

Bainbridge Township, Ohio
Board of Zoning Appeals
July 17, 2003

Pursuant to notice by publication and certified mail, a public hearing was called to order at 7:44 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 2003-19 by Paul Dennis, Agent for property at 16860 Cats Den Road
Reconsideration

The applicant is requesting a conditional use permit with variances for the purpose of establishing a cluster residential condominium development (former application BZA 2001-15). The property is located in a R-5A District.

Mr. Lamanna explained that application 2003-19 will be considered in the business portion of the meeting and there will be no additional public hearing on this application. He explained that a question was raised regarding the conditional use permit approval relating to the road that is for the purpose of serving a cluster subdivision. He said that it will be built to a narrower width and will be less visible to the surrounding properties and the record was fairly clear that the road will be provided and maintained satisfactorily for emergency vehicles. He said one other question was regarding the septic systems so the board will add a condition that they comply with those requirements and it is only proposing to make clear in the motion that it was a practical difficulty and the smaller road was for the purpose of open space and there is more than adequate land to do this.

Application 2003-21 by Hemlock Landscapes, Inc. c/o Dennis Barriball for The Federated Church Family Life Center for property at 16349 Chillicothe Road - Continuance

The applicant is requesting a conditional use permit for the purpose of installing walking paths, labyrinth, landscaping and gardens and establishing recreational facilities. The property is located in a R-5A District.

Mr. Lamanna stated that the board asked the applicant to provide additional information.

Mr. John Bourisseau submitted a letter to the board dated July 17, 2003 and testified that he provided Mr. McIntyre with drawings and photographs. He continued by saying that the Chagrin Soccer Association requested use of the fields in the fall for 20 games during eight weeks. He said ten will be held on Sunday afternoons and ten will be held Tuesday or Thursday evenings and the field will be open for practice Monday through Thursday but not on Fridays or Saturdays and added that a schedule will be developed and a copy provided to the township. He said that at the Chagrin Soccer Association games, it will not be all coaches, there will be players and spectators and they are guests. He said there is an additional concern about noise levels because a door or window was left open during a performance, but the phone number of the

church is in the phone book and if someone calls the church, it will be dealt with personally and added that the sound levels are inconsistent with the use of the facility. He said there was an issue of trespass so he walked the property with Mr. McIntyre and Mr. Orłowski and we (the church) will place signs along the property and referred to the photo supplied. He referred to photo #1 and said it is looking east and it shows the walking path, the parking lot which is 20' to the south of that path, 4' – 5' shrubbery, a 3' – 4' ditch and adjacent properties. He continued by saying that the position of the Federated Church is that it is a shared responsibility and he will ask that the homeowners associations use their newsletters to address the issue of trespass and he will ask that it be included in the mailings of the Chagrin Soccer Association to make people aware of the trespass issue. He said with regards to lighting, we meet those requirements and there is no light trespass but will look into shielding. He explained why the fields were developed.

Mr. Takacs said he walked the west field and the clean-outs could be covered.

Mr. Bourisseau said there are a lot of holes, ruts, dips and rocks and it is not a smooth field. He said the field has not been finished because the church is driven by donations and a donor came in and first wanted to develop the east field and the back field cost over \$20,000.00 to get six acres ready for play and if funds become available, they will be happy to work on the front field.

Mrs. Stanton said she does not understand where the clean-outs are in the front.

Mr. Bourisseau explained the location of the clean-outs per the site plan.

Mr. Lewis said the board originally approved the soccer field in the front.

Mr. Bourisseau said yes but we were told to move the building forward and construct a retention pond in the front and added that the front field was not considered.

Mr. Takacs said it was considered.

Mr. Bourisseau said correct, and in our minds, both fields were to be developed and with our assertion to place the backstop in the back, we were going to develop the back field and there was never a thought to do it in the front.

Mr. Olivier asked if the backstop was for minor church use and not organized games.

Mr. Bourisseau said their thought was to use sports with the church and we consider it to be one of the greater missions of the church and as a community out-reach. He continued to say that there are a number of groups that use the facility but the church will not let those groups monopolize the facility and it will not become a community use.

Mr. McIntyre stated that his observation on sight after walking the property (front and back) with Mr. Bourisseau and Mr. Orłowski, was that he found the front to be a playable field for soccer, the mounding is adequate, additional landscaping would help though, and he found very little difference between the front and back fields and said he has played on many fields.

Mr. Bourisseau said he cannot assume the risk for people to use the front field.

Mr. Takacs said a couple of loads of topsoil could be placed on it.

Mr. Bourisseau told the board that they should ride a lawn mower with him and it has a lot of clover and we cut it at 4" and cannot cut it at 3-1/2" because there are a lot of rocks and as far as insurance, the risk is too high.

Mr. Lamanna stated that the board will take testimony, but there is no need to recapitulate what was said at the last meeting and only new testimony will be heard.

Mr. Chris Barton of 8748 Lake in the Woods Trail testified that Reverend Norley has stated "who could object to laughter of children?" He said that laughter on the soccer field is not likely, there is a lot of whistle blowing and yelling and the issue is doing the right thing. He said the fields were in the front on the plans and the residents have to eat dinner and get children to bed and it does not take into account the activities the church has. He said they want to be able to serve the greater community, but they moved into our back yards and added that his property abuts the paths and he is weary because the fields were changed without contacting the neighbors or the township. He asked where it will stop and it comes down to being a good neighbor and if they can make the other field work, it would be better.

Ms. Helen Sparks of 8665 Lake in the Woods Trail testified that she is the Chagrin Falls Lacrosse coach and stated that they had no difficulty using those fields in the front and said they would prefer to come and pay money to use the front fields at the Federated Life Center and added that she thinks the front fields should be used.

Mr. Lamanna asked Mr. Bourisseau if they have been using the front field.

Mr. Bourisseau replied yes and said very minimal.

Mr. Takacs asked if they paid to use it.

Mr. Bourisseau said yes.

Mrs. Anne Meyers of Chagrin Road asked where the team played before.

Ms. Sparks said they played at River Run and Founders Field but it is a shorter field.

Mrs. Meyers said maybe they should go to the new park in Bainbridge.

Mr. Joe Franzese of 45 Wolfpen Drive, S. Russell read from the 1998 BZA minutes and testified that there is to be a mound and no spillover lighting and said they did not get either. He said the communication starts by being sensitive to the people closest to you first and all the promises they made were not kept.

Mr. Bourisseau said there is no light trespass and no indication with a light meter.

Ms. Mary Feliciano of 46 Wolfpen Drive, S. Russell asked how that was determined.

Mr. Bourisseau said that Mr. McIntyre looked at it and determined there was no light trespass.

Mr. Franzese said "I have two eyes".

Ms. Feliciano testified that she is a teacher and for seven months of the year she feels like she is living next to a Walmart parking lot. She said they are denying the problem exists, but it does exist and there is light trespass when the leaves are off the trees.

Mr. Lamanna explained that it is not a requirement that no light will leave the premises and there is no guarantee that you will not see lights and it is a matter of placement.

Ms. Feliciano stated that she understands that she might see a street light and a need for security, but something needs to be done and what they have done over the years is not encouraging to us.

Mr. Lamanna said he went out and looked at the lights and they are on very short posts and in his observation they have done what they could to modify and improve the situation.

Mr. Jose Feliciano of 46 Wolfpen Drive, S. Russell, asked the board if they are saying that they are going to ignore this and do nothing.

Mr. Lamanna responded by saying everyone will see when the board makes its decision.

Mr. Feliciano testified that this is a very significant problem and he said he thinks he hears the board saying they will not do anything.

Mr. Lamanna said the applicant will take some steps to address the lighting by adding frosted glass etc.

Mr. Feliciano said he did not see anything in the file that related to switching the field location from the front to the back and nothing was approved for the back with a stamp on it and it sounds like no approval was given to go in the back.

Mr. Feliciano said part of the challenge is that there is a need for additional fields for the community but a church should not take it upon themselves and they are at fault for putting a public park back there. He said there is pain in the voices, there is a lot of pain, and he asks the board to have an open heart to that problem and added that this noise is an incredible problem and the residents heard that they are going to put lights at the field in the back.

Mr. Lamanna said the board can only deal with what is before it and if it is not on the table, it cannot be discussed.

Mr. Barton said the residents are concerned that the board is contemplating granting a variance.

Mr. Lamanna said the only things there, are a few poles and grass and they do not need a permit for that.

Mr. Barton said that is the issue because the fields were supposed to be in the front.

Mr. Lamanna said when they start using it is when it becomes an issue.

Mr. Barton asked what assurance the residents have.

Mr. Lamanna said the applicant has no assurance that it will be approved. He explained that if people come in for approval after they build something, they may have to take it down and added that the board is not free to totally regulate what they (church) do there because there are Federal laws and statutes that govern places of worship.

Mr. Barton said he thought the fields were going to be used by the church and not farmed out to be a rec center.

Mr. Lamanna said that one of the issues the board is dealing with is that a school could have been built there with fields. He explained that a conditional use permit does give the board authority to regulate and balance the interest of the various people and we will take into consideration the concerns the people have and the rights of the property owner. He said the board understands there is some displeasure associated with that so they will balance the issues using other alternatives.

Mr. Barton said they are bringing in outside groups and that is a benefit to the church which is to add members so it is a motive for them to bring in new families.

Mr. Steve Thomas, Attorney for the applicant, testified that Mr. McIntyre has been to the premises and dealt with the existing light and the height of the berms and said they are in compliance.

Mr. Lamanna said there is a question as to the amount of landscaping on the berms.

Mr. Thomas stated that if soccer is permitted on the property, the landowner will use discretion when to let it occur.

Mr. Feliciano said that he is challenging the lighting and asked when Mr. McIntyre went out there, what the readings were. He said where you put fields or don't put fields, the only thing approved was up front and some expert went there and told them to put it up front. He said people are saying to put the field up front and there has been testimony already that the field up front has been used for Lacrosse and one of the board members has asked what the difference is between the front and back fields.

Mr. Lamanna explained that the applicant still has a right to ask for a field in the back and they can come and ask for a modification to the conditional use permit anytime and said a conditional use permit can be modified with conditions.

Mr. Feliciano asked what role or rights the neighbors or adjacent property owners have.

Mr. Lamanna said they have certain rights not to be impacted by this.

Mr. Feliciano asked what about the lady who could not eat outside.

Ms. Konny Schantz of 53 Fairfax Drive, S. Russell, asked if the residents would be here if the fields were in the front and said no. She said by opening it up to the Chagrin Soccer League, it is like a public park.

Mr. Thomas said he happens to be a trustee in Chagrin Falls Township and has been for 16 years and it is his understanding that townships are not permitted to regulate noise.

Mr. Feliciano said the board can impose reasonable limitations.

Mr. Lamanna said since what is before us is a conditional use we need to balance how it would affect the neighboring properties.

Mr. Bourisseau said in the spring the field was used by 23 teams and games were held on Saturday mornings and the Chagrin Soccer Association will communicate effectively with their people and monitor the people at these games.

Mr. Lamanna asked about the age group of the children.

Mr. Bourisseau said they are ten and eleven year olds.

Ms. Susan Dippel of 8672 Lake in the Woods Trail testified that she takes offense to this and the use has been everyday and on weekends and said it is not just the noise, it is hundreds of people back there.

Ms. Dippel continued by saying there are five good months in the summer when they are not seeing lights, but then we have the soccer and if the applicant requires outside games, then do it in the front and added "love thy neighbor".

Mr. Bill Koons of 61 Potomac Drive, S. Russell, testified that he lives three streets away and the landowners are going to lose because the residents can hear the songs the people are singing and the attitude of the church is that they are going to win and we have not seen an olive branch thrown to us.

Mr. Feliciano said the residents have never received any communication from the church, only a registered letter from the township and then we received a letter from the church. He said at the last meeting there was a map, provided by the applicant, showing only their property and I suggested and the board agreed that they show a map showing their property and ours at Kensington Green and I think they agreed to that because it is hard for us to visualize. He said their mission far out strips any obligation to the neighbors and we are all very frustrated with their attitude and arrogance.

Mrs. Stanton stated that she does have a problem with bringing in the Chagrin Soccer Association because this field was set up for the front for church use and there is no adequate buffer there. She said she feels the soccer field should be in the front and added that she applauds their reach out to the community but even public parks require a 50' buffer.

Mr. Lewis stated that his thoughts greatly parallel Mrs. Stanton's. He referred to the lighting and the fact that they documented that they will create shielding, indicates there is a problem to the adjacent properties. He referred to Mrs. Stanton's comments about public parks that require a 50' buffer and added that something needs to be done formally on a fixture driven basis to direct the light straight down. He said as far as the soccer field being located in the front, there is no question in his mind regarding that on the original plan, that was asked for by the applicant and was approved, that the field be located in the front. He said his feeling is the existing use is not by the church but for outside use and if the church is getting money for it then take the money and improve the field, hence a donation. He referred to the hours and days requested from the Chagrin Soccer Association for Fall which are for 20 games, ten games will be on Sunday afternoons and ten games will be on Tuesdays or Thursday evenings and the field will be open Monday through Thursday for practice every single week and concluded that 44 time slots are available to accommodate noncongregational activities for a charge.

Mr. Thomas said the church does not charge the Chagrin Soccer Association for the use of the field.

Mr. Lewis said the church does not want to spend the money to prep the field so there is no redeeming hardship to alter the location and this is dangerously close to being a commercial park.

Mr. Takacs stated that he was on the board and made the motion regarding the soccer fields that would be in front and after walking both fields, he did not see a problem in the front. He said they meet the requirement of a 10' – 12' berm but the motion was agreed to plant evergreens but the foliage is lacking, there are sparsely placed pine trees and it must be corrected. He said if the church wants to use the field in the back for their own use, it is not a problem but outside groups should not use the back. He asked if the garden was built with donations.

Mr. Bourisseau said yes, with 100% donations.

Mr. Olivier said that the other board members explained his sentiments very well.

Mr. Lamanna said the issue is the question of to where and what extent and what circumstances the church can use what part of their property for outside groups and if they want to conduct their own activities in the back, if the principal use is for church purposes. He said his own observation is that the front field could be used and it will not require a complete re-grading or re-seeding and it seems that everyone thinks that the use of the field will obviate the situation and the board needs to address the interim and long term solution. He said these are the kinds of activities that should be restricted to the front field and for reasonable hours of the day and added that the question here is about the Fall soccer schedule.

Mr. Lewis said the schedule does not start for six weeks so there is ample time.

Mr. Takacs asked why Friday nights and Saturdays are not proposed.

Mr. Bourisseau said the Chagrin Soccer Association decides what works best for them and he asked them what their primary needs are and added that there are numerous members of the congregation that participate in the association.

Mr. Takacs asked if there are any other activities going on with the church.

Mr. Bourisseau said sometimes there are.

The board discussed the soccer schedule.

Mr. Olivier asked how often soccer is played at Founder's Field.

Ms. Sparks explained that the field at Founder's Field is worse than the front field at the church.

The board discussed the fields and the proposed schedule of the Chagrin Soccer Association.

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

Motion BZA - 2003-21 - 16349 Chillicothe Road

Mr. Lamanna made a motion to modify the existing conditional use permit to allow the following:

1. The use of the area to the rear of the parking lot for a field for general purpose athletic use and including the so-called rustic back-stop on that field. That field shall be used only for the use of the Federated Church Family Life Center for activities directly involving the Federated Church Family Life Center and its permitted uses and will not be made available for outside groups or leagues or associations that are not part of or controlled by the Federated Church.
2. With respect to the front field on the northwest side of the property, use will be permitted with respect to the outside groups, again providing that such use will not commence before 9:00 A.M. on Saturday or Noon on Sunday and will be confined to daylight hours.
3. With respect to the existing berm, the applicant will add about 15 additional pine trees to increase the density of the existing pine trees on that berm to provide the additional screening that was anticipated in the original conditional use permit. With respect to the trees, the trees should be similar in size to the existing trees that are planted there and should be evergreens and with a density to provide a reasonable shield to get a reasonably continuous barrier.
4. With respect to the walking path, the applicant has agreed to take steps to adequately mark the path and to discourage people that are using the path from leaving the applicant's property and trespassing on adjacent neighbor's property.
5. With respect to the lighting on the facility, the applicant will add frosted glass to the lighting on those post lights on the side of the church that faces the property in Kensington Green and the applicant will also put some additional shield over emergency or security lighting currently on that same north side of the building to reduce light being transmitted to the adjacent property owners.

Mr. Takacs seconded the motion.

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

Application 2003-23 by Michael Miller for property at 8336 Summit Drive -
Continuance

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

The zoning inspector's letter dated June 13, 2003 was read and photos of the site were submitted.

Mr. Michael Miller was present to represent this application. He testified that he was not present at the last meeting and that Mr. Giles from the Lake Lucerne Architectural Review Board sat in for him but he did not have anything in writing stating that he could be the representative. He submitted a copy of the floor plan and elevations to the board.

Mrs. Stanton asked if it showed the dimensions of his backyard and the distance from the house to the back property line.

Mr. Miller replied no.

Ms. Anne Patram testified that the distance is about 50'.

Mrs. Stanton said to Mr. Miller that he is asking for 5' but the ARB approved 10' and asked him if he is asking for 10'.

Mr. Miller replied yes and said the ARB actually asked him to push the shed back to 5' from the property line and added that the neighbor to the east has a garden shed 10' off of his property line.

Mr. Lamanna asked about the proposed roof peak.

Mr. Miller said it was a new submission and did not know how technical the drawing had to be.

Mr. Lamanna asked how far back the property line is.

Mr. Miller said he did not know but apparently his neighbor behind him seems to know.

Mrs. Stanton said she went by the scaled drawing from the county.

The board reviewed the aerial photograph of the property and photos of the site.

Ms. Patram said with no leaves on the trees for seven months, behind the shed could be a holding place for a lot of junk.

Mr. Lamanna said with ten feet away, there should be no issues.

Ms. Patram said she and her husband were concerned if the shed were to be placed 5' from the property line.

Mrs. Stanton said the board has asked applicants from time to time to install evergreen trees and asked Mr. Miller if he would be amenable to that.

Mr. Miller said he would be open to the suggestion but said the neighbors are not maintaining their property so it is unfair to him.

The board reviewed the photos of the property again.

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

Motion BZA 2002-23 – 8336 Summit Drive

Mr. Lamanna made a motion to grant the following variances for the applicant to construct the shed, approximately 10' x 12', in accordance with the drawing that the applicant has submitted, and will be an exhibit as part of this application.

1. A variance from the required rear yard setback of 90' to 10' for a variance of 80'.
2. A variance from the required side yard setback of 50' to 20' for a variance of 30'.
3. A lot coverage variance of 20.37% for a variance of 10.37% noting that the shed is only adding .81% additional lot coverage.

Based on the following findings of fact:

1. A practical difficulty exists because it is a pre-existing lot of record where there is insufficient space to be able to construct a shed within the confines of the setbacks.
2. These setbacks have been approved by the local homeowners association.
3. The setbacks are consistent with other setbacks in this area for similar sheds.
4. The shed will not further encroach in the side yard setbacks beyond that where the existing house already lies.
5. The increase in lot coverage is minimal.

With the following condition:

1. Everything is to be stored inside the shed and there shall not be external storage of things around the shed or on the outside of the shed.

Mr. Takacs seconded the motion.

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

Application 2003-26 by Northcoast Cycles LLC dba BMW Motorcycles of Cleveland for property at 7309 – 7315 Aurora (Kent) Road

The applicant is requesting a conditional use permit with an area variance for the purpose of establishing retail sales and service of motorcycles. The property is located in a CR (Commercial Recreation) District.

The zoning inspector's letter dated July 9, 2003 was read and photos of the site were submitted.

Mr. Dale Kramer was present to represent this application.

Mr. Kramer testified that his wife Nancy and Mr. Andy Chess were also present and stated that unfortunately he was unable to purchase the Kredo Hardware building and continued by stating the following:

“As a resident of Bainbridge Township, it is with great pride that I present the following Zoning Applications for the property at 7309-7316 Aurora (Kent) Road, Bainbridge Township, Ohio:

1. In accordance with Chapter 151.02 Part A, CR Commercial Recreational District, of the Bainbridge Township Zoning Resolution, I am applying for a Zoning Permit as a Specialty Retailer for the retail sale of new and used motorcycles as regulated by Chapter 143.02 of this Zoning Resolution.
2. As an ancillary use, I am also applying for a Conditional Use Zoning Certificate as specified in Chapter 117.12 Part A, for the repair of new and used motorcycles.

It is the intention of BMW Motorcycles of Cleveland to add to the value, reputation, and prestige of Bainbridge Township and the Bainbridge business community.

It is hoped that these applications meet with your satisfaction and we request your approval.”

Mr. Kramer referred to the BMW overview and said that it is the same that was presented at the prior hearing. He referred to the site plan and stated the following:

Mr. Kramer explained that there are three parcels and said the former tenants were leasing and had no incentive to improve the property and the building is in disrepair.

“Working with the existing building and site, we have made the following changes:

- Demolished existing house in Northwest corner of property.
- Relocated drive on east side of property and concentrated land use to the west side of property to create large “green” areas.

- Moved large portion of parking to rear of property.
- Increased size of front building from 1,800 s.f. to approximately 4,000 s.f.

The above enhancements to the site will improve the appearance of the property and greatly increase curb appeal.”

Mr. Kramer referred to the parking and stated the following:

“Per Chapter 169.06 of the Bainbridge Zoning Resolution we have provided one parking space for every 250 square feet of usable floor area. (10,000 s.f./40 spaces)”

Mr. Kramer referred to the elevations and stated the following:

“The exterior of the facility is old and outdated. The present color scheme is not harmonious with the surrounding properties. We plan to improve the appearance of the site as follows:

- Expand existing front building to approximately 4,000 s.f.
- Construct a clean, modern facade.
- Eliminate garage door on west side of “warehouse” building and reconfigure the garage door on the east side.
- Re-roof existing “warehouse” building.
- Repaint entire structure, per BMW specifications, using white as the primary color with grey trim.

The above changes will:

- Radically improve the current appearance of the building.
- Give the property greater “curb appeal”.
- Be more harmonious with surrounding structures.
- Enhance the character and value of the adjoining properties.”

Mr. Kramer referred to the interior layout and design and stated the following:

“BMW has strict guidelines for the improvement and renovation of dealership facilities. The requirements include, but are not exclusive to:

- Floor Covering
- Ceiling Treatment
- Lighting
- Retail Floor Space
- Service Department”

Mr. Lamanna asked if there were any signage issues.

Mr. Kramer said he did not foresee any but if there are, he will come back to the board.

Mrs. Stanton asked about the front of the property.

Mr. Kramer explained which part will be green.

Mr. Lamanna said there will be some landscaping, trees and shrubs.

Mr. Takacs asked about the proposed biker bar shown on the floor plan.

Mr. Kramer said it is just a table with stools around it for people to sit in the showroom. He said maybe there will be some coffee and an ice cream cooler but he is not opening a “biker bar” and there will be no alcoholic beverages.

Mr. Lamanna asked about the proposed lot coverage.

Mr. McIntyre explained that it will be at 84.22% with 6% green space.

Mr. Lamanna said it will be an improvement on the lot coverage and no increase in any non-conformity.

Mr. McIntyre said that is correct.

Mr. Lamanna asked about the adjacent uses.

Mr. McIntyre said the use immediately to the east is Lee’s Automotive that has a For Sale sign in front of it, the next closest is the Speedway gas station and added that if the Walmart service station is included in the distance, it is 350’.

Mr. Kramer said that Sirnas is on one side.

Mr. Lamanna asked if all of the repairs will be done inside.

Mr. Kramer said yes.

Mr. Lamanna asked where the motorcycles will be kept that need repair.

Mr. Kramer said they will be kept inside.

Mrs. Stanton asked about the lighting.

Mr. Kramer said there are lights on the telephone pole and he is not sure how much will be put in the parking lot.

Mr. Olivier referred to the awning and asked what it will be used for.

Mr. Kramer said it may be interesting to put in an awning for bikes to be displayed in the daytime.

Mr. Kramer said it is not near a residential neighborhood.

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

Motion BZA 2003-26 – 7309 – 7315 Aurora (Kent) Road

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

1. A conditional use permit to operate a service or repair station for the repair or service of motorcycles ancillary to the business of the sale of motorcycles.
2. With respect to this conditional use, the board will also grant the applicant a variance with respect to the restriction on repair or service shops being located within 3,000' of an existing repair shop or gas station. There are technically three such locations. One involves Walmart which actual location as measured building to building is far beyond the 3,000'. There is also a gas station which is engaged only in the sale of gasoline and a non-repair service 360' or a 2,640' variance and an adjacent car repair shop.

Based on the following findings of fact:

1. The applicant will be storing all of his motorcycles under repair within the facility so from exterior purposes, this facility will not be recognizable as a repair facility and does not have the concern of creating hazards associated with a repair facility where there may be outside storage of vehicles, nor does it have any of the hazards associated with dispensing of motor fuels so the purposes for which the 3,000' restriction was enacted would not apply to this particular site.

With respect to the site itself, the following area variances will be granted with respect to the side and rear yard setbacks:

1. A variance of 64.6' on the west side.
2. A variance of 30' on the south side.
3. A variance of 57' on the east side.
4. A variance with respect to lot coverage which will be 84% for a variance of approximately 44%.

Motion BZA 2003-26 – 7309 – 7315 Aurora (Kent) Road - Continued

Based on the following findings of fact:

1. A practical difficulty exists in the fact that this is a pre-existing lot of record with a pre-existing structure.
2. With respect to the structures, one on these structures will actually be removed which will reduce the nonconformance.
3. With respect to that structure and the other structure it will not have any increase in the nonconformity of the setbacks.
4. With respect to lot coverage, that will also be improved. It is a small lot so it will be very difficult to maintain the lot coverage given the existing construction on the property. There will be an approximate 10% improvement in lot coverage.
5. The applicant is also providing some additional green or undeveloped areas in the front and sides of the property.

With the following condition:

1. The applicant will provide some reasonable landscaping with ornamental trees and/or shrubs for the area which will ameliorate the large amount of lot coverage.

Mr. Takacs seconded the motion.

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

Application 2003-27 by Mark and Donna Mueller for property at 18105 Snyder Road

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

The zoning inspector's letter dated July 9, 2003 was read and photos of the site were submitted.

Mr. Mark Mueller was present to represent this application.

Mr. Mueller testified that he is requesting a variance for the purpose of constructing a shed on his property and his neighbor Rich Kluchar is doing a similar building and is also here tonight for a variance. He said he would like to place the shed in the corner of his property which is 19' – 20' off the property line which is less than the required 50' setback and the property line is lined with dense mature pine trees and it would be an improvement for Mr. Kluchar because he would not be able to see the shed.

Mrs. Stanton asked Mr. Mueller for an explanation of the location of the proposed shed and where Mr. Kluchar proposes to put his.

Mr. Mueller explained the proposed locations and the similarity of the sheds.

Mr. Lamanna asked what the reason is why the shed cannot be built 50' off of the property line.

Mr. Mueller said that he has a sliding glass door and he would be looking at the building and he does not think anyone would want it in the front yard.

Mr. Takacs asked if the shed could be moved back.

Mr. Mueller said it would be shifting an eyesore and it will be used for lawn equipment storage.

Mr. Lamanna said when you put up a storage shed, you should look at it, not your neighbor and there is no reason why it cannot meet the 50' setback.

Mr. Mueller said no one will see it in the corner and explained the line of site of his neighbor and said it is a great rationale of not putting it in the front yard and added that you do not want to see the building either.

Mr. Lamanna said the board is not trying to be difficult but we do have standards we have to uphold.

Mr. Mueller said it would be obnoxious anywhere else.

Mr. Lamanna said some landscaping could be installed around it and added that there has to be a physical reason for not being able to meet the setbacks.

Mr. Mueller explained the location of the stream and said it overflows the banks in the spring.

Mr. Takacs asked about the proposed location per the photograph.

Mr. Mueller said he put stakes in.

Mr. Takacs asked what is wrong with placing the shed in the back.

Mr. Mueller said the location he is asking for is fine with the neighbor and the shed will be hidden with pine trees and if it were to be placed in the front yard, it would be totally obnoxious.

Mr. Lamanna said there has to be reason.

Mr. Mueller said from what he has heard tonight, people are concerned with views.

Mr. Lamanna said they had to do with a conditional use permit and if the board grants a variance to a setback, there has to be a reason and there has to be a physical limitation to grant the variance.

Mr. Mueller asked if there is a restriction on the distance from the home to the structure.

Mr. Lamanna replied no.

Mr. Mueller asked what if the home was 30' from the stream.

Mr. Lamanna said if the stream was close to the house, maybe it would make a difference.

Mr. Takacs asked what is in the back of the property.

Mr. Mueller referred to the 30' span mentioned earlier and asked if there would be any restrictions on building it closer to the stream.

Mr. Lamanna said that is hypothetical and the board does not deal with hypothetical situations. He said people have to come here with a plan and there is no physical impediment on this property.

Mr. Richard Kluchar, next door neighbor, testified that he is next on the docket and said he thinks where Mr. Mueller is putting the shed is a better choice.

Mr. Lamanna said it is not up to the board as to what is a better choice.

Mr. Kluchar said that about 1-1/2 years ago, Joan Demirjian wrote an article in the newspaper about sheds not having to meet the current setback anymore and asked if that passed. He showed a copy of the article to the board.

Mr. Lamanna said the trustees never adopted it into the zoning code and explained to Mr. Kluchar, as an example, that since his house is 41' from the side property line, as long as a 41' setback is maintained, he could have built a shed 41' or not beyond the side of his house.

Mr. Mueller said that his proposed location is still a better location for aesthetics.

Mr. Lamanna said the township cannot zone for aesthetics.

Mr. Mueller said he had mentioned about water coming onto his property from the stream.

Mr. Lamanna told Mr. Mueller that he could withdraw his application.

Mr. Kluchar said that in 1941, the Corp of Engineers used dynamite to make that ditch 50 feet at a time and it is an 8' wide ditch that is 4' – 5' deep for drainage.

Mr. Lamanna said the board can deny this application or it can be withdrawn and the applicant can come back at another time. He explained the difference between withdrawing the application or a denial from the board.

Mr. Mueller asked what he should do with the stream issue.

Mr. Lamanna told Mr. Mueller that the board could postpone this and he could go back to generate more evidence.

Mr. Mueller asked if this type of variance had been granted before and said he demonstrated a practical difficulty.

Mr. Lamanna told Mr. Mueller that he had an option.

Mr. Kluchar asked if Mr. Mueller could move the shed over to be in line with his house.

Mr. Mueller said he is trying to avoid that and asked if the water issue is a practical difficulty.

Mr. Lamanna said that one of the problems is that there is a lot of room back there.

Mr. Mueller said that he is not experienced with variances.

Mr. Lamanna said the bigger the lot you have, the less likely you will get a zoning variance and explained the reasons such as ravines, etc.

Mr. Mueller said the only space is between the stream and the house.

Mr. Lewis said the distance between the stream and the house is 100'.

Mr. Mueller asked if the board would debate 5' from his home.

Mr. Lamanna told Mr. Mueller that he has 100' and suggested that this application be postponed.

Mr. Mueller told the board they will never have the total view of what he is trying to present.

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

Motion BZA 2003-27 – 18105 Snyder Road

Mr. Lamanna made a motion to table this application to the next regularly scheduled meeting to be held August 21, 2003.

Mr. Takacs seconded the motion.

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

Secretary's note: Application 2003-27 for property at 18105 was withdrawn by the applicant on July 18, 2003.

Application 2003-28 by Richard Kluchar for property at 18101 Snyder Road

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

The zoning inspector's letter dated July 9, 2003 was read and photos of the site were submitted.

Mr. Richard Kluchar was present to represent this application.

Mr. Kluchar testified that the only difference he has with his property is that they have a heavy tree line and if he would move it over, it would be out in the open and in the middle. He said here it is hidden behind heavy trees and added that Mr. Jim Zydyk from Weathervane, neighbor to the north, has no objection.

The board discussed the proposed location of the shed.

Mr. Kluchar explained the proposed location per the photos that were submitted.

Mr. Lamanna said as indicated, the board could grant a variance to 41' off the property line.

Mr. Kluchar said he could do it but it would block his view to the lake.

Mr. Lewis explained that the house is 41' off the lot line.

The board discussed the variance request.

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

Motion BZA 2003-28 – 18101 Snyder Road

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

1. A variance from the required side yard setback of 50' to 41' for a variance of 9'.

Based on the following findings of fact:

1. A practical difficulty exists in that the existing house side setback is 41' and this proposed shed will not further encroach into the side yard setback and therefore will not adversely affect the neighboring property owner.

Mr. Takacs seconded the motion.

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

Application 2003-29 by Gene Melen for property at 7466 Samuel Lord Drive

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 July 9, 2003 was read and photos of the site were submitted.

Mr. Gene Melen was present to represent this application.

Mr. Melen testified that this application is to replace a garage that was destroyed by falling trees and said they were real substantial trees to make the existing structure a total loss and he found out since then there are setback requirements.

Mr. Takacs asked if he will be using the existing floor plan or foundation.

Mr. Melen said the slab was destroyed and cracked into enough pieces so it is no longer usable and added that it was not built to current standards and his guess is that it was built in 1977 because there were initials carved into the wet cement with that date.

Mr. Takacs asked Mr. Melen how long he has owned the property.

Mr. Melen said he purchased it April 1st and six weeks later the trees fell on the garage.

Mr. Lamanna asked if it will have the same footprint.

Mr. Melen said the footprint will be slightly larger.

Mr. Lamanna asked how much slightly larger will it be.

Mr. Melen said not quite 10' wider and 15' deeper.

Mr. McIntyre testified that the original building was 21' x 16' and the proposed building will be 24' x 36'.

Mr. Melen said the original building was 19.5' on the side but it was not parallel to the side line.

Mr. Takacs asked if this is a new drive per the photo.

Mr. Melen said it is all existing and the photo was taken from standing on the pad looking towards the road.

Mr. Takacs asked if it is the front or back of the pad.

Mr. Melen said the pad is with the street behind you and added that it cost \$350.00 to take the remains to a landfill.

Mr. Lewis asked Mr. Melen how he would describe the former structure.

Mr. Melen said it was 10' to 12' at the peak.

Mr. Takacs asked what the new structure will be used for.

Mr. Melen said it will be for his car, truck and motorcycle.

Mr. McIntyre said the proposed structure shows 20' for the height.

Mr. Lewis said it is 19' on his scale.

Mr. Melen said the spot where it will be sitting is in a swale.

Mr. Lewis asked how many stories the house is.

Mr. Melen said the house is a ranch style.

Mr. Lamanna asked if the existing house has a garage.

Mr. Melen said yes and the driveway is paved but got abused by the equipment hauling out the demolished building.

Mr. Lamanna asked how the previous building was built so close in the first place.

Mr. McIntyre said in 1977 there was a 20' side yard setback and in 1979 the regulations changed.

Mr. Lamanna said the objective is to try to get things back into perspective and this is a pretty big building.

Mr. Melen said there was a building there at one time.

Mr. Lamanna said but now you want to build a bigger building.

Mr. Melen said if there would have been a way to salvage it, he would have.

Mr. McIntyre said that in 1977, it was a 30' setback for non-residential buildings.

Mr. Norm Schultz of Chagrin Road testified that the development (Stone Ridge Colony) was built in the 1960s.

Mr. Lamanna asked if the proposed building can be shifted over a little bit, but there is an existing driveway.

The board discussed shifting the proposed garage over.

Mr. Melen said he widened the drive out to match up with the width of the proposed building and it will pose a problem because of the terrain and if he turns it, there is a pretty deep slope going from the septic and explained that he would have to bring in compacted fill.

The board discussed moving the garage to 30' from the property line.

Mr. Melen said he would be happy with 30'.

Mr. Lamanna said there is a topological issue.

Mr. Melen said he spoke with the neighbor in the back and he cannot see it.

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

Motion BZA 2003-29 – 7466 Samuel Lord Drive

Mr. Lamanna made a motion to grant the applicant the following variances for the purposes of replacing a detached garage that was destroyed in a storm.

1. A variance from the required side yard setback of 50' to 36' for a variance of 14'.
2. A lot coverage variance from the maximum of 10% to 10.38% for a variance of .38%.

Motion BZA 2003-29 – 7466 Samuel Lord Drive - Continued

Based on the following findings of fact:

1. A practical difficulty exists.
2. With respect to the lot coverage variance, it is a minimal variance over that permitted and also the applicant only has a 1.7 acre lot in a three acre district so he has much less lot coverage to start with because this is a pre-existing lot of record.
3. With respect to the side yard variance, the applicant is decreasing the side yard encroachment of the prior structure.
4. The zoning district is previously subject to a 30' side yard setback. In addition, the applicant has an existing driveway located on that side of the house that fed into this location and this variance will allow the applicant to continue to use that driveway.
5. Alternate orientations of the building to fit within the full side yard setback are not practical because of the substantial existing slope of the property in that area which would make it very difficult to orient the building in that direction.

Mr. Takacs seconded the motion.

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

Mr. Lamanna recessed the public hearing at 11:00 P.M. and opened the regular meeting and stated that application 2003-30 will be postponed until later so the board can clear up two other applications.

Application 2003-19 by Paul Dennis, Agent for property at 16860 Cats Den Road
Reconsideration

The applicant is requesting a conditional use permit with variances for the purpose of establishing a cluster residential condominium development (former application BZA 2001-15). The property is located in a R-5A District.

Mr. Lamanna made a motion to amend the motion as follows to add the additional findings of fact and the additional condition included therein.

Based on the following findings of fact:

1. There is a practical difficulty justifying the narrower road. The purpose of the requirement is to assure adequate access and traffic flow, as well as to assure that emergency vehicles can reach the buildings.
2. The road is of adequate construction.

3. The small number of homes means minimal traffic and little need for a wide road.
4. There will be a small incidence of conflicting traffic and provision has been made to reduce that situation.
5. It is consistent with the spirit and intent of the cluster zoning and the resolution in general to preserve sensitive areas and present a rural appearance. A smaller road does this.

With the following condition:

1. The applicant will comply with the requirements of the Geauga County Health Department or obtain appropriate variances from their requirements.

Mr. Takacs seconded the motion.

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

Application 2003-9 by Judson Retirement Community for property between Franklin Street, Rocker Avenue and Chagrin Road in Bainbridge Township (Phase I and Phase II)

The following discussion was held regarding this application.

Mr. Lamanna stated that the board did receive some comments from some of the interested parties and did address most of the comments and some are already covered by the zoning resolution.

Mr. David Mitchell asked if the board can elaborate on the times of construction and satisfaction of the conditions, time limits, etc.

Mr. McIntyre referred to Chapter 109.06 (b) of the Bainbridge Township Zoning Resolution which states the applicant has one year to start construction and two years to finish construction.

Mr. Mitchell asked if the issue of lot consolidation was addressed.

Mr. Lamanna said yes, that was one of the requirements as is acquiring sewer and water.

Mr. Mitchell asked if the construction hours included Saturdays from 7:30 A.M. to 5:00 P.M.

Mr. Lamanna replied yes.

Mr. McIntyre referred to the zoning resolution.

Mr. Lamanna said the hours are not restricted on Saturdays.

Mrs. Anne Meyers said that 7:30 A.M. – 5:00 P.M. on Saturdays is unacceptable.

Mrs. Norma Hendler stated that on Saturday, people who have patios and pools cannot sit there without being inundated with noise.

Mrs. Meyers said she would like the hours of operations to be half-way decent.

Mr. Mitchell said we are concerned about kids playing soccer on Saturday and not concerned about construction on Saturday.

Ms. Linda White said she has two houses going up across the street from her and they work on Saturday and Sunday.

Mr. Lamanna said the board did not have a problem with them not working all day on Saturday.

The board discussed the road and that it will be a public road and not a limited access road and who builds it will be up to the township trustees.

Mrs. Hendler referred to the mounding, fencing and trees and asked the board if they included the whole length of the road or if it will be limited to a certain area and added that some properties on Brigadoon Drive abut that road area.

Mr. Lamanna said when the road reaches Chagrin Road, it will be more likely impacted.

Lighting was also discussed.

The discussion was concluded.

Amended Motion BZA 2003-9 - Judson Retirement Community for property between Franklin Street, Rocker Avenue and Chagrin Road in Bainbridge Township (Phase I and Phase II)

Mr. Lamanna made a motion to amend the motion for BZA 2003-9 to reflect the modified motion which further clarifies the findings of the board with respect to the record on this case.

The record in this case being considered by the board will include all of the filings that are in the official file of the application and such other documents that have been added from time to time as exhibits. The board will also include the briefs and reply briefs that have been filed by the applicant and the other interested parties including the exhibits thereto, the various traffic studies, the bound descriptive booklet on the Judson Retirement Community and everything else in the folder which will be marked as an Exhibit.

I. The Board makes the conclusion of law that the project as proposed by the applicant, including the free standing independent living units meets the definition of a residential care facility (“RCF”) as that term is used in the zoning resolution and the Ohio Revised Code. This conclusion is based upon the facts set forth below, and in particular on the following findings:

- a. This project is being operated as a unitary operation and that people can move from independent to assisted living.
- b. The residents obtain no specific legal right to any unit. Judson remains the single owner of the property (which is not divided in any way).
- c. The term ‘facility’ as used in many contexts, including other regulatory ones, means collections of buildings which are engaged in a single enterprise.
- d. The definition of RCF contemplates that that there will be independent as well as assisted living units within the same facility.

This finding is subject to the applicant’s adherence to the conditions set forth below.

II. The Board concludes that the facility proposed by the applicant is a permitted conditional use in the district in which is to be located under Section 135.06 of the Zoning Resolution, and makes the following findings of fact:

1. The proposed residential care facility will be bordered on at least one side by a professional office district, convenience business district or commercial recreation district.
2. The minimum lot size has been satisfied as it exceeds five acres.
3. The proposal meets the ratio of beds to resident bedrooms.
4. The proposal also meets the requirements on bedroom space, parking spaces, site plan and the requirements of 135.06 subsection 6, 7, 8, and 9, provided that these are continuing conditions that must be complied with.
5. It meets the area, yard and bulk requirements and the maximum lot coverage is not exceeded at 20%.
6. There has been the appropriate and satisfactory review by the fire department in conformance with 135.06(12).

The determination and findings are subject to the following conditions being satisfied, and no zoning certificate will be issued until compliance with the requirements in items 3, 4, and 5 have been satisfactorily demonstrated to the zoning inspector and/or the county prosecutor.

1. The POD screening regulations set forth in Chapter 141 (g) with respect to adjacent residential areas shall be complied with and final plans will be subject to review to assure compliance with those requirements.
2. The requirements set forth in 135.06 subsections 13, 14, 15, and 16 will be continuing conditions applicable to this conditional use permit.

Amended Motion BZA 2003-9 - Judson Retirement Community for property between Franklin Street, Rocker Avenue and Chagrin Road in Bainbridge Township (Phase I and Phase II) - Continued

3. With respect to the requirements as to connection to a public water system, the board finds, because of the nature of this facility, that it must be connected to a public water system, it cannot be served by a well system due to the existing water concerns in the area and the size of the facility and its layout. Therefore, the applicant must obtain a binding legal written commitment for the supply of such water.
4. Likewise, the board finds that this proposed facility must be connected to a public sewer system and no alternate on site treatment would be acceptable due to site conditions and potential impact on neighboring properties. Therefore, the applicant must obtain a binding written legal commitment for sufficient sewer capacity.
5. The applicant will have obtained legal title to some or all of the existing Metroparks land dividing their parcels such that their parcels will be contiguous and applicant will be able to build its structures where shown on the drawings in conformance with all applicable setbacks. Applicant will complete a merger of all parcels forming a part of the RCF or its access.
6. The applicant will comply with all applicable governmental requirements with respect to stormwater runoff and wetlands.

The board finds that these conditions are consistent with the past practices of the board regarding compliance with these types of requirements, are a reasonable and practical method of addressing serial governmental approvals and will assure that the applicant fully complies with all of the requirements for this conditional use.

The board also finds that this facility will provide a good transitional use from professional office district to a residential district which is one of the purposes of this conditional use. In addition, it will also transition from a more densely developed residential to less densely developed residential areas. This based on the following findings of fact:

1. This property abuts residential areas of the township that are densely developed for historical reasons and a POD district.
2. The lot coverage ranges from 40% - 50% in these areas.
3. This particular facility will have a lot coverage of 20% which will provide a good transition to the remainder of this residential district where lot coverage typically is 10% or less.

In addition to the specific requirements for the conditional use set forth in 135.06, there are other general standards and requirements for conditional uses. The board makes the following findings with respect thereto:

Amended Motion BZA 2003-9 - Judson Retirement Community for property between Franklin Street, Rocker Avenue and Chagrin Road in Bainbridge Township (Phase I and Phase II) - Continued

1. This use is harmonious with the purposes of the zoning regulation which permits this type of use and is also providing the transitional situation that this use is intended to promote and also the arrangement and design of the project are generally harmonious with the residential design and residential character.
2. The operation and design is primarily residential in nature and does not change the essential character of the neighborhood.
3. It is not a hazardous type of operation or have other emissions or the like that could be disturbing.
4. The board has examined carefully and in great detail the provision of public services (police, fire, rescue, etc.) and finds that with an access road from Chagrin Road into the facility and into the adjacent areas of the township, principally Rocker Avenue and Franklin Street, as provided in the conditions below, public services can be provided to this facility in an efficient and safe manner, without undue burden and with timely response. This occurs because the access road will lessen the burden in providing services to those adjacent areas.
5. There will not be an unreasonable increase in demand on those services and (subject to the conditions) a burden from the cost of providing such services.
6. Based upon the residents and activities at the facilities, the number of employees and the various traffic studies, this facility will not substantially increase traffic or adversely affect traffic in the area in a material way.
7. The board also finds that the access road should reduce the flow of traffic on lower Chagrin Road and in the Cedar, Pine area and will reduce the need for emergency vehicles trying to reach areas off Franklin Street from having to use that part of the highway.
8. Additional information with respect to the actual traffic flow generated by the facility and further study may be required before the second phase is actually built to determine whether additional modifications or conditions would be required to manage that traffic flow.
9. The board has examined the vehicular approaches to the access road including pictures of the proposed entrance and testimony on site lines at that point of access. We find that this is a suitable point of access that the site lines appear to be quite adequate and will not create any undue hazards on Chagrin Road at the new intersection.

Amended Motion BZA 2003-9 - Judson Retirement Community for property between Franklin Street, Rocker Avenue and Chagrin Road in Bainbridge Township (Phase I and Phase II) - Continued

10. The board would also note that there is a set of specific criteria regarding conditional uses set forth in Chapter 117.13 (b) that are operational in nature including such things as the 100' limit from property lines, certain restrictions on lighting, on access roads and the like. The applicant must comply with all of those specific requirements.

III. In the course of the testimony, numerous valid concerns have been raised by the residents concerning the potential impact of this facility upon their property, upon the use of Chagrin Road and upon the provision of township services to this area. Based upon that testimony, we find that a number of conditions need to be applied to this proposed facility in order to ensure that any adverse impact is ameliorated to the greatest extent possible. We find that these conditions are necessary to ameliorate the adverse effect and we also would find that absent these ameliorating conditions that these adverse effects could be such as to otherwise cause this board to deny this application. Therefore we find that satisfaction of these conditions is mandatory in order for this application to have satisfied the requirements for granting this conditional use.

1. Access Road

1. An access road be provided from Chagrin Road into the facility with connection to Rocker Avenue and/or Franklin Street.
2. The access road will be built to appropriate county standards for the type of use of the road.
3. The access road will be available to emergency and non-emergency vehicles.
4. Any lighting on this road will be done in a way so it does not adversely impact the neighboring properties, especially as it approached Chagrin Road. The lighting on the road will be subject to review by the zoning inspector to assure that there is minimal light pollution.
5. Where the road goes upon the so called Begy property and approaches Chagrin Road, berming, fencing and/or landscaping will be provided to provide a buffer between the road and the adjacent property owner to the east so as to reduce the amount of noise and also to prevent headlights from shining into the property at night. The applicant will provide appropriate design of that for review and approval by the zoning inspector.

Amended Motion BZA 2003-9 - Judson Retirement Community for property between Franklin Street, Rocker Avenue and Chagrin Road in Bainbridge Township (Phase I and Phase II) - Continued

2. Lighting

Lighting at the facility will be done so as to minimize upward spillage and minimize lighting adjacent areas. No light will be permitted to shine directly into any adjacent dwelling. Street lighting on the independent free-standing units will not be more than 16 feet high with minimal intensity.

That lighting will be designed to minimize spillage onto adjacent property and to prevent this facility from becoming a light island in the middle of the existing residential areas.

3. Signage

The applicant will meet all of the existing requirements and limitations on signage applicable to the district and this particular facility.

4. Construction of the Facility

1. The applicant will take appropriate measures to regulate the number and flow of construction vehicles so as not to impede local traffic.
2. Construction will take place during reasonable hours, not sooner than 7:30 A.M. nor later than 5:00 P.M. for outside work or 8:00 P.M. for other work and not on Sundays and not on Saturdays after 1:00 P.M.
3. All construction will be done in a way to minimize dust and dirt and contractors will be required to keep any of the adjacent roads which they use clear of mud and other debris from the construction of the facility.
4. The access road will be substantially built and improved (other than paving) prior to major site construction and will be maintained so as to minimize dust coming from the access road which could be an annoyance to the neighbors.

5. Taxes

1. The board specifically finds that if this facility does not fully pay its taxes to the County of Geauga and the Township of Bainbridge, that it would create an undue financial burden upon those governments due to the cost of the additional public services required for the facility without having additional revenue.

Amended Motion BZA 2003-9 - Judson Retirement Community for property between Franklin Street, Rocker Avenue and Chagrin Road in Bainbridge Township (Phase I and Phase II) - Continued

Therefore to the extent that all or any part of this facility becomes exempt from taxes, the applicant will be required to pay to the county and to the township 'in lieu of taxes' an amount that would be equal to the amount of taxes that would otherwise be due on such exempt portion with respect to levies or assessments with respect to providing services that benefit generally or specifically this facility including but not limited to police, fire, road, general administration, library, health services and the like. These funds would have the effect of defraying such burden.

6. Traffic Study Prior to Phase II

Prior to commencement of Phase II, the applicant will perform a traffic study with respect to the actual traffic patterns on the property and adjacent roads to evaluate the impact of Phase II. This study will be submitted to the board for review at public hearing to determine whether additional conditions or signage or directional devices or limitations are needed to prevent adverse traffic consequences.

7. Residential Care Facility

1. This facility must actually be operated in the way it has been represented in the record; namely that it is run as a unified complex.
2. The residents will acquire no ownership or similar rights in any of the living facilities. The applicant will retain all ownership and there will be no subdivision, condominium creation or tenancy rights with respect to the units.
3. The applicant will continue to use a service agreement substantially similar to the one which is part of the record. The residents of the facility will be only those people who have a reasonable expectation within a reasonable time of using the specialized services that are being provided by the RCF by reason of age or physical or mental impairment.
4. With respect to any services being provided, the services shall be provided only for residents and their bona fide guests.
5. No outside persons will be allowed to receive services on any type of fee or commercial basis.

Amended Motion BZA 2003-9 - Judson Retirement Community for property between Franklin Street, Rocker Avenue and Chagrin Road in Bainbridge Township (Phase I and Phase II) - Continued

6. With respect to non-commercial activities that may be open to the public such as meetings or speakers and the like, the applicant will be limited to no more than two such events per week and will use all reasonable efforts to control the number of outside persons who are unrelated to residents to no more than 25 people for each such event.
7. The board notes that this condition is subject to future amendments based upon review of actual issues regarding traffic, parking, and impact on neighboring properties, to determine whether or not these are creating any undue burden and whether or not a more flexible approach is warranted on those considerations.

8. Annexation

The applicant has stated that they will not seek annexation of the facility. The applicant will provide an agreement to the township within a reasonable time that they will not seek annexation of the facility and its property to the Village of Chagrin Falls.

9. Ratio Between Assisted Living and Independent Units

Because consideration of issues relating to the provision of public service and traffic consideration were based upon an assumed ratio of 80 to 20 independent to assisted, and higher assisted living could adversely affect those matters in a way not considered on this record, the number of assisted living units (assisted living being those where a resident is receiving a substantial amount of the personal care services) will be no more than 25% of the total units.

The board notes that this is subject to the future adjustments based upon a review of the actual experience of the RCF with respect to emergency calls and other situations to determine whether there would be an adverse impact either on the township or on the local residents if there were a higher percentage. Since the findings are based on the above assumption, a change would require further review of those issues to determine what the impact would be and to ensure that it would not be substantially adverse.

The board notes that the decision will not become final until these minutes are approved at a subsequent meeting.

VARIANCE REQUEST

Mr. Lamanna made a motion to grant the variance for the purpose of constructing a three story building as shown on the plans submitted by the applicant and grant a height variance of 9' for a total of 44' for the height of the building.

The board makes this decision based on the following findings of fact:

1. One of the primary purposes of the height limitation is that of safety considerations. The testimony of the fire department is that they are able to adequately serve with their current equipment the configuration and structure of the proposed buildings.
2. The building will be sprinklered which substantially reduces any hazard from the additional height and makes the fire hazard less than other, less tall, buildings in the township.
3. Although they are three story, 44' high structures, they look like residential buildings, and they are located in most cases, substantially distant from the residential areas. Therefore, the added height will not adversely affect these areas by creating an appearance that is imposing or substantially impairing line of site.
4. The buildings are located in a low area where they will blend with the topography and will not be highly visible from the higher residential areas. Much of the residential area is separated from these buildings by the free standing units.
5. Shorter hallways are necessary for efficiently providing services to residents who need them by reason of age or infirmity.
6. The variance is not substantial based on the fact that certain other areas of the township permit buildings to be three stories or 45' and this is a similar type of use to that which might be permitted in that area.
7. The additional height will not change the character of the neighborhood to any greater extent than would a two story building. Most of the residences are far from the taller buildings. Those that are closer are in an area of very dense residential development and thus would not be adversely affected.

Amended Motion BZA 2003-9 - Judson Retirement Community for property between Franklin Street, Rocker Avenue and Chagrin Road in Bainbridge Township (Phase I and Phase II) - Continued

8. An additional story will not impact the delivery of government services. Any additional time required to go from a second to third floor, one flight of stairs will be minimal in terms of the overall time of response by the fire department.
9. The spirit and intent of this particular provision would still be observed with this higher building and it would give substantial justice to the applicant.
10. The variance would not derogate from the purposes of the zoning regulations in as much as it permits this type of use in this area.
11. Other factors are not significantly relevant to this variance.

With the following condition:

The applicant must satisfy any fire department requirements with respect to equipment access to these buildings such as hard surface access areas.

Mr. Takacs seconded the motion.

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

Minutes

Mr. Lamanna made a motion to adopt the minutes of the June 19, 2003 meeting as written with the following exceptions and additions.

1. The approval will not include the motion with respect to BZA 2003-9 as that motion has been amended and such amended motion will be acted upon at the next regularly scheduled meeting to be held August 21, 2003.
2. The board will include as far as the minutes, and which will become final tonight, the amendments to the motion with respect to BZA 2003-19 for property at 16860 Cats Den Road.

Mr. Takacs seconded the motion.

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

Mr. Lewis departed from the meeting at 11:35 P.M.

Mr. Lamanna recessed the regular meeting at 11:35 p.m. and reconvened the public hearing.

Application 2003-30 by Gutoskey & Associates, Inc. – Matt Bryant, P.E. for George Quay III for property at 17075 Savage Road

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

The zoning inspector's letter dated July 9, 2003 was read and photos of the site were submitted.

Mr. Matt Bryant of Gutoskey & Associates and Mr. George Quay were present to represent this application.

Mr. Bryant testified that Mr. Quay owns separate parcels and explained that they propose to do a lot split and a variance is needed to use the existing driveway. He said two other lots are owned by Mr. Quay and his sister.

The board discussed the parcels.

Mr. Bryant said they don't want another drive directly on Savage Road so they want to obtain an easement to use the existing drive on Savage Road.

Mr. Quay said he is the owner of the property and an easement is to get to the parcels.

Mr. Bryant said the reason for the variance is the usable land on Savage is not large enough for a home and a septic system and the lot they are creating conforms to R-3A zoning but they are concerned about having another drive on Savage Road because of the site distance. He submitted a letter from Patricia Lybarger supporting the variance.

Mr. McIntyre said the county gets involved when there are four or more lots.

The board discussed the proposed lot split.

Mr. Bryant said they would like to have an easement to share a driveway.

Mr. Lamanna said the driveway must come off the frontage on the property and the board will ask that the applicant enter into a formal easement agreement for this property.

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

Motion BZA 2003-30 – 17075 Savage Road

Mr. Lamanna made a motion to grant the applicant a variance from Chapter 161.11 dealing with driveways to allow the applicant to perform a lot split and consolidation which will create a revised parcel fronting on Savage Road.

Based on the following findings of fact:

1. The most feasible location to build on this parcel is across a large ravine or it would put a large ravine between the house and Savage Road so it is not feasible to easily exit onto Savage Road.
2. There is an existing parcel of land containing a private drive for two other parcels in the area which is available for use so the variance would apply to allowing both the adjacent parcel and this proposed new parcel on Savage Road for a variance to zero feet for an access road to that driveway.

With the following condition:

1. In order to avoid future problems, as a condition of granting this variance, the owner of the parcel containing the driveway which is the same as the owner who is applying for this variance, will enter into an appropriate easement agreement with respect to the driveway on such parcel, allowing access and addressing issues of future maintenance of the driveway which document will be recorded with Geauga County and will be submitted to the zoning inspector for his review or review by the county prosecutor.

Mr. Takacs seconded the motion.

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

Application 2003-31 by Bainbridge Land Development , LLC for property at 7185 Kent (Aurora) Road

The applicant is requesting an area variance for the purpose of constructing a retail building at the Marketplace at Four Corners Shopping Center. The property is located in a CR (Commercial Recreation) District.

Mr. Takacs made a motion to postpone this application until the next regularly scheduled meeting to be held August 21, 2003 at the request of the applicant.

Mr. Lamanna seconded the motion.

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

Since there was no further testimony the public hearing was closed at 11:59 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: August 21, 2003

Bainbridge Township, Ohio
Board of Zoning Appeals
July 17, 2003

The regular meeting of the Bainbridge Township Board of Zoning Appeals was called to order at 11:59 P.M. by Mr. Michael Lamanna, Chairman. Members present were Mr. Mark Olivier, Mrs. Ellen Stanton and Mr. Donald Takacs. Mr. Todd Lewis was absent.

Applications for next meeting

Application 2003-31 by Bainbridge Land Development, LLC for property at 7185 Kent (Aurora) Road

The applicant is requesting an area variance for the purpose of constructing a retail building at the Marketplace at Four Corners Shopping Center. The property is located in a CR (Commercial Recreation) District.

Application 2003-32 by Mark E. & Jennifer Fleming for property at 18024 Harvest Drive

The applicants are requesting an area variance for the purpose of constructing a front porch. The property is located in a R-5A District.

Application 2003-33 by Nancy J. Kelley for property at 7080 Cedar Street

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

Application 2003-34 by Chris W. Brown for Prestige & Premier Co. for property at 8260 Wembley Court

The applicant is requesting an area variance for the purpose of constructing landscaping, a pool and patio. The property is located in a R-3A District.

Application 2003-35 by Bainbridge Associates, Ltd. for property at 16765 Chillicothe Road

The applicant is requesting an area variance for the purpose of installing a ground sign. The property is located in a CB District.

Application 2003-36 by Bainbridge Associates, Ltd. for property at 8564 E. Washington Street

The applicant is requesting an area variance for the purpose of installing a ground sign. The property is located in a CB District.

Application 2003-37 by Eric Gifford for property at 7180 Chagrin Road

The applicant is requesting area variances for the purpose of constructing a garage addition. 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 August 21, 2003 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 12:10 A.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: August 21, 2003