

# Board of Zoning Appeals

## Munson Township

Minutes of October 17, 2019

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

Gabe Kezdi moved and Jim O'Neill seconded to accept the minutes of September 19, 2019. Motion carried, 4-0.

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.

**CASE 19-17: Michelle Capdeville** 10306 Mayfield Rd., Chesterland OH-requests to construct a detached garage 25' in front of the principal structure. Violates SEC. 509.2 (in part) no garage or other accessory structure shall be erected within the front yard of any district.

Mr. Pilawa read the variance request and violation. Zoning Inspector Jim Herringshaw was sworn in. He referenced photos including an aerial photo showing the I-shaped lot and explained the appellant would like to put the garage in the middle of trees on the other side of the driveway. He pointed out that Mayfield Road is not as close as it appears. Ms. Capdeville had previously come for a variance for a barn behind the home and there is not much room remaining.

Michelle Capdeville was sworn in. She explained they bought the 10-acre property about 16-17 years ago. They had a barn built because the house is old and has no basement. The existing garage is too low to park an SUV and her pick-up is too tall. The pickup is also too wide for the barn doors. They would like the garage to be located opposite the barn between trees so it would not be seen. She needs a place to park especially when it snows because she has to leave early for work. It would also be used to store a wood splitter.

There were 23 affected property owners notified in Case 19-17. Bernadette Alpers of 12525 Rockhaven Road questioned if the Board makes an exception for the building would it affect future requests? Mr. Pilawa explained it is a variance from the zoning regulations and every situation cannot be covered in the book. A decision by the Board confers a property right to that property forever. Each case rises and falls on its own merit and the facts presented; it does not set a precedent.

Tim Kearns moved and Gabe Kezdi seconded that the variance request in Case 19-17 be approved as written. Discussion following the motion included that even though there is a beneficial use without

the variance, it is not substantial; the essential character of the neighborhood would not be changed; adjoining properties would not suffer a detriment; the delivery of government services would not be affected, but could be a benefit by keeping a large pick-up out of the driveway; the predicament cannot be feasibly relieved through some other method; it doesn't matter if the property owner knew about the restriction, because they did come before the Board before; and the spirit and intent behind the zoning would be observed and substantial justice done by granting the variance. Upon the roll call all members voted yes, 5-0. Motion carried.

**CASE 19-18: Gerard Roberts** 11830 Mayfield Rd., Chardon OH-requests to erect two storage unit buildings and use existing structure as commercial storage. Violates SEC. 407.2 Permitted Uses and Structures-storage units are not a permitted use in the Commercial District.

**CASE 19-19: Gerard Roberts** 11830 Mayfield Rd., Chardon OH-requests to add two principal structures (in addition to the original), with a gravel loading and unloading circulation area 3' from the east and west property lines, 70' from the road right-of-way and a 7' fence and 81% lot coverage. Violates SEC. 503 Principal Structures Per Lot (in part)-no more than once principal structure may be constructed upon any one lot. SEC. 411 Minimum Dimensional Requirements-maximum lot coverage is 50% in the Commercial District; minimum side yard setback is 20'; and minimum setback from the road right-of-way is 80'. SEC. 509.5c Fences (in part)-fences and walls shall be no more than 6' in height in any side or rear yard.

It was agreed upon that Cases 19-18 and 19-19 would be heard together. Mr. Pilawa read both requests and the relative violations. Zoning Inspector Herringshaw explained the aerial view that was taken to give an idea of what it looks like now. The site was previously Munson Radiator and used car sales. The existing white building will remain and the fence would be 6 feet with 1 foot of barbed wire. He explained the site map shows the buildings and side yard setbacks. There is enough room for ingress and egress around the aisles. A storage unit is not included in permitted uses in the Commercial District.

Gerard Roberts was sworn in. He said he had been in Munson in a commercial capacity since 2001. He had the gas station on the corner and bought this property thinking he would expand. He has rented it out over the years, but did not want to deal with that anymore. He had a body shop in there at one point, but the property is not feasible for cars in the back. He hired Hess Engineering and a representative was present if anyone had any technical questions.

Mr. Pilawa asked him how many units he was proposing. Mr. Roberts responded "90 units." Mr. Pilawa then asked if he did a study. Mr. Roberts replied that the storage place in Chesterland has sold out. He also mentioned that the previous owner said he got a variance for storage units, but there is no record of it. Mr. Pilawa asked Secretary Friebertshouser if there were any prior variances. She responded there was one for a landscaper to utilize the property. The prior owner, George Paolucci, did not receive a variance.

Mr. Pilawa explained that a use variance is harder to get because the requirements are stricter. He provided the example that the community would not want a gun shop in proximity of a school. One of the questions is if the zoning regulations deprives the owner of a substantial property right. Mr. Pilawa felt this in particular should probably be the focus since the requested use seems to fit in the area.

There were 20 affected property owners notified in Cases 19-18 and 19-19. There was no public comment.

Mike Timas from Hess Engineering was sworn in. Mr. Pilawa asked him that despite a drainage issue, was everything alright for building. Mr. Timas responded it was and plans were submitted to Geauga Soil & Water. Other approvals will be required, but they needed the variance first. Mr. Timas explained they are not required to provide stormwater retention which drove the design. When asked the timeline to begin the project, Mr. Roberts responded it would probably be first thing in 2020. Mr. Timas explained that the EPA has been out to the site for soils testing and it is not considered a wetland. Mr. Kearns, the previous zoning inspector, questioned Mr. Roberts about previous drainage issues. Mr. Roberts explained there is a drain back there and it was the reason he hired an engineer. Mr. Roberts said he had the gas station for 10 years and learned a lot during that time. When it turned to a Circle K they found old tanks and the owner blamed him and he had to deal with the EPA.

Tim Kearns moved and Danielle Pitcock seconded that the variance requested in Case 19-18 be approved as written. Discussion following the motion included that it did not make sense that a storage unit is not a permitted use; it is clear the hardship is not self-induced because of the zoning regulation; the zoning regulation does protect the public health, safety and morals; adjoining properties would not be harmed and whether he purchased the property with knowledge of the zoning restriction is immaterial; and under the circumstances it makes it unique to the property. Upon the roll call, all members voted yes, 5-0. Motion carried.

Danielle Pitcock moved and Gabe Kezdi seconded that the variance requested in Case 19-19 be approved as written. The Board felt the Duncan Factors had been met. Upon the roll call, all members voted yes, 5-0. Motion carried.

**CASE 19-20: George Fretz 11639 Chestnutdale Rd., Chardon OH-requests to put up a 20' x 24' detached garage 13' from the principal structure, 3' from the rear property line, 5' from the east property line, and 72' from the road right-of-way. Violates SEC. 509.3 Accessory Structures (in part) Accessory structures shall not be closer than 15' to the principal structure. SEC. 411 Minimum Dimensional Requirements-minimum setback from road right-of-way is 80'; minimum side yard is 25'; and minimum rear yard is 40'.**

Mr. Pilawa read the variance request and violations. Zoning Inspector Herringshaw showed an aerial view of the four parcels. He pointed out that the existing building crosses over two parcels, but the proposed garage would not. The land behind the home slopes down. Mr. Pilawa asked if this all pre-existed zoning. Mr. Herringshaw replied "yes." Mr. Pilawa commented that the zoning regulations makes them all nonconforming. He explained that in the past they have tried to get fees waived for these residents. Mr. Herringshaw informed him he is looking into what he can do about this in the future because it does not seem fair.

George Fretz was sworn in. He explained he would be taking the one car garage down and replacing it with a two-car garage. They are too close to their own property line and cannot squeeze it in. They moved into their home in July.

There were 67 affected property owners notified in Case 19-20. There was no public comment.

Tim Kearns moved and Jim O'Neill seconded that the variance requested in Case 19-20 be approved as written. Discussion following the motion included: there could be a beneficial use without the variance; however, it is not substantial; the essential character of the neighborhood would not be altered; adjoining properties would not suffer a detriment; it would not adversely affect the delivery of government services; the predicament cannot be feasibly relieved through some other method; not sure if the property owner purchased the property with knowledge of the zoning, but it doesn't matter; and the spirit and intent behind the zoning would be observed and substantial justice done by granting the variance. Upon the roll call, all members voted yes, 5-0. Motion carried. Mr. Pilawa commented it would probably be too costly to combine the lots.

**CASE 19-21: Milt Pavlisin of Custom Homes Ltd., 11645 Lake Rd., Chardon OH-requests to construct a new home 16' from the north property line, 16.67' from the south property line and 30' from the road right-of-way. Violates SEC. 411 Minimum Dimensional Requirements-minimum setback from road right-of-way is 80'; and minimum side yard is 25'.**

Mr. Pilawa read the variance request and violations. Mr. Herringshaw explained this is another one similar to that in Bass Lake Community with a small lot. The home will be removed and a new one erected in close proximity to the original. The neighbor to the south came in for a variance. Mr. Pilawa commented that there was an issue with the former zoning inspector with nonconformity in that he looked at it with a different view.

Milton Pavlisin of Custom Homes was sworn in. He felt it would be a great improvement to the area and there would still be 16 feet from the side yard. The home will need to be brought forward because of the flood plain. They will be digging a new foundation, and hope to start soon.

Mr. Pilawa asked if he would be increasing the square footage. Mr. Pavlisin replied "yes." There were 17 affected property owners notified in Case 19-21.

Kristen Christian of 11639 Lake Road (next door neighbor to the north) was sworn in. She said she has lived on the road for 50 years and this proposed home will be built right next to her dream home and she does not want it that close.

Janet Holzhaeusser of 11671 Lake Road was sworn in. Ms. Holzhaeusser is one of the homeowners of the property in question. She explained that the existing home is from the 50's and has a musty smell, and while they would have loved to renovate it, it is not feasible. She explained they are not asking for an extravagant home; it would be similar to the previous footprint and she did not feel it would impact the neighborhood.

Ms. Christian commented that the house that is there now is 35 feet from the property line. She does not want it any closer; the lots were made for cottages. Ms. Holzhaeusser commented that the house next door to her property is currently under construction and is keeping the same footprint.

Bonnie Tager of 11671 Lake Road was sworn in. She explained she has lived there 20 years and dreamed of being on the lake so she and her friend went together to buy the property. The existing

home is old and has a dirt crawl space. She explained that next to the house is a shed and in proximity to where the shed is, the difference is not much.

Mr. Pavlisin questioned the distance from the property line. Mr. Herringshaw commented there is no record of the measurement on paper. He left the room to check the Geauga ReaLink website. With the measuring tool it showed the existing home was 25 feet give or take 5 feet. Mr. Pavlisin commented that the required setback is 25 feet and even though the neighbor was saying it is 35 feet, it can be 25 feet. Ms. Holzhaeusser commented that the house next to them (to the south) is extremely close to their line so they wanted to balance it out with 16 feet on each side. She pointed out that if they had an emergency situation it would provide better access. Mr. Pavlisin said they made the house as narrow as they could. Ms. Holzhaeusser added it is a modest home.

Jack Smith of 11615 Lake Road was sworn in. He mentioned a shed they had that blew down and when they went to rebuild they were not allowed to, and had to put it in the middle of the property. He said the neighbors property on his daughter's other side has a shed which infringes on her property. They have been held to restrictions with the flood plain since they have been there. Ms. Christian said she feels terrible, but does not want to trade her dream and wondered if something could be worked out. Mr. Herringshaw showed the map to her. Mr. Pilawa explained the area pre-existed the zoning ordinance. Mr. Pavlisin commented that neither one conforms and fair is fair. Ms. Christian commented she was glad someone wrote the regulations but implied an error was made. Mr. Pilawa responded he did not think it was an error, but just that the area pre-existed zoning.

The Board recessed at 8:02pm. The hearing resumed at 8:25pm.

Mr. Smith asked the builder if the property had been surveyed. Mr. Pavlisin responded it had in order to do the site plan. Mr. Smith commented to the builder that he knows zoning regulations and asked him why he would design a house like he did. Mr. Pavlisin responded that most houses have variances and in most communities the setback is 15 feet. The 16 feet still leaves a bit of room. He added that all he can do is submit the plans; the lot is not normal.

Mr. Pilawa responded to Mr. Smith's comments saying he was not sure they were helpful, and to be fair, the builder had nothing to do with Bass Lake Community. The lots are not normal sized lots and everything is out of conformity. Mr. Pilawa explained that a variance request is not a deviation from the zoning regulations. Built into the resolution is an option to come for a variance because whoever wrote the book could not foresee the future.

Danielle Pitcock moved and Tim Kearns seconded that the variance requested in Case 19-21 be granted as written. Mr. Pilawa explained for the record, the Board has to apply the Duncan Factors. They are asked to consider eight factors but are not required to give one more weight than the others. Discussion following the motion included: is the variance substantial? - the variance is a request for nine feet in an area where there is almost no conformity with zoning - it is not substantial; there will be about 40 feet between structures and in the other direction there would be less than 15 feet which would hinder the delivery of government services-this will assist; the essential character of the neighborhood would not be altered-in Bass Lake Community everything is a struggle to begin with, all residences are close and have difficulty meeting the current zoning; the spirit and intent behind the zoning is one of fairness, granting and having it ultimately be where it is.

Mr. Smith wanted to know if the setback requirement would keep the houses lined up. Ms. Christian commented she needs the Board to take a drive and look at the house. She asked if Mr. Pilawa would want someone to build next to him. Mr. Pilawa responded the Board's position is limited; they hear the case, let people talk, and they understand her position. He explained the appeal process.

Mr. Pilawa said the Duncan Factors have been met. Upon the roll call, members voted as follows: Gabe Kezdi, yes; Danielle Pitcock, yes; Tim Kearns, yes; Jim O'Neill, no; and Dennis Pilawa, yes. Motion carried 4-1.

Mr. Pilawa explained to Mr. Pavlisin that until the appeal process passes, he would be at risk to begin the project. Ms. Christian said they can be assured she will appeal. She would have 30 days to appeal after the minutes are approved on November 21, 2019.

The meeting was adjourned at 8:41pm.

  
Dennis Pilawa, Chair      11/21/19  
Date

  
Paula Friebertshauser, Secretary      11/21/19  
Date