

Board of Zoning Appeals

Munson Township

Minutes of December 7, 2017

Chairman Dennis Pilawa called the meeting to order at 6:30pm with Gabe Kezdi, Danielle Pitcock, Joe Tomaric, Alternate Tim Kearns, Zoning Inspector Jim Herringshaw, Secretary Paula Frieberthausser, and Court Reporter Kim Giel present. Don Alexander was absent. The Pledge of Allegiance was said.

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. He added that the Board does not accept letters as testimony; they are heresy.

Gabe Kezdi moved and Joe Tomaric seconded to approve the September 21, 2017 minutes as written, with a unanimous vote. Motion carried.

CASE 17-10: Nate McDonald/Gray Horse, Inc. 11230 Mayfield Rd., Chardon OH - requests to allow for the transfer of a strip of land 15' x 970' from Gray Horse Inc. to the McDonald family to align legal ownership with the use of property on Sherman Rd. Violates SEC. 502 Frontage required-(in part) no new lot shall be created 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.

Zoning Inspector Jim Herringshaw was sworn in. He read the legal notice and explained that when the property was originally split and the strip added in the 90's, it probably did not need a variance because of Section 702.1 it is a lot of record; and Dave Dietrich of the Planning Commission seemed to be in accordance. However, because they are creating a new lot now it does require a variance.

Nate McDonald was sworn in. He introduced his wife and children, David King, Attorney and Allison Titgemeier, property owner. Mr. McDonald provided display maps of the properties. He explained that the "flagpole" lot address of 11230 Mayfield Road, actually fronts Mayfield but has 15 feet of frontage on Sherman Road. They are asking to cut off the portion fronting on Sherman which would be a property transfer from Gray Horse, Inc. to the McDonald family. Mr. McDonald owns the barn and the house; his parents own two parcels. A portion of the property to be transferred would go to him and a section to his parents.

Mr. McDonald pointed out that the flagpole portion goes between the barn and his house. He would be taking 2.5 acres that surrounds the barn and would unify the farmstead. He explained that the McDonald family and Gray Horse had entered into an agreement to sell 100 acres so that the McDonalds would have the farm area, fields and woods, and Gray Horse would end up with the houses and accessory buildings off of Mayfield Road. Both parties realized the flagpole lot was a complication so they put a provision in the contract that they would close within a year so that this issue could be resolved.

Mr. McDonald explained he grew up in the house he is living in now. His parents moved to a house next to his sister on Mayfield Road. His father managed the Gray Horse farm and property and still runs the farm.

Mr. McDonald reviewed the practical difficulty factors. He explained there is a beneficial use without the variance; and he could see it as being substantial both ways - they are taking away frontage, but with only 15 feet of that frontage, it is already nonconforming. In terms of the way the land is used, all three houses have an easement over the driveway and use Mayfield Road. The McDonald's have always used Sherman Road. In the winter, the driveway is not plowed and in terms of their agreement, Gray Horse would have an easement for use of the driveway in case of an emergency. They would keep that part of the agreement upon transfer of ownership. There is no detriment to adjoining properties because they are owned by the McDonalds. The variance would not adversely affect the delivery of government services because all of the mailboxes are on Mayfield and have Mayfield Road addresses. The predicament cannot be feasibly relieved through some other method; they were advised by Mr. Dietrich of the Planning Commission that they cannot move forward until a variance is obtained because it would be creating a landlocked parcel. The property owner did know of the zoning restriction. Mr. McDonald felt the most important factor, that being if the spirit and intent would be observed and substantial justice done by granting the variance, would be met because it would align the legal ownership rights with the use of the property. They would be able to farm the land without driving the vehicles on the road. In terms of the practical difficulty, just the basic idea that his home is bisected by a driveway owned by someone else may cause difficulty in the future. The easements are also important - the parcel has legal ingress and egress met by the strip to Mayfield Road. He felt substantial justice would be done because they carefully negotiated this issue and Gray Horse is willing to give them that opportunity. He did not think it would have major impact on anyone else.

Mr. Pilawa stated for the record that 23 affected property owners were notified in Case 17-10. There was no public comment.

Danielle Pitcock moved and Joe Tomaric seconded that the variance requested in Case 17-10 be granted as requested. Other than the facts that were set forth by Mr. McDonald, it was noted that the McDonald's purchased that same land and involved a neighbor willing to purchase a part that goes to Auburn. Upon the roll call, all members voted unanimously for the variance, 5-0. Motion carried.

CASE 17-11: Philip & Sally Fogarty 10575 Butternut Rd., Chesterland OH - request to replace an existing shed with a 40' x 24' garage in front of the home. 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 legal notice. Zoning Inspector Jim Herringshaw pointed out the proposed location on the photos.

Sally Fogarty was sworn in. She explained they would like to replace the existing shed with a garage in front of the home. It would be quite a distance from the road. There would be 82 feet between the house and the garage. They could not build behind the home because there would be no access.

Mr. Pilawa stated for the record that there were 10 affected property owners notified in Case 17-11. George Kirchhausen of 10587 Butternut, adjoining neighbor to the south, was sworn in. He explained he has lived there for 30 years and had a few neighbors prior to the Fogarty's. Mr. Fogarty had gone over the plans with him and he felt it was a great idea. He felt it would be the perfect spot and would

not affect them. There is enough frontage, trees and a pond between them. Mr. Kirchhausen added that the Fogarty's keep their property immaculate. Mr. Tomaric questioned if Mr. Kirchhausen was on the left side. He confirmed that they are further from the Fogarty's than the most affected neighbor. The other neighbor was not present to object. Mr. Pilawa commented that people generally come to the meetings if they are against a variance. When asked what the proposed use for the garage would be, Mrs. Fogarty replied "storage."

Tim Kearns moved and Gabe Kezdi seconded that the variance requested in Case 17-11 be approved. Discussion included that it appears that the factors the Board has to apply would seem to lead them to the conclusion that the variance should be granted. Upon the roll call, all members voted unanimously to approve the variance, 5-0. Motion carried.

The meeting was adjourned at 7:19pm.


Dennis Pilawa, Chair 1/18/18
Date


Paula Friebertshauser, Secretary Date 1/18/18