

Bainbridge Township, Ohio
Board of Zoning Appeals
March 17, 2005

Pursuant to notice by publication and certified mail, a public hearing was called to order at 7:42 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 2005-13 by Lester D. Hillier for property at 18880 East Rivers Edge Drive

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

Mr. Todd Lewis recused himself from this application.

Mr. Lester Hillier was present to represent this application.

Mr. Hillier testified that he has lived at his residence for 28 years and because of his disability, he had a shed built. He said he lost 24 trees on his property so Mr. Jim Borrer cut the wood that was used on the outside and the inside of the shed and added that he did not know the setback was 50', he thought it was 15' so the shed was built 20' off the property line. He continued by saying that his septic system is in the middle of the property and there is a deep ravine on the other side. He said since he lost so many trees, he did not want to cut any more down. He added that the house is Cedar sided and the shed matches the house. He said there is no access to the shed except with a wheelbarrow and the neighbors have keys to borrow things from it. He said it is his fault he did not get a permit before building it and he got a letter from Mr. Orłowski. He said he is asking for a variance from 50' to 20'.

Mrs. Stanton asked about the base of the shed.

Mr. Hillier said the base is gravel with 4" – 6" of concrete on top of that and the slab is anchored down. He said a truck poured the slab and added that he will have to go to the county now, the trusses are regular and the walls are insulated and all finished.

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

Motion BZA 2005-13 – 18880 East Rivers Edge Drive

Mr. Lamanna made a motion to grant the following variance:

1. A variance from the minimum required side yard setback of 50' to 19.5' for a variance of 30.5'.

With on the following condition:

1. This variance is granted on the condition that the applicant puts in the pine tree landscaping in the form that he proposed in his application in order to reduce the impact on the neighboring property.

Based on the following findings of fact:

1. A practical difficulty exists because the applicant has a leach field in his rear yard which limits the location in which he can put a shed and to the side of that leach field, the other location on the other side, has topographical issues.
2. The applicant's existing structure is only 32' from the side line as well so this is a smaller variance than it would normally appear.
3. This shed is sufficiently far back from the road so it will not affect the neighboring properties.

Mr. Takacs seconded the motion.

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

Application 2005-14 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.

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

Mr. Brown testified that a variance was previously granted for this subplot to build a spec home but we subsequently had a customer buy the lot and they want to put an addition on the back of the house. He said that he and Mr. Orłowski looked at it and there is a significant wetland boundary defined. He added that he has a letter from the residents on both sides and they have no objections. He said he is looking for a 30' variance from the front yard setback to 70'.

Mr. Lamanna asked what it was before.

Mr. Takacs said it was 82'.

Mr. Olivier asked if they are bumping the house out the back.

Mr. Brown said yes, for a sunroom and it is on the east side of the lot. He added that it is on a culdesac so it will be less noticeable.

Mr. Takacs asked where the houses are located on each side of this one.

Mr. Brown presented a larger site plan to the board that showed the location of the homes on each side.

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

Motion BZA 2005-14 – 8120 Woodberry Boulevard

Mr. Lamanna made a motion to grant the following variance:

1. A variance from the minimum required front yard setback of 100' to 70' for a variance of 30'.

Based on the following findings of fact:

1. The applicant has substantial wetlands and drop-off in the backyard and it would not be possible to put the house back beyond the 100' setback line without encroaching upon the wetland areas.
2. The house is consistent with other houses in the area as far as size.
3. Due to its location on the culdesac, it will not give an appearance of being substantially closer to the road than the adjacent houses on either side and therefore will not have any adverse effect on the neighbors or the character of the neighborhood.

Mr. Takacs seconded the motion.

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

Application 2005-15 by Prestige Homes for property at 16505 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.

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

Mr. Brown testified that he had Mr. McIntyre check the site because there was a question about the high water mark, so they had a survey drawn up because of that information. He said they have to stay 25' from the approximate high water mark so they are requesting a variance of 29' from the required 100' for a setback of 71' to the right-of-way of the lot. He added that this is next to an open space block so there will be no impact on that lot and subplot 64 has a home on it.

Mr. Takacs asked where the home is on subplot 64.

Mr. Brown said it is in the process of being constructed right now and that they (Prestige) are the owner.

Mr. Olivier asked if a variance was needed on subplot 64.

Mr. Brown replied no and said the stream goes to the northeast there.

Mr. Lamanna said that this really is not the style of house that fits on this lot and the house is very deep and added that not every house is appropriate for every lot and the other house is a standard depth for the other houses around it and it is not so deep. He asked if this is a spec house.

Mr. Brown said no, they are building it for a customer. He added that the front room is a library, the breakfast room is in the back along with the master bedroom, but added that he is not too familiar with the interior of the home. He continued by saying that their alternative is to move it further back but then they would need a variance from the riparian setback and added that they always want the garage on the higher side of the lot.

Mr. Lamanna said the greatest point of depth is at the greatest front of the location of the stream so the house that is going in is going in behind the building setback line.

Mr. Brown referred to the house on subplot 64.

Mr. Orłowski said he has the plans if the board would like to see them.

Mr. Brown said there is a block next to it, so this one won't be sticking out between the two houses.

Mr. Lamanna said his inclination is to take this one back and re-work it a little more and look at the riparian to push it back a little more.

Mr. Brown said it would need two variances, one for the front yard setback and one for the riparian setback.

Mr. Lamanna said yes and asked Mr. Brown if he can adjust the house on the lot or do a modification to the structure. He suggested tabling this application to the next meeting.

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

Motion BZA 2005-15 – 16505 Majestic Oaks Drive

Mr. Lamanna made a motion to table this application to the next regularly scheduled meeting to be held April 21, 2005 to gather additional information.

Mr. Takacs seconded the motion.

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

Application 2005-16 by McMillon Construction for property at 16749 Bedford Street

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

Mr. Cedric McMillon was present to represent this application.

Mr. McMillon testified that he would like to construct a house on five lots that total 100' x 100' in size. He said the proposed house will be 2,300 sq. ft., a two story colonial and would like to relocate the house on the lot because he wants the door to face Woodland and the side entry will face onto the Bedford Street side.

Mr. Takacs asked if the driveway will come off of Bedford Street.

Mr. McMillon said the driveway will be on Bedford and the front door will be on Woodland. He described the proposed setbacks and variances requested.

Mr. Lamanna asked about the elevation of the lot.

Mr. McMillon said the elevation is flat and showed the board on a site plan.

The board reviewed the site plan.

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

Secretary's note: The applicant requested that the address be changed from 16749 Bedford Street to 7063 Woodland Avenue.

Motion BZA 2005-16 – 16749 Bedford Street aka 7063 Woodland Avenue

Mr. Lamanna made a motion to grant the applicant the following variances to construct a single family dwelling according to the plans attached to the application:

1. A variance from the required minimum front yard setback of 100' to 20' on Woodland Avenue for a variance of 80'.
2. A variance from the required minimum front yard setback of 100' to 23' on Bedford Street for a variance of 77'.
3. A variance from the minimum required side yard setback of 50' to 15' for a variance of 35'.
4. A variance from the minimum required rear yard setback of 90' to 45' for a variance of 45'.
5. A variance on lot coverage from the maximum of 10% to 27.68% for a variance of 17.68%.

Based on the following findings of fact:

1. The property is located in the Chagrin Falls Park Subdivision consisting of five previously existing platted lots of record so it would be impossible to build on the property without the granting of variances due to its size.
2. This lot size is consistent with the other total lot sizes in this residential neighborhood.
3. All of the setbacks are consistent with or greater than the typical setbacks in this neighborhood and therefore all of these variances are consistent with the neighborhood's characteristics and would not adversely affect any of the neighboring properties.

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 -
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.

Mr. Anthony Meldon, applicant, Mr. Sheldon Berns, attorney for the applicant and Mr. Dale Burrier, engineer, were present to represent this application.

Mr. Berns testified that he is representing the applicant and there are a number of things to present to the board. He said there is a revised site plan that reduces the number of requested homes from 23 to 20 and they are moving the units along Chagrin Road to 100' from Chagrin Road. He submitted an explanatory letter, dated February 1, 2005, that reflects the changes that have been made on the lot coverage, open space, etc. He said a question was raised the last time regarding the site line distance but a site line study had been performed and submitted to the county engineer and it appears to be sufficient for 40 mph. He said the other question is the ownership of the property that is north and adjoins the Meldon property. He said there is a conservation easement on the property and it was deeded to the Bainbridge Township Board of Trustees and the grantor is the Chagrin River Land Conservancy, but the parcel is owned by Bainbridge Township. He added that he has a copy of the conservation easement and continued by saying that the property to the north is owned by the township and cannot be used for any other purpose except passive use and the deed restrictions are in perpetuity. He referred to his letter regarding the four variances that are being requested and said they are as follows:

1. A variance from Chapter 139.04(b) to reduce the density of the dwelling units from one dwelling unit per three acres to 1.42 dwelling units per acre (the 1.65 per unit acre shown on the site plan is an error).

Mr. Berns stated that these are condos and the area is significantly less than the areas in Canyon Lakes and Knolls.

2. A variance from Chapter 135.04(k) to reduce the setback from the northerly perimeter property line adjoining the property owned by the township and containing a Conservation Easement in favor of the Chagrin River Land Conservancy from 100 feet to 35 feet.

Mr. Berns stated that there will be no use of the land to the north so there is no reason for the 100' setback and they comply with the setback from the stream.

3. A variance from Chapter 134.04(g) increasing site coverage from 15% to 19% of the total cluster development.

Mr. Berns stated that the site coverage is less than the site coverage in Canyon Lakes.

4. A variance from Chapter 161.01(a) to permit more than one single-family detached dwelling on a single lot.

Mr. Berns stated that there is no reasonable basis not to permit condo ownership here. He continued by saying that he had two depositions from Mr. Gus Saikaly stating that both water and sewer are available at this site. He stated that the capacity is sufficient to take care of this property and the additional gallons will be negligible and it is the same for the water.

Mr. Berns said a new water line is being brought in from the City of Solon according to Mr. Saikaly and explained it per the map. He added that Mr. Saikaly said the water pressure is sufficient. He asked if they are entitled to water and sewer and referred to the 208 plan. He said the sewer area almost surrounds the Meldon property and no one can ascertain the reason why the Meldon property was omitted from the 208 plan. He said it will be within five feet of one of these homes so there is no rational basis why the Meldon property could not have service if requested by the township trustees. He said it is the township trustees' choice to advise the county commissioners of what they want and it would be irresponsible not to extend the sewer service to this property when the sewer line is running through it and any court in the United States would come to the same conclusion. He continued by saying that if the township approved it, the water line would be extended and added that water and sewer was extended to other parts of the township. He referred to a deposition by Mr. George Smerigan in which Mr. Smerigan stated that it is in the best interest that where water and sewer are available, they should be made available. He continued by saying that zoning was intended, according to its terms, to service properties where water and sewer are not available. He continued by saying that Mr. Smerigan is a well known city planner and he testified on behalf of the township. He referred to Canyon Lakes and said that their open space is 55% and ours is 67% and our coverage is 1% lower than they allow and we are at 19% and they are at 20% and asked what the difference is. He said this proposed subdivision will look pretty much the same as Canyon Lakes and asked what reason there is not to grant this variance. He continued by saying that the use will be for empty nesters and there will be shallow backyards. He said they will be looking to the east at ten acres, there is a bluff and it is an ideally suited piece of land because the land is narrow and will be an ideal place for empty nesters. He said the variance will not change the character of the land, the roads will be private and there is no reason not to grant the variance. He referred to Duncan vs. Middlefield and said there will be no adverse effect on any of the property around it, it will be a unique development in Bainbridge Township and northeast Ohio and McFarland Creek flows on one side, there are hills on the other side and it is incredibly beautiful.

Mr. Dale Burrier, engineer, testified by explaining the difference between this plan and the last one and said the road is shorter and the houses are pushed further back from the drive and those are the primary changes with this plan.

Mr. Charles Riehl, attorney, testified that he is representing the Bainbridge Township Board of Trustees and they do not want the granting of this variance. He said Mr. Berns is asking this board to vary the standards, but with no water and sewer, the allowable amount of homes is four. He referred to Canyon Lakes and said if that density is applied to the Meldon property and if that is a sufficient analogy to Canyon Lakes, our expert came up with the number of twelve homes. He said that Mr. Smerigan was not available to attend the meeting tonight and submitted a copy of a deposition to the board. He continued by saying that they took the deposition of Mr. Smerigan in Mr. Berns' office with Mr. Berns' permission and added that Mr. Smerigan is an expert land planner in the area and Mr. Smerigan's report is attached to the deposition as Exhibit #5.

Mr. Riehl said the report analyzes the request for the variances and the first is under the Duncan factors without water and sewer and the second analysis is with water and sewer and the key factor is shown on Exhibit #2, the 208 Service Area Plan and the exhibit shows the Meldon property not included in the existing area or areas that may be sewered. He said the next exhibit is Exhibit #3, and we have great respect for Mr. Saikaly, but the issue of water and sewer is in the Memorandum of Understanding between the county commissioners and the township trustees and attached to Exhibit #3. He said it is the county commissioners that control the water and sewer and to whom Mr. Saikaly reports. He said the Memorandum of Understanding states that water and sewer can be extended by certain circumstances and Mr. Meldon's predecessor, who allowed the sewer line to go through the property, had no contractual obligation with the county to tie into it and there is no assessment on the Meldon property and the sewer can only be extended if under the existing service area. He continued by saying there is no evidence that with Mr. Meldon's house, there is no indication of a failed septic system and certainly not for the requested 20 units but the Meldon property has not been designated to be in the plan but if the variance is granted, the applicant will ask for relief from the Memorandum of Understanding and the County 208 Plan. He said that in Mr. Smerigan's report, one of the key factors was whether the variance is substantial and Mr. Smerigan made an analogy to Canyon Lakes with water and sewer and concluded that the variance is 25% more than what is in Canyon Lakes and it is actually twice the density of Canyon Lakes and in the earlier plan, 25% more lot coverage so he finds the variance is substantial and he has not found any proposal with this kind of density. He continued by saying that Mr. Smerigan stated that if water and sewer were to be available to this property, the appropriate density would be 12 units. He said that two studies were done by Mr. Frank McIntyre, Zoning Inspector, dated March 15, 2005 and Mr. McIntyre made an analysis of the variances requested and also made an analysis of the density. He said that Mr. McIntyre previously made one back in December with the density factors and lot coverage factors in Canyon Lakes and he used the assumption that the size of the houses would be 3,000 sq. ft. in those areas that were developed and he picked similar homes and the average lot coverage for a house in Canyon Lakes is 15.94%. He said the other factor in lot coverage is the road calculations and the roadways in Canyon Lakes are wider than the road proposed for this proposed subdivision. He compared the roadways in Canyon Lakes versus the 20' road in this subdivision and said the roadway would comprise of 5% lot coverage. And the lot coverage runs about 20% in Canyon Lakes and in this property, it would be a little less with the revised plan, but the bottom line is, we think the request to vary the standards in the zoning resolution, requires a showing of a practical difficulty and the applicant is asking the board to make certain assumptions regarding the water and sewer and it is a speculative testimony of an employee of the county because if you look at the 208 plan, the availability of water and sewer is assumed and if you look at the Canyon Lake subdivision, this requested variance is much more substantial and the maximum amount of dwellings should be 12 units, not the 20 requested.

Mr. Berns referred to Mr. McIntyre's calculations and asked how many condo cluster units are planned for 16 acres in Canyon Lakes.

Mr. McIntyre testified that the overall total is 274 units.

Mr. Berns asked if they are all built.

Mr. McIntyre said no.

Mr. Berns said there is 1.71 acres per single family unit excluding the condos.

Mr. McIntyre said they took out the acreage for the condos.

Mr. Berns asked if the condos have a greater density than the single family homes.

Mr. McIntyre said it is hard to answer until he gets the site plan.

Mr. Berns said the acreage is 1.12 acres per lot excluding the condos.

Mr. McIntyre said that is correct. He added that they are starting construction on Units one and two and Phase 10 just started.

Mr. Berns asked what the names are of the streets with the condos.

Mr. McIntyre said Beech Grove.

Mr. Berns asked Mr. McIntyre if he knew what the density is.

Mr. McIntyre replied no.

Mr. Berns asked what the total of number of condos will be.

Mr. McIntyre said 274.

Mr. Berns referred to the condo units in Phase 10 and said there are 30.4 acres and 274 units are permitted and asked how many units there will be and said if they build all those condos, there will be over eight units per acre.

Mr. McIntyre said the western portion has land to accommodate those units.

Mr. Berns referred to the density for the Knolls condos and said there are 2.5 units per acre and said he asked Mr. Smerigan if he thinks Canyon Lakes is unique and Mr. Smerigan said you want to look at what is around it and someone negotiated the standard and added that some areas are unbuildable.

Mr. Lamanna asked what percentage of this lot is unbuildable.

Mr. Berns said very little is unbuildable and it is very easy to set aside an area to not build and added that they have surpassed Canyon Lakes in open space. He referred to the availability of water and sewer and said Mr. Saikaly was asked if the department always uses the Memorandum of Understanding and Mr. Saikaly said no. He said Geauga Lake, Hershman, Lanza and Montefiore all got sewers along with Judson Retirement and where someone wanted it to happen it happened and someone consciously drew a sewer map and left this property out and Mr. Saikaly was asked if there was ever a time the township trustees asked the county and the commissioners said no and Mr. Saikaly replied no. He continued by saying that what they are asking for is an empty nester community and explained what Mr. Smerigan had said regarding the price of the lots according to the size of the homes and said the township does not have anything in its zoning resolution to provide for empty nesters. He said that Mr. Smerigan said it is not a bad thing to provide houses for older people and nothing wrong with it if the property has sewers and the applicant is entitled to the variance request.

Mr. Lamanna asked Mr. McIntyre about the 820 acres in Canyon Lakes and if it is before or after adjusting for the road right-of-way.

Mr. McIntyre said before and that is the land without any development, there are 65.24 acres for dedicated right-of-way so it brings it down to 762.53 acres.

Mr. Lamanna asked how long the proposed road is for this subdivision.

Mr. Burrier said he can measure it.

Mr. McIntyre said it is 1,350 linear feet going around the loop.

Mr. Burrier said that sounds right and added that the road will be 20' wide and private.

Mr. Olivier asked if this is going to be an empty nester subdivision, or is it going to be controlled.

Mr. Berns said it will be controlled with both the lots and the units because the backyards will be very short and the units will have plans with first floors only.

Mr. Olivier asked if there is no legal ability to prevent people, other than empty nesters.

Mr. Berns said he is 72 years old and his youngest son just moved out two years ago, but would exclude that kind of average and kids could come home from college, but playground equipment could be excluded and Mr. Smerigan said the lack of adequate yard and the floor plans would control it.

Mr. Riehl said that Mr. Smerigan said there is no guarantee.

Mr. Lewis asked about written by-laws for the owners.

Mr. Berns said when a developer is chosen, he may or may not have those and his own inclination is he won't do that.

Mr. Lamanna stated that since a lot of new or different things have come in, the board will allow a few minutes for anyone that has any comments. He then closed the testimony portion of this meeting.

EXECUTIVE SESSION

Mr. Lamanna moved that the Bainbridge Township Board of Zoning Appeals enter into executive session to discuss matters regarding this application.

Mr. Lewis seconded the motion.

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

The board of zoning appeals recessed the public hearing at 9:24 P.M. in order to enter into executive session to discuss matters regarding this application.

The board of zoning appeals returned from executive session after discussing matters regarding this application and reconvened the public hearing at 10:24 P.M.

Mr. Lamanna stated that the board has considered this application and as proposed, this application requires a rather long and substantial list of variances. He said this development is proposed as a condo development and it takes the project out of county subdivision review so a number of items required at the county level would not be required. He said there would be no reason to prohibit a condo style development with appropriately applied standards. He said the applicant has not demonstrated he was water and sewer and after review of the various depositions, there is no conclusion what water and sewer is actually available. He said the applicant has indicated they are obtaining water and sewer so the board will place a condition on the conditional use permit that water and sewer is available prior to the issuance of the zoning certificate. He continued by saying that if the board assumes that water and sewer are available, the board believes consideration should be given to develop this property consistent to the adjoining Canyon Lakes development. He said the board believes the only reasonable way to do this is to look at the entire Canyon Lakes property relating to this proposed cluster development and the board decided that making adjustments for roads is not an endeavor that is worth taking and by using the overall acreage, it would provide a slight benefit to the applicant. He said that there are several items required by cluster zoning that have not been provided by the applicant with respect to the construction of the street and the street requirements are 24' wide with curbs unless the board grants a variance.

Mr. Lamanna said another concern is the management of storm water and drainage and it is not appropriate to have it in ditches but to retain it and transport it to retention ponds. He referred to the required parking spaces and said three are required and it does not include parking in the driveway, that there has to be an additional parking space off of the driveway. He said with regards to the layout of the property, the applicant will have to submit a revised plan for the board's review. He said with regards to the side yard setbacks, the board will not grant a variance due to the concerns of the fire department and no variance will be granted for the rear yard setback because of the conservation district because by placing the houses up to 35' of it impinges on the district and part of the conservation district would be used by the homeowner. He said also, the board does not believe there is any reason to change the 15% total coverage for cluster development, the additional lot coverage is driven by the number of units on the plan before the board. He said based on the calculations using the 820 acres and 675 units in adjacent Canyon Lakes (1 unit per 1.21 acres) that comes out to 11.8 units which is close to 12 units, so under those circumstances, the board will permit 12 units.

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

Motion BZA 2005-3 – 8133 Chagrin Road

Mr. Lamanna made a motion to grant a conditional use permit ("CUP") for cluster development with a variance for the purpose of constructing 12 single family dwelling units on the property subject to the conditions contained herein; to deny the application for CUP and variances with respect to 20 single family dwelling units; and to also grant a variance with respect to the requirement that there only be one dwelling unit per lot to permit the organization of this development on a condominium basis.

However, as a condition to allowing development under the CUP, the board will impose the following conditions as permitted by the ordinance so that the development will (i) satisfy the requirements specified in the ordinance for granting the CUP and (ii) be equivalent to development on an individual lot basis as contemplated by the ordinance.

1. Each dwelling unit will be deemed to have a lot (the "Deemed Lot") for the purposes of applying setback requirements. The Deemed Lot front lot line will be a line measured 12 feet from the center of the street, the side lot lines will be a line that is drawn perpendicular to the front line and passing the average mid-point between the sides of the two adjacent units (or if no adjacent unit, 35 feet from that side of the unit for such lot), and the rear lot line will be a line parallel to the front line and 50' from the rear most point on the dwelling opposite the front.
2. The board is granting no variances from the side yard setback and front and rear setback requirements for the individual dwelling units; and all such units must meet all setback requirements based on the Deemed Lots established in paragraph 1 above.
3. The area outside the roadways and the Deemed Lots will be the common use area for the purposes of calculations of the common use area.

Motion BZA 2005-3 – 8133 Chagrin Road - Continued

4. The 100' buffer must be met on all sides, including but not limited to the northern perimeter of the property.
5. The applicant has requested no variance to the road requirements so the board will find that a 24' road with curbs would apply and that the applicant will have a method for piping storm water to the detention ponds from the roadways and from the individual units to avoid any run-off issues.
6. The project will not exceed the 15% lot coverage.
7. Prior to any zoning certificate being issued, the applicant must submit a revised plot plan meeting the requirements set forth herein and all other information, plans and details of construction required by the cluster zoning ordinance and not previously submitted.
8. Prior to any zoning certificate being issued, in order to demonstrate that water and sewer is actually available at the site, the applicant must present signed agreements with the appropriate county entities indicating that they will actually provide water and sewer services to the property and that all required tap-in or like fees for all of the permitted lots have actually been paid.
9. All other requirements of the zoning code applicable to conditional uses or otherwise required by the applicable sections regarding cluster development would apply.

This action is based on the following findings of fact:

1. The applicant has not sustained its burden of proof to demonstrate that water and sewer are presently available to the site. The property is not located within the boundaries of the current sewer and water service areas. There is no assurance that the service areas would be extended to the subject property. If the service area is not extended the agencies providing water and sewer would not provide such services.
2. Based upon the testimony of the applicant and the township's expert, the area of the township that is most relevant to and affected by the property is the Canyon Lakes subdivision, and the appropriate density for the subject development should be determined by the standard established for the Canyon Lakes Subdivision. This subdivision surrounds the subject property on three sides, in an area of single family homes. There are areas of condominium development that are not immediately proximate to the subject property. Canyon Lakes has been established, developed and modified as a single concept, and the total number of dwelling units that has been allowed has been based upon the total overall density of development considering the entire parcel. The density of development in Canyon Lakes is .82 units per acre.

Motion BZA 2005-3 – 8133 Chagrin Road - Continued

3. The Chagrin Knolls development is not relevant to this application as its circumstances are materially different. Chagrin Knolls is located a substantial distance from the subject property. It is located on the major commercial artery of the township. It is also located adjacent to and partially in an industrial zoned district and in close proximity to substantial commercial development. The character of the neighborhood is not comparable.
4. It is reasonable and appropriate that the density, if water and sewer is available, should be the same as that contained in the adjacent Canyon Lakes Development, and that the appropriate way to calculate this is to look at the entire area of each of the developments and the number of permitted units in each.
5. Density of development greater than permitted by zoning adversely affects storm water run-off to adjacent properties. Curbed roads and direct routing of storm water to retention ponds (sized as required by the Geauga Soil & Water Conservation District) are necessary to prevent adverse affects of runoff to adjacent properties by the permitted number of units. The proposed plan would cause adverse runoff impacts on the adjacent properties.
6. Density of development greater than permitted by zoning would adversely affects access for police and fire. There is only one entry point. Roads must be 24' wide, built to county standards and have a turn around sufficient for township emergency vehicles to not adversely affect emergency services.
7. There is a property subject to a conservation easement on the one perimeter of the subject property. Infringement on the required 100' perimeter line would adversely affect the property and diminish the purpose of the easement which is to maintain undeveloped and natural property. Residences closer than 100' and the activities from those residences would adversely affect the conservation property and would adversely affect the users of the conservation property by diminishing its purpose of being in a natural state. Failing to maintain the required buffer would be an attempt by the subject property to take value from the adjacent property for its own benefit. The perimeter line must also be maintained in other areas (other than the Chagrin Road side) to not adversely affect adjacent properties. The applicant has not established any of the factors which would indicate that this requirement poses a practical difficulty.
8. Separation between buildings less than that required by the code, would create fire dangers and difficulties in fighting a potential fire in the area as indicated by the fire department. The proposed plan is substantially less than code and would create those issues.
9. It is necessary to have the required front yard setbacks so that the dwellings are not excessively close to the main access road for fire issues as well as to maintain a development consistent with the adjacent Canyon Lakes development and consistent with the intent of the zoning district.

Motion BZA 2005-3 – 8133 Chagrin Road - Continued

10. The property can yield a reasonable return and have beneficial use at the level of development permitted by zoning and the applicant has not presented evidence to the contrary or detailing any financial problem. The applicant is only entitled to the minimal amount of relief to overcome his predicament, and the permitted 12 units clearly provide reasonable return and beneficial use.
11. The applicant has requested a number of variances, and each one of them is substantial. The requested unit variance is 500%; the setback and spacing variances are all substantial, reducing it to less than half of that required or greater percentage in some cases; and the lot coverage had nearly a sixty percent increase. This factor weighs heavily against granting a variance on the proposed plan. The permitted plan reduces the variance for number of units to 300%, and eliminates the other variance requirements.
12. The number of units in the proposed plan and their layout and spacing would change the essential character of the neighborhood. It is inconsistent with the spacing, level of development on adjacent properties as well as the overall density. It would adversely affect adjacent property owners. Failure to maintain setbacks would adversely affect the units being built. The number of units in the permitted plan and variance is consistent with the essential character of the overall neighborhood and would not cause undue damage to the adjacent property owners.
13. The variance in the proposed plan with respect to the 100' setback, would cause the adjacent property to suffer a substantial detriment and adversely affect its character. This variance is not part of the approved plan.
14. The variances in the proposed plan would adversely affect the delivery of government services. The requested number of units and the close proximity to one another could create difficulties in fighting fires and create a situation where a single fire could result in involvement of multiple dwelling units and also additionally, the road requirements are necessary to assure adequate access of firefighting equipment. The permitted plan has obviated the adverse impacts and would have minimal affect on delivery of government services.
15. The property owner purchased this property with the knowledge of the zoning restrictions as the three acre requirement predates his ownership. The subsequent provisions allowing cluster are a relaxation of the requirements and mitigate the impact of the zoning.

16. The property owner's predicament cannot be obviated by some method other than a variance with respect to the total number of units. However, the applicant is only entitled to the minimum relief necessary to overcome the problem. The proposed plan seeks relief beyond that necessary to overcome the predicament. With respect to the other variances requested in the proposed plan, the potential issues posed by the size, shape and topography of the property can be overcome by developing only with the number of units permitted in accordance with a cluster plan using good site design practices.
17. The spirit and intent of the zoning requirements will not be observed and substantial justice will not be done by granting the variance requested in the proposed plan. The requested plan has a number of units and a placement of those units that is completely outside the intent of the zoning and its spirit. It would be a substantial deviation from what is permitted and from what actually exists in the area. There is no need to grant the amount and layout of units requested in order to provide substantial justice. The applicant is entitled to some relief within the spirit and intent of the requirements and to provide substantial justice, but only the minimum amount necessary to provide it. If the applicant is actually able to obtain sewer and water, it would be consistent with the spirit and intent of the zoning to develop his property to the same density as the adjacent Canyon Lakes subdivision which also has sewer and water. This level of density and development would also provide substantial justice to the applicant, if there is sewer and water available. It would increase the number of units threefold that are permitted by the zoning resolution, allowing a much more profitable use than the reasonable return he can already obtain under existing zoning. Further units are not necessary to provide substantial justice and would have substantial adverse affects.
18. The board finds that all of the foregoing findings of fact are based upon and subject to the conditions to the conditional use being in existence. All such conditions are found to be necessary in order to satisfy the requirements for granting the conditional use as provided for in the zoning resolution, and to be necessary for satisfying the criteria for the granting of the variance, including but not limited to these involving impact on adjacent properties, provision of services, consistency with neighborhood and substantial justice. The Board finds that absent the conditions, it would not have found facts in favor of the conditional use and variance.

Motion BZA 2005-3 – 8133 Chagrin Road - Continued

Mr. Takacs seconded the motion.

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

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

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.

Mr. William Joyce, applicant and Mr. Todd Petersen, attorney for the applicant, were present to represent this application.

Mr. Petersen testified that his applicant returned to the board for fee simple lots and when he originally came in, the angle of entry requirement was off by 3% in terms of the angle to the road. He said that according to Mr. David Dietrich of the Geauga County Planning Commission, the site distance is not an issue. He said perhaps this is a means to try to get around the planning commission subdivision regulations. He continued by saying that Mr. Joyce came to him a few years ago and they laid out a standard subdivision then went to the condominium concept, put the road in, in 2003 (Corban Drive) but the lots are not selling.

Mr. Lamanna said the board knows because it created this beast to accommodate the applicant.

Mr. Petersen said there is one unit, which is Mr. Joyce's house, the road is a 5" core with 2" of top coat and 22' wide with utilities. He submitted packets to the board and said Exhibit J is the on-line listing, Exhibit K is the lot price listing and said they are not an actual lot but will be sold as a unit at a price of \$150,000 per unit and that price has gone down to \$70,000 per unit and Mr. Joyce has not had a single bite. He said people are scared off by the condominium concept and explained that Exhibit L is the website activity for the lots and in one month, they had 1,200 hits on the site but no sales. He said that Mr. McIntyre sent a letter to Mr. Dietrich and he was much more promising prior to receiving the letter and in the second conversation with Mr. Dietrich, he said to pay attention to what is not said in his letter to Mr. McIntyre. He continued by saying the road is already installed and each unit has equal access to that road and the easement essentially exists so everyone has the right to use Corban Drive. He said there will be five units or five lots, each will have a septic system and there will be the same amount of vehicles pulling out onto Country Lane. He said an effort was made, the board tried to accommodate Mr. Joyce, but it is just not working.

Mr. Lamanna asked if right now there is a condo declarant on this property.

Mr. Petersen replied yes.

Mr. Lamanna asked if that is going to be vacated.

Mr. Petersen said yes, they have not sold any units and are in the process of vacating the declaration and it will have to be re-filed. He said the first step is to get a variance on the frontage.

Mr. Lamanna said the applicant will still have to go through the lot split.

Mr. Petersen said certainly.

Mr. Lamanna asked if the applicant will get approval.

Mr. Petersen asked, at the county level?

Mr. Lamanna said yes, even if you get a variance, you still have to get approval from the planning commission.

Mr. Petersen said they would file the original legal, and he thinks this can be done if they get the area variance from the board. He added that Corban Drive will never be dedicated and will remain private.

Mr. Lamanna said his inclination is that this is a huge variance and it gives the appearance that the board is assisting an end-run around the subdivision regulations. He said he does not need aggravation from the county for trying to subvert regulations and the applicant is looking for a huge variance and in going back, the board was not going to do this in the first instance.

Mr. Petersen said if an easement is included, it will hit Mr. Dietrich's desk and it won't meet regulations.

Mr. Lamanna said Mr. Petersen's conversation with Mr. Dietrich is hearsay and can only rely on what he sees in the letter. He added that if the applicant wants to bring Mr. Dietrich in before the board, he can. He continued by saying that he cannot rely on Mr. Petersen's interpretation, only Mr. Dietrich's letter and said he could come in and tell the board something different. He said the board would be doing an end-run and decided it is not an appropriate thing to do and the board was not willing to do this in the first place.

Mr. Petersen said they are under different circumstances and he cannot fathom another applicant coming in for condos and going back to fee simple lots. He added that they got a variance from the health department for the septic systems.

Mr. Joyce confirmed by saying yes.

Mr. Petersen said they are no better, and they are stuck. He said it will not change the number of cars, houses, etc. whether the property is divided or in a limited common area.

Mr. Lamanna said unfortunately there are rules over subdivision standards and the board has sympathy, but it is not prepared to grant a variance for this sort of thing.

Mr. Petersen said the setbacks will be the same, it just won't be a dedicated roadway.

Mr. Dave Sedlak testified that the outcome would be beautiful homes and would enhance the community.

Mr. Lamanna asked Mr. Petersen if he wants to pursue more information.

Mr. Petersen asked what the board would like to hear and said if it needs a dog and pony show, he will do that.

Mr. Joe Gutoskey testified that they won't see the line in the road.

Mr. Lamanna said the board would be circumventing the process to a certain extent and would get grief from the county.

Mr. Petersen said the applicant would like a continuance to the next meeting.

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

Motion BZA 2005-5 through 2005-9 – 7315 Country Lane

Mr. Lamanna made a motion to table this application until the next regularly scheduled meeting to be held April 21, 2005 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 2005-18 by Brian Winovich for property at 17477 Chillicothe Road

The applicant is requesting area variances for the purpose of constructing multi-family residential – condominiums. The property is located in a R-3A District.

Mr. Mark Olivier recused himself from this application and departed the meeting room.

Mr. Brian Winovich and Mr. Jeff Markley were present to represent this application.

Mr. Winovich thanked the board and testified that he is a sales representative and not a developer or lawyer. He said he does have a partner, Mr. Mark Olivier, who recused himself from all conversations and dealings with this project and that Mr. Jeff Markley, Landscape Architect, is the site developer for this project. He continued by saying that the property is located at 17477 Chillicothe Road and he is looking for feedback from the board. He said they are asking for variances from density, setbacks and lot coverage and added that there is unused capacity relevant to water and sewer for this property. He referred to a color map showing the Tanglewood Lake Association development and indicated that the little gray parcel consisting of 1.6 acres is the parcel in question and noted that only two parcels are not part of Tanglewood Association. He said they feel that it would be a win-win for all involved, for Tanglewood, the associations surrounding this parcel and for themselves. He said they would like a private interior access off of Tanglewood, the parcel is 1.6 acres and it is surrounded on three sides by condos, and State Route 306 and it is an island as it sits today. He said they went to both condo associations to get a feel as to what they want to see on the property and are looking for their direction and our goal today is to gain access through one of the private roads. He said the Burns family has owned the house since 1947 and only one family has lived there for over 50 years and added that part of this parcel was part of the Tanglewood Subdivision and they swapped with Tanglewood .6 of an acre. He said the Burns property is currently bordered with multi-family homes, it is a two bedroom home and has not been lived in for over two years and the well has been shut off for quite some time and added that they believe the current house cannot be used as a single family dwelling. He continued by saying that the house sits six feet from the street right-of-way and is closer than any other existing house in the area.

Mr. Winovich continued by saying there is no mound for the noise so it is a less desirable home on State Route 306 and a buffer could not be put in the right-of-way. He said it is an island surrounded by a multi-family use and under current zoning laws, this board or a previous board would not have permitted this property to be excluded from the PUD. He said the property is not suitable for new single family construction because it lacks significant depth and the new house would have to be placed to the rear of the property, the side yard would be reduced and it would not be economically desirable for a new single family home. He said regarding the capacity for the water, he referred to the other color photo and said some of the property went un-built because it was originally platted (3.217 acres) as a townhouse block platted in 1965 but was never built so currently there are six homes on that property and this property could have yielded up to 26 units.

Mr. Lamanna asked if they had an accounting of the number of units associated with that block.

Mr. Winovich said it is based on what is currently in Tanglewood and said the sheet shows the units per acre, density and lot units. He continued by saying that this property will not exceed the density of the multi-family units bordering it and they will keep the density the same and the lot coverage and setbacks will be consistent and they would like to have it merged to Tanglewood Lake Association and subject to the same deed restrictions. He said Tanglewood Lake Association would gain architectural review and approve of the development and provide water via the Tanglewood Water Company. He said they are proposing nine to eleven units and received approval for them from Gus Saikaly of the Geauga County Water Resource Department so it has been approved for sewers. He said the proposal shows a preliminary approval for a construction drive off of Route 306 at the south end of the parcel and the current drive is at the north end. He said that ODOT gave the approval as long as the existing drive is eliminated. He said they would prefer an internal drive for access and had conversations with both boards regarding access and added that they did try to merge their parcel with the condo association. He said they did not receive from Condo #3 any feedback and from Condo #4, President Frank Stanovich is in favor of the easement agreement. He explained the property line and said there are four buildings in Condo #3 and they did not want to alter what Geauga County had given them but the county calls the condos by different numbers. He said Condo #4 has eleven units, Condo #3 has four buildings with 26 units and noted that with Condo #3 they tried to combine their condo units with theirs but they have not agreed to give us access.

Mr. Takacs asked if access cannot be obtained, what the plan is.

Mr. Winovich stated that he spoke with ODOT to gain access on the southern part of the property.

Mr. Markley testified by explaining the recorded plat and said it is different from what the county shows. He said they produced a number of different concepts and the mindset was to put concepts on paper and these are envelopes where the buildings could be. He explained the scenarios and the last one shows access off of Route 306 if need be so there is a tremendous amount of flexibility. He said they prefer the internal access but if it can't be worked out there is an alternative off of Route 306 and a number of possibilities.

Mr. Lamanna said that having access off of Route 306 is highly undesirable and it is better to reduce the number of entrances off of Route 306 because it is not a very happy traffic spot right there and added that if the development will not go onto Tanglewood Trail, it removes the purpose of being with Tanglewood.

Mr. Winovich asked if safety was the reason.

Mr. Lamanna replied yes.

Mr. Takacs said there is a lot of traffic on the road.

Mr. Winovich said there is a current precedence that has been set down the road.

Mr. Lamanna said the more you add the worse it gets and if you want to consider this to be a part of Tanglewood, he would prefer it to access through Tanglewood.

Mr. Bob Nailler testified that he lives at 8546 Tanglewood Trail and lives in the Tanglewood #3 development and said that three of the buildings adjacent to the property in question have their front doors no more than 35' to the property line and our board is not in favor of an access or the joining of our association. He said the residents would like the property to remain R-3A single family and we ask the board of zoning appeals not to grant any variances on this property.

Mr. Matt Lynch of 17397 Sugar Hill Trail testified that he has seen this property, has been in the house and it could be used for a single family home. He said that Tanglewood Homeowners Association has not approved anything and it is not part of the Tanglewood water system. He said they have to belong to one association or another and one association voted 25-1 against it. He explained how the road would have to be cut in and said one association already said no and until that, very important formalities need to be considered.

Mr. Paul Brown of 17559 Merry Oaks Trail testified that he is the Vice President of the Tanglewood Homeowners Association and said in general terms, they support this use and are concerned about how that land will be used. He said that water is not an issue and we will be happy as a board to work with the condo associations to attempt some internal access.

Ms. Nancy Connell of 8516 Tanglewood Trail testified that the water is an issue and they would be extending those lines to someone outside of Tanglewood, they would be selling water and to access the traffic onto Route 306 would be horrible. She said there would be nine units where one house is now and it would detract from those living there now.

Mr. Winovich said any building done on the property will be consistent with the green space and the setbacks will be standard with what is around it today.

Mr. Lamanna said what would be approved would be the minimum amount of units to make it work and we (township) have a difficult piece of property here because these kinds create serious problems for us. He said the house is so close to the road and there is a potential issue that someone might want to go commercial and whatever happens, it will affect the people in those condos. He said if it creates what they think is an adverse effect on them, it makes it difficult for the board to act on this and if blended and included with the Tanglewood Association, those condo owners may feel it will adversely affect them. He said that coming off of Route 306 creates such safety issues and a problem could be created by coming off of Route 306 and if the board approves this it is because it would be part of an existing subdivision and the present condo owners have to understand that it may not remain a single family dwelling.

Mr. Lamanna continued by saying that three things could happen and they are that it could stay the same, the house could be torn down and another house could be built and set back on the property or something else could be built there on a basis that it is not a viable residential use. He said other people have to weigh that as well but if they are diametrically opposed, it will be a hard sell.

Mr. Markley referred to the houses to the south on Route 306 and said they are starting to deteriorate after a while along the business corridor.

Mr. Lamanna said you have to convince the neighbors that the project will be beneficial to them.

Mr. Winovich asked Mr. Lamanna to elaborate on the basis of a reasonable return for the property.

Mr. Lamanna said the variance has to be a minimum amount necessary to obviate the difficulty.

Mr. Winovich said that if the Burns family would have sold this property years ago, probably condos would be there now.

Mr. Markley added that with this proposal, it would stay a residential use, not a commercial use.

Mr. Winovich said the vote from Condo #3 was 25-1 to not combine our condo association with theirs.

Mr. Lamanna said he understands their sentiment.

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

Motion BZA 2005-18 – 17477 Chillicothe Road

Mr. Lamanna made a motion to table this application to a date to be determined.

Mr. Takacs seconded the motion.

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

Application 2005-17 by Hoehnen Landscaping Co. (Scott Hoehnen) for property at 16745 Park Circle Drive

The applicant is requesting area variances for the purpose of constructing a warehouse. The property is located in a LIR District.

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

Since there was no further testimony, the public hearing was closed at 12:18 A.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: April 21, 2005

Bainbridge Township, Ohio
Board of Zoning Appeals
March 17, 2005

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 12:18 A.M. by Mr. Michael Lamanna, Chairman. Members present were: Mr. Todd Lewis, Mr. Mark Olivier, Mrs. Ellen Stanton and Mr. Donald Takacs.

Other Business

Mr. Norman Schultz met with the board regarding the signage and lighting at Briar Hill/Briar Patch on Chagrin Road.

Minutes

February 17, 2005

Mr. Lamanna made a motion to adopt the minutes of the February 17, 2005 meeting minutes as written with the change of the address for Thomasville Furniture (2005-4) to 7655 Market Place Drive.

Mr. Lewis seconded the motion.

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

March 3, 2005

Mr. Lamanna made a motion to adopt the minutes of the March 3, 2005 meeting with the penciled in changes reflected in the final copy of these minutes.

Mr. Lewis seconded the motion.

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

Since there was no further business, the meeting was adjourned at 12:35 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: April 21, 2005