

Board of Zoning Appeals

Munson Township

Minutes of October 21, 2020

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

Mr. Pilawa explained the role of the Board of Zoning Appeals is to apply certain principles of law as required by the Ohio Supreme Court. He explained that the Board of Zoning Appeals is a quasi-judicial Board which acts in the role of judges. The Board interprets the Zoning Resolution specifically on what is brought before them. 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. The Board does not accept any evidence that is not protected by the cross-examination process. If a case goes to court, decisions are based on what is presented the evening of the hearing. A court would determine whether the Board properly applied the standards to be considered. 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.

Joe Tomaric moved and Jim O'Neill seconded to approve the minutes of September 16, 2020 as written. Upon the roll call, all members present who had been at the September hearing voted yes, motion carried 4-0.

CASE 20-20: Sandor Janosy 11549 Holden Ridge, Chardon OH – requests to have an in-ground swimming pool equipped with a power safety cover without a fence. Violates SEC. 514.3 (in part) An outdoor in-ground swimming pool shall be surrounded by a barrier or fence.

Mr. Pilawa read the variance request and violation. Zoning Inspector Jim Herringshaw was sworn in. He pointed out the aerial view which shows two ponds and explained photos taken from several angles including views from the proposed pool location.

Sandor Janosy was sworn in. He explained he would like to have a 20' x 40' pool in back of his home and in lieu of a fence, would like to have an automatic cover within ASTM safety standards. He explained it has a 485-pound load capacity and perimeter detractors. When asked when he plans to put it in, Mr. Janosy responded he would like to soon but the shipment is currently delayed. When asked for his backup plan, Zoning Inspector Herringshaw responded that Mr. Janosy does have a zoning certificate that includes a fence.

Mr. Pilawa stated for the record that 36 affected property owners were notified in Case 20-20. Todd Petersen of 11579 Lake Road testified that he knows Sonny and was in for a variance for the same size pool and cover. He said that his pool has a key to open and close it; he can take the key out and no one can get in. There are rails on each side and he does not have to worry about leaves, animals or children

getting in. Mr. Petersen's children are older now, but he described situations where he had to go out on the cover just to retrieve toys. He described Mr. Janosy's lot as a corner lot with two ponds that are not fenced and is surrounded by topography with a tree line that goes down. To the west there is a large chunk of land and he feels the property is pretty insulated. Mr. Petersen commented that a person jumping a fence could not be seen.

Mr. Janosy explained that with his profession in aviation, it is all about safety. He has three children and would never compromise his family's safety.

James Ross of 11550 Holden Ridge explained he lives in one of the four homes on the cul-de-sac. He was in favor of the request and did not even know if Mr. Janosy had room for a pool because the property is secluded and set back.

Diane Wagner of 9481 Jordan Drive, Mentor and nearby owner property owner, commented that she did not think safety should ever be waived and felt a fence would be the safer option because a gate can be latched. She explained that if the cover is off and Mr. Janosy was to run in the house for something, it could be a problem.

Curt Burday of 11660 Legend Creek commented that besides his kids, he's sure that Mr. Janosy worries about others' children as well. He felt the cover is safer than the fence and latches can come undone. He felt Mr. Janosy is responsible and added that there are no kids living next door.

Ben Barnes of 9619 Mulberry Road informed them that his property is behind Mr. Janosy's and he agrees with everything he said. It is secluded, and a large lot. Mr. Barnes is a Mechanical Engineer and has researched the covers and felt they are a safer alternative to a fence.

Darlene Burday of 11660 Legend Creek also offered support of the variance request. She pointed out there are ponds in the area and none are fenced. She felt the Janosy's are responsible and would cover the pool when not in use.

Matthew Bowden of 11547 Holden Ridge lives across the street and agreed the pool cover is a good alternative but the fence may be a better deterrent. He did agree the cover is only as good as when it is closed but felt they would do it right because safety is the most important thing to them.

Mr. Tomaric referred to Section 514.3 that requires a fence and asked that if the Board approves the cover would they be liable if someone gets injured. Mr. Pilawa responded he did not think the Board is liable because there are certain governmental immunities. Mr. Petersen agreed completely. He reiterated that someone cannot fall in when the cover is closed and any responsible home owner will supervise. He explained he controls access to the pool even when he is not there. He has peace of mind because it provides an opportunity that a fence does not. Mr. Pilawa added that with his experience of both a fence and a cover, a fence is a barrier but not protection; a cover is. He could not envision the township being liable; it would be negligence of the owner.

Mr. Janosy explained that he and his wife sat down and discussed the option of a key versus a key pad and chose the keypad because they would be the only one that knows the code.

Joe Tomaric moved and Gabe Kezdi seconded to accept the variance from Section 514.3 requested in Case 20-20 for 11549 Holden Ridge and that it be approved for a safety cover without a fence. Mr. Pilawa explained that the Board is required to consider each case based on the Duncan Factors which came from a Supreme Court case. He provided the following substantiation: Can there be a beneficial use without a variance? -Yes, although this is not relevant here. Is the variance substantial? -It probably is because the Board is considering a deviation but the alternative is probably safer. -Will the variance adversely affect the delivery of government services? -No, it will probably be safer. Will adjoining properties suffer a detriment? -The predominant feeling is there would be no effect. Will the essential character of the neighborhood be altered? -No, it is a secluded home. Can the predicament be feasibly relieved through some other method? -Yes, except the alternative is better than what is required and there is evidence to that affect. Will the spirit and intent behind the zoning be observed? -Yes, the zoning provides for variances and in his view it would be observed. Did the property owner purchase the property with knowledge of the zoning restriction? -Not relevant. Upon the roll call, all members voted unanimously to grant the variance, motion carried.

CASE 20-21: Julie Novak for University Hospitals Geauga Medical Center 13207 Ravenna Rd, Chardon OH – pursuant to a parcel consolidation application, applicant is requesting to have multiple existing principal structures on one large parcel. Violates SEC. 503 Principal Structures Per Lot-no more than one principal structure may be constructed upon any lot for the purpose of this Resolution. The construction of more than one principal structure upon any one lot shall require the approval of a variance from the Board of Zoning Appeals.

Mr. Pilawa read the variance request and violation. Zoning Inspector Herringshaw explained that the variance request is for a consolidation of lots in Claridon and Munson (marked in yellow) with a building located on 13193 and the medical building on Hospital Drive. He referred to photos he took showing the building that doctors' use and another that is half in Munson, half in Claridon. He was told by Linda Crombie of the Planning Commission that Claridon does not have a medical use district; they have institutional which allows for multiple buildings and includes medical use.

Todd Hunt, attorney for Geauga Medical Center; Julie Novak, Director of Operations; and Dr. Donald DeCarlo, President, were sworn in. Mr. Hunt thanked Zoning Inspector Herringshaw for his accurate representation and proceeded to show the different parcels and their buildings on a display board. Mr. Hunt addressed if there could be a beneficial use and felt it's possible but when you have a modern medical center and are trying to provide all services, it is important to consolidate because going forward there would be several zoning restrictions. Ms. Novak added that in trying to integrate services they have physicians' practices, outpatient services, etc. and want to bring as many services to the community as possible; the goal is to be proactive.

Mr. Pilawa asked for clarification that they are before the Board to obtain the variance pursuant to the process of consolidation. Mr. Hunt replied that they filed with the Geauga County Planning Commission and then the Planning Director reached out to the zoning inspector to check on any issues. They then were cited for Section 503. The new parcel would be 90 acres. Mr. Pilawa clarified that as a prerequisite UH has to address the zoning issues. Mr. Hunt responded yes and they would move forward with the Planning Commission on November 10. They had no zoning issues with Claridon. Mr.

Hunt explained if they cannot consolidate, each parcel would probably have zoning setback issues, parking lot, loading area and exterior lighting issues.

Dr. DeCarlo explained the primary purpose is to take care of the community and be a good neighbor. Mr. Hunt explained that in referring back to the Duncan Factors and in respect to the variance being substantial, the essential character of the neighborhood being altered, adjoining properties suffering a detriment, and the adverse effect to governmental services; he answered no to all. There would be no change of use for the consolidated parcels and they do not anticipate anything in the near future. In regards to 'Can the predicament be feasibly relieved through some other method' he responded no, because without the variance they would have to go with more protracted measures to allow the medical use to have more than one building; and in regards to the spirit and intent, it was his interpretation that Section 503 does not have the medical district in mind and that the medical district was put in after this restriction. He pointed out that in looking at the medical use district in the resolution; there is the term 'facilities' that indicates there is more than one. The medical use district is to provide health care and medical treatment facilities as implied in the beginning of the medical use section. In referring to the last factor 'Did the property owner purchase the property with knowledge of the zoning' Dr. DeCarlo responded no, he has been there probably 10 years.

Mr. Pilawa asked if the bottom parcel was zoned residential. Mr. Hunt replied yes, and the little parcel county owned. Mr. Pilawa asked Trustee Bushman if it predated zoning. He replied it was pre-1980.

Mr. Pilawa stated for the record there were 17 affected property owners notified in Case 20-21.

Dorothy Bauer of 13149 Ravenna Road commented that she wished she could have seen what Mr. Hunt was talking about. She referred to parcels 21-703235 and also 21-7032105 on the letter she received – she thought the one is not in Munson and the other should be 21-703215 (it was put incorrectly on the original application). Mrs. Bauer was shown a parcel map. Mr. Pilawa asked which lots were residential. Mr. Hunt responded using the last three numbers of each parcel: 800 to the north; 700 south of that; 215 & 235 and the medical use were in red. Mrs. Bauer asked if lots separated by roads and parcels used in a different way can be combined. Mr. Hunt said yes and the lots will stay residential unless the Medical Center requests different of the township. Mr. Pilawa clarified they have stated they do not have current plans related to how it is currently zoned. Mr. Hunt replied that was correct. Mrs. Bauer asked what the benefit is to their doing this. Mr. Pilawa pointed out that Ms. Novak had explained the purpose for a medical campus. Mrs. Bauer conceded it is a benefit to give good care to the community. Ms. Novak said they hope to bring many services to the campus. Mrs. Bauer pointed out that parcels owned by UH ending in 900, 400, 000 and one north of that are next to her and is concerned with the value of her property. They do not mind the way it is now even though people can see their property more. She said the hospital does not have plans now but will in the future because they will grow. She felt the township does not need another 'Ahuja.' She said she is a nurse but would not want to live next door to that. Their home is a place where their children come to relax. They have worked their way up to where they are now and their 11 acres is important to them. She commented that the helicopter used to come up Ravenwood and land. Dr. DeCarlo responded it depends on where it is coming from; having more services they have seen fewer transports out. There has been a decrease in traffic over the past decade. Mrs. Bauer explained they have had helicopters hover over

their house a lot this year. She knows they want more services and if those two parcels are left alone they would be happy. Geauga Hospital has served them well. Dr. DeCarlo said he understood.

Mr. Hunt said he would let the Geauga Medical Center representatives speak to the use of the county services building moving forward. Dr. DeCarlo explained the Geauga Job & Family Services building was purchased at the beginning of the year. Geauga Job & Family Services is currently leasing, but once they move out the building will be repurposed for outpatient services. In comparing to Ahuja, he said the bed situation is similar but they are undergoing expansion; that is not in Geauga's foreseeable future. Mr. Hunt pointed out that Ahuja is next to Interstate 271.

Mr. Pilawa explained that the Board's authority is limited. They are often asked to consider what the future might hold. The Board takes it seriously and understands the concerns; however, their authority is limited – "it is a narrow decision on a narrow request." He further explained that if the request exceeds what is granted, it becomes an enforcement issue; if relevant to use or area they can come for a variance. Every variance request is heard on its own merit. The Board has approved some and denied some.

Vanessa Evanick-Barnes of 11532 Holden Ridge asked who owns the three properties on Ravenna Road that end in 560, 200 and 900 and why weren't they included in the request. Mr. Hunt responded that Geauga Health Medical Center and Geauga Hospital Inc. own the parcels and they are for profit and there are tax considerations.

Danielle Pitcock moved and Jim O'Neill seconded to grant the variance requested in Case 20-21 as written. Discussion following the motion included that no one can dispute there is a beneficial use – the Board sees the benefit all the time, but it may be more beneficial as a modern medical campus as long as it does not cause detriment to adjoining properties; the variance does not seem substantial – it is not a request for a use variance; what is being done with testimony is going to essentially stay the same – the residential identification lets it stay the same; the delivery of government services are relative and would be enhanced; the predicament could not be feasibly relieved because the sole purpose is to connect the properties; the spirit and intent would be observed; and it is irrelevant as to whether UH knew about the zoning restrictions. Upon the roll call, members voted unanimously to approve the variance, motion carried.

The meeting was adjourned at 7:56pm.

	<u>11/18/2020</u>		<u>11/18/2020</u>
Dennis Pilawa, Chair	Date	Paula Friebertshauser, Secretary	Date