

Board of Zoning Appeals

Munson Township

Minutes of December 15, 2021

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

Don Ondrejka moved and Dennis Pilawa seconded to approve the minutes of November 17, 2021, as written. Motion carried, 2-0.

Chair Pilawa explained the role of the Board of Zoning Appeals is to apply certain principles of law as required by the Ohio Supreme Court. The Board has limited authority and cannot change the zoning, but there is a provision in the zoning resolution for variances. He 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.

When asked by a resident in attendance, Chair Pilawa explained the factors to be considered and provided the case site.

Chair Pilawa made it clear to the applicant that with only four members present a tie vote would be a no vote and offered that they could continue the case. They wanted to proceed.

CASE 21-19: Lake County Concrete LLC, 10266 Wye Road, Chesterland, OH - requests to keep a home currently under construction 65 feet from the road right-of-way. Violates SEC. 411 Minimum Dimensional Requirements-minimum setback from the road right-of-way is 80 feet.

Chair Pilawa read the variance request and violation. Zoning Inspector Jim Herringshaw was sworn in. He explained that he received a call last month from an area resident saying the home appeared to be close to the road. The property owner was previously issued a zoning certificate and the site plan showed a 90-ft. setback. Mr. Herringshaw notified Mr. Petersen and asked him to verify the measurement. Mr. Herringshaw mentioned that some of the neighbors' homes across the street are closer than 80 feet and showed photographs that showed the southeast corner of Wye and Rockhaven; the southwest corner; the view north from Wye; and several of the construction site.

Todd Petersen, representing Lake County Concrete LLC, and Mike Mirenda were sworn in. Mr. Petersen explained that he has personal knowledge of the property because he was the original owner. He purchased it and the surrounding properties with the intention of creating a seven-lot subdivision

but instead had it split into four lots. The property is not high in the front and is lower in the middle. They had to go to Geauga Soil & Water prior to construction.

Chair Pilawa asked what accounted for the difference. Mr. Petersen admitted they screwed up – he felt there was some miscommunication between he and Mr. Mirenda. He presented a map that showed six homes across the street that are approximately 61, 54, 51, 80, 69, and 78 feet from the road right-of-way. He added that the Mabel's house fronts off Wye and is 55 feet from the road right-of-way. Chair Pilawa commented that the variance meets one of the Duncan Factors by not altering the essential character of the neighborhood. Mr. Petersen explained the home is under construction; it has a slab, but no basement because of the wetness. He told Mr. Mirenda to put it on hold but winter weather will be setting in. He provided setback measurements from the eastern edge at 69.4', and the western edge at 68.8'. Rudy Schwartz did the survey but with the curve in the road they left the variance request at 65' in case they put a stoop or porch on the house.

Mr. Petersen reviewed the factors: he felt the beneficial use is tough; it was supposed to be an extra 10 foot setback and he knows the zoning inspector would have said measure from the road right-of-way; the variance is not substantial with the proximity of surrounding homes; and the same argument applies for if the essential character of the neighborhood would be altered; and will adjoining properties suffer a detriment – it's one house on one lot and everything meets the requirements except for 11 feet; the variance will not adversely affect delivery of government services; the predicament cannot be relieved through some other method because it is an elevated slab and the walls are to be delivered soon; the spirit and intent would be observed because it is an unusual circumstance with no ill intent; and the property owner did purchase the property with knowledge of the zoning restriction. Mr. Petersen commented that the only thing he can figure happened is that it was measured from the edge of the road instead of the road right-of-way.

Chair Pilawa responded that while the Board must apply the Duncan Factors, not one carries more weight than another. They can accord any facts dependent on circumstances and some do not apply.

Chair Pilawa stated for the record that 23 affected property owners were notified in Case 21-19. Michael Roote of 12935 Rockhaven Road was sworn in. He commented that the house is at the intersection of Rockhaven and Wye and felt there is a setback for a reason. He provided the example that if someone has had a few drinks and comes out of the golf course they could drive right through the intersection into the house. Chair Pilawa asked Mr. Roote if he had a specific objection to the house going up. Mr. Roote commented there is zoning for a reason. Chair Pilawa responded that there is a provision to vary from the zoning. Mr. Roote commented that most of the homes are well setback on that side. Others may have predated zoning but not that side.

Mr. Petersen explained the only potential issue is at the intersection and there are trees that form a barrier. Mr. Mirenda added there also is a four-foot culvert ditch. He felt that ever since he bought the lots people have tried to tell him what to do and someone has pulled in his drive and taken pictures of his grandkids. Mr. Mirenda wanted to build for his family and has never had a problem until now. Chair Pilawa responded that the Board's authority is very limited. Mr. Petersen added it was an honest mistake. There is an 11-foot setback variance; a four-foot culvert and tree line; and he has never heard of a car going through that intersection; the trees are still there. He commented that the house that

was previously there was halfway up the drive. Chair Pilawa commented that he does not see a factor for a drunken driver.

Mr. Roote said he has never trespassed nor taken pictures of Mr. Mirenda's grandkids. He has never complained or called; he is not big on zoning. Chair Pilawa responded that Mr. Roote could say whatever he wants so it is on the record and commented that in Bainbridge he probably would have been cut off. Nancy Roote was sworn in. She commented that it is shocking that Mr. Mirenda got permission to build there because it is very wet. Mr. Herringshaw explained they must get a septic permit, and a letter from Geauga Soil & Water before they can build. It is a buildable, recorded lot.

Mr. Petersen explained that the reason he abandoned the previous plan for a seven-house subdivision is because it allows them to stay away from the wetness.

Mr. Roote asked if it is the same lot that came for a variance for a shared driveway. Mr. Herringshaw responded no. Mr. Petersen explained that the variance was for two driveways with a joined area so that they can turn around and point out.

Don Ondrejka moved and Joe Tomaric seconded that the variance requested in Case 21-19 be approved as written. Chair Pilawa commented there is some concern about the law being applicable and emphasized that because that law provides for this forum that is within the ordinance. The following factors were provided: there could probably be a beneficial use but as indicated in the application it would be tough; the variance is not substantial with the difference between 65 feet and 80 feet; the essential character would not be altered and there is one that has a 65 foot setback; it was asked what detriment would adjoining properties have but there was no evidence it would impact the value; the delivery of government services would not be adversely affected – it seems having the home 15 feet closer would be a lot easier to get to; and whether the predicament could be feasibly relieved – the important part is “feasibly” and other than a variance to undo it would not be feasible; and it complies with the spirit and intent for all the reasons just mentioned; and the fact that the property owner knows of the zoning restriction, the Board does not give a whole lot of weight to – it has become less important. Upon the roll call, members vote 4-0, motion carried.

The meeting was adjourned at 7:13pm.

			
Dennis Pilawa, Chair	Date	Paula Friebertshauser, Secretary	Date