

Board of Zoning Appeals

Munson Township

Minutes of November 19, 2015

Chair Bobbie Nolan called the meeting to order at 6:30pm with Don Alexander, Gabe Kezdi, Danielle Pitcock, Richard Wright, Alternate Michael Waclawski, Secretary Paula Friebertshouser and Court Reporter Kim Giel present. The Pledge of Allegiance was said.

Mrs. Nolan swore in Jim Herringshaw as an alternate Board of Zoning Appeals member to fulfill Danielle Pitcock's unexpired term through 2016. Mrs. Pitcock had been appointed as a regular member in August 2015.

Richard Wright moved and Don Alexander seconded to approve the October 15, 2015 minutes as written. Motion carried.

Mrs. Nolan 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.

CASE 15-20: Bruce Burton, 11295 Sutton Place, Chardon OH - request to construct a 16' x 24' accessory building 17' from the west side property line. Violates SEC. 411 Minimum Dimensional Requirements - minimum side yard is 25 ft.

Pamela Burton and Zoning Inspector Tim Kearns were sworn in together. Mr. Kearns read the variance request and violation. He explained the photographs he had taken of the proposed location. The septic location was confirmed.

Mrs. Burton explained the shed would be used for storage. They currently have a two and one-half car garage and are growing out of it. They wanted to put the shed in the back but could not go back too far because of the septic and the yard slopes down. The proposed location is mostly flat and easy to access. She added that where the driveway is the property also starts to slope down.

When asked if some grading had been done, Mrs. Burton responded yes, and that one tree was taken out. She explained they were asked to stake out the proposed location. When asked, she said there would be no water, but maybe electric. When asked if there were any other location, Mrs. Burton responded that it would have to be pretty far back. Mr. Wright asked how the 17 foot distance was figured out. Mr. Kearns explained he and Mr. Burton found the property side line. Mrs. Nolan asked for confirmation that if it were moved it would hit the septic. Mr. Kearns replied it could not be built on the flat part because of the septic.

Mr. Alexander pointed out that according to the drawing, it shows that the building would be over the septic. Mrs. Burton responded that it would be moved over a bit.

Mrs. Nolan stated for the record that 19 affected property owners were notified in Case 15-20. There was no public comment.

Don Alexander moved and Gabe Kezdi seconded that Case 15-20 be approved as requested. Discussion following the motion included the following: there can be beneficial use as a residence and the variance is substantial due to the size of the structure and the close proximity to the neighbors; however, the new structure will be well built which negates any concerns; the essential character of the neighborhood would not be altered; adjoining properties would not suffer a detriment; the delivery of government services would not be adversely affected; the predicament could not be feasibly relieved through some other method; the spirit and intent behind the zoning would be observed and substantial justice done by granting a variance; and the property owner did know of the zoning restriction. Upon the roll call, all members voted yes, 5-0. Motion carried.

Continued -CASE 15-17: David King for Gray Horse Inc., 11251 Sherman Rd (Parcel B-3), Chardon OH - request to create a buildable lot with no frontage on a public or private road. Violates SEC. 502 Frontage required - no new lot shall be created nor shall any building or structure be erected upon a lot which does not possess the required minimum frontage upon a public or private road established for the district in which such lot is located; SEC. 411 Minimum Dimensional Requirements - minimum frontage at the road right-of-way is 200 ft.

Continued -CASE 15-18: David King for Gray Horse Inc., 11251 Sherman Rd (Parcel B-2), Chardon OH - request to create a buildable lot with no frontage on a public or private road. Violates SEC. 502 Frontage required - no new lot shall be created nor shall any building or structure be erected upon a lot which does not possess the required minimum frontage upon a public or private road established for the district in which such lot is located; SEC. 411 Minimum Dimensional Requirements - minimum frontage at the road right-of-way is 200 ft.

Continued -CASE 15-19: David King for Gray Horse Inc., 11251 Sherman Rd (Parcel B-1), Chardon OH - request to create a buildable lot with no frontage on a public or private road. Violates SEC. 502 Frontage required - no new lot shall be created nor shall any building or structure be erected upon a lot which does not possess the required minimum frontage upon a public or private road established for the district in which such lot is located; SEC. 411 Minimum Dimensional Requirements - minimum frontage at the road right-of-way is 200 ft.

David King was sworn in. It was agreed that Cases 15-17, 15-18 and 15-19 would be discussed all at once. Zoning Inspector Kearns read the variance requests and violations for all three cases.

Mrs. Nolan pointed out that the resolution states "no frontage on a public or private road". She asked Mr. Kearns if it were a private road; he responded yes. She questioned if it were in fact private, don't they have frontage. She asked Mr. King if it were a driveway or a private road. He responded it was a driveway. Mrs. Nolan asked if there were parcels there already. Mr. King explained there are three

homes: one house to the south on a flag-shaped lot with 15 feet of frontage at Mayfield where Alison Titgemeier lives; a house to the north that was built in the 60's and has 15 feet of frontage on Sherman Road; and a house located in the middle that has frontage granted from a prior variance with a 30 foot wide easement between Mrs. Titgemeier and Gray Horse.

Mr. King presented Exhibit A which depicted Parcel B-2 on the west side of the driveway. Even though zoning would require two and one-half acres, in meeting with Dave Dietrich of the Planning Commission, he wanted five acres minimum. He would not approve with anything less than that. Mr. King described the "Common Area" marked on the map. It has four garage bays, a large garage, pool and pavilion and would become common property. The Homeowners Association has a 60 foot easement and the common area. Mr. King met with Fire Chief Mark Lynn and he was fine with the development as long as the trucks could come in and out easily. Exhibit B depicted the turn-around detail. Mr. King said the Homeowners Association would share the cost of maintaining the turn-around and common area.

Mr. King explained that before the depression the parents bought the property and an uncle owned Heather Hill. It was basically horse property. The depression forced the uncle to sell and it became Ingleside Center and the rest was in James and Alice Osborne's name (Alison's parents). Gray Horse consists of the next generation with Alison Titgemeier as matriarch. There are nine or ten voting family members. Gary McDonald lives and farms on the property off of Sherman Road. The intent is to keep it the way it is to the largest extent possible with a means of return. There has been a split on how to get the best return and how to keep it as the founding fathers wished. Mr. King is a renter of the northern house. He was asked to present an option for a reasonable return and preserve the property. He explained that Ms. Titgemeier has no garage; it is a barn and house together; the parents lived in the middle house and the house to the north was built in the 60's. The problem the owners face is maintaining the homes and property. For three owners to share the cost of the maintenance of the driveway and homes is expensive. They considered selling to a developer but the houses would be torn down. To maximize the homes' value they thought adding three more would spread the costs over six owners. Mr. King explained everything is in line with the Western Reserve Land Conservancy - they would have 135 acres. Originally they asked the Conservancy to buy more if they wanted to maintain continuous ownership and connect through to Bass Lake. One of the conditions with the Conservancy is the approval of these three lots. To maximize the value, 18 acres with frontage on Auburn Road and a bit on Sherman would be left with the idea it could be preserved as agricultural or conserved. They believe this would be consistent with what people - both government and residential would want. He pointed out on the map that the purple area was farmed and the turquoise would be the Conservancy. The Conservancy has obtained funding for the watershed area not the farm area.

Mrs. Nolan commented she was on the Board at the time the first variance was obtained. Mr. King showed her on the map. He explained the yellow part on Exhibit A is currently Ms. Titgemeier's but will be part of B-2; the pink area would be added to hers under subdivision regulations. Mrs. Nolan asked how far from Mayfield the south line of parcel B-3 was. Mr. Alexander thought it would be 1000 to 1100 feet.

Mr. King explained Exhibits C and D which were lot evaluations for soil testing to support site approval for septic.

Mr. King addressed the factors for an area variance. He said the property was purchased in the 1920's. Is the variance substantial - absolutely. Can the predicament be feasibly relieved through some other method? Yes and no, there can be a reasonable return if there is full scale development, but the family does not want to go that route. Are the delivery of government services affected? No, he worked with Fire Chief Lynn. Is the spirit and intent affected? No, when you consider going from two and one-half to five acres there is a spirit of conservation. Mr. Alexander asked that with the construction and addition of the turn-around, would it be paved? Mr. King replied "yes". Mr. Alexander then asked if the existing drive can sustain two-way access. Mr. King responded there is one pull-off and another would be added because the 60 foot access at Mayfield would allow for widening. Mr. Alexander asked if there were any concerns with thru access. Mr. King responded no, there is a gravel drive to Sherman Road, but if the property sells there would be no hesitation to cut that off. Mrs. Nolan asked if there were any intent to sell to family or anyone in particular. Ms. Titgemeier responded they have no plans. Mrs. Nolan commented that the Board of Zoning Appeals prior decision on the property was because of family. Mr. King said there was not enough family interested in living there. Mrs. Nolan asked if the variance is granted is it positive they will sell to the Conservancy. Mr. King responded yes, the only basis not to was if they did not get approval of the proposed parcels by the end of the year.

Mr. King summarized that he knows this is a big variance, but felt the Board would not be passing the buck because the ultimate judge is Dave Dietrich of the Planning Commission.

When asked if the property would be sold with any conditions. Mr. King responded there would be a Declaration of Restrictions & Covenants including minimum square footage and approval of architectural design. The homeowners would be required to be a member of the Homeowners Association which would be typical but on a smaller scale. He noted the area conserved would be named after the grandparents.

Mr. King presented Exhibit E which is an evaluation for lot B-1; F, G and H which are evaluations for proposed Lot B-2; and Exhibits I, J and K for proposed Lot B-3.

Mrs. Nolan stated for the record that 27 affected property owners were notified in Cases 17, 18 and 19.

Paul Kenny of 12415 Auburn Road was sworn in. He asked if each lot would have their own septic system. The answer was yes. Mr. Kenny then asked about the access drive and where it becomes gravel. Mr. King pointed out the location where the drive is paved. He added that the pavement is not 15 feet wide but the land is 30 feet wide; Ms. Titgemeier owns 15 feet and 15 feet immediately west is an easement owned by Gray Horse for a total of 30 feet committed to access. Mr. King pointed out a dotted line which is currently their parcel and that it is all wooded in the back of the lot. The area in pink on Exhibit A would be added to Ms. Titgemeier's parcel.

Sylvia DeFranco, owner of 10 acres off of Mayfield was sworn in. She wondered how her parcel would be affected. Mr. King explained hers would be favorably affected as all the property surrounding it will be conserved. Mrs. Nolan asked if her property was for sale. Ms. DeFranco replied "yes". When asked, she confirmed she raises aquatic plants.

Andy Bushman of 12110 Fowlers Mill Road was sworn in. He offered that even the property not in the conservancy would look the same now with continued farming. He pointed out that the same group owns 122 acres across Mayfield which has been preserved.

Upon hearing Mr. Bushman's comments, Mrs. Nolan asked if the intent was to preserve the rest of the farm. Mr. King commented the Conservancy does not want it yet due to funding. He added that the 122 acres across the street has agricultural use. Nate McDonald, whose dad Gary McDonald farms and lives off of Sherman, was sworn in. He explained his parents, sister Tessa and her husband Rob bought a portion of the property south of Mayfield Road where they currently farm, and have an agricultural easement through a grant to protect it from any further development.

The Board recessed at 7:58pm for executive session. The meeting resumed at 8:13pm.


Richard Wright moved and Gabe Kezdi seconded that the variance requested in Case 15-17 be approved as stated. Discussion following the motion included: the project is pretty involved and obviously there has been a beneficial use; things change, times change; the variance is substantial with what you have presented, honestly well presented; the essential character of the neighborhood would not be affected; the size of the property and houses will assure they are well built; adjoining properties will not suffer a detriment; the variance does not affect the delivery of government services and will include a turn-around; the predicament cannot be relieved and with what is presented, and what you intend to do, the spirit and intent will be upheld; and you did not know of the zoning restriction. Upon the roll call all members voted yes, 5-0. Motion carried.

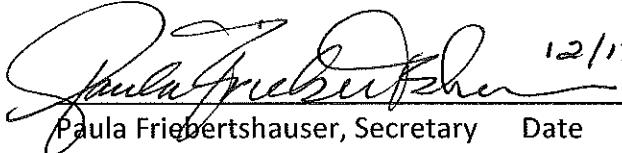
Don Alexander moved and Gabe Kezdi seconded that the variance requested in Case 15-18 be approved as requested. It was noted to include the same discussion as that for Case 15-17. Upon the roll call all members voted yes, 5-0. Motion carried.

Danielle Pitcock moved and Gabe Kezdi seconded that the variance requested in Case 15-19 be approved as written. Again, the same discussion was used as that for Cases 15-17 and 15-18. Upon the roll call all members voted yes, 5-0. Motion carried.

Don Alexander moved and Danielle Pitcock seconded to approve the findings of fact for Case 15-16. Motion carried.

The meeting was adjourned at 8:22pm


Richard Wright, Vice-Chair 12/17/15 Date


Paula Friebertshauser, Secretary 12/17/15 Date