

Bainbridge Township, Ohio
Board of Zoning Appeals
October 16, 2003

Pursuant to notice by publication and certified mail, a public hearing was called to order at 7:36 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 2003-46 by Timothy L. Wolfe for property at 18646 Haskins Road

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

The zoning inspector's letter dated October 8, 2003 was read and photos of the site were submitted.

Mr. Timothy Wolfe was present to represent this application.

Mr. Timothy Wolfe testified that he is planning to build a storage building next to his existing garage and tear that garage down when the new one is finished and there is not enough space to keep within the 50' setbacks and to get the equipment in to tear down the garage. He said when he purchased the property the setbacks were only 20' to the property line and his lot is very narrow, only 150', and difficult to build a structure without a variance. He added that he is trying to stay within the 20' side yard setback and will be no closer to the road than the existing garage.

Mr. Lamanna asked if the lot is vacant next door.

Mr. Wolf said that is correct except for an old farmhouse.

Mr. Olivier asked if the old garage can be torn down first.

Mr. Wolfe said there is not enough space to store all of his things until the new building is put up. He added that he wants to add onto his house with an attached garage in the future.

The board viewed photos of the site.

Mr. Lewis asked about the proposed height of the storage building.

Mr. Wolfe said it will be 16' and there will be a loft but it will not be as tall as the house. He explained to the board per the photos, the location of his neighbor's house and the existing garage.

Mr. Lamanna asked if the existing garage is cinder block.

Mr. Wolfe said yes and he will need equipment to take it down and it will not be an easy thing to do because the person needs at least 10' on each side for safety reasons.

Mr. Lamanna said it will be easier for him but we are talking about the ease of him taking an afternoon to take it down and a new building that will be there for years and there is a vacant lot next door where someone could build a house.

Mr. Mike Curran of 18709 Riverview Drive testified that he owns the lot next door and it goes back and he has no objection to Mr. Wolfe building 10' closer to the property line because they might have a roadway there someday.

Mr. Lamanna said it is helpful to know that and asked how long it will be before the existing garage will be torn down.

Mr. Wolfe said he did not know and asked if he needed a permit to tear it down.

Mr. McIntyre advised him to contact the Geauga County Building Department.

Mr. Lewis asked if the building will be built this fall.

Mr. Wolfe said the building will go up this fall depending on the weather.

Mr. Lamanna said the board will probably give the applicant 60 days to take the old garage down.

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

Motion BZA 2003-46 – 18646 Haskins Road

Mr. Lamanna made a motion to grant the applicant the following variance for the purpose of constructing a storage building.

1. A variance from the minimum required side yard setback of 50' to 40' for a variance of 10'.

Based on the following findings of fact:

1. A practical difficulty exists due to the presence of an existing garage and the lot is only 150' wide at this point.
2. The board also notes that because of the nature of the adjacent lot, it would be unlikely that the principal dwelling structure would be built adjacent at this point, but would be much farther back on the adjacent lot due to its size and shape.

Motion BZA 2003-46 – 18646 Haskins Road - Continued

With the following condition:

1. The board also will permit a period of time necessary to construct the new storage building. For 60 days after substantial completion of that storage building there may be three accessory structures on that property but will be reduced to two by removal of the existing garage within 60 days after substantial completion of the storage building as a condition for permitting this situation to exist.

Mr. Takacs seconded the motion.

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

Application 2003-47 by Gregory J. Fritz for property at 8505 Rockspring Drive

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

The zoning inspector's letter dated October 8, 2003 was read and photos of the site were submitted.

Mr. Lamanna noted that Mrs. Stanton will recuse herself from this application.

Mr. Gregory Fritz and Mr. Doug Fouts, Attorney for the applicant were present to represent this application.

Mr. Gregory Fritz testified that he erected the fence for safety and security of his kids, privacy, noise and pollution. He said the trucks are using their engine brakes even though they are not supposed to and his bedroom is on the eastside and he goes to bed early. He said he received a letter from the zoning department that said he needed a permit for the fence and he needs a variance because the fence is 6' high instead of the permitted 4'. He submitted photos of similar homes in the area on Rt. 306 that have fences similar to his, one being 8' tall and the rest are all 6'. He continued by saying it cannot be seen from the stop sign so there is no issue for people turning off onto Rt. 306.

The board viewed the photos.

Mr. Lamanna asked how far forward the fence comes.

Mr. Fritz said it is 10' short of the pin before the curve.

Mr. Lamanna asked if it is 6' from the right-of-way.

Mr. Fritz replied yes.

Mr. Lamanna asked Mr. Fritz why he did not seek a variance before building the fence.

Mr. Fritz said he asked the contractor and he said a permit was not necessary.

Mr. Lamanna asked Mr. Fritz if he applied to the Lake Lucerne Architectural Review Board.

Mr. Fritz said yes and it was refused.

Mr. Lewis asked if this was done in advance of the construction of the fence.

Mr. Fritz said he moved into the house in 2002 and waited a year to put up the fence and put it off until his neighbor moved. He said the neighborhood does not uniformly enforce the deed restrictions because there are 10 – 12 homes that have fences similar and there are 6' and 4' high fences along frontage in Lake Lucerne. He said he does not want to get into the reasons for refusal from the ARB unless he has to.

Mr. Lamanna said the requirements are, any application based on zoning would not have an effect on satisfying deed restrictions but he is concerned about things being built and people showing up to the board after the fact. He said one of the things the board likes to assure is that it was inadvertent and it is not helpful that this was turned down by the local homeowners association.

Mr. Fritz said he gave very good reasons for building the fence and his family comes first but he lived in Auburn before this and had a fence put in and no permit was required and thought that all townships were the same.

Mr. Lewis asked Mr. Fritz if he had a copy of the letter as to the ARB's response on the original application.

Mr. Olivier asked Mr. Fritz how long he has lived at this site.

Mr. Fritz said he purchased the home in December 2001.

The board reviewed the letter from the Lake Lucerne Architectural Review Board.

Mr. Lewis said it looks like the fence did not meet the definition of decorative and added that this house and the traffic on Chillicothe Road was pre-existing.

Mr. Fritz agreed by saying yes.

Mr. Dave Snapp of 17096 Eastview Drive testified that he lives on the corner of Rockspring and Eastview Drive and said his eastern line is up against the western line and said he did not care about the fence at Rt. 306, only the corner of the fence that is on his lot line. He said one of the reasons for the fence is that the kids were getting on his property and the kids who live on Rt. 306 go down the lot line to get into the lake and the kids who live on Rockspring come down Rt. 306 and there is a big no trespassing sign up and he has the right to tell the people not to go on his property but wishes Mr. Fritz would consider the facts regarding the fence.

Mr. Fritz said there is a gate on the south end of the property they could go through and they could also go through the people's property on Eastview.

Mr. Lamanna said that the issue before the board is the height only on the section of fence along Rt. 306.

Ms. Beth Krause of 8182 Westhill Drive testified that she is here on behalf of the Lake Lucerne Board of Trustees and Architectural Review Board and she feels that Mr. Fritz should not have any fence up because it is against the deed restrictions. She said that Mr. Fritz signed a document that he was in agreement with the deed restrictions and added that he was denied by the Lake Lucerne Board of Trustees and Architectural Review Board and the boards feel his problem could have been avoided with landscaping. She added that they are against the fence and asked that this variance be denied.

Mr. Lamanna said the issue is the height of 6' versus the permitted 4'.

Ms. Krause said the fence breaks up the community and looks bad.

Mr. Doug Fouts, Attorney for the applicant, testified that he researched the law regarding the deed restrictions and found that fences made of chain link or metal are prohibited, but others are permitted. He said there are other fences in the development and deemed to be decorative and their position is that this is a zoning issue and not a neighborhood issue. He added that there are no alternatives here and heavy landscaping will not deaden the sound or prevent trash on the lawn or keep the kids out. He submitted a newspaper article about a similar case in Strongsville.

Mr. Mike Carter of 8408 Rockspring Drive testified that all the tests must be met to grant a variance.

Mr. Lamanna said that not all have to be considered.

Mr. Carter stated four of the standards for an area variance: “Whether the property in question will yield a reasonable return or whether there can be a beneficial use of the property without the variance.” and said that it would. “Whether the variance is substantial.” He said the variance is substantial because it is a 50% increase in the height. “Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance.” He said the Lake Lucerne residents believe that a 6’ board on board fence alters the essential character of the neighborhood. “Whether the property owner’s predicament feasibly can be obviated through some method other than a variance.” He said they believe other methods could be used to reduce the sound from the street etc.

Ms. Kathleen Phan of 17096 Chillicothe Road testified that she has lived at her residence for 12 years and lives two lots down from Mr. Fritz and said she never has had trash on her property from the road. She added that her children are 6 and 8 and were taught to never go into the road. She said that his yard abuts Rt. 306 and her children use the path he spoke of and added that four children use it and two are hers and he put the fence up on the path.

Ms. Sue Halverstadt of 8429 Rockspring Drive testified that the fence is unattractive and it looks like he is trying to block out a junk yard. She said a family lives across from him and had five kids and they don’t have a fence on the road and it takes away from the community by having to see it when you drive in. She said if noise or privacy is an issue then he should not have moved into that house.

Mr. Lamanna said the legitimate issue is if the variance would introduce something not in character of the neighborhood.

Ms. Anne Murphy of 17050 Woodmere Drive testified that she has lived in Lake Lucerne for many years and we care a lot about Lake Lucerne because it is an open community and it is a special place that we love and if you do this, people will follow suit and told the board she hopes they can get a feel for what she has experienced in Lake Lucerne.

Mr. Fritz said he likes Lake Lucerne a lot but if he moves, he would take down the fence and added that his neighbor to the south likes his fence. He continued by saying that he is a single parent and it is nice to let his kids out to run around and it feels safer. He said people are still welcome to cut across his property and his other neighbor’s property.

Mr. Takacs asked Mr. Fritz if he did not see the deed restrictions.

Mr. Fritz said no.

Ms. Halverstadt said she has a copy that he signed stating that he was going to abide by the deed restrictions.

Mr. Lamanna said it is expected that the title company should have made him aware of the deed restrictions.

Mr. Lamanna closed the public comment portion of this hearing.

More discussion from the board followed.

Mr. Olivier stated that since it is more of a safety and debris issue, a 4' fence could provide the safety.

Mr. Lewis said that the property's nuance and character were pre-existing for many years and those conditions and traffic were there in advance of acquiring the property and the applicant was denied by the Lake Lucerne Trustee Board and ARB but took it upon himself to disregard it.

Mr. Takacs said that Mr. Olivier and Mr. Lewis stated his thoughts.

Mr. Lamanna said in looking at the reasons for a 6' high fence versus a 4' high fence, a 4' fence is just as effective as a 6' fence and said he is not sure it would make that substantial of a difference with the noise issues. He said that people here raised issues regarding the character of the neighborhood and part of their fence restriction is openness. He said an adult can look over a 4' fence and they raised a valid point on how the variance would affect the character of the neighborhood.

Mr. Fouts asked if he could have a number of how many board members are or have been residents of Lake Lucerne and asked that they recuse themselves.

Mr. Lewis said that he lived in Lake Lucerne as a minor growing up in the sixties and never was a property owner there.

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

Motion BZA 2003-47 – 8505 Rockspring Drive

Mr. Lamanna made a motion to deny the applicant's request for a variance for a maximum height of a fence in the front yard from 4' to 6'.

Based on the following findings of fact:

1. The denial of this variance is based on the findings of the board that the applicant has not demonstrated that there was a practical difficulty.

Motion BZA 2003-47 – 8505 Rockspring Drive - Continued

2. In this case, a 4' high fence would provide substantially the same benefits as a 6' high fence and therefore the applicant's use of the property would not be materially affected by the failure to grant this variance.
3. Furthermore, having a 6' high fence would create an impact upon the character of the neighborhood. Such character generally being one of open spaces and a 6' high fence would substantially impact that character.
4. The variance requested would be substantial in that it represents a 50% increase in the permitted height of the fences in that area.
5. The property owner was aware that he needed a permit per a quote from Auburn Fence Corp. dated March 9, 2002 and marked Exhibit A. (*Motion amended by the Bainbridge Township Board of Zoning Appeals – see minutes dated November 20, 2003.*)

Mr. Takacs seconded the motion.

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

Application 2003-48 by James Skerlec for property at 18512 Haskins Road

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

The zoning inspector's letter dated October 8, 2003 was read and photos of the site were submitted.

Mr. James Skerlec was present to represent this application.

Mr. Skerlec testified that he wants to rebuild his garage but to do that he needs a side yard variance because there is a swale that runs through the middle of the yard and he cannot build in that area.

Mr. Lamanna asked Mr. Skerlec what buildings are there now.

Mr. Skerlec said there were three out buildings, now there are two and he wants to remove one and build where the existing garages are now.

Mr. McIntyre testified that it will not be encroaching anymore.

Mrs. Stanton asked if equipment will be stored in it.

Mr. Skerlec said yes, in the new garage, and it will be 6' further back than the present garage and added that he cannot get one vehicle in there now.

The board viewed photos of the site.

Mr. Lamanna asked Mr. Skerlec if he had any thoughts about getting rid of the other building.

Mr. Skerlec said he will eventually, but needs it to store stuff.

Mr. Lewis asked if he will be able to get everything in the new garage.

Mr. Skerlec said he would like to keep the additional building to store equipment in it and could move it but it has a block foundation.

Mr. Lamanna said the logical place to put the new garage is behind the existing house.

Mr. Jim McEnaney of 18519 Haskins Road testified that he lives across the street and looks at the garage everyday and was involved in the sale of this property to Mr. Skerlec and said the present garage is a dangerous structure and he is doing a tremendous amount of work over there. He said he does not have a problem with the proposed garage whatsoever.

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

Motion BZA 2003-48 – 18512 Haskins Road

Mr. Lamanna made a motion to grant the applicant a variance from the side yard requirement of 50' to 23' for a variance of 27'.

Based on the following findings of fact:

1. A practical difficulty exists due to the existing location of the house and driveway on this property.
2. This is the most reasonable place to place this new garage building.
3. There is also a swale on the property which prevents it from being moved significantly farther away on the property line.
4. The existing main dwelling house is only 4' off the property line and another auxiliary structure is only 3' off the property line so this new structure will be well within the footprint.

Mr. Takacs seconded the motion.

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

Application 2003-49 by Bainbridge Associates, Ltd. for property at 8564 E. Washington Street

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

The zoning inspector's letter dated October 8, 2003 was read and photos of the site were submitted.

Mr. Cliff Hershman and Mr. Tim Olland were present to represent this application.

The board reviewed the sign regulations with Mr. McIntyre and Mr. Hershman.

Mr. Lamanna said the calculations are based on the long end of the frontage and E. Washington Street.

Mr. Hershman said yes and testified that the Movie Gallery wants to put a sign on E. Washington Street but if the board allows signage for the Movie Gallery and Sherwin Williams, the rest of the stores don't get a sign and all he wants is signage for all his tenants.

Mr. McIntyre explained the proposed signage and how it will fit within the zoning regulations.

Mr. Olland testified that the ground sign is not in addition to the store front sign.

Mr. Lamanna said the most reasonable way is a perpendicular projection.

Mr. Lewis said that tenants will be around the courtyard area.

Mr. Takacs said, coming from Chagrin Falls, you look at the long part of the building.

The board discussed, with Mr. McIntyre, signage calculations and the maximum possible signage for this property.

Mr. Hershman said just so everyone can have a sign.

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

Motion BZA 2003- 49 – 8564 E. Washington Street

Mr. Lamanna made a motion to grant the applicant a variance for purposes of calculating the maximum signage by determining that the distance to be used will be the distance of the long face of the building which is 400.3' rather than the distance that technically fronts on E. Washington Street.

Based on the following findings of fact:

1. Because of the nature and orientation of this structure along E. Washington Street, the actual viewed front and operating front of the retail center construction is along the long axis of the building and therefore it is more reasonable to consider that when determining the amount of total signage allowed since it is consistent with the intent of the sign regulations.
2. It is also consistent with the fact that all of the entrances to the retail stores along the retail center are in that long axis of the building.

Mr. Takacs seconded the motion.

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

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

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.

Secretary's Note: Application 2003-50 by Bainbridge Associates, Ltd. was postponed indefinitely at the request of the applicant.

Since there was no further testimony the public hearing was closed at 8:54 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: November 20, 2003

Bainbridge Township, Ohio
Board of Zoning Appeals
October 16, 2003

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 8:54 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Todd Lewis, Mr. Mark Olivier, Mrs. Ellen Stanton and Mr. Donald Takacs.

New Business

Mr. Cliff Hershman and Mr. Tim Olland met with the board to discuss the cement curb in front of the new shopping center on E. Washington Street.

Minutes

Mr. Lewis made a motion to adopt the minutes of the September 18, 2003 meeting as written.

Mr. Olivier seconded the motion.

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

Applications for next meeting

Application 2003-51 by James R. Davidson for property at 18981 Chillicothe Road

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

Application 2003-52 by Discount Drug Mart for property at 16765 Chillicothe Road

The applicant is requesting a conditional use permit for the purpose of installing a pharmacy drive-up facility. The property is located in a CB District.

Other Business

Ms. Ann Myers met with the board and commended them for taking a stand with the Federated Church and discussed where Judson stands with sewer and water and its appeal on the Haskins Road site.

The board discussed pending litigation.

Since there was no further business, the meeting was adjourned at 9:30 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: November 20, 2003