

# **Board of Zoning Appeals**

## **Munson Township**

Minutes of January 21, 2016

Vice-Chair Richard Wright called the meeting to order at 6:30pm with Don Alexander, Danielle Pitcock, Alternate Jim Herringshaw, Secretary Paula Friebertshauser and Court Reporter Kim Giel present. Bobbie Nolan and Gabe Kezdi were absent. Michael Waclawski opted not to be reappointed as an alternate. The Pledge of Allegiance was said.

Danielle Pitcock moved and Jim Herringshaw seconded to approve the minutes of December 17, 2015 as written. Motion carried.

Dennis Pilawa was sworn in as a new member for a 5-year term and Don Alexander was sworn in as an alternate for a two-year term.

Richard Wright moved and Jim Herringshaw seconded to nominate Dennis Pilawa as Chair. Motion carried 4-0. Mr. Pilawa abstained. Danielle Pitcock moved and Richard Wright seconded to nominate Bobbie Nolan as Vice-Chair. Motion carried, 5-0.

**CASE 16-01: Thomas Lee for 2015 Berkshire Hills LLC, 9760 Mayfield Rd., Chesterland OH - request Conditional Use Certificate renewal due to change in ownership. Violates SEC. 801.20 Conditional Use Standards - The conditional use certificate shall be void upon change of ownership or use unless a new application is made for such a certificate within thirty (30) days after change of ownership or use. The conditional zoning certificate shall be limited to whom it is originally issued and is not transferable.**

Zoning Inspector Tim Kearns read the conditional use request. Mr. Wright asked him if he had toured the golf course. He did not, but referred him to their attorney.

Tom Lee, attorney representing 2015 Berkshire Hills LLC, was sworn in. He introduced Tom Kucinc, Manager of the LLC and Walter Miraglia, Golf Course Manager. Mr. Lee explained there are seven parcels that are the entire golf course and its related buildings. They are just asking to change ownership.

Mr. Pilawa explained that the Board of Zoning Appeals is a quasi-judicial Board which acts in the role of judges. They take facts as presented and apply 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 take the case to the Court of Common Pleas within 30 days after the minutes of the meeting are approved.

Mr. Lee commented that he works for Taft as an attorney; is a 30 year resident and serves as a solicitor for Middlefield. He explained that per a provision in the zoning code recently added, their Conditional

Use permit is old. He thought there is no need for approval of the ownership, but the new owner is eager to be a good neighbor and decided not to raise that as an issue. The sole issue is that with a conditional use they are required to come before the Board when there is a change of ownership that could be denied if not properly used. Mr. Lee felt the best use is a well run golf course.

Mr. Pilawa asked when the original permit was issued. Mr. Lee thought sometime in the 1950's. Mr. Kearns replied 1953 under Pebblebrook.

Mr. Lee handed out a map with the parcel numbers of the seven properties. Mr. Pilawa asked Mr. Lee to verify his position that he is there to tell the Board there is going to be a golf course and that it will remain as is. Mr. Lee concurred and passed out other documents; one listing the parcels and their relative acreage, and an aerial view of the property. He explained Mr. Miraglia has been running the operation for the past several years and will continue to do so. He is more familiar with the day-to-day operations.

Mr. Pilawa asked Mr. Kearns if there had been any complaints outside of the use. Mr. Kearns replied "no".

John Paynick was sworn in. He asked if the clubhouse and swim club would still be operating. Walter Miraglia was sworn in. He said that everything that is currently there will remain - the golf course including the Pro Shop; Roger Gergacs leases the swimming pool area; and the banquet facilities. Mr. Miraglia explained he met with Milan Kapel four years ago at Milan's request. He has put \$80,000 into improving the banquet facility and lighting and is currently working on the kitchen. They have hired a groundskeeper. They may build a deck and hope to tear out the carpet in the shop and clean the restrooms. Mr. Paynick mentioned the erosion on his property that is close to the 15th hole.

Mr. Wright asked Mr. Miraglia who initiated the sale. It was explained that the former owner was putting the property up for auction, but they completed the purchase prior to that. Mr. Paynick expressed concern that cluster housing was going in. Mr. Lee explained the current plan is to apply the conditional use to the existing parcels and continue as a golf course.

Mr. Pilawa stated for the record that 96 affected property owners were notified in Case 16-01. Bob Cunningham addressed Mr. Kearns in regards to the prior response when he said there were no complaints. Mr. Cunningham had made complaints. Mr. Pilawa clarified that he asked Mr. Kearns if there were any complaints not compliant with zoning. Mr. Cunningham commented that party centers are not in the zoning. He explained that a few years back they signed a renewal. At times the doors to the party center would be open and they could hear the music with the bass thumping. He said the Board of Zoning Appeals made a mistake and the prosecutor said there was nothing they could do. Mr. Cunningham questioned if they are appealing to reapply. Mr. Lee explained they are a pre-existing nonconforming use and their right cannot be taken away. Again, Mr. Cunningham said the prosecutor ruled she could not enforce it. Mr. Lee was unaware of any complaints. They have a relatively new ownership and he believes Mr. Miraglia is a lot better than the previous owners. He added there is no noise ordinance. Mr. Lee pointed out that under Section 803.1 of the Munson Township Zoning Resolution swimming pools are allowed.



Mr. Cunningham commented that his property backs up to the party center and parking lot. The party center was originally a dairy barn with no sound barrier; and when he would call, no one would answer the phone. People throw trash onto their property. He wants a way to hold someone accountable. When asked, Mr. Cunningham said that happened four to five years ago. Mr. Kearns commented that he has had a meeting with Mr. Miraglia and he mentioned the complaints and that it would not happen again. Mr. Kearns felt reassured that he now has a person to contact when needed.

Mr. Pilawa asked Mr. Lee if he was present solely for change of ownership in which Mr. Lee concurred. Mr. Pilawa explained this application does not say he gets to expand; even for a deck, they will have to come in and get a permit.

Mr. Cunningham commented they would have to comply with what is in the current zoning resolution, and there is a method to make this right. He pointed out it states "excessive noise". Mr. Miraglia concurred that noise would be a violation for him as well. He explained they installed two large air conditioners, insulated the attic and will keep the doors closed which will help sound proof the party center. He added that the music will not go past 11:00pm. They have security now because they also have a golf course to worry about. Mr. Cunningham commented that Mr. Miraglia could call the Sheriff's Department where they have filed complaints. They do not dispatch a car because there is no noise ordinance. Mr. Miraglia said he would like to see those complaints. Mr. Lee said if the Board says no they may have legal remedies. Mr. Cunningham said he was not opposed to the golf course but wants them to adhere to the rules. Mr. Lee agreed the best use of the property is as a golf course that closes at sundown which would best for the neighbors, but not the golf course.

Greg Lockhart was sworn in. He explained he has an easement on Pebblebrook Road and the golf course is responsible to maintain that. Mr. Lee did not know of the easement, but upon a contract with Mr. Miraglia, they will comply with the easement rules. Mr. Lockhart asked Mr. Miraglia what his hunting policy is. Mr. Miraglia responded that under the lease he has the say so and would deny permission. When asked about fishing, he said he would allow certain people to fish in the back lake, not in the front one or by the 18th hole. When asked if the Canadian geese would be controlled; Mr. Miraglia said they will continue to use blinking lights, fake swans, and his dog will chase them. Mr. Lockhart asked if they have a long range plan beyond the five year lease. Mr. Lee responded he did not know. He explained the owner is a Canadian resident who has relatives here. He loves the property and the mansion house and one of his options is to live there. He has no interest in development. Mr. Miraglia currently leases the mansion.

Paula Williams of Health Road was sworn in. She explained they live east of the pool and are neighbors of the Cunningham's. They have lived there four years. She said someone from a party at the pool had called the Fire Department because they did not like the smoke coming from her property even though they were burning during appropriate times. The pool area is loud and Wednesday is late night. Mr. Gergacs also may have friends after hours.

Mr. Miraglia commented they sublet the pool and he could write in some noise regulations. He explained that in the previous lease with the Kapels, they had to have the lights and music off by a certain time. He will enforce that. Mr. Lee added that those documents have not been done yet. Cara Cunningham was sworn in and affirmed everything Mrs. Williams said.



Mr. Pilawa commented that all these issues go beyond the Conditional Use permit request; however, they are important and he thought a remedy seems available. When asked about the zoning resolution availability; it was explained that it is online.

Mr. Pilawa asked if there was any more public comment. Meg Moosa, a Valley Vista resident, was sworn in. She said they live just behind the golf course through the woods. She was extremely concerned the use was going to change and was happy it will remain a golf course. There was no further comment.

Richard Wright moved and Don Alexander seconded that in Case 16-01 the Conditional Use permit be approved. Upon the roll call all members voted yes, 5-0. Motion carried.

**CASE 16-02: John R. Mascaro**, 11180 Beechnut Lane, Chardon OH - request to construct a 28' x 61' structure and a driveway extension 8.75' from the south side property line. Violates SEC. 411 Minimum side yard requirement is 25 feet; SEC 511 Driveways shall be a minimum of 15 feet from any lot line and minimum width of 12 feet.

Zoning Inspector Tim Kearns read the variance request and violations and presented photos of the home and proposed location.

John Mascaro was sworn in. He explained he needed more garage space because he does woodworking, works on cars and wants storage for another vehicle. He maintains his property by landscaping and snowplowing and may buy a tractor. Mr. Mascaro pointed out that aside from the front corner, the remainder of the building would meet the 25 foot requirement. It would taper back and be approximately 30 feet from the property line. He thought he would probably be even closer, more like 12 3/4 feet, but because of the preliminary drawing he wanted to be conservative and apply for an extra 4 feet. It was his goal that the front part be 12 1/4 feet inside the 25 feet. It was his belief that the extension of the driveway would probably fall within the 15 foot requirement. Mr. Mascaro explained the only option would be to take the entire garage and set it back farther, but aesthetically it would not look right and he would have to clear more trees. The existing garage is 50 feet to the house. When asked what the tall garage was for, Mr. Mascaro said it was for his motor home. He explained the proposed garage will only be another 11 feet further back. If he were to move the entire building back to meet zoning it would extend the wall and be more obstructive. When asked, Mr. Mascaro said the property is about 170 feet from the back of the neighbor's house to where the garage would be. There are mature trees there and six months out of the year he cannot see the back of the neighbor's home.

Mr. Wright asked if there would be electric and water and commented that the proposed structure is large. Mr. Mascaro responded there will be just electric and there are no restrictions in the zoning as to the size of the building. When asked what the height of the door would be, Mr. Mascaro responded "12 feet". The garage door for the motor home is 14 feet high. The building would match the house. Mr. Mascaro reiterated that the structure would be used for his personal use. They have lived there 16 years and plan on retiring there. He is a small business owner in Willoughby.

Mr. Pilawa stated for the record that 22 affected property owners were notified in Case 16-02. Peggy LeBlang, neighbor to the west, was sworn in. She explained her home was built at the same time as Mascaro's and his home is 75 to 100 feet back from hers. Originally when she looked out of her great room they saw trees and woods. Then Mr. Mascaro built the other garage for the motor home and now with this 61 ft. long structure, when they look out the living room window that is all they are going to see. She commented it would affect her property value.

Mr. Mascaro commented that when he paced it the distance was about 175 feet back. Ms. LeBlang commented it will look like it is in her backyard, all they see is garage. Mr. Pilawa asked if she had taken a picture of the view. She said with all the snow all they would have seen is white. Mr. Mascaro responded that the existing garage is 50 feet long; he would just be adding 10 more feet so it wouldn't be that much different. Ms. LeBlang responded he would be coming 25 feet closer. Mr. Mascaro explained geometrically that in regards to the view with the angle there would be less space she would see.

Mr. Pilawa explained that Mr. Mascaro could move it back 30 feet and not require a variance. Ms. LeBlang responded that it would look even worse. Mr. Mascaro agreed and added that it would be 90 feet of exposure if it conformed with zoning.

Dean Pahr, property owner five houses to the south, was sworn in. He commented that the Mascaro property is maintained like the White House and he is in full support of the project.

Ms. LeBlang commented she cannot see it in the summer, but October through the spring it is all she can see. Mr. Mascaro once again pointed out that in looking at the picture and the way the driveway is set up, the garage would be set off to the side and back.

Mr. Wright asked about the possibility of adding onto the second garage. Mr. Mascaro explained it could meet some of the needs but it does slope down ten feet or so. He would like to have access to bring things in and out. Mr. Wright asked if he had to fill it in at all to build the second garage. Mr. Mascaro said it was pretty level, it sloped a little.

Ms. LeBlang again said she is afraid that with the view it would impact her property value. Mr. Pilawa asked if she had talked to a realtor. She said no, but she used to be one.

Richard Wright moved to not approve the variance request for Case 16-02. For lack of a second, the motion failed.

Dennis Pilawa moved and Jim Herringshaw seconded that the variance requested in Case 16-02 be approved. Mr. Pilawa explained the findings of fact are based on factors that include: can there be a beneficial use of the property without a variance; is the variance substantial; will the essential character of the neighborhood be altered; will adjoining properties suffer a detriment; will the variance adversely affect the delivery of government services; can the predicament be feasibly relieved; will the spirit and intent behind the zoning be observed and substantial justice done by granting the variance; and did the property owner purchase the property with knowledge of the zoning restriction. He explained they are all based on case law and are the Duncan factors. Except for the exception that the



adjoining property will suffer a detriment, the area variance shall be granted. Upon the roll call, members voted as follows: Mr. Herringshaw, yes; Ms. Pitcock, yes; Mr. Wright, no; Mr. Alexander, yes; and Mr. Pilawa, yes. Motion carried 4-1.

Mr. Pilawa explained that the case can be taken to court. It has to be done within 30 days of the approval of the minutes which will occur on February 18th.

Jim Herringshaw moved and Richard Wright seconded to approve the findings of fact provided for Cases 15-21, 23 and 24. Ms. Pitcock abstained from voting on Case 15-21.

The meeting was adjourned at 8:02pm.

	
Dennis Pilawa, Chair	Paula Friebertshauser, Secretary
2/18/16	2/18/16
Date	Date