

Bainbridge Township, Ohio
Board of Zoning Appeals
January 15, 2004

Pursuant to notice by publication and certified mail, a public hearing was called to order at 7:46 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 2003-56 by Heritage Development Company for property at PP# 02-420598 Aurora Road - Continuance

The applicant is requesting a conditional use permit with area variances for the purpose of building a commercial retail center. The property is located in a CR District.

Motion BZA 2003-56 – PP# 02-420598 Aurora Road

Mr. Lamanna made a motion to table this application until the next regularly scheduled meeting to be held February 19, 2004 at the request of the applicant.

Mr. Takacs seconded the motion.

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

Application 2004-1 by Jozef Kofol for property at 16381 Chillicothe Road

The applicant is requesting a substitution/enlargement of a pre-existing, non-conforming use for the purpose of expanding a restaurant. The property is located in a R-5A District.

The zoning inspector's letter dated January 6, 2004 was read and photos of the site were submitted.

Mr. Josef Kofol and Mr. Thomas Reitz, Attorney were present to represent this application.

Mr. Reitz testified that Mr. Kofol submitted the application but he brought in the landscaping plan yesterday and he hopes the board received it. He said the existing structure is a U shape, the back part was Bongiorno's Restaurant and this is a pre-existing non-conforming use. He said there was a fire at the restaurant last year in January 2003 but the restaurant has not reopened and the remainder of the building has been used for furniture re-sale and an antique business which are all pre-existing non-conforming uses.

Mr. Reitz continued by saying they are proposing to keep the 60 seat restaurant that was Bongiorno's and the other part will be remodeled for a 175 seat restaurant and the site plan is what you see. He continued by saying that the first part of the building will be demolished and removed and will be located further back from Chillicothe Road and the addition will be reduced so the non-conformity will be reduced and added that they will keep 2/3 of the existing building. He explained the parking and said it is a hard gravel surface and no parking spaces are designated but the parking will be reduced. He said the zoning inspector did a calculation and the lot coverage and parking will be reduced. He said there will be landscaping where none exists and will include some mounding and added that the large building will be removed and the remaining building will be shorter and further from the road and will be less intrusive and will reduce the non-conformity. He said the property to the north is the Fellowship Bible Church and to the south there is another church which is expanding. He added that there is no proposal for signage at this time but the new sign will be similar to the existing sign and a larger sign is not contemplated. He continued by saying the sign will remain on the building but the signage will be reduced. He added that with the time period, because it is still within two years since the fire, the restaurant will be able to continue and they want to remove the non-conforming building and replace it with a smaller building.

Mr. Lamanna asked if it will be an entirely new building.

Mr. Reitz said it will be slightly taller but not entirely new.

Mr. Takacs asked if the restaurant is expanding.

Mr. Reitz said the restaurant operation will be expanding with a new owner.

Mr. Lamanna asked if they will use the existing kitchen space.

Mr. Reitz said they will use a common wall.

Mr. Takacs said the non-conforming use is expanding from 60 seats to 175 seats.

Mr. Reitz said it cannot expand, they are asking for a substitution and added that the parking will be reduced and there will be less traffic.

Mr. Lamanna asked about the amount of square footage before and after.

Mr. Reitz said he can get that for the board but the zoning inspector had a better number than he did and added that the building space will be reduced by slightly under 6% for the actual building.

Mrs. Stanton asked about the hours of operation for the restaurant.

Mr. Reitz said that has not been decided yet because they did not know if the project would be approved.

The board reviewed the submitted application and site plan.

Mr. Lamanna asked if there will be an outdoor seating area.

Mr. Reitz said there is a porch on the building plan, on the second floor, but he is not aware of any outdoor seating and there will be no outdoor cooking.

Mr. Lamanna said that given this is a residential area, it is more of a concern because the township has had noise issues in commercial districts that reach residential districts far away and the area is not conducive for outdoor seating.

Mr. McIntyre said it does show an outdoor porch but no seating and explained the square footage of the old building and the lot coverage that will be removed.

Mr. Reitz said there is a potential for free standing tables and parking spaces for 54 cars and parking spaces for employees in the rear based on 170 potential customers.

Mr. Lamanna asked if the elevation is one-story.

Mr. Reitz said no, not entirely, but the wing portions are one story.

Mr. Lamanna asked if the operations will take place all on one floor.

Mr. Kofol testified by saying yes, only one floor will be used.

Mr. Reitz also said yes.

Mr. McIntyre reviewed the floor plans with the board.

Mr. Lewis asked if the office space will be upstairs.

Mr. Kofol replied yes.

Mr. Lewis asked if it will be the business office for the restaurant.

Mr. Kofol said yes.

Mr. Olivier asked if there is no pitch to the roof.

Mr. Kofol said that is right, the roof will be flat.

Mr. Lewis asked where the Bongiornos Restaurant was according to the site plan.

Mr. Kofol showed the board the location of the former restaurant and added that they also had a walk-in cooler and showed the location of the new proposed area on the site plan.

Mr. Takacs said it looks like more than 50% is being replaced.

The board discussed, with Mr. Kofol, the site plan and square footage of what is existing and what will be removed.

Mr. Lewis said it looks like they are going to use the rear wall of the one building and it will be the front wall of the other building.

Mr. Kofol said yes.

The board reviewed Chapter 165 regarding the 60% or more removal rule.

Assistant Chief Lovell of the Bainbridge Township Fire Department testified that there was a fire in the restaurant almost a year ago and it disappointed the fire department personnel because the smoke detector was in an adjacent structure. He said that Mr. Kofol has since then taken care of that but the fire department did not have enough notification and they have to take a tanker up there because there is no water and in places of assembly they are very careful and they want a commitment from the applicant that they are going to have a sprinkler system since they are dealing with 175 patrons and employees and to make sure the alarm system will notify the fire department in a timely fashion.

Mr. Lamanna said the new building will have to be built to code.

Mr. Lewis asked where the water will come from for the sprinkler system.

Assistant Chief Lovell said that cisterns can be used but it will have to be designed by an engineer in accordance with the Ohio Building Codes.

Mr. Lewis said with stored water a pump will be required.

Assistant Chief Lovell said a generator will be required to accommodate the pump and life safety equipment.

Mr. Reitz said they are willing to make that commitment regarding the sprinkler system with the pump and generator designed by an engineer.

Mr. Lamanna asked if this application can be continued to the next meeting so the board can see all the numbers.

Mr. Reitz said absolutely but they did not change the layout, only the landscaping was not included with the submission, but everything else was there.

Mr. Lamanna said the board needs a more concrete understanding of the lot coverage and total occupied area, where the old part is, the number of stories and how much retail was in there before and how much is there now. He added that it will benefit the applicant.

Mr. Reitz asked if there was any other information that the board wanted.

Mr. Lewis said the board wants to be really sure and understand that only one wall is being used.

Mr. Reitz said that is correct.

Mr. Lewis said the board would like the dimensions of the old building versus the proposed new one and the length of the wall being used.

Mr. Reitz said they are discontinuing the furniture and antique store.

Mr. Takacs asked how much is going to be substituted.

Mr. Reitz said they will have that information at the next meeting.

Mr. Lamanna said the board wants to see the actual square footage of the old restaurant versus the new proposed restaurant (dining area) and current eating area of the existing and what the new one will be.

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

Motion BZA 2004-1 – 16381 Chillicothe Road

Mr. Lamanna made a motion to table this application until the next regularly scheduled meeting to be held February 19, 2004.

Mr. Takacs seconded the motion.

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

Application 2004-2 by Thomas C. Bauer for property at 17350 Tall Tree Trail

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

The zoning inspector's letter dated January 6, 2004 was read and photos of the site were submitted.

Mr. Lamanna stated that the applicant has built a tool shed too close the rear property line.

Mr. Thomas Bauer was present to represent this application.

Mr. Bauer testified that he could not find the right back pin and went on the left back pin but because it is heavily wooded it was difficult to see a straight line. He said he found the other right pin and tried to come back 50' with the shed, but about two or three months after the shed was up his kids found the pins when they were playing. He said when Joe Orłowski, Assistant Zoning Inspector came out it was discovered that the shed was in the wrong place, so his first step was to try to get a variance and added that if he moves it, it would violate the side yard setbacks on the left and if it goes right it violates the back lot line and 50' would put the shed right in the middle of his back yard in view of his neighbors. He brought photos with him showing a view from his neighbors the Nascas and Fausts. He continued by saying that the property behind his is owned by Canyon Lakes and he submitted a letter saying they see no negative impact and they said it is OK where it is. He said if it is moved 50' forward, he would not like it and his neighbors would not like it and he and his neighbors do not feel there is any negative impact where it is now and it is in a vacant spot surrounded by trees.

Mr. Lamanna asked for an explanation of the site plan that was submitted.

Mr. McIntyre explained that the shed on the original site plan that is located closer to the house is the one that the zoning permit was issued for.

Mr. Bauer said he has a letter from Laura Cramer saying there is 50' of open space behind his property.

Mr. Lamanna asked if the area is platted back there.

Mr. McIntyre testified by saying yes and the open space is platted also but it is for utilities.

Mr. Bauer said there is no walking space back there, it is all wooded.

Mr. Lamanna said the property belongs to Canyon Lakes.

Mr. Bauer said yes, Hugh Edwards owns it.

Mr. Lewis said it is really easy to scale the distance from the front property line instead of the back if the pins could not be found.

Mr. Bauer said he did not think that way and 50' from the rear was his target.

Mr. Takacs told Mr. Bauer that he had 100' from the back of the house and he missed it quite a bit.

Mr. Lamanna asked how the shed is constructed.

Mr. Bauer said it is on cinder blocks, and the ground is level and compacted.

Mr. Lamanna asked if it has a floor such as wood, etc.

Mr. Bauer said yes and it is 10' x 12'.

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

Mr. Takacs asked what the shed is used for.

Mr. Bauer said it is used for storage for the lawn mower, cultivator, and kid's bikes and in the summer the snow blower etc. to keep the clutter out of the garage.

Mr. Lamanna said the board is looking into the feasibility of moving the shed some.

Mr. Bauer said he would have to take down trees.

Mr. Lamanna asked if it could be moved up to the grassy area because the board would be happier with 10' off the property line instead of 1' off.

Mr. Bauer said he will have to cut trees and level off the land.

Ms. Loretta Nasca of 17360 Tall Tree Trail testified that the shed is not visible because it was put discretely in the woods for the neighbors.

Mr. Lamanna said the board has to look at the integrity of the zoning and 1' off the property line is not appropriate and it is too easy to create future problems.

Mr. Bauer said everyone's case is unique.

Ms. Nasca said the shed is further back from his house.

Mr. Lamanna asked if the shed could be moved to within 10' of the property line.

Mr. Lewis said if the shed were to be placed 50' off the lot line, the original location of the shed would have put it in the middle of the back yard.

Mr. Bauer said that would not have been done.

Mr. Lewis said the back yard is 103' deep so 50' would have been easy to establish.

The board viewed photos of the site.

Mr. Takacs said per the topographical lines, the shed could come forward and the ground would still be pretty flat.

The board viewed the correspondence submitted by Mr. Bauer.

Mr. Olivier asked if the plat shows the utility lines running through the open space in the back.

Mr. McIntyre said it comes between two properties and heads south.

Mr. Olivier said if they do any clearing in the rear, the shed would be more visible to the homes in the back.

The board discussed the foundation of the shed and the potential of it being moved.

Mr. Olivier asked if Canyon Lakes Homeowners Association allows out buildings.

Mr. Bauer said yes and he had approval to build it.

The board discussed moving the shed 10' forward.

Mr. Lamanna said the consensus is to grant a variance 10' off the rear property line.

Mr. Bauer said it would mean cutting trees.

Mr. Lamanna said he understands but a couple of evergreens could be planted behind the shed and the board just does not want to have buildings that close to the property line and the board is going to grant a pretty substantial variance as it is and under the circumstances, there is a reason to grant a variance for 10' but there is no reason to grant a variance for 1' off the property line.

Mr. Bauer said he will have to cut down trees and build up the land.

Mr. Takacs said according to the topography, there is not much of a slope.

Mr. Bauer said his choices are getting a tractor in the back, cutting down trees, stumping or changing its use. He asked what the rules are for a kid's clubhouse and swing sets.

Mr. Lamanna said he thinks swing sets are structures.

Mr. McIntyre said that recreational equipment is permitted in the setback, but this is not considered a swing set.

Mr. Bauer said you can have a structure with four different colors and noise and it is not a shed.

Mr. Lamanna said this board did not make that decision and swing sets are usually gone in five years anyway.

Mr. Bauer said the main factor of a variance is the negative impact and his neighbors are here to say there is no negative impact.

Mr. Lamanna said the board has to look at how substantial the variance is.

Mr. Bauer asked if one of the board members would be willing to come out and take a look.

Mr. Lamanna said the zoning inspector could go out and look and report back to the board.

Mr. Bauer said he would appreciate it if one of the board members could come over and take a look at it.

Mr. Lamanna said someone from the board could do that.

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

Motion BZA 2004-2 – 17350 Tall Tree Trail

Mr. Lamanna made a motion to table this application until the next regularly scheduled meeting to be held February 19, 2004.

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 9:07 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: February 19, 2004

Bainbridge Township, Ohio
Board of Zoning Appeals
January 15, 2004

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 9:07 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Todd Lewis, Mr. Mark Olivier, Mrs. Ellen Stanton and Mr. Donald Takacs.

Public Comments

The board met with Mr. Pat McCarthy, Councilman for Reminderville regarding the impact the Marketplace at Four Corners shopping center has had on Reminderville, the City of Aurora and the City of Solon with water run-off, noise and traffic. He suggested that a JEDD be formed to include the aforementioned cities so they could share in the taxes from the shopping center.

Minutes

Mr. Takacs made a motion to adopt the minutes of the December 18, 2003 meeting as amended.

Mr. Lewis seconded the motion.

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

ORGANIZATIONAL SESSION

Sunshine Law

Mr. Lamanna made a motion to adopt the Ohio Sunshine Law (ORC).

Mr. Takacs seconded the motion that passed unanimously.

Meeting Schedule

Mr. Lamanna made a motion to set the meeting night of the Board of Zoning Appeals on the third Thursday of each month at 7:30 P.M. at the Bainbridge Town Hall and which some meetings may be continued from time to time, the board may set an additional meeting during the month.

Mr. Takacs seconded the motion that passed unanimously.

Election of Vice Chairman

Mr. Olivier made a motion to appoint Mr. Lewis as Vice Chairman.

Mrs. Stanton seconded the motion that passed unanimously.

Election of Chairman

Mr. Lewis made a motion to appoint Mr. Lamanna as Chairman.

Mrs. Stanton seconded the motion that passed unanimously.

Notice of Meetings

Mr. Lamanna made a motion to require a \$25.00 fee and 12 self addressed stamped envelopes for notice of public hearings and/or special meetings.

Mr. Takacs seconded the motion that passed unanimously.

Zoning Secretary

Mr. Lamanna made a motion to reappoint Linda Zimmerman as secretary to the Board of Zoning Appeals.

Mr. Takacs seconded the motion that passed unanimously.

Meeting Proceedings

Mr. Lamanna made a motion that as part of its proceedings, the board of zoning appeals, upon motion of one of its members, may adjourn into executive session for the purpose of conducting its business meeting and/or deliberations.

Mr. Lewis seconded the motion that passed unanimously.

Applications for next meeting

Application 2003-50 by Bainbridge Associates, Ltd. for property at 8465 E. Washington Street - Continuance

The applicant is requesting a conditional use permit with variances for the purpose of establishing a restaurant/outside eating area. The property is located in a CB District.

Application 2003-56 by Heritage Development Company for property at PP# 02-420598
Aurora Road - Continuance

The applicant is requesting a conditional use permit with area variances for the purpose of building a commercial retail center. The property is located in a CR District.

Application 2004-1 by Jozef Kofol for property at 16381 Chillicothe Road - Continuance

The applicant is requesting a substitution/enlargement of a pre-existing, non-conforming use for the purpose of expanding a restaurant. The property is located in a R-5A District.

Application 2004-2 by Thomas C. Bauer for property at 17350 Tall Tree Trail - Continuance

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

The Bainbridge Township Board of Zoning Appeals set the public hearing on the above applications for February 19, 2004 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 10:15 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: February 19, 2004