

Bainbridge Township, Ohio  
Board of Zoning Appeals  
January 20, 2005

Pursuant to notice by publication and certified mail, a public hearing was called to order at 7:41 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 2005-2 by Prestige Homes for property at 16485 Majestic Oaks Drive

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

The zoning inspector's letter dated January 13, 2005 was read and photos of the site were submitted.

Mr. Chris Brown of Prestige Homes was present to represent this application.

Mr. Brown testified that this is a typical lot in the Woods of Wembley Subdivision and the riparian corridor setbacks were passed after this subdivision was approved and they started building homes. He stated that this proposed home needs a variance from the riparian corridor setbacks from the required front yard setback of 100' to 85.5' for a variance of 14.5'.

Mr. Lamanna asked if the lots on either side of this one have the same problem.

Mr. Brown said they are working with Mr. McIntyre on this, on a lot by lot basis, but most likely they will require variances also.

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

Motion BZA 2005-2 – 16485 Majestic Oaks Drive

Mr. Lamanna made a motion to grant the applicant a variance from the front yard setback requirement of 100' to 85' for a variance of 15'.

Based on the following findings of fact:

1. A practical difficulty exists.
2. The particular subplot in question has a riparian setback requirement in the rear yard and the house would be unreasonably close to this setback if it was kept at the normal 100' line.
3. This is a minor variance and will not have an adverse effect on the adjacent properties.
4. Given the existing long setback, the 15' will not make any substantial difference.

Mr. Takacs seconded the motion.

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

Application 2003-56 by McGill Property Group fka 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.

The zoning inspector's letter dated January 20, 2005 was read.

Mr. Dale Markowitz, attorney for the applicant, Mr. Brian Grassa, representative from McGill Property Group, Mr. Ron Shaw, civil engineer from URS and Mr. Kevin Westbrooks, engineer from URS were present to represent this application.

Mr. Dale Markowitz, testified that he is representing the applicant and is prepared to give a power point presentation. He stated that his clients were here in December of 2003 with a different plan and added that there are 85 plus acres. He said there is a .6 acre parcel that Geauga Lake is going to sell to his client so the balance will be over 85 acres. He said the previous shopping center was developed by Heritage Development but the founder has passed away and that Bainbridge North Development, LLC is affiliated with John McGill who will develop this property. He said when his clients were here in December of 2003, they requested a conditional use permit with two variances. The variances were a 20' side yard variance and lot coverage of 52.62% of the site to be covered but since then the plan has changed and totally refigured. He said they don't need a 20' side yard variance because they will meet the 100' side yard setback and due to substantially reducing the number of parking spaces and the addition of a .6 acre parcel the lot coverage will equal 49.77% which is about 3% less than in 2003. He continued by saying that he did not represent Heritage in December of 2003 but noted that the chairman had stated that they need to work on making the parking more efficient and to get the lot coverage down. He said that Mr. Ron Shaw from URS is present to talk about drainage that we have addressed and Mr. Kevin Westbrooks of URS is present to talk about traffic. He said that his client is not here for a conditional use permit because this use is a permitted use in a Commercial Recreation (CR) District and this site was stuck in the middle of an amendment regarding Chapter 143.02 which provides permitted uses under that chapter and the township allows shopping strip centers, not a mall and ours is a strip center which is a conditional use in a CB District and all conditional uses that are permitted in a CB District are permitted in the CR District and added that he challenged everything that happened in 2003. He said commercial recreation was intended to permit more intensive uses and referred to the zoning map that indicates the southwest end of town where there is a major highway and Geauga Lake amusement park. He said they have a memorandum of understanding with the township trustees regarding signage, architectural design, lighting etc. and this will be developed with the same set of restrictions as the south side.

Mr. Markowitz stated that the only reason they are here is for the lot coverage and they will voluntarily agree to submit to conditions that the board imposes. He said another factor that Mr. McIntyre reminded him of is that on the south property, they created separate parcels for tax purposes so we may come back to the board on this property also. He said they are proposing a new road from Pettibone Road to Rt. 43, a spur to Rt. 43, and plan for it to be private, although in the future it could become public, it will be built to county standards and they will comply with all the setbacks required as if it were a public road. He said again that they are asking for a variance from the overall lot coverage for the whole lot, but they may come back for lot splits like they did on the other property and they will put deed restrictions on this property like they did on the Bainbridge south property. He continued by saying that this plan is significantly different than the plan in 2003. He said the old plan was for 52% lot coverage and he described the proposed parking. He referred to the new plan that includes the road from Pettibone and they consulted with the township trustees, engineers, City of Solon and various people to consider a better plan and will reduce the parking for better lot coverage and the alternate road we did not have before. He said they asked Mr. David Hartt to do a study and he could not be here tonight but he will be at the February 17<sup>th</sup> meeting. He said that Mr. Hartt was asked to do an analysis on whether the variance would be appropriate and referred to a letter from Mr. Hartt. He continued by saying the area on the zoning map shows it in a commercial recreation district and their parcel is not broken up on the zoning map. He indicated the location of the railroad tracks and Pettibone Road and said there are very intense commercial uses in this area. He showed on the map the location of the Geauga Lake property, the proposed water park and the commercial development on Rt. 43, Bainbridge south, and said SR 43 is a major state road that serves Aurora and Solon. He said that Mr. Hartt's letter indicates that this kind of coverage is not incompatible in the area because there is already more than 40% lot coverage on the Geauga Lake property, the Bainbridge south property and other properties along there are significantly greater than 40% lot coverage. He also said that sewer and water is available and added that the County 208 Plan was amended for the Bainbridge south property and to be available on the Bainbridge north property and Geauga Lake and added that there will be minimal impact to the wetlands on the site. He continued by saying that Mr. Hartt worked with citizens of the township (Bainbridge Township Citizens Advisory Committee (CAC)) and they recommended that the lot coverage in this area be increased to 60% - 65% and the open space should drop to 35% - 40% and said that this variance is in keeping with the studies for this town. He said the committee wanted to avoid expanding in an area not zoned for commercial development but to expand in areas already zoned for it. He said that Mr. Hartt stated in his letter that the traffic generated can be handled by using the existing infrastructure and this project will enhance the drainage in this area. He stated that Mr. Ron Shaw did a substantial study of the drainage in the area and they submitted an informal application to the soil and water district and they found a way to keep the drainage on site and away from the south property. He continued by saying that Mr. Hartt stated that with the street going through to Pettibone Road, it will help the police and fire departments get there faster and it will also be a help to Parkside Church because the people will have another path to come through. He also said that the people will not have to travel on Geauga Lake Road to get to the shopping center.

Mr. Markowitz continued by referring to Mr. Hartt's letter saying that the variance is justified because the aquifer will be recharged because of the sanitary and water services that are available to the property. He said this property abuts the City of Solon and they allow 30% of the area to be covered in buildings but Bainbridge Township counts roads, retention basins, etc. He said there are 86.0654 acres including the Geauga Lake parcel which is .6 acres and Solon cannot say that granting this variance is unreasonable and the variance is not substantial because it is similar to the one granted to Bainbridge south where the area is in excess of 40% lot coverage. He continued by saying that for the people living on Pettibone Road, there will not be a significant increase of traffic on that road and the added buildings will not require additional governmental services and it is acceptable by the safety forces. He said they will handle all of their own drainage and will do more than pay their own way. He said there is also an opportunity for a joint economic development on this site with Solon and they have a 2% tax rate so this site will generate more revenue than will be spent. He said they were aware of the zoning restrictions on this property because they developed the property to the south and were granted a variance on the lot coverage there but they will offer the same protection as on the south side. He continued by saying that there are no other ways to obviate the lot coverage problem because there is no other land they can acquire. He said there is additional land in Solon but it is not part of the community and not part of Bainbridge Township's code. He said they will do another memorandum of understanding and added that they cannot reduce the building size and parking in order to get a reasonable return. He said the spirit of the overall zoning code will be upheld and it will promote long term stability to the area. He said that with major national tenants it will attract other tenants and there is a practical difficulty because national tenants impose parking requirements. He said they looked at the site characteristics and there are no category 3 wetlands on this site and explained the involvement of the Army Corp of Engineers. He continued by saying that the site has good characteristics and this project will improve the drainage in this area, signals and turn lanes will be created so it will be a safer service to the community and Chief Jimison has looked at this and we feel it is a much better approach and want to go back to the trustees for a memorandum of understanding as we did on the south side and hope to get final approval in February.

Mr. Lamanna asked about the Solon parcel.

Mr. Markowitz said it is a little less than 25 acres and is available for purchase. He said he represents the owner of that property and met with Solon about re-zoning it and it will be discussed with the City of Solon and the trustees. He said they cannot buy all 24 acres and make the site work but Solon would like to acquire part of it and we would acquire the balance and give it to the township and it would get the lot coverage down to 45% and there is another 16.7 acre parcel in Bainbridge that we could offer as well.

Mr. Lamanna said his view is that the property should be contiguous so long as it was tied together with deed restrictions.

Mr. Markowitz said the lot could be merged and attached to Bainbridge Township but it is a long process.

Mr. Lamanna asked if deed restrictions will be placed on that property.

Mr. Markowitz said they could give it to the township or put it in a land conservancy.

Mr. Lamanna said if that parcel were added in and the lot coverage re-done, it would be getting down to a manageable number.

Mr. Markowitz said they will design the site to have all the water retention on site and Solon has asked them to pump water to the Grandview golf course.

Mr. Brian Grassa of McGill Property Group testified that in 2003 he presented a proposed plan to the board to put all the issues on the table and in keeping with the standards of the township, it took a year to redesign it before coming to the board tonight. He said there is no need for a conditional use permit and there is only a 9.77% increase of the permitted 40% lot coverage which is 49.77% of impervious area. He said in 2003 they were asking for 52.62% of lot coverage. He continued by saying that the site represents 150,000 sq. ft. of retail area and related parking area and the variance requested is 40.4424 acres of impervious area with an additional area of 7.9374 acres of impervious area. He said the building area will be 150,000 sq. ft. and that requires 600 parking spaces which equals 192,000 sq. ft. of parking area. He said they are requesting an additional 7.9374 acres or 345,753 sq. ft. of additional impervious area. He stated that he will be comparing the December 2003 site plan with the January 2005 site plan and that he will be covering lot coverage calculations, the parking analysis, wetland preservation, project benefits, variance justification, stormwater issues and traffic analysis. He continued by stating his qualifications and said he will only hit the highlights. He said in December of 2003 they were proposing a total building area of 542,000 sq. ft., total parking of 2,627 spaces – 4-8 parking ratio, total impervious area of 44.95 acres or 52.62% lot coverage, three (3) access points on Geauga Lake Road, no access on Pettibone Road and the main development was clustered in the center of the site but in January 2005 they brought the parking down to 2,349 spaces (278 spaces less), the total impervious area will be 40.44 acres – 49.77% lot coverage (4.51 acres less), one (1) access point on Geauga Lake Road, direct access to Pettibone Road and they will break up the sea of parking. He said there will be a total of 86.0654 acres, the road will be 4.8 acres for a total of 49.77% lot coverage. He indicated on the site map the gray areas and said they are the impervious areas. He talked about the parking analysis and said there are three factors which the zoning resolution requires and that is one parking space per 250 sq. ft. of usable area which is 80% of the gross area and based on the township zoning requirements, the current center would require 1,916 parking spaces (combined requirements of retail stores, restaurants and banks). He said that national tenants require 4.5 to 5 spaces per 1,000 sq. ft. of gross leasable area and it dictates higher requirements for out-parcel development – between 10.0 to 15.0 spaces per 1000 sq. ft. of gross leasable area and based on tenant criteria, the current center would require 3,186 parking spaces.

Mr. Grassa referred to a ULI 1998 study on parking requirements for shopping centers and said for centers between 400,000 sq. ft. – 599,999 sq. ft. of gross leasable area the recommended parking ratio is a pro-rated sliding scale from 4.0 to 4.5 spaces per 1,000 sq. ft. of gross leasable area. He said the current center is 584,275 sq. ft. of gross leasable area therefore the recommended parking ratio is 4.46 spaces per 1,000 sq. ft. of gross leasable area or 2,606 spaces. He continued by saying that they are proposing 2,349 spaces for a parking ratio of 4.0 spaces per 1,000 sq. ft. of gross leasable area which is 257 spaces less than is recommended by the ULI and 837 spaces less than is required by tenant criteria. He continued by talking about the wetlands and said there are a total of 7.343 acres of Category 1 / 2 wetlands onsite and the development only impacts 0.133 acres of wetlands. He said the onsite stormwater management system will be designed to enhance the wetland hydrology and make those areas “Project Features”. He talked about the project benefits and said they want the same set of standards as they used when they developed the south side and it will be a comprehensive development that compliments Marketplace at Four Corners. He said there will be traffic between both centers through the use of Geauga Lake Road, they will use the same treatment of building architecture, landscaping, setbacks, lighting and signage through the use of a memorandum of understanding with the trustees and there will be a through street to Pettibone Road and there will be an opportunity for a JEDD with the City of Solon for the purpose of income taxes which would generate \$479,455 in income taxes in addition to real estate and personal property taxes. He explained that the market value for the proposed center will be \$55,000,000 and the estimated annual real property tax will be \$1,155,517. He said the proposed distribution of taxes from this center is \$290,547 to the county \$1,072,253 to the schools, \$36,951 to JVS, \$848,836 to the township (part of that would be shared with the City of Solon) and \$22,824 to the library for a total of \$2,271,411 a year in tax revenues. He referred to the variance justification by saying that this is in a unique zoning district as commercial recreation and there is already an intense use in the area. He said it is a separate and distinct development area segregated from the rest of the township and it does not diminish the ability to provide basic services in the area. He said the increased income from the property and income tax will more than offset the cost of the services such as police, fire and roadway maintenance and added that the approved public utilities are readily available through the City of Aurora. He said that they will maintain the nature and character of the surrounding developments such as Marketplace and Geauga Lake. He said the parking requirements are of the National Tenants/ULI Recommendations and exceed the requirements of township regulations. He said the current square footage of the proposed floor area represents the threshold required to make the project economically viable and a reduced revenue stream would not meet requirements of lending institutions to finance the project. He said they will provide a new roadway from Geauga Lake Road to Pettibone and that is backed by the township safety officials and discourages the traffic alternative to Geauga Lake Road as a cut-through. He stated that D.B. Hartt’s letter has already been reviewed. He continued by talking about stormwater issues and said they had a meeting with various officials and the McGill Property Group (fka Heritage) and discussed the overall drainage issues in the area. He said McGill Property Group pledged to modify the outlet structure on the pond behind Circuit City and they modified the outlet orifice on the pond behind Kohl’s and added that all changes were made and the ponds are currently functioning properly.

Mr. Grassa said all site stormwater flows to the north, the proposed stormwater management system will help minimize flooding along Route 43, there will be a series of wet/dry ponds onsite to maintain and improve the flow of the water to the appropriate watershed and the ponds/stormwater management system will enhance the existing onsite wetland areas.

Mr. Ron Shaw, civil engineer with URS Corporation testified that he can appreciate the township's concern about drainage on this project. He displayed a map and indicated where the lakes, detention ponds, green areas, current wetlands and the areas that constitute development and said that last week Rt. 43 over-topped and they observed themselves what was happening and a lot of changes including the extension of Geauga Lake Road affected the drainage in that area. He said they found that the water was going in a northwest direction toward the new Geauga Lake Road and Geauga Lake Park has infiltration trenches handling their water and they constructed detention ponds for their drainage issues. He showed on the map, a pond where the run-off will go on-site and will drain northwesterly into the wetland area and the wetlands will discharge along the roadside ditch on Pettibone Road and run through the golf course. He said the area of interest is what is happening to the south. He explained all the detention ponds and where they drain, to culverts etc., and said he talked to the officials at Solon and Geauga Lake Park and they found the water went around between two residences with an outlet in Solon and back to the north and he is pretty certain that it works its way back to the north. He referred to another site plan and said the dark blue areas on the site plan are retention areas, there will be three ponds and the ponds will have 6-1 slopes that meet the zoning requirements. He said they are leaning toward making the larger ponds wetlands and since they did Market Place at Four Corners, state regulations were enacted called Phase II Stormwater Control so the ponds will be designed per the Geauga Soil & Water regulations and the Phase II stormwater regulations.

Mr. Kevin Westbrooks, engineer with URS Corporation testified that he is a traffic engineer and stated his qualifications. He said from a traffic standpoint, it is a superior plan with a road between Geauga Lake Road and Pettibone Road and the through traffic will go into the center but cannot make a right turn from Geauga Lake Road into the new shopping center to keep the people from using Geauga Lake Road as a cut-through into the center. He said it will be easier to come down Pettibone Road therefore Geauga Lake Road no longer becomes a short-cut. He said the study must also be submitted to ODOT because of Route 43 and they look 20 years into the future, not just to the year 2006. He said ODOT requires the study to meet the specifications of the State Highway Access Management Manual and the study will include opening year (2006) and Design Year (2026) analysis. He said the study recommends roadway improvements to mitigate the traffic impact of the development. He said one of the key locations is Pettibone Road and the drive will be more of a back door as a relief point and will not have a higher traffic volume on Pettibone Road. He referred to Geauga Lake Road and said it is a signalized intersection now and they are not expecting any more traffic to use Geauga Lake Road. He said people coming from the northeast will use Pettibone Road, it will be a backdoor entrance and will limit the curb cuts on Rt. 43 and Geauga Lake Road.

Mr. Westbrook explained the Level of Service (LOS) stating that the service is rated A – F with A equaling the best and F is the worst. He said that D is usually the lowest acceptable level of service. He said that Pettibone Road is rated a B on its level of service and added that they will install right and left turn lanes and the township would have to approve a signal on Pettibone Road and it will be safer for those using Pettibone Road. He said St. Route 43 has another traffic signal but this signal will be 750' away from the existing signal at Geauga Lake Road and there will be turn lanes for all driveways. He showed an overview of the improvements, turn lanes and traffic signals and they will discourage people from using Geauga Lake Road to access the site. He continued by saying there will be 150,000 sq. ft. of retail and will account for an 18% increase in total traffic with a minimal increase in traffic on Pettibone Road and the roadway improvements remain the same with or without the variance and added that these improvements are not required because of the variance, the improvements are needed anyway.

Mr. Markowitz said the traffic lights are actually 1,500' apart, not 700' apart.

Mr. Lewis asked if the road onto Geauga Lake Road will be designed with a cut so it will be impossible to make a right hand turn into the center so a legal right hand turn will not be established.

Mr. Westbrook said that is right, the people will not be able to make a right hand turn into the center from Geauga Lake Road.

Mr. Lewis asked if the Bainbridge Police Department can issue tickets there.

Mr. Westbrook replied yes, the only choice will be to continue to Rt. 43.

Mr. Lewis referred to the proposed light on Pettibone Road and said there is a very large church there and they let out hundreds of cars at once and it can get backed up to Rt. 43 and on Pettibone Road to Rt. 306. He said the question is, they have their own traffic control, so how will that be coordinated.

Mr. Westbrook said he does not analyze special events.

Mr. Markowitz said the church could put somebody there with a hand-held control for the light and added that a township police officer is being paid by the church now, so they could synchronize the light.

Mr. Lewis asked if the church knows there will be an increased expense for them.

Mr. Westbrook said the signal is designed to sit on green all day on Pettibone Road until someone comes out of the shopping center so most of the time the light will sit green and the signal can be programmed for certain times.



Mr. Takacs asked about the 20 year requirement.

Mr. Westbrook explained that it is required by the state and it is the expected projected growth for 20 years and added that ODOT requires a look-out for 20 years. He said they require us to go out 20 years to make sure this development will not have a detrimental effect.

Mr. Takacs referred to the year 2006 volume and the year 2026 volume and said a lot of the numbers are the same.

Mr. Westbrook said the shopping center numbers are assuming a fully developed center that will generate 500 cars and in 20 years it will still generate 500 cars.

Mrs. Stanton asked what the current distance between the two lights on Rt. 43 are.

Mr. Grassa said the lights are close to 1,300' apart and one may be 1,500'.

Mr. Olivier asked if there will be a turn lane westbound on Pettibone Road for the center.

Mr. Westbrook replied yes.

Mr. Takacs asked if this traffic study looked at hourly numbers.

Mr. Westbrook said yes, it looks at the absolute worst and peak hours.

Mr. Lamanna asked if this was looked at on a seasonal basis.

Mr. Westbrook said yes, they did do the study during Six Flags traffic and what Geauga Lake Park and Sea World would generate.

Mr. Lamanna asked if this shopping center will change the level of service.

Mr. Westbrook said the level of service might change from a B to a C.

Mr. Grassa said that is all he has for his presentation.

Mr. Dennis Silvia of 18860 Geauga Lake Road testified that as a resident north of the railroad tracks, his water comes from a well and just because there is already intensive uses in the area, there is no reason for more intensive uses and asked as we start to consolidate the run-off, does that cause a problem with the road salt to move into the aquifer. He continued by saying there will be light pollution problems and he is concerned about the water and there is no recourse with water and sewer and this will aggravate the already existing problems.

Mr. Jim Vacca of 1101 Moneta Avenue, Aurora, testified that he attended a meeting in May about the water problems and nothing has changed. He said Reminderville and Aurora are still getting flooded out and the chemical filters have not changed and the volume has not been reduced. He said you want to stop people from turning into the subdivision from Geauga Lake Road, it is appalling that you would make people drive around onto Pettibone Road and added that the people did not want the road there anyway. He said if the traffic lights are not synchronized, there will be a quagmire and added that these guys (developers) will never use these traffic lights, only the residents.

Mr. Steve Spencer of 837 East Blvd, Aurora, testified that he wants to compliment the McGill Property Group on the improvement to the site plan and said this is an improvement with the cut onto Pettibone Road. He said that Mr. Markowitz mentioned that this could improve the congestion so why not make it a township road from the get-go and asked if the site plan has been the subject of a variance from the planning commission.

Mr. Lamanna said there is no planning commission in the township.

Mr. Spencer said there is a serious question in cutting into Geauga Lake Road and asked if it will eliminate a cut on Rt. 43 and asked if both of the lights are demand lights. He said there is nothing between the two traffic lights and the park traffic was down and if the new water park brings more traffic, there will be three lights within 3,000' so there must be some way of regulating them. He said he heard that URS had something to do with the relocation of Geauga Lake Road and it is a very nice wildlife area but with the increase in light spillage and the heat generated from the lights, what impact will it have on the wildlife and what will the center have on the drainage pattern from one side of Geauga Lake Road to the other. He said that Mr. Markowitz made a comment that there is already an intense commercial activity in the area so it justifies a request for an increase in lot coverage. He said the intense commercial activity was generated by the other shopping center, so just because it is bad don't make it worse. He asked who said the ponds are working and said people should take a drive down Lake Avenue to Reminderville. He said he resents any reference to the Class 3 wetlands that were saved because for every one saved, ten were buried and he resents any mention of a JEDD between Bainbridge and Solon and asked why Solon.

Mr. Lamanna said it is not germane who is going to be in the JEDD.

Mr. Gary Jancsurak of Aurora testified that they are correct as a known entity in development style but said he was told by Mr. Grassa that he would be told what is being done but he has received no phone call. He asked what the modifications to the retention ponds were because he was there this morning and you could see all three ponds but the oil and residue from the shopping center was flooding his backyard and he could not cut the grass in his backyard last summer because it was covered in water and the agriculture was never put in the retention ponds and they have not done what they said they were going to do.

Mr. Markowitz asked the board to continue this hearing to February to give them (McGill Property Group) an opportunity to meet with the trustees and added that Mr. David Hartt will be available at that meeting and Mr. Westbrook and Mr. Shaw will also be there.

Mr. Lamanna said the board would like a report on the south side regarding the drainage issues etc. and the corrective issues and regarding the traffic issue, asked if three lights can be synchronize somehow.

Mr. Markowitz said the lights are all subject to ODOT's jurisdiction and we will tell you the exact distance between the two existing lights at the next meeting.

Mr. Lamanna said once the shopping center is tied into Pettibone Road, there will not be much of an incentive for people to use Geauga Lake Road for a cut-through.

Mr. Markowitz said the tenants would prefer to have a right turn lane into the shopping center from Geauga Lake Road.

Mr. Lamanna said with access from Pettibone Road, the problem should be solved.

Mr. Markowitz said they have no problem taking it off of the site plan.

Mr. Lamanna said it may be more of a punishment for the residents in that area if they cannot turn into the shopping center from Geauga Lake Road.

Mr. Lewis asked Mr. Markowitz if there have been any conversations with the township trustees regarding access to Geauga Lake Road.

Mr. Markowitz said the trustees were comfortable with not having multiple accesses on Geauga Lake Road and one trustee was surprised that we imposed the right turn only access out of the shopping center.

Mr. Lewis said that would be a convenience for people living in the southwest area.

Mr. Markowitz said the curve could be cut back and we have no problem taking it out, but we will discuss it with the trustees.

Mr. Lamanna said we need to look at the traffic lights next time.

Mrs. Stanton asked if there has been a study done regarding usage of the parking spaces across the street.

Mr. Grassa said not all of the tenants are open yet and the parking ratio is higher there than what it will be here and the tenants want as much parking as they can get whether or not they use it.

Mrs. Stanton said it seems like a lot of parking spaces and the board talked about banking some spaces.

Mr. Grassa said this is the absolute minimum for the tenants otherwise they won't be interested in this site.

Mr. Markowitz said their parking ratio is significantly lower than what they have at other sites.

Mrs. Stanton said it just seems like a lot of extra spaces.

Mr. Markowitz said he appreciates that but it costs them money to build there.

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

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

Mr. Lamanna made a motion to continue further consideration of this application to the next regularly scheduled meeting to be held February 17, 2005.

Mr. Takacs seconded the motion.

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

#### Application 2005-3 by Anthony S. Meldon for property at 8133 Chagrin Road

The applicant is requesting a conditional use permit with area variances for the purpose of establishing a cluster housing development. The property is located in a R-3A District.

The zoning inspector's letter dated January 20, 2005 was read and photos of the site were submitted.

Mr. Sheldon Berns of Berns, Ockner and Greenberger, attorney for the applicant, Mr. Tony Meldon, property owner and applicant, Mr. Dale Burrier, landscape architect with Cawrse and Associates and Mr. Matthew Bryant, engineer and Mr. Robert Hill, planner, were present to represent this application.

A court reporter from Rennillo Reporting Services was present for the applicant.

Mr. Berns testified that there is a lawsuit pending in the Court of Common Pleas (03M000118) with Judge Forrest Burt challenging the constitutionality of the township's zoning and on November 30, 2004 the court ordered a stay for us to come back to this board for a conditional use and variance. He stated that he will be calling a number of witnesses.

Mr. Lamanna swore in those that would be testifying.

Mr. Tony Meldon of 8133 Chagrin Road testified that he owns 14.5 acres and said the site plan was prepared by Craig Cawrse and Associates.

Mr. Berns asked Mr. Meldon to describe the proposed housing development.

Mr. Meldon stated that there will be 23 single family units with first floor bedrooms and these will be empty nester homes. He said the landscaping will be maintained by the association and the price range for the homes will be between \$400,000 - \$500,000. He said there is a sewer line running through the property with a waterline up the road and behind him is Canyon Lakes.

Mr. Berns submitted a copy of the Declaration of Covenants and Restrictions to the board and asked Mr. Meldon to describe it.

Mr. Meldon said it spells out the rights the association will have regarding open space, construction of homes and the development of the property.

Mr. Berns said he had no other questions for Mr. Meldon.

Mr. Lamanna asked what the nature of this development is and was it originally condominiums.

Mr. Berns said at the moment there will condominiums but they could be sublots.

Mr. Lamanna asked if there is a plan.

Mr. Berns said at the moment they will be condominiums.

Mr. Lamanna asked if there are any documents regarding ownership of common space, condominium association etc.

Mr. Berns said no, it is premature for that.

Mr. Lamanna said it is not premature, the board needs to know if there will be adequate roads etc.

Mr. Berns said the board could approve the conditions upon the documents being prepared but we would not be permitted to transfer property or start construction without it.

Mr. Lamanna said that would be at the discretion of the board.

Mr. Berns said there is nothing prepared with regards to condominiums and said he was going to call Mr. Dale Burrier next as a witness.

Mr. Dale Burrier testified that he is a landscape architect with Cawrse and Associates and described his background and experience. He said he has worked on projects such as Laurel Springs, Canyon Lakes, Auburn Lakes, Kensington Green and Whitetail Run. He said he did prepare a site plan for the Meldon property and described its characteristics. He said there are 14 acres and it slopes to Canyon Lakes, a stream cuts the site in one-third and it is partially wooded and partially open.

Mr. Berns asked Mr. Burrier if he prepared the site plan regarding open space.

Mr. Burrier said yes he did and the site plan illustrates the open area for the homeowners' association.

Mr. Berns asked what percentage is common area.

Mr. Burrier said that 60% of the site is common area.

Mr. Berns asked where the sanitary sewer line is located.

Mr. Burrier said it crosses the site plan and parallels McFarland Creek.

Mr. Berns asked if it follows the line of the riparian setback.

Mr. Burrier said the riparian setback is in the open space.

Mr. Berns asked Mr. Burrier if this property has central water and sewer.

Mr. Burrier said that is correct.

Mr. Berns said that he had no other questions for Mr. Burrier.

Mr. Lamanna asked how they knew for a fact that the property will be served by sewer and water and if there is an agreement.

Mr. Matthew Bryant testified that there is no agreement at this time.

Mr. Lamanna asked about the water.

Mr. Burrier said it can be extended to the site.

Mr. Lamanna asked if there is an agreement from the county to supply the water.

Mr. Burrier replied no.

Mr. Lamanna asked what makes them think they can get sewer and water.

Mr. Berns said there is a sewer line on the property and water is 1,000' – 1,500' away from the property so it can be extended. He continued by saying that there is sufficient capacity at McFarland and they have two depositions from Gus Saikaly, Director of Geauga County Water Resource Department that were taken, and the board would conclude, no doubt, that if the trustees were to say they would like the water line extended, they would extend it and through the administrative process, extend the 208 Plan. He said the deposition says the township trustees are reluctant to extend water lines for residences and it is difficult to understand why the trustees of the township would not permit the sewer line to be extended because it is not an appropriate place to have septic tanks and if septic systems were to be installed, the effluent would run into McFarland Creek. He said he can't believe the trustees would not cooperate to allow them to tap into the sewer and water because of public health and safety concerns and if the board would approve this development, the trustees would recommend to the county commissioners to let it occur.

Mr. Lamanna said you are saying if the board approves this development, the trustees will allow you to tap in.

Mr. Berns said if this board were to allow any development on this property, ie. four homes, there would be no logical, reasonable or rational basis to deny sanitary sewer or public water whether there are four homes or 23 homes, the same thing is true in his judgment and it would be wholly illegal for them not to have public water and public sewer. He said almost all the homes around have public water and sewer. He referred to the 208 Plan and said the Meldon property is not included and why his is not sewered is because someone made an effort to not let this property be sewered and there is not a judge around that will say this property cannot be sewered when the property all around it is sewered. He added that it is simply a township issue and not a county issue.

Mrs. Stanton asked if the homes served by water are all homes on Chagrin Road.

Mr. Berns said no but all of Canyon Lakes is served by water.

Mrs. Stanton asked if there are any other homes other than Canyon Lakes that are served by water.

Mr. Meldon said there are other homes on Chagrin Road that were permitted to tie in and there is a new house that was allowed to tie into the sewer and water.

Mr. Berns said that all of the surrounding subdivisions have water and sewer.

Mrs. Stanton said that Lake Lucerne is on private wells.

Mr. Berns said that Canyon Lakes has water.

Mr. Lamanna said that was part of the deal when the lawsuit was settled.

Mr. Berns said that all the subdivisions around Mr. Meldon's house are on sewer and water.

Mr. Meldon said that they allowed 18 acres on his border to go into Canyon Lakes and allowed sewer and water.

Mr. Berns said that some were added but those people had a greater ability to convince the trustees.

Mr. Lamanna said there were trade-offs within Canyon Lakes and the number of lots has gone down from the original number.

Mr. Berns said when a sewer line is running through the property, the question is whether or not this property can be served by sanitary sewers and water and if there is a concern by the board, then we will ask the board to approve the conditional use upon approval of sewer and water.

Mr. Lamanna said you are asking the board to approve this subdivision incumbent upon water and sewer and it is incumbent upon the applicant to give us this information and we need all relevant information to make a decision. He asked if Mr. Burrier can address the requested setbacks.

Mr. Burrier stated that there is a 70' front yard setback on Chagrin Road that is already established by the existing house on the site and the existing barn.

Mr. Berns asked what the lot coverage will be.

Mr. Burrier said there is 25% site coverage.

Mr. Lamanna asked why the 35' buffer.

Mr. Burrier said it is in the code for conservation development.

Mr. Frank McIntyre explained conditional use requirements and that all buildings must be located 100' of the property line and the 70' setback is not valid if the building is removed and replaced.

Mr. Lamanna asked if the old buildings on the property are staying.

Mr. Berns said they are going.

Mr. Burrier said the house to the east is closer.



Mr. Berns said the setback conforms with the home that is already there.

The board reviewed the cluster regulations in the zoning resolution.

Mr. Berns said the north boundary line is permanently deed restricted and the land is conserved and given that fact there is no other use for that property we will ask for a variance from that too.

Mr. Lamanna asked who owns the parcel to the north and if there is a deed restriction on that.

Mr. Berns said the owner's name shows the Chagrin River Land Conservancy.

Mr. Lamanna said the board wants something in writing that confirms that it is tied up. He asked Mr. Burrier if he did the road design on this project.

Mr. Burrier replied yes.

Mr. Lamanna asked if there is 20' of pavement.

Mr. Burrier replied yes.

Mr. Lamanna asked if the road will be built to county standards.

Mr. Burrier said yes, the minimum width is 20' for private roads and that is the county standard.

Mr. Lamanna said that the applicant will have to get a comment from the police and fire departments regarding road layout, maximum grade, etc.

Mr. Berns said the Canyon Lakes houses appear to be on the property line.

Mr. Takacs said that no building can be closer than 100'.

Mr. Lamanna said that Canyon Lakes was platted prior to this ordinance.

Mr. Berns said what about the newest section.

Mr. Lamanna said he did not know about the newest section and said the maximum lot coverage is 25%.

Mr. Burrier said yes but the regulations say 15%.

Mr. Lamanna asked if they had a scaled site plan.

Mr. McIntyre said no but explained the calculations and breakdown.

Mr. Berns said they would be glad to furnish those drawings. He said he will call Mr. Matthew Bryant next.

Mr. Matthew Bryant testified that he has been a professional engineer in Ohio.

Mr. Berns asked about the soils regarding Mr. Meldon's property.

Mr. Bryant said there are four different kinds of soils according to the Geauga County Soils survey and they are not conducive to septic systems.

Mr. Lamanna asked if soil tests were done.

Mr. Bryant replied no.

Mr. Lamanna asked if the information was based on soil mapping from the county and not actual data obtained.

Mr. Bryant said that is correct.

Mr. Takacs asked if there is a problem regarding the septic and well with the existing house.

Mr. Meldon said the water is lousy and the septic is 50 years old.

Mr. Takacs asked if maintenance has been done on the septic system.

Mr. Berns asked Mr. Meldon if he was familiar with the soils on his property.

Mr. Meldon said there is a lot of bedrock on the property with 18" of dirt.

Mr. Berns said he assumes there is some validity to the Geauga County Soils Map and added that Mr. Meldon has done digging on his own property. He asked Mr. Bryant if septic tanks were to be installed on the property what would happen.

Mr. Bryant said the effluent would percolate into the ground and travel laterally and assumes it would head toward the creek.

Mr. Lamanna asked Mr. Meldon where he has dug on the site.

Mr. Meldon said there are two small 500 gallon crocks and tail pipe and most of the water runs out of the crocks down here (he showed the board on the site) and showed on the site plan where he has done digging and said it is very sloping land and would be difficult to have septic systems there.

Mr. Berns asked Mr. Bryant about the capacity at McFarland Creek Wastewater Plant.

Mr. Bryant said they expanded to 1.8 million gallons per day from 1.2 million gallons per day.

Mr. Berns said that Mr. Saikaly stated that this development would have a negligible effect on the McFarland treatment plant and as far as city water, there is enough pressure for 23 homes.

Mr. Bryant stated that there is water at the intersection of Chagrin Road and Brigadoon and there would be sufficient capacity to serve 23 homes and Geauga County is entering into an agreement with the City of Solon to increase water pressure.

Mr. Berns showed an area on the map that will be enhanced by Solon water.

Mr. Robert C. Hill, city planner and landscape architect was asked next, by Mr. Berns, to testify as an expert witness on behalf of this application.

Mr. Hill testified that he is a planning consultant for the City of Strongsville, Middleburg Heights, Independence, Berea and Lyndhurst.

Mr. Berns asked Mr. Hill if he was engaged as a consultant for this project.

Mr. Hill responded by saying yes, to perform planning and zoning assessments of the Meldon property and said the previous plan had more units and this plan is the most recent.

Mr. Berns asked Mr. Hill what his opinion is on the restrictions on the R-3A zoning.

Mr. Hill said based on the surrounding development, R-3A is not appropriate to the Meldon property because the property can be served by central water and sanitary sewers and the location is completely surrounded by Canyon Lakes and it is an island of undeveloped land.

Mr. Berns asked what the comparison is.

Mr. Hill said it will be harmonious, compatible and will look like Canyon Lakes when completed.

Mr. Berns asked what the purpose of R-3A is and why it was established.

Mr. Hill said the purpose of the R-3A zoning was to identify properties that will not be served by water and sewer and the R-3A zoning spells it out clearly that R-3A areas will not be served by sewer and water.

Mr. Berns read from Chapter 139.01 Establishment "...to provide for development of lands within the Township zoned for residential use, in accordance with the ability of such lands to support development without central water supply and/or central sewerage disposal facilities;..."

Mr. Hill referred to Chapter 131.04 – Purpose of Districts.

Mr. Berns read from the "Purpose of Districts" and stated that it is mentioned twice in this code. He asked Mr. Hill with regards to the Meldon property, if this is what he expects to find as harmonious zoning.

Mr. Hill said no, if R-3A is applied to the Meldon property, this is spot development, where the property is developed completely around it, not on a basis of one unit to .8 units per acre.

Mr. Lamanna asked how that was calculated.

Mr. Hill said he divided the units by acreage and the overall density of Canyon Lakes equals .82 units per acre.

Mr. Lamanna asked Mr. McIntyre if those numbers are correct.

Mr. McIntyre said he will check into it.

Mr. Olivier asked about the density of the proposed development.

Mr. Hill said it is 1.6 units per acre (density).

Mr. Lamanna asked if they measured the distance between the houses in Canyon Lakes.

Mr. Hill replied no.

Mrs. Stanton said she is confused about the comment about this property being surrounded.

Mr. Hill said it is surrounded on the north, south and east.

Mr. Berns said they computed the open space in Canyon Lakes.

Mr. Hill said that there is 55% more relative open space and Meldon's development will be at 60%.

Mr. Lamanna asked Mr. Hill if he meant common area.

Mr. Hill replied yes and said they gave the board a drawing of the open space.

Mr. Lamanna said it is probably 20% of what the lots are in Canyon Lakes.

Mr. Hill said these are senior citizen homes and they don't have backyards and are designed that way.

Mr. Lewis asked how many acres are in Canyon Lakes and how many lots there are.

Mr. Hill said there are 822.176 acres, 675 units, 402 are single family detached, 273 are townhouses with 447 acres of open spaces and it was all certified by Mark Smoly, professional engineer.

Mr. Berns said the condos at Canyon Lakes are much smaller and not much different than the Knolls condos.

Mr. Hill said the Meldon property will have 1.64 units per acre, the cluster in Canyon Lakes is 2.26 acres and Beechgrove, White Oak and Chagrin Knolls is 2.56 units per acre.

Mr. Meldon said his is substantially less.

Mr. Lamanna said the cluster in Canyon Lakes is a unified density plan and Chagrin Knolls has no bearing on this because it is near an LIR District.

Mr. Hill asked what do you do with the Meldon property other than integrate it into the Canyon Lakes property.

Mr. Lamanna said that is why it is before the Board of Appeals. He asked if there have been any economic work ups for this property regarding cost return.

Mr. Berns said that is not germane.

Mr. Lamanna said there is no argument that you need this number of homes for economic reasons.

Mr. Berns said the R-3A zoning is unreasonable and inequitable. He said you can put four homes on this property but it won't be pretty because of the long private driveways.

Mr. Lamanna said it may be relevant to put in ten units and that would generate a reasonable return to the property.

Mr. Berns said whether it is reasonable and harmonious to the other subdivisions around it, usually someone says you paid too much for the land and it is not an issue as to whether R-3A applies to this property given this situation with water and sewer available.

Mr. Lamanna said the board cannot include economical consideration.

Mr. Benjamin King of 8144 Chagrin Road testified that he has lived there for 17 years and was retired when he moved there and he is concerned about the traffic situation. He said he has put his grandchildren on the bus and spent a lot of time out there and the cars start out at 45 mph but gain momentum and by the time they get to his driveway, the cars are going 55 – 60 mph and it is scary and nerve wracking. He continued by saying that he can see only 250' – 300' from his driveway and both sides of Chagrin Road are lined with trees and he has to roll his car windows down so he can hear because he cannot see. He said at the Meldon property, there is a blind curve and coming up the hill the natural thing to do is to put the foot on the accelerator to get up the hill. He said a car hit him coming into his drive and the girl lost control of her car. He said 23 homes are proposed here and all families have two cars, that equals 46 cars so that would be a minimum of at least 3 times a day so there will be 138 cars exiting and 138 cars returning. He said that means 2,000 times a week they will be coming in and out of a private drive and it will put a lot of people in harm's way. He referred to a development on SOM Center Road and the developer put an exit 2/3 of the way up the hill and now it is blocked off because it did not work. He said this will be 300' from the corner of the property to Canyon Lakes Drive and said they could get an easement and build a bridge across the creek and added that there will be a terrible accident there. He said 57 years ago he was sworn in to practice law in the State of Ohio, but he is disillusioned and if the court decides this it will put 23 families in jeopardy.

Mr. Lamanna asked if a site line study was done.

Mr. Berns said yes, it was reviewed by the county engineer's office and it was determined that there is no problem with the site line and added that the police department does a pretty good job.

Mr. Lamanna asked if it would be feasible to go out to Canyon Lakes.

Mr. Bryant said crossing McFarland Creek would be difficult.

Mr. Lamanna said that Mr. King raised a good point.

Mr. Meldon said that the police do a good job, they give tickets and have been doing it for 24 years so it is not a problem.

Mr. Lamanna asked about drainage and a stormwater retention plan for this site.

Mr. Bryant said it will be located in the corner and conforms to Geauga County Soil & Water regulations, there will be roadside ditches and driveway culverts, it will be brought down to the pond and released at a rate acceptable to the county.

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

Motion BZA 2005-3 – 8133 Chagrin Road

Mr. Lamanna made a motion to continue further consideration of this application to the next regularly scheduled meeting to be held February 17, 2005.

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 11:15 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: February 17, 2005



Bainbridge Township, Ohio  
Board of Zoning Appeals  
January 20, 2005

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 11:15 P.M. by Mr. Michael Lamanna, Chairman. Members present were: Mr. Todd Lewis, Mr. Mark Olivier, Mrs. Ellen Stanton and Mr. Donald Takacs.

Minutes

Mr. Lewis made a motion to adopt the minutes of the December 16, 2004 meeting as amended.

Mr. Takacs seconded the motion.

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

Applications for next month

Application 2003-56 by McGill Property Group fka 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 2004-46 by Daniel M. Fine for property at 9519 Taylor May Road – Continuance

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

Application 2005-3 by Anthony S. Meldon for property at 8133 Chagrin Road - Continuance

The applicant is requesting a conditional use permit with area variances for the purpose of establishing a cluster housing development. The property is located in a R-3A District.

Application 2005-4 by Greg Harris for Brilliant Electric Sign Co., Ltd. for Thomasville Furniture for property at 7705 Market Place Drive

The applicant is requesting area variances for the purpose of installing signage. The property is located in a CR District.

Applications 2005-5, 2005-6, 2005-7, 2005-8 and 2005-9 by William Joyce for property at 7315 Country Lane

The applicant is requesting area variances for the purpose of creating fee simple lots instead of limited common area sites. The property is located in a R-5A District.

Application 2005-10 by RCV Investments for property at 8388 E. Washington Street

The applicant is requesting an amendment to a conditional use permit for the purpose of reconfiguring a game room. The property is located in a CB District.

Application 2005-11 by Schneiders Saddlery – D & S Schneider Realty for property at 8255 E. Washington Street

The applicant is requesting an area variance for the purpose of creating parking. The property is located in a CB District.

Application 2005-12 by John F. Iacano for property at 9213 Charles Drive

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

#### Organizational Session

#### Sunshine Law

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

Mr. Lewis 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. Lewis seconded the motion that passed unanimously.

#### Election of Vice Chairman

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

Mr. Olivier seconded the motion that passed unanimously.

### Election of Chairman

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

Mr. Takacs 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. Takacs seconded the motion that passed unanimously.

### Application Requirements

Mr. Lamanna made a motion that all applicants, other than individual single family dwelling units, be required to provide at least seven days prior to the Bainbridge Township Board of Zoning Appeals meeting, six copies of any exhibits they plan to introduce at the meeting and six copies of any expert report from any expert they plan to have testify at the meeting, and if not provided, they may be refused admission at that meeting subject to the discretion of the chairman.

Mr. Takacs seconded the motion that passed unanimously.

Since there was no further business, the meeting was adjourned at 11:53 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: February 17, 2005