

Board of Zoning Appeals Munson Township

Minutes of September 19, 2019

Chair Dennis Pilawa called the meeting to order at 6:30pm with Gabe Kezdi, Danielle Pitcock, Joe Tomaric, Alternate Jim O'Neill, Secretary Paula Friebertshauer and Court Reporter Laura Ware present. Alternate Tim Kearns was also present. Don Alexander was absent. The Pledge of Allegiance was said.

Joe Tomaric moved and Gabe Kezdi seconded to accept the minutes of August 15, 2019. Motion carried, 5-0.

Mr. Pilawa explained that the Board of Zoning Appeals is a quasi-judicial Board which acts in the role of judges. The Board receives sworn testimony and applies that testimony and evidence to certain standards of law to then make a decision. A court reporter is present so that anyone wishing to speak for or against the case must be sworn in for the record. The record is made up of testimony and evidence presented. If a case goes to court, decisions are based on what is presented the evening of the hearing. Anyone not in agreement with the decision of the Board could file with the Court of Common Pleas within 30 days after the minutes of the meeting are approved.

Note: Cases 19-10 through 19-13 were withdrawn prior to the hearing.

Resident Dave Partington asked if the Duncan factors the Board would be using could be explained. Mr. Pilawa explained they are standards of law based on a Supreme Court case used for area variances, not use variances.

CASE 19-16: Diane Bija of New Creation Builders 13060 Manor Dr., Chardon OH-requests to construct a detached garage 15' in front of the principal structure and setback 72' from the road right-of-way and 10' from the side yard property line. Violates SEC. 509.2 (in part) no garage or other accessory structure shall be erected within the front yard of any district; SEC. 411 Minimum Dimensional Requirements-minimum setback from the road right-of-way is 80'; and minimum side yard setback is 25'.

Zoning Inspector Jim Herringshaw was sworn in. He explained photos he took showing where the home was; the proposed location of the garage off of the turnaround; and views from the road and various directions.

Diane Bija of New Creation Builders was sworn in. She explained they are primarily garage builders. She introduced Mr. and Mrs. Wild, the homeowners, and explained they are requesting a detached garage off the turnaround which seems the obvious place. It cannot go in the side yard.

Mr. Pilawa stated for the records that 72 affected property owners were notified in Case 19-16. There was no public comment.

Joseph Wild was sworn in. He said they are new owners and have been there seven weeks. He talked to his neighbor about the proposed building and location and there were no issues, Mr. Pilawa commented that if someone objects they usually attend the meeting.

Danielle Pitcock moved and Jim O'Neill seconded that the variance requested in Case 19-16 be approved as requested. Discussion following the motion included: there can be a beneficial use without the variance, but it does not appear substantial; the essential character of the neighborhood would not be affected; adjoining properties would not suffer a detriment; the delivery of government services would not be adversely affected; the predicament could feasibly be relieved but the location of the turnaround is a good place to build; the spirit and intent behind the zoning would be observed and substantial justice done by granting the variance; and they did go through the property zoning procedure. Mr. Pilawa commented that the Supreme Court said specifically that the Board does not have to give equal weight to each factor; they can consider some or all. Upon the roll call, all members voted yes, 5-0. Motion carried.

Ms. Bija commended the Board and the office staff and said she if she could clone the township she would.

CONTINUED: CASE 19-14: Robert Gaglione-University Hospital 13193 Ravenna Rd., Chardon OH-request to utilize structure to provide overnight housing for doctors and nurses on call which is not a permitted use in the Residential District. Violates SEC. 401 R-1 Residential District; SEC. 401.2 Permitted Principal Uses and Structures. Doctors and nurses on call overnight housing is not a permitted use.

Mr. Pilawa read the variance request and violations for continued Case 19-14. Robert Gaglione was sworn in. He explained there is a vacant residence they would like to utilize as housing for doctors and nurses who are on call overnight. He reviewed the following factors that relate to a use variance: in relation to the hardship, the property would still be used as a residence; would it deprive the owner of a substantial property right, it would keep them from using it as an overnight residence; may the property be used in an economically viable manner without the variance, they would not have the space to house doctors on call. Mr. Pilawa asked where the doctors currently stay. Dr. DeCarlo responded that that is one of the challenges. He explained there has been substantial growth over the years. They have added a level 3 Trauma Center; there is none in Lake and Ashtabula counties. The Trauma Center requires staff to live within 30 minutes from the hospital. With inclement weather, it could make the travel longer. Also, the heart cauterization team needs to be within 30 minutes as well due to heart attacks. They have run out of space. The house has three rooms. Mr. Pilawa mentioned there was some concern last month that University Hospital had started a project without permits and there seemed no regard for zoning, but that is not the case with this variance request. Dr. DeCarlo agreed and added that the disregard was not intentional. Mr. Pilawa thought that was made clear last month.

For the record, Mr. Pilawa stated there were 21 affected property owners notified in Case 19-14. Dorothy Bauer of 13149 Ravenna Road was sworn in. She explained the whole reason she objected was she felt the value of her property was being affected by the hospital using the property between

us. She understood the hospital needs space. She is a nurse and is aware of being on call and the value of a hospital in a community; however, their main asset is their property. They told Dr. DeCarlo it would be fine to use the house. Mrs. Bauer mentioned they have hired David King as their legal counsel and he advised them that if they gave UH use of the house they would have use of the whole parcel. Mr. Pilawa responded that the Board takes every request seriously and the variance stays with the property forever. For that reason, if the variance is granted, the Board tries to make it as specific as possible. He explained that if the Board were to grant the variance, it would be limited to structures to be used in its current size. No one would be able to come forward and make it long term. The intended use is for surgeons and nurses on call. Mrs. Bauer asked if that would be all it is used for. Mr. Pilawa responded "absolutely". If UH were to use it for anything else, it would become an enforcement issue for the Zoning Inspector.

Mrs. Bauer explained she suggested to Dr. DeCarlo that they have 46 acres behind them that UH owns; they could put a facility there. It's not the only thing they could do. She referred to a map in the Zoning Resolution that predicted the future and those parcels were still residential. Mr. Pilawa responded that he cannot speak to that because the Board has limited authority.

Catherine Whitright of 11690 Bass Lake Road was sworn in. She asked if the variance were to be granted, does a person have to wait to appeal the case. Mr. Pilawa responded probably not, but the case won't be ripe, the court would say the minutes have to be approved. The record is more for the judge to show whether or not the Board acted properly. Ms. Whitright wondered if the hospital could start using the property tomorrow. Mr. Pilawa responded they could at their own peril. There would be a 60-day deadline to file an appeal and it would then depend on the court's timing.

Mrs. Bauer commented that their lawyer asked if the Bauers could ask for a continuance. Mr. Pilawa mentioned he did not know if they ever had an affected property owner ask for a continuance. He said typically there is a \$100 continuance fee and the Board votes on it. He wanted to confer with the Board members. He asked Mrs. Bauer if they had retained a lawyer. She said yes, David King who told them they should object because the Bauers would be giving something away for nothing. Dr. DeCarlo said they would not favor another continuance; it was tabled the last time in an effort to try and work with the Bauers. He felt they had met many of their expectations and going into this hearing, Mrs. Bauer had said they were fine with using the property. Mrs. Bauer commented they were told they could ask for whatever they want in regards to the parking lot; they asked for screening but were looking at the other property. They wanted UH to purchase their property and were asking a lot less than what the two properties were paid for. The Bauers had asked if they did not oppose the use of the property with the house on it would UH not develop the other property. They would like to keep the property closest to them unimproved with 100 feet of trees to stay where they are. Mr. Moore of S.A.M. Landscaping and Mr. Herringshaw had said UH could cut every tree down if they wanted. We asked two times about the trees. They got something in writing from Dr. DeCarlo but it was unsigned and not notarized.

Mr. Pilawa asked if there were any other neighbors that had come forward. Mrs. Bauer said no. Mr. Pilawa commented there are a lot of affected property owners. Mrs. Bauer said they are the only one.

Amy Gallo, a representative of UH, was sworn in. She questioned what other use the house on the corner could be used for. There would be no value to the hospital. Mr. Pilawa responded it could be used as a single family residence.

The Board recessed at 7:25pm. The meeting resumed at 7:35pm.

Mr. Pilawa commented there is a request to continue the hearing for 30 days and asked if there were a motion. Gabe Kezdi moved and Danielle Pitcock seconded that the request for a continuance in Case 19-14 be denied. The Board saw no reason to delay the request any further. Upon the roll call, all members voted yes, 5-0. Motion carried.

Mrs. Bauer commented that at the last meeting it was mentioned that UH purchased the property due to flooding and the need for a new sewer system. Once they did that they thought what else could they do with the property. It was bought for the sewer system then they decided to put in a parking lot and use the house.

Danielle Pitcock moved and Jim O'Neill seconded that the variance requested in Case 19-14 be granted as requested. Mr. Pilawa read the request to utilize the structure to provide overnight housing for doctors and nurses on call which is not a permitted use in the Residential District. Discussion following the motion included: is the hardship unique to the property - it would be used for doctors and nurses in a home that was abandoned and then remodeled; the specific use would be an asset to the community; does the regulation deprive the owner of a property right - it would basically keep them from the opportunity; may the property be used in an economically viable manner without a variance - yes it could but it would not serve the community; does the proposed use compare to adjacent and nearby uses - it would be right next to the hospital; is the hardship self-induced - UH bought the property knowing it was residential with the hopes that it could provide other use; how does the zoning regulation protect public health, safety, and morals - it would definitely help the community; will adjoining properties be harmed - we don't believe so; and did the property owner purchase the property with knowledge of the zoning - not sure, but they had a specific use in mind. Mr. Pilawa commented that it is important to note that in comparing it to the proposed use it is similar in both respects; it would be used to facilitate medical care, but would not be used as a commercial venture, but as a residence on a short-term basis like residential adjacent use. Granting the variance would protect the health, safety and morals by permitting staff to be more available. Mr. Pilawa did not quite understand the previous reference to the zoning map, but the matter of how the property is zoned would deprive the property owner of a right. Upon the roll call, all members voted yes, 5-0. Motion carried.

Dr. DeCarlo asked if they could begin using the facility right away. Mr. Pilawa replied that they could but 90 plus days from now he may not be able to.

The meeting was adjourned at 7:47pm

	
Dennis Pilawa, Chair	Paula Friebertshauser, Secretary
10/17/19	10-17-19
Date	Date