laurel Springs, Mr. Larry Blond sold lots to builders so he did not share in the profit of the homes.

Mr. Lewis asked Mr. Dinallo if he is going to sell lots to other builders.

Mr. Dinallo replied no.

Mr. Lewis asked Mr. Dinallo if he will be the exclusive builder.

Mr. Dinallo said yes, they will be built by us.

Mr. Markowitz said they made the analysis for the land costs, etc. not the building costs.

Mr. Takacs said the cost analysis on the land does not make sense, they will lose money, and asked if they will make money on the homes.

Mr. Lewis said they will both make money if he builds all of the homes.

Mr. Olivier asked if the developer's profit will be 10%.

Mr. Dinallo said it depends on how long the houses sit and this is the biggest gamble of a business you can be in.

Mr. Lewis said the board is being asked to grant a variance based on an economic analysis but the board has to look at the whole thing and the economic benefit is having 15 homes versus nine homes which is substantially greater. He referred to the application where the applicant states he knew about the zoning restriction but he had time to assess it and work a business model.

Mr. Lewis continued by saying the statement on the application “a taking has occurred or relief would be granted” does not sit well with him and the applicant wants a variance after the fact.

Mr. Markowitz said the applicant did seek advice and he knew about the five acre zoning and you can evaluate the site and know that the zoning is not viable and go before the zoning board who understands it or go to court. He referred to the property along Route 422 that was re-zoned and the township trustees bought it because they knew it needed relief. He said the applicant knew it was five acres but typically when a developer buys a piece of property, he is still going to try to get relief.

Mr. Takacs said in Mr. McIntyre’s analysis it states that there are no preliminary documents indicating the intended ownership of common open space to be provided and there are no fire and police reports attached and no detailed road construction drawings.

Mr. Markowitz said there was no reason to provide them until they know they can develop this plan.

Mr. Takacs asked about the proposed multiple crossings.

Mr. Markowitz said that is something they will provide to Mr. McIntyre and it should be a condition.

Mr. Takacs asked if they have a profit total for the houses.

Mr. Dinallo said he is the developer and the builder so he will wear two hats and will have two profit structures.

Mr. Takacs asked about the profit structure.

Mr. Dinallo explained the profit structure and said on a project in Macedonia, he is losing 5% - 10% on every lot.

Mr. Takacs asked what the business plan is on this project.

Mr. Dinallo said it is 20% - 25% per lot and the costs turned out to be a lot more than anticipated and it could raise the costs of the lots.

Mr. Takacs asked if Canyon Lakes influenced this proposed development.

Mr. Dinallo replied yes.

The board discussed entering into executive session to deliberate on this application.

EXECUTIVE SESSION

Mr. Lamanna moved that the Bainbridge Township Board of Zoning Appeals go into executive session for the purpose of making initial consideration on application 2005-51.

Mr. Lewis seconded the motion.

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

The board of zoning appeals recessed the public hearing at 10:37 P.M. in order to go into executive session for the purpose of making initial consideration on application 2005-51.

The board of zoning appeals returned from executive session after making initial consideration on application 2005-51 and reconvened the public hearing at 10:52 P.M.

Mr. David Mitchell asked what the basis was for the executive session.

Mr. Lamanna stated that board deliberations are not open to the public and that was determined by the opinion of the attorney general. He continued by saying that the board reviewed what the applicant said and looked at the applicable zoning and there is no apparent adverse impact on the adjacent property owners, it is a cluster subdivision and the property has access to sewer and water. He said the board is hard-pressed not to grant substantial relief given the fact there is other more dense development located around a substantial part of this property. He said the property is not attached to three acre zoning and the property all around it is developed in other ways and the applicant provided information regarding a reasonable rate of return on five acre zoning. He said the applicant must satisfy several issues with regards to cluster zoning and the board will provide appropriate conditions to deal with Mr. Giel's property.

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

Motion BZA 2005-51 – 17509 Chagrin River Road

Mr. Lamanna made a motion to grant the applicant a conditional use permit for the purposes of developing a cluster development in the form as shown on the plans that have been submitted by the applicant and to grant the applicant a variance from the maximum density requirement of one unit per five acres to one unit per three acres which will correspondingly permit 15 units.

With respect to the conditional use permit, the board will impose the following conditions so that the development will satisfy the requirements specified in the ordinance for granting a conditional use.

1. The applicant will comply with all of the requirements for submission of information regarding the conditional uses contained in Section 135 including the documents regarding the ownership of the common space and the completion of the police and fire reports, detailed road construction drawings, and an erosion and sediment control plan approved by the county. Until such requirements are met, no zoning certificate will be issued and all of those matters will be submitted to the zoning inspector for his review and approval.
2. The barn will be removed from the setback area so that the full setback can be maintained going to the development immediately behind there.
3. The applicant will satisfy all of the requirements of Section 160 and any other applicable provisions of the zoning ordinance.
4. Prior to the zoning certificate being issued, in order to demonstrate that water and sewer is actually available, the applicant must present signed agreements with the appropriate county indicating that they will actually provide water and sewer services to the property and that all required tap-in and like fees for all of the permitted lots have been actually paid including providing sewer and water to the existing residence that is on this property.
5. With respect to road drainage and retention areas, the applicant will comply with the Geauga Soil and Water Conservation District requirements with respect to collection, treatment and release of road drainage and individual home site drainage.
6. The applicant, with respect to the property to the south, Mr. Giel's property, will make the appropriate arrangements for an easement to allow the continued drainage and access for a drainage pipe from Mr. Giel's property across where their access road will enter.
7. The applicant will appropriately landscape the front entrance to the proposed development and along the road right-of-way boundary with Mr. Giel's property. If there are areas that are not buffered after the road clearing is completed, they will plant some appropriate trees to provide a buffer between the road and his property.

Motion BZA 2005-51 – 17509 Chagrin River Road - Continued

This action is based on the following findings of fact:

1. The board finds that the applicant has demonstrated that the soil conditions at the site are substantially difficult for the purposes of putting in septic systems and therefore the appropriate way to develop this site would be with sewer connections.
2. The applicant has presented a plan which shows that because of the necessity for a long access road, and with a number of lots limited to the number of nine that the five acres would provide, it would not be economically feasible to develop this property. The applicant has also demonstrated that a three acre density for a development project would be marginally profitable so that the applicant does not appear to be requesting more relief than is reasonably necessary to solve this predicament.
3. The board also finds that the slightly greater density proposed by the applicant would not create any increased burden on providing government services nor would it create any increased traffic that would adversely impact the area, nor does it appear that the layout and density of the houses would adversely impact the surrounding property owners or be substantially different from the surrounding development.
4. The board also finds that the property owner's predicament cannot be obviated by any other method.
5. The board finds that the applicant knew of the zoning restriction when he purchased the property but that fact in and of itself is not sufficient when considered with all others to deny the variance.
6. The board also finds that the spirit and intent of the zoning requirements will be observed and substantial justice done by granting a variance requested to a higher density of one unit for every three acres.
7. The difference between the requirements of the five acre and three acre zoning are such that once water and sewer have become available to a particular location, that the basis for that distinction is in this case rendered moot because the board has found that there are no other substantially adverse impacts such as adverse impacts on drainage from the slightly higher density that would mitigate against granting the variance.
8. The board also finds that all of the foregoing findings of fact are based upon and subject to the conditions set forth to the conditional use. All such conditions are necessary in order to satisfy the requirements for granting the conditional use and to be necessary to satisfying the criteria for granting of the variance including but not limited to those involving impact on adjacent properties, provision of service, consistency with the neighborhood and substantial justice. The board finds that absent the conditions, it would not have found facts in favor of the conditional use and variance.

Mr. Takacs seconded the motion.

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

Application 2005-50 by Dr. Rashad & Jehan Eldabh for property at 16485 Majestic Oaks Drive

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

Secretary's note: This application was withdrawn at the request of the applicant.

Since there was no further testimony, the public hearing was closed at 11:17 P.M.

Respectfully submitted,

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

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

Date: October 20, 2005