

Bainbridge Township, Ohio
Board of Zoning Appeals
February 19, 2004

Pursuant to notice by publication and certified mail, a public hearing was called to order at 7:34 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.

Mr. Lamanna stated that this application was postponed again at the request of the applicant.

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 March 18, 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 2004-2 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.

Mr. Lamanna stated that the board has heard previous testimony on this application.

Mr. Thomas Bauer was present to represent this application.

Mr. Bauer testified that the shed was located much closer to the back lot line than it should be because he could not find the pins and more importantly, the adjacent property owners, Mrs. Nasca and Mrs. Faust were at the last meeting and one did speak up and said it was OK. He said if he brought the shed up from the back lot line, it would be more visible to the neighbors.

Mr. Bauer showed the board photos that he took of the shed from two properties away and said to move it up 10' would require taking down 30' trees, re-routing the sprinkler system and it would have a negative impact on the neighbors' view. He said a mistake was made but all the property owners adjacent to him feel it is OK and it would impact the neighbors if moved and it is not feasible to move a 10' x 12' structure. He said he did talk to Laura Cramer of Canyon Lakes and he would be willing to put screening behind the shed and Laura had no problem with that. He also noted that a mistake was made and he tried to do the right thing and he did get a permit, but it was difficult to see the pins and Mr. Orłowski had to come out when the leaves were gone.

The board reviewed the application and the photos that were submitted by the assistant zoning inspector.

Mr. Takacs said this is a significant variance.

Mr. Bauer said the trees are tall and it would be going against what the neighbors want.

Mr. Takacs said he did not think the grade of the land changes that much.

Mrs. Stanton stated that she has a problem with this because the variance is substantial and it can be pulled up a bit and even the residents in the Chagrin Falls area pull their sheds up at least 5' off the property line and added that the buffer is being used as a setback here.

Mr. Bauer said a variance can be one inch or one foot or one yard and nothing says it is not going to work.

Mrs. Stanton said she is afraid that in the future, people will use this as a precedent.

Mr. Lamanna told Mr. Bauer that if nothing had been built and he wanted to build a shed in this location, the answer would have been no.

Mr. Bauer said it will change the character of the neighborhood.

Mr. Lamanna said the board is cutting Mr. Bauer a major break at 10' off the property line and the board would not have considered 10' if it wasn't already there.

Mr. Bauer said he has letters from three of the adjacent neighbors.

Mr. Lamanna said it is a substantial variance and there is no practical difficulty.

Mr. Bauer said the neighbors say they don't want it there.

Mr. Lamanna said the fact is that it can be made conforming, and when the board grants a variance, we are concerned about how substantial the variance is. He continued by saying that the board does not want to have a building located that close to the property line and 10' would give a plausible distance between the shed and the property line.

Mr. Olivier said we don't know how the land behind this is going to be developed.

Mr. Bauer said he does have to worry about the three property owners that have said if the shed is brought forward, they will see it.

Mr. Lewis said the trees don't have to be taken down and the distance could have been reversed measured from the house and a permit was issued for a different location, so the board is trying to come up with a compromise and everyone should have known that 50' from the back line would have been in view of the neighbors.

Mr. Bauer said that his neighbors think it is Ok where it is.

Mr. Lewis said the board does not think it is OK and we are willing to compromise.

Mr. Takacs said it can be moved without a tractor.

Mr. Bauer said he wanted someone to come out and walk the property because it is different than what the picture looks like.

The board reviewed the site plan.

Mr. Lamanna said the board could table this application again until someone from the board can take a look at the location, or the board can act on it, or talk about a different location.

Mr. Bauer said he did not want to cut down trees, so his option was to change the use.

Mr. Lewis said the other option is to put the shed in the location that the permit was issued for in the first place.

Mr. Bauer said he is looking for the right remedy.

Mr. Lamanna suggested tabling it until next month.

Mr. Bauer said he would prefer April.

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 April 15, 2004 meeting of the Bainbridge Township Board of Zoning Appeals.

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 - 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.

The zoning inspector's letter dated February 10, 2004 was read and photos of the site were submitted.

Mr. Cliff Hershman and Mr. Michael Longo, owner of the restaurant, were present to represent this application.

Mr. Hershman testified that he is here to get approval for an outdoor eating area and he had applied for it earlier but it was tabled because the restaurant fell through. He said that now, Mr. Longo is asking for an outside eating area and asked if the freezer in the back needs to be discussed.

Mr. Joe Orlowski testified that it is already hard surfaced.

Mr. Hershman said that he also needs 30 additional parking spaces for the employees and the new tenants said they will need more employee parking spaces in the back.

Mr. Takacs asked about the 30 proposed parking spaces.

Mr. Hershman said he needs 11 and 19.

Mr. Takacs asked why some spaces were omitted in a certain area.

Mr. Hershman said because there is going to be a post-office box in that location.

The board reviewed the site plan.

Mr. Takacs said there are two parcels.

Mr. Hershman explained the location of the parcels.

Mr. Olivier asked if the proposed patio is on the other parcel.

Mr. Hershman said that is correct.

Mr. Takacs asked if the restaurant is taking up the entire Phase A.

Mr. Hershman said no, they are going to use 3,700 sq. ft., or 20% - 25% of Phase A which consists of 16,000 sq. ft.

Mr. Olivier said the patio is on the other parcel and the parking is on the restaurant parcel.

Mr. Lamanna asked if this was the location of the proposed day care center.

Mr. Hershman said yes.

Mr. Lewis asked if there was a lot coverage variance.

Mr. Takacs said there was also a variance for parking at one time.

Mr. Lamanna said this location is the same as the formerly proposed outdoor play area, only a change of use.

Mr. Hershman said yes, it is all the same.

Mr. Lamanna said the parking is changing.

Mr. Olivier said the parking is on a different parcel.

Mr. Lewis asked if Mr. Longo has applied for a liquor license for the restaurant.

Mr. Longo testified by saying it is in process.

Mr. Lamanna said this is a minor change of use.

Mr. Lewis asked about the hours of operation but said it is in the middle of commercial.

Mr. Hershman said they limited the parking spaces behind CVS to 16 to keep the tall trees and he remembers what the board said about putting the parking in the rear so he put the parking in the back.

Mr. Takacs asked if it is going to be the same type of restaurant as Fire Fly.

Mr. Longo said it will be a little more casual, a Texas type restaurant.

Mr. Lewis said the employee parking in the back seems to be a practical solution.

Mr. Hershman said when this was approved, the grass was parking and there were 16 spaces here. He referenced the site plan and said that he had talked with the board that if a restaurant goes in, more parking would be required.

The board reviewed the parking spaces per the site plan.

Mr. Hershman explained where the dumpsters are located.

Mr. Takacs said the proposed day care had a loading dock.

Mr. Hershman said that was when we were going to only buy the one parcel and have a day care center, but that was three years ago.

Mr. Takacs said the site plan is dated 2001.

Mr. Hershman said that was before they came in to do the shopping center.

The board reviewed the current site plan.

Mr. Hershman said this is his last site plan and there was more green space when the Ethan Allen and Cactus Moon were on the property.

The board reviewed the former site plans to compare them to the current site plan and the board of zoning appeals meeting minutes from 2003.

The board stated that they want to review the minutes of BZA 2003-12 to compare the lot coverage calculations and what was granted.

Mr. Lewis said if the board goes forward, they have to have a baseline.

Mrs. Stanton asked for an explanation of the location of the outdoor eating area and the parking per the site plan and if it will be fenced in.

Mr. Longo said yes, it will be fenced in.

The board held a discussion about the former application for the day care that would have included a playground area.

Mr. Hershman said the parking was shifted closer to E. Washington Street and it was during the building process.

The board discussed the area that has been paved already.

Mr. Lamanna said the board needs an accurate calculation of what the lot coverage is.

Mr. Takacs said he wants to see what has already been approved versus this.

Mr. Lamanna said the board needs to have it re-calculated off the latest drawing because some things have been shifted around and some parking spaces have disappeared.

Mr. Hershman asked if he could get a vote on the conversion of the playground to the patio.

Mr. Lamanna said yes, the board could vote on that and table the parking.

Mrs. Stanton said the day care and the playground were approved in the very first application.

The board reviewed the original site plan for the proposed unpaved playground.

The board reviewed the other site plans related to the shopping center and modified building.

Mr. Lamanna said the board needs to have this re-calculated.

Mr. Hershman asked if the patio can be approved.

Mr. Takacs asked if the restaurant is already in the building.

Mr. Hershman said no, Mr. Longo is getting his drawings done to go to the building department.

The board discussed the patio versus the playground area and will postpone the parking variance to get a better calculation.

Mr. Lamanna stated that the board will allow the change of use from the playground to the patio. He said the board will review what has happened prior to the application of the day care because there have been various changes in the parking and drives so the board is not confident in the overall lot coverage.

The board discussed the outside patio area.

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

Motion BZA 2003-50 - 8465 E. Washington Street

Mr. Lamanna made a motion to grant the following:

1. To modify the previous conditional use permit, granted for a day care center use of a piece of the adjacent property for an outdoor play area, to permit an outdoor patio and eating area for a restaurant located at 8465 E. Washington Street. With respect to that use, all of the previous conditions, caveats and requirements that were applicable to the day care center's use of that portion of the adjacent property and all of the findings with respect to that are hereby adopted and incorporated in this decision.
2. With respect to the actual outdoor area, the board also will modify the conditional use permit with respect to 16765 Chillicothe Road to increase the overall lot coverage by the 2, 138 sq. ft. representing .75% additional lot coverage so that the total of lot coverage permitted on that parcel will now be 46.21%. The use of this parcel was previously approved with respect to a day care center. This is a similar type of ancillary use, the only difference being it will now be a paved surface rather than an unpaved play area, therefore the requirement for a minimum side yard of 20' is also reduced to a 0' side yard for a variance of 20' on the side yard based on the previous findings and regarding the common use of the properties. Any requirements with respect to that prior finding will continue to apply to this application.

With the following condition:

1. With respect to the use of the outside patio area, it will be used no later than 1:00 A.M. and any outside music otherwise permitted by the zoning regulations must be of a reasonable and not excessive volume and done in such a way that its impact on any adjacent residential property is kept to a minimum and does not cause interference or unreasonable interference with the adjacent use of the residential property.

Based on the following findings of fact:

1. It is not substantially different from the previous conditional use granted and the increase in lot coverage is minimal and therefore will not have any additional adverse effect and it is consistent with the development of this parcel and the adjacent parcel.

Proposed Parking Variance – BZA 2003-50

With respect to the rest of the application regarding the additional 31 parking spaces, Mr. Lamanna moved that this part of the application be tabled until the next regularly scheduled meeting to be held March 18, 2004 so that the board can have an accurate determination of the lot coverage with the new proposed parking area and also reflecting all other intermediate changes in parking configuration and actual building construction.

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. Tom Reitz, attorney for the applicant and Mr. Jozef Kofol were present to represent this application.

Mr. Reitz testified that a couple of days ago he forwarded a letter to Mr. McIntyre and wanted to make sure the board received it and apologized for not getting it to the board sooner and noted that the calculations are accurate. He continued by saying that the existing square footage is 12,050 and the proposed area will be 5,300 sq. ft. subsequently reducing the square footage by 7,100 sq. ft. He said the present lot is hard packed gravel, not lined and he is sure that 100 cars can park there but cannot verify that. He said the dining area will increase by 1,100 sq. ft. which is an increase from the smaller Bongiornos Restaurant.

Mr. Lamanna said that most of the parking is in the front and a little goes around to the side and it will be a little smaller but will have slightly more paving.

Mr. Reitz said exactly, and the landscaping is being moved to the front of the property.

Mr. Takacs asked if the 57 parking spaces include the employee parking.

Mr. Reitz replied yes and said the building will be an additional 118' from the road for an increase in the landscaping. He said the total overall square footage will be reduced and all of the antique sales will be discontinued. He said their engineer has drawn up plans and submitted them to the fire department for the sprinkler system and they will do what Assistant Chief Lovell requests. He said the building will be raised and Assistant Chief Lovell asked if the fire department can use it for firefighter training purposes and we are in agreement with that.

Mr. Takacs asked if only one wall will be used.

Mr. Reitz said yes and it is 38' 4".

Mr. Takacs asked if the fire department will raise some of the wall.

Mr. Reitz said it is the same location.

Mrs. Stanton asked what kind of restaurant this will be and the hours of operation.

Mr. Reitz said the restaurant will serve lunch and dinner and will not be heavy on traffic, though no traffic count has been done.

Mr. Kofol said he will not have a liquor license.

Mr. Lewis asked if Bongiorno's had a liquor license.

Mr. Kofol said they did.

Mr. Reitz said Mr. Kofol does not own a liquor license.

Mr. Lamanna asked Mr. Kofol if he was going to operate the restaurant.

Mr. Kofol replied yes.

Mrs. Janet Hooker, of Lake Lucerne, testified that she and several others are in the antique store on the premises and asked Mr. Kofol what the time-table is for them to vacate the building because they have to find a new home.

Mr. Kofol said it would be a couple of months.

Mrs. Hooker asked if that will be from March 1st.

Mr. Kofol said yes.

Mr. Norman Schultz, Chagrin Road, asked if this property is zoned residential.

Mr. Lamanna said yes.

Mr. Schultz asked if it does not say that if the structure goes all the way to the ground it cannot be re-built.

Mr. Lamanna explained that there are issues on modifications to non-conforming uses and there is a distinction between non-conforming uses and non-conforming uses in buildings. He explained that the square footage of the building space will be reduced by about 60% in this case and based on the history of this property the use can be substituted to a restaurant use and it will be an improvement to the front yard setbacks and the appearance associated with this property. He said they will be getting rid of a substantial amount of non-conforming building and also it will have an effect on government services because they will be replacing fire-prone buildings with a building with a sprinkler system required by the fire department and it will not affect the adjacent neighbors because they are church facilities and it is across the street from the Woods of Wembley retention pond. He said the board looked at the purpose and intent of the non-conforming use provisions and it is a variance to re-construct the building.

Mr. John Kramer of Chagrin Falls testified that he shops out here and comes out Bell Street because of the huge traffic on Rt. 306 and E. Washington Street and the speed limit is still 45 mph and asked if anyone coordinates this.

Mr. Lamanna said that speed limits are controlled by state statutes and in terms of traffic issues, this is an existing retail establishment that will be reduced in size by 60%. He said if based on square footage, it will still be less traffic than now and in looking at traffic studies, regarding the Weils and the Heinens center, which are a magnitude bigger than this property, they don't have a measurable effect on Rt. 306.

Mr. Kramer said he saw traffic at Bongiorno's and the antique shops and there was never more than 15 cars all day and added that antique stores have very little traffic.

Mr. Lamanna said the traffic from the restaurant there before will be about the same and we will have traffic that was from Bongiorno's but not for the other retail spaces. He said they could come in with another mix of retail and quadruple the traffic but we are looking at a 5,000 sq. ft. building.

Mr. Kramer asked if this will be like a Timberfire.

Mrs. Stanton said that the Timberfire seats just under 200 and this will seat 175 and referred to Bob Evans. She asked Mr. Kofol if he would consider one entrance instead of two out onto Rt. 306 and she would like one wider drive rather than two.

Mr. Kofol said he thinks it is better if there are two drives but it is up to the board.

Mrs. Stanton said the one is almost opposite another street.

Mr. Kofol said whatever the board wishes, but the architect said it is better with two entrances instead of one.

Mrs. Stanton said she is worried about a potential accident.

The board discussed the proposed drives.

Mr. Takacs said it is a valid point with all the traffic.

Mr. Lewis said he likes the idea of two entrances for the fire department.

Mrs. Stanton said her other concern is lighting.

Mr. Reitz said they would agree to have the lights directed straight down, but it is the board's choice.

Mr. Lamanna said the bigger concern is on the back side of the building and the board wants to make sure the illumination is down and the parking lot is not lit from the building.

Mr. Takacs said that bollards keep everything down.

Mr. Lewis said it lights up the parking area and walkways.

Mr. Takacs said there shall be no spillover lighting.

Mr. Lamanna said the two parking lots on each side are already illuminated.

Mr. Lewis said the board is concerned with the lighting in the back.

Mr. Takacs asked if there will be landscaping in the back.

Mr. Reitz said it is an extensive lot to the back with no real foliage and we don't know how much room they will need for the tank and generator for the sprinkler system and no landscaping is planned for the rear at this time.

Mr. Lamanna asked about the air conditioning plan.

Mr. Kofol indicated on the site plan the location of the air conditioning unit.

Mr. Olivier asked if there will be outdoor dining.

Mr. Kofol replied no.

Mr. Lamanna closed the public hearing portion of the meeting.

The board discussed this application further.

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

Motion BZA 2004-1 – 16381 Chillicothe Road

Mr. Lamanna made a motion to grant the following:

1. The applicant's request to partially substitute non-conforming uses in converting the entire non-conforming use to a restaurant use from the current restaurant and multiple retail and other permitted uses.
2. A variance to the requirements of Chapter 165 with respect to removing the existing structures and erecting in their place a structure as presented by the applicant in his application 2004-1.

Based on the following findings of fact:

1. The proposed replacement building will be a substantial reduction in the non-conforming structure as permitted by Chapter 165.08(a).
2. The board has found that the existing square footage will be reduced from 12,450 sq. ft. to 5,300 sq. ft. so there will be a net reduction of 7,150 sq. ft. of actual building space available.
3. There will be a reduction in the total amount of parking and the total amount of paved areas is roughly unchanged.
4. The setback will be increased.
5. The height of the building will be reduced from 40' to 25'.
6. The overall lot coverage will be reduced by approximately 16%.
7. The revised plan will also move the parking lot a greater distance from Chillicothe Road which will improve the overall appearance of the front of the property and reduce the visual impact on Chillicothe Road.
8. Based on the revised uses, the board does not believe that there will be any substantial difference in the traffic use at the property.
9. The board will also consider the impact upon governmental services and the board believes that this will improve and reduce the amount of governmental services that would potentially be required by this property. The buildings will be smaller in size so there will be less impact upon fire and they will also be replacing older fire-prone buildings with a new structure that will meet the latest fire protection requirements that are applicable.
10. Overall, in looking at the adjacent properties, currently, the two adjacent properties on the same side of the street, are being occupied by churches under conditional uses and they are not actually being used for residential purposes and the property immediately across Chillicothe Road is part of a residential subdivision but it is being used for retention basin purposes so the first residential areas are a significant distance away.
11. Because of the reduction in the non-conforming use, the overall impact on the adjacent residential areas should actually be improved, but at worse, there will be no greater effect from the change that the applicant has requested.

With respect to making these changes, they are subject to the following conditions in order to minimize the impact on the adjacent properties and these conditions are a necessary part of the board's findings that this variance should be granted and there are also conditions associated with the substitution of non-conforming uses as provided in Chapter 165.09 of the zoning ordinance.

The conditions are as follows:

1. The applicant will meet the system requirements of the Bainbridge Township Fire Department.
2. There will be no outdoor dining areas provided.
3. There will be two ingresses and egresses provided. On the egress side, the northern most egress will be right turn only and the southern most will be left turn only.
4. Lighting will be done so as to minimize any outflow of light. Down-lighting only on the front, and in the rear all lighting will be directed so that it is pointing in towards the building on the back and sides of the building area.

Mr. Takacs seconded the motion.

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

Since there was no further testimony, the public hearing was closed at 10:07 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: March 18, 2004

Bainbridge Township, Ohio
Board of Zoning Appeals
February 19, 2004

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 10:07 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. Takacs made a motion to adopt the minutes of the January 15, 2004 meeting as amended.

Mr. Lamanna seconded the motion.

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

Applications for next meeting

Application 2003-50 by Bainbridge Associates, Ltd. for property at 8465 E. Washington Street and 16765 Chillicothe Road - Continuance

The applicant is requesting an area variance for the purpose of additional parking. 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 2004-3 by George R. Wierdsma for property at 18524 Root Road

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

Application 2004-4 by Heritage Development Company for Circuit City for property at northeast section of development between Aurora Road (S.R. 43) and Lake Street

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

Application 2004-5 by Prestige Homes for property at 8120 Woodberry Boulevard

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 Bainbridge Township Board of Zoning Appeals set the public hearing on the above applications for March 18, 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 10:25 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: March 18, 2004