

BAINBRIDGE TOWNSHIP
ZONING BOARD OF APPEALS
VARIANCE MEETING MINUTES
June 28, 2018

CALL TO ORDER:

Chairman, Ron Bjes, called to order at 7 p.m. a Variance Meeting held at the Bainbridge Township Hall, 7315 Territorial Rd., Watervliet, Michigan.

Present: R. Bjes, J. DeLapa, N. Weber, P. Zaluckyj, and Alternate A. Gardiner

Absent: G. Zilke

PUBLIC COMMENT:

- Opened Public Comment at 7:01 p.m.
- Question was asked about the drain issues. Chairman stated that was a Township Board issue.
- Closed regular meeting at 7:03 p.m.

APPROVAL OF MINUTES:

Motion by Zaluckyj/DaLapa to approve the minutes of February 21, 2018 as submitted.

Voice Vote: Yes—all; No—none.

Motion carried.

RECESS REGULAR MEETING – 7:04 p.m.

- Ron Bjes excused himself from the meeting and turned over chairmanship to Vice-Chairman, John DeLapa.

PUBLIC HEARING:

- Opened Public Hearing at 7:04 p.m.
- Chairman summarized the reason for this hearing request.
- Public Hearing for a Special Land Use Permit for Steve Schrage to conduct a repair shop and used car sales that Planning Commission denied on September 18, 2017 and the Zoning Board of Appeals approved on December 13, 2017. Judge Donahue remanded the ZBA to conduct a further hearing to be filed as a supplement of appeal with the Court.
- Chairman DeLapa read the Public Hearing procedures and rules – 3 minutes for each speaker and 8 minutes for each attorney.
- Steve Schrage presented his request for a Special Land Use Permit to operate a car repair shop and to sell used cars. His business is located at 6101 E. Napier, Benton Harbor, MI, property number 11-01-0029-0005-01-9. He is "sorry for the mess" this has created. One twin as multiple disabilities and it is a necessity to help care for child. He had to leave his job and wants to provide a living for his family. Five vehicles are his and 10-15 cars are in for service. He stated he went to Diane Baker, the Plaintiff, first before breaking ground and she said you need to do what you need to for your family. He is providing a service to the community and not trying to take away from the neighborhood. He has serviced many farm vehicles. The business across the street has semi's in all hours of day and night.
- Mrs. Schrage told the Board that the building was built with sound proofing and it is a two-person shop.
- Bainbridge Township – No report.
- Correspondence entered into record. (Attached)

PUBLIC COMMENT:

- Crystal Baker, 6308 Naomi, Eau Claire, MI – My mother, Diane Baker, would not agree with Schrage's statement to allow a car repair/sales next to her property. Other parents with special needs children go to work.
- Pam Dorstewitz, 48890 44th Ave., Lawrence, MI – No one here will rebuttal about child's health issues. Will this set a precedence?

- Skip Birdsong, 110 S. Park, Benton Harbor, MI – My property sets precedence. I have a SLU permit and must renew it every two years. I have driven by Schrage's property and it is always neat and clean. This is an opportunity for the community to step up and support his business.
- Kathy Schrage, 916 Church St., St. Joseph, MI – This would cause a huge problem if business is shut down.
- Karen Parrinello, 9250 Napier Ave., Benton Harbor, MI – I have attended every meeting. Judge sent it back because of procedures. Is he in compliance with the EPA? I do not want it across from me.
- Kathy Frazee, (unknown address) – Precedence has been set. How can people run this type of business without permits?
- Karyl Fain Riccio, 159 Millburg Dr., Benton Harbor, MI – In favor of Schrage. He is running a clean, neat business and is providing a service for the community. To turn away a young couple to provide a service for our township and provide for their children is immoral.
- Jeremy Glowickie, 8980 Yund Rd., Benton Harbor, MI – Napier Ave. has always been about commercial businesses. This business should be allowed in our Township.
- Carl Hinkleman, 7010 Napier Ave., Benton Harbor, MI – How did this happen? Chairman DaLapa explained procedural events.
- Hanna Seal, 31600 66th Ave., Lawton, MI – Works in a shop in St. Joseph and all chemicals, oils, etc. are taken care of as Schrage stated. He is just taking care of his family.
- Jerry Berkholtz, 935 S. Arent Rd., Benton Harbor, MI – Do they keep hours? Mrs. Schrage replied 9 to 5.
- Jeff Williams, 6425 E. Napier Ave., Benton Harbor, MI – Has attended the first two hearings. He has a list of questions: The appeal was not about the law. No way Miss Baker would have bought property if it was going to be commercial. The law is the law. It is sad for both sides and it will change the quality of Baker's life. It will devalue her property.

Closed Public Comments at 7:20 p.m.

Opened Attorney Comments at 7:20 p.m.

- Jake Lombardo, 3996 Chicago Dr., Grandville, MI – Attorney for Schrage -- Judge Donahue remanded the ZBA considered Use Variance vs. Variance. The Fair Housing Act says the law is the law but sometimes there are exceptions. It is up to the ZBA to make reasonable accommodations under the Federal Law.
 1. Is request reasonable?
Daughter is qualified under the law.
 2. Is request a necessity?
Business is helping the community.

The ZBA has three choices:

1. Grant it
 2. Deny it
 3. Table it and make amendments to the Zoning Ordinance
- Chairman DaLapa – Asked Attorney Lombardo if he addressed Fair Housing Act at the hearing?
 - Lombardo – No
 - Steven Smith, 1014 Main St., St. Joseph, MI – Attorney for Bainbridge Township – Township cannot issue a Use Variance. It is against your Zoning Ordinance.

Closed Attorney comments at 7:32 p.m.

RE-OPEN REGULAR MEETING

Chairman DaLapa read Attorney Peterson's opinion. (Attached)

Chairman DaLapa reviewed the following applicable sections of the Zoning Ordinance.

- Ag District, Section 5.09
- Hardship District, Section 6.11
- Commercial District, Section 5.06
- Commercial Agricultural District, Section 5.07
- Special Land Use, Section 8.04

Member Gardner – Our Master Plan through 2025 shows future commercial property along this Napier corridor. The ZBA voted to approve his permit and we should stay with this decision.

Member Zaluckyj – Same opinion as Member Gardner.

Secretary Weber – We must follow the rules in our Ordinance. Against allowing business to continue.

Chairman DaLapa – We must follow the rules. Auto sales and repairs are not permitted in Ag district. Property needs to be zoned Commercial. We cannot interrupt Federal Law referred to by Mr. Lombardo during public comment. This is up to the attorneys and the court.

FINDING OF FACTS: (Attached)

Completed Finding of Facts.

The ZBA did not address the request for a Variance at the December 13, 2017 meeting. The directive from Judge Donahue was from a Use Variance.

Motion by DaLapa/Weber to grant a Use Variance to Mr. Schrage to repair and sell automobiles at his property on Napier Ave. Roll call vote:

Gardner – Yes

Zaluckyj – Yes

DaLapa – No

Weber – No

Motion denied.

Motion by Gardner/Zaluckyj to table decision for further investigation. Roll call vote:

Gardner – Yes

Zaluckyj – Yes

DaLapa – No

Weber – No

Motion denied.

Sections 5.09 and 10.01B addresses a Special Land Use permit. Motion by DaLapa/Zaluckyj to approve a Special Land Use permit for Mr. Schrage's property on Napier Ave. to repair and sell cars. Roll call vote:

Gardner – Yes

Zaluckyj – Yes

DaLapa – No

Weber – No

Motion denied.

ADJOURNMENT:

- Motion by DeLapa/Gardner to adjourn at 8:20 p.m.
- All in Favor

Respectfully Submitted,

Nancy Weber, Secretary

All matters listed under the Consent Agenda are considered routine by the council and will be enacted by one motion. There will be no separate discussion of these items. If discussion of an item is required it will be removed from the Consent Agenda and considered separately.