

Franklin Township, Portage County  
Board of Zoning Appeals  
August 12, 2019

Present: Chair David Hansford, Glenn Russell, Justin Money Penny, Marilyn Sessions, and alternate James Henry, Board Members; Sam Abell, Zoning Inspector, Joe Ciccozzi, Assistant Zoning Inspector, and Jenny August, Administrative Assistant.

Mr. Hansford called the Board of Zoning Appeals meeting to order at 7:00 p.m. He introduced the Board Members and explained the procedures for the meeting.

**7:00 Hearing:**

At 7:00 p.m. an application by Richard Bancroft of Bancroft Development Group, 3516 Tuttle Ave. Cleveland OH representing Richard and Sandy Germaine 1951 White Feather Lane Nokomis FL 34275 for the property located at 4713 Newcomer Road (parcel numbers 13-063-00-00-004-000, 13-063-00-00-005-000 and 13-063-00-00-003-000) was heard for a conditional use Planned Residential Development which includes a site plan review. In addition the applicant was seeking variances to section 601.01.B.56.N.4.b which requires a minimum separation distance between principal residential dwellings of twenty (20) feet and requires a minimum side yard setback for principal buildings of ten (10) feet and section 404.05.C.3.b which requires a fifty (50) foot buffer for Category 2 wetlands. The applicant wishes to construct primary residences that are separated by 15 feet and with a 7 ½ feet side yard setback. In addition there are three building lots that encroach on the 50 foot buffer requirement. This hearing was a continuation from the July 8, 2019 meeting.

Mr. Hansford asked who is here to speak to this tonight. Mr. Richard Bancroft of Bancroft Development Group, 3516 Tuttle Ave. Cleveland was sworn in representing Richard and Sandy Germaine of 1951 White Feather Lane, Nokomis FL. Mr. Michael Wohlwend of Wohlwend Engineers Group 4216 Karg Industrial Parkway, Kent was also sworn in.

Mr. Bancroft gave a brief recap of the previous month's meeting. He said he heard four main concerns about this project from the neighbors and he would like to address those tonight. The four concerns were the school overcrowding, traffic concerns, wetland buffers and flooding. Regarding the school overcrowding, he looked at the schools 2016 audit and it shows that population increased, yet school enrollment was down over 940 students. Also, median age is 36.9 to 39.7, so we are seeing an aging population.

Mr. Wohlwend wanted to address the drainage concerns first. He pointed out the pond behind Sunny Dell Farms and what drainage is going into it. Over 2,124 acres drain into that pond. Their project will be 21.25 acres, which is less than 1% of all of the drainage. The Portage Co. Engineer and Portage Co. Soil & Water control drainage criteria. They use the critical storm method. They require each basin to be able to handle a 25 year storm. Mr. Wohlwend said they have met those requirements and even oversized the basins for the 100 year flood requirements.

Regarding traffic concerns, Mr. Wohlwend said they hired TMS to do a traffic analysis. This report was submitted to the Portage County Engineers office and they also did a site distance study. The County Engineers office agreed with both prepared studies.

The buffering to the north was the third concern he wanted to address. The homes most affected are on the north side of the site. The trees along the buffer will remain undisturbed. There will be about 230 feet between the back of the homes to the tree line.

Mrs. Sessions read a letter that was sent to the township from the Franklin Township Fire Inspector stating the concerns that there were not going to be two access roads. She asked if an additional egress is required. Mr. Bancroft replied that per Ohio Revised Code 1301:7-7-01.a.101.2.1 appendices these requirements were not adopted by the township and Portage County Regional Planning did not comment. This is an advisory, not a legal requirement, and not currently required in the Franklin Township Zoning Code.

Mr. Henry asked if they would consider eliminating lots 14 and 15 to get rid of the buffering issue. Mr. Bancroft said they are asking for nothing beyond what the federal code requires. The housing density in this project is already well below the limit. He thinks they have already compromised. Mr. Henry asked if the variances were not granted, how much that would affect the project. Mr. Wohlwend said they might eliminate the second entrance. The county would prefer just one entrance. The density here is only 2/3 of what the Franklin township code allows.

Mrs. Sessions asked what they will do with the current home that is there. Mr. Bancroft said they would remove the house. The two barns will be preserved and moved. He would be willing to donate anything in the house to Habitat for Humanity.

Mr. Hansford opened the meeting to Public Comment.

Mr. Delbert Stewart of 65 Johnson Road Kent was sworn in. His concerns were about water. There has been an issue with water for 20 years. He and three neighbors have all put ponds in to help with the water. The City of Stow put in a large housing development and the retention pond no longer is effective is not being maintained. It was 40 feet deep, and is now less than eight feet deep. He does not understand why Summit County sewers are coming in to Portage County. The PRD (Planned Residential Development in Chapter 6 of the Franklin Township Zoning Code) limits to 80 homes, and this is 107. Mr. Bancroft said the basins will be maintained by the Homeowners Association. There will be annual inspections. A portion of the annual homeowner's fees will be earmarked in a capital account for the basins. Mr. Wohlwend reviewed the PRD formulas. Mr. Wohlwend reviewed the calculations for the housing density and noted they are following the Franklin Twp code.

Gloria Rogers 4562 Newcomer Road, Stow was sworn in. She said according to the Ohio Revised Code the county Engineers office is responsible for storm water control. How can we enforce that the Homeowners Association to do that? Mr. Bancroft said it will be in the agreement.

Cindy Lukens-Wagner of 4573 Newcomer Road, Stow was sworn in. She said the pond in the back of her property has only been there for 15 years. The developers promised her that she would not flood. She used to have a 2 ½ foot culvert that never overflowed. Now she has a 4 ½ foot that over flows constantly. She sued the City of Stow and won. She does not want to do this again. All of the housing development is ruining their way of life. Nobody checks on the developers or follows up on things. This will be a detriment to them and reduce property values. The county told her they did not have a traffic study on file. She was told that the County is in charge of storm water. This project will add a lot of impermeable surfaces that will cause more runoff. She wants the Germaine's to put the property up for sale and give someone else a chance to buy it and preserve it.

Mr. Henry said the comments about the water are beyond their control. Mr. Hansford reminded the public that they are there to hear two variances. The storm water issues should be addressed by someone else.

David Keith Schmader of 217 Johnson Rd. Kent was sworn in. He questioned the calculations that were used in this project for setbacks and side lot lines. The Zoning Resolution Appendix B says side yard setbacks are 25 feet. The side yard setbacks here say 10 feet. Mr. Abell said in a PRD it is 20 feet. Mr. Schmader was looking at Rural Residential. He also asked how they got 44.4 acres of critical natural areas. He thinks it is more than that. Mr. Hansford said these were the calculations that were submitted. Mr. Wohlwend referred to the Franklin Township Zoning Resolution page 38 to 58. Mr. Hansford said they were verified by Portage County Regional Planning Commission. Mr. Schmader said in the "Definitions" and 654.f.2 there is only one specific area in the township that gets a special exception. Mr. Russell said that is a question for the Zoning Commission. They bought their land because they wanted to farm. This will affect his plan. It is very hard to find farm land anymore.

Mr. Henry said he sympathizes with everyone, but this audience is asking them to do something beyond their scope of responsibility. They can only vote on the two variances and establish conditional uses.

Mr. Schmader said this is more than just the variances. He thinks the Zoning Board needs to see a new plan.

Mrs. Gloria Rogers said she thinks the Trustees should vote no on the variances. A good government would require two entrances. She has to avoid Newcomer Road before and after work because of the school traffic.

Walt Shleper of 4829 Newcomer Road Stow was sworn in. Five days after the previous hearing he took pictures. There were 2 inches of rain in 15 minutes. On 20 acres, this creates 1 million gallons of water. This is just coming from Stow alone. That is just the one side of his property.

Cindy Lukens Wagner said there is nowhere for kids to play in their yards. What are they doing with the open space besides drainage? If there will be trails, will people be walking into her property? Playgrounds, trails, or pavilions should be included in the plan.

Mrs. Sessions said this is a private agreement between the developer and property owner. Mr. Hansford said they can do whatever they wish. The Engineers have been involved with this project, and we must presume they will do their job.

William Perfect of 116 Spell Road Kent was sworn in. How could they have addressed this before it came as far as the BZA. What is the next step if variances are approved? He believes in development, but thinks it needs less density and two entries.

Mr. Bancroft said the next step will be to design storm water and all other utilities, acquire permits; plans will be reviewed by Ohio EPA and Storm water people. Then construction will begin. He reminded the Board that the PCRP Commission approved these plans conditionally upon Board approval.

Mr. Schmader noted that a variance from 20 feet to 15 feet is 33%. The 10 to 7.5 feet is a 25% difference. The number of feet doesn't sound like much, but percentage wise, that is significant!

Mr. Hansford closed public comment.

Mr. Russell said the setback variance is a slippery slope. He thinks we need to stick with the code. Mr. Henry said if we did not grant the variance, they could still build the homes 20 feet apart. Mr. Bancroft said most developments would come in and build 162 homes. They are building much less and trying to preserve the wetlands. Mrs. Sessions was not comfortable granting a blanket variance. She thought they could come back for a variance for each home if needed.

Mr. Henry wondered if they should set any conditions. Mr. Abell said setting conditions might be geared towards Fire Dept. approval, wetland approval, and maintenance agreement of the Homeowners Association for storm water maintenance.

Mr. Hansford moved to approve the site plan and to grant a conditional use for a Planned Residential Development for the parcels located at 4713 Newcomer Road with the conditions that the conservation easement is resolved, and that the plans are reviewed by the Fire Department regarding the second egress point, and that the Homeowners Association maintains the detention basins established by the Portage County Soil and Water Division as per the Long Term Maintenance Agreement. Mrs. Sessions seconded the motion. All Board members voted yes.

Mr. Russell moved to grant a variance that would allow three (3) building lots, specifically lot 14, 15 to encroach by 36 feet, and lot 35 to encroach by 21 feet on the fifty (50) foot buffer requirement for Category 2 wetlands as shown on the plans dated 4/9/2019, with a second by Mr. Moneypenny. Mrs. Sessions and Mr. Russell voted yes, Mr. Henry voted no, Mr. Hansford voted yes. The motion passes.

Mr. Hansford reviewed the Standards for an area variance.  
A- yes, B-yes , C-no , D-no , E-yes , F-yes , G-yes .

Mr. Hansford noted that there was a 30-day appeal period that would begin after the minutes of this meeting were journalized. The journalizing will occur at the next meeting of the Board of Zoning Appeals.

Mr. Russell moved to grant a variance of 5 feet for the separation of distance between principal residential dwellings, allowing the applicant to construct primary residences that are 15 feet apart, reducing the minimum side yard setback requirement for principal buildings from 10 feet to 7.5 feet. Mrs. Sessions seconded the motion.

Mr. Henry asked if they know how many homes this may happen with. Mr. Bancroft said they project that it would be less than 20%.

Mr. Hansford reviewed the Standards for an area variance.  
A- yes, B-yes, C-no, D-no, E-yes, F-yes, G-no.

On roll call all members voted no. This motion fails.

### **7:15 Hearing:**

At 7:15 p.m. an application by Javon Miller, 5139 Erwin St. Maple Hts. OH 44137 representing K-Jin LLC, 2009 Crossfield Cr. Kent for the property located at 1935 State Route 59 (parcel number 12-021-00-00-027-000) will be heard for modifications to an existing conditional use (event hall, party space, lounge and arcade).

Mr. Javon Miller of 5139 Erwin St. **Maple** Heights was sworn in. He stated to the Board that he was asked to come up with a way to improve security. He has hired armed security services with Heights Force Security that wear real looking Police uniforms with badges. There is also a marked vehicle that looks like a real police car in the parking lot, and he has improved lighting in the parking lot. He also has worked with a former correction officer to learn how to deal with different cultures. He has also modified his hours of operation. Originally he was open for set times. He is no longer open unless he has an event scheduled. Previously he opened around noon, but now he would like to open at 6:00 am for morning meetings and events. This will be similar to a hall rental.

Mr. Abell said his concern is for a "Cell Phone" party. Mr. Miller said a cell phone party is when he invites someone to a party, and they forward it on to others, who also forward it. Mr. Abell said this is what happened at the party in Twin Lakes where someone was killed. Mr. Miller is agreeing to have an armed security guard in the parking lot. Mr. Russell asked if he had the required security in place when the shooting episode happened at his establishment. Mr. Miller said yes, but they were not armed or in uniform.

Mrs. Sessions asked about the cost of rental. Mr. Miller said it will be \$550 plus the cost of security, and if the people holding the event provide their own security, Mr. Miller said he will also have security present.

Mr. Miller said he has been meeting with a former Cleveland Correctional Officer from the juvenile detention center and I am learning how to engage college students and African

Americans. Mr. Abell said Mr. Miller wants to reduce the security guards from 5 to 2, but they will be more official.

Mr. Moneypenny asked if he would consider outside cameras. Mr. Miller said yes. Mr. Russell asked if 2 guards are enough. Mr. Miller said yes, because they are more professional.

Mr. Ciccozzi asked if he allows people in with a concealed carry. Mr. Miller said no. Signs are posted.

Mr. Hansford opened public comment.

Mr. Keith Schmader of 217 Johnson Road had been sworn in at the previous hearing. He said per the Portage County Sheriff's Office there were 250-300 people in the parking lot and only one hired security guard was there. They found 20 shells in the parking lot.

There was no other public comment.

Mrs. Sessions moved to grant a conditional use of intended business occupancy to be located at S.R. 59 with the following conditions: This will be reviewed in one year, hours will be 6:00 am to 2:00 pm on Thursdays through Sunday, and that there will be two armed security guards during open hours with one stationed outside. Also, there are to be signs posted on each door prohibiting firearms. Mr. Hansford seconded the motion. All Board members voted yes.

Mr. Hansford noted that there was a 30-day appeal period that would begin after the minutes of this meeting were journalized. The journalizing will occur at the next meeting of the Board of Zoning Appeals

### **7:30 Hearing:**

At 7:30 p.m. an application by Valerie May, 14770 Friendsville Rd Burbank OH 44214 representing David Quist, 7748 Diagonal Rd. Kent for the property located at 7748 Diagonal Rd. Kent (parcel number 12-075-00-00-004-000) was heard for a home based business of an online retail wine store.

Ms. Valerie May of 106 Main St. Burbank Ohio was sworn in. She is the owner of the wine business being discussed. She would like to transfer her current license to 7748 Diagonal Road and apply for a conditional use. Her current business is open from 4-8 on Fridays.

Mr. David Quist of 7748 Diagonal Road was sworn in. Her license must be associated with an address. The business will occupy 1/3 of the basement, which is about 10% of the house. They will only be open on Fridays from 4-8. Most business is online or occasionally by appointment if someone wants to pick up their order. A car would only be in the driveway to load, and very seldom would there be more than one car in the driveway. The walkout basement would be very helpful.

Mr. Russell asked if sales will be shipped from the house. Ms. May said she will have the wine delivered and she will store the wine at her house in Burbank and then take orders to the Fed Ex. Office to be shipped out. Wine that is being sold will be delivered to her home in Burbank Ohio, but may occasionally be delivered to the Diagonal Road address. Mrs. Linda Traffic of 7735 Diagonal Road, Kent was sworn in. She asked if the variance will stay with the property. Mr. Hansford said it stays with the business as a conditional use.

Mr. Russell asked about a C2 license. Ms. May said it is for wine only, and no wine tastings on the premises.

Mr. Spencer of 7727 Diagonal Road Kent was sworn in. He said Mr. Quist is a great neighbor but he is concerned about the driveway. The location is dangerous and vision can be obstructed. Mr. Quist said he always advises people to use the turnaround in the driveway.

The motion is to grant a conditional use which would allow the applicant to operate a home based business of an online retail wine store subject to adhering to the eight conditions of the Conditions and Operating Standards for Home Based Business in Chapter 6, Section 601.01.b.48.E. Mr. Hansford, Mr. Moneypenny, Mrs. Sessions and Mr. Henry voted yes. Mr. Russell voted no. The motion is approved.

Mr. Hansford noted that there was a 30-day appeal period that would begin after the minutes of this meeting were journalized. The journalizing will occur at the next meeting of the Board of Zoning Appeals

**7:45 Hearing:**

At 7:45 p.m. an application by Robert Marton, 910 Woodmore St, Louisville OH 44641 representing Kent Plaza LLC 17 S. Main St. Akron OH 44308 for the property located at 1705 East Main St (parcel number 12-022-00-00-062-004) was to be heard for a conditional use where the intended use, a massage and day spa, is not listed as a permitted or conditional permitted use in a C-1 district. Mr. Marton had issues with the lease of his intended location and would not need this hearing.

Motion to continue Mr. Marten's application for one month by Mrs. Sessions. Mr. Russell seconded the motion. All Board members voted yes.

**Approval of Minutes:** Mr. Hansford moved to approve the minutes as presented from the July 8, 2019 meeting. Mrs. Sessions seconded the motion. All Board members voted yes. The meeting minutes were approved.

**Next Meeting:** The next meeting is scheduled for September 9, 2019 at 7:00 p.m.

**Adjournment:** The meeting was adjourned at 9:40 pm

Respectfully submitted,

Jenny August

Administrative Assistant  
Board of Zoning Appeals

Approved as submitted:

---

Chairperson, David Hansford

Approved as amended:

---

Chairperson, David Hansford