

# Board of Zoning Appeals

## Munson Township

Minutes of February 21, 2013

Chair Bobbie Nolan called the meeting to order at 6:30pm with Don Alexander, Gabe Kezdi, Richard Wright, Lucy Longo, Alternates Danielle Pitcock and Michael Waclawski, Secretary Paula Friebertshauser and Court Reporter Nayann Pazyniak present. The Pledge of Allegiance was said.

Richard Wright moved and Lucy Longo seconded to approve the minutes of December 20, 2012 as written and corrected. Motion carried.

Ms. 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 this evening. 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.

**Continuance: CASE 12-14: Joseph Weiss, Jr.**, 10823 Mayfield Rd, Chesterland OH – request to erect a 7 x 4 ft. ground sign. Violates SEC. 1003.6 (2) Signs Permitted in the Commercial District (in part) – one (1) ground sign, which shall have a maximum area of sixteen (16) square feet per sign face.

Tim Kearns, Zoning Inspector, was sworn in. He read the variance request and violation. Mr. Kearns explained that initially there was an issue with the additional individual business sign that currently exists; however, that sign is grandfathered in, but if the business changes, the new regulations that the Zoning Commission are working on would apply once in effect.

Joseph Weiss was sworn in. He passed out three exhibits to the Board. Exhibit #1 was a copy of the GIS map of the property. Mr. Weiss explained that Mr. Simiele, who actually lives down the street near Klatka Drive, would be offering testimony.

Mr. Simiele of 11009 Mayfield Road was sworn in. He explained that the structure in Exhibit #1 is a multi-tenant building with 10 suites. The name is Munson Plaza and it currently has two tenants – Friel & Associates and the Karate Institute; and has 350 feet of frontage. They are requesting to replace the existing old wooden sign, and would like to eliminate future additional signs. Exhibit #2 is the current sign which is illuminated by two 100 watt ground lights. Exhibit #3 was the proposed new 4 x 7 sq. ft. sign. It would be of aluminum construction and illuminated from within. There would be only room for four businesses on the sign. Mr. Wright noted that there are ten suites in the building. Mr. Simiele explained that if there is a need, they would just readjust the sign to accommodate the added business(s). Long-term tenants Friel & Associates currently have five units and the Karate Institute two.

Mr. Weiss asked Mr. Simiele if it is a common sign. Mr. Simiele responded “yes, this one is a bit smaller”. Mr. Weiss asked him about the traffic and site distance. Mr. Simiele explained that the planned ground sign will increase visibility and is easier to see as opposed to multiple signs. He said there have been numerous signs there – four or five at one time. Mr. Weiss asked if the goal is to narrow them

down to one. Mr. Simiele replied “yes”. Mr. Alexander asked if the new sign would be replacing the current one in the exact location. Mr. Simiele replied “yes”. He added that it would not exceed six feet.

Mr. Alexander asked Mr. Kearns if the 16 square feet permitted is per sign face. Mr. Kearns explained yes, and that it could be double-faced. When asked if he included the 2 x 2 foot base, Mr. Kearns replied it goes by the base and approached the table. Mr. Alexander commented that if it includes the base it would be 32 square feet. Mr. Kearns said that is correct.

Mr. Weiss commented that they could have more than one sign according to the prosecutor, and the Zoning Commission is going to review that, but they personally do not want a lot of signs. He saw the face as 16 square feet and does not count the pedestal but was not going to argue. Mr. Weiss felt the sign would be a vast improvement and have a better appearance.

Mrs. Nolan stated for the record that 30 affected property owners were notified. There was no public comment. Mrs. Longo asked if there would be a group sign on the building. Mr. Weiss replied “no”.

Richard Wright moved and Don Alexander seconded that the variance requested in Case 12-14 by Joseph Weiss Jr. for sign area – 28 square feet versus zoning of 16 square feet be approved as requested. Discussion included: the hardship is unique to specific area – a good case in point is that the sign is wearing out; the sign seems significant covering many businesses, and keeping it uniform is a definite improvement; thus the essential character of the neighborhood would not be jeopardized but kept neat; adjoining properties would not be impacted; the delivery of government services would not be affected; the predicament cannot be feasibly relieved through some other method; the intent by granting the variance is fair and reasonable; and the property owner did not know the zoning restrictions as stated. Upon the roll call, all members voted yes, 5-0. Motion carried.

**Continuance: CASE 12-17: George Paolucci, 11850 Mayfield Rd., Chardon OH – request to construct a 30 x 80 ft. commercial storage unit with 170 feet of frontage at the road right-of-way and a minimum lot size of 1.5 acres. Also, request to keep an existing 20’ wide driveway. Violates SEC. 408.2 Permitted Uses and Structures – the above requested use is not listed as a permitted use and structure in the Commercial District. SEC. 411 Minimum frontage at road right-of-way is 200 feet; minimum lot size is 2.5 acres. SEC. 511 – Driveways shall be a minimum of 15 feet from any lot line and have a minimum width of 12 feet.**

Mr. Kearns read the variance request and violations. Mr. Weiss explained that subsequent to the application, Mr. Kearns pointed out there was an application denied in 1998 that was similar and could be considered *res judicata*. Since that time, Mr. Paolucci has a potential tenant and may want to expand the existing building. They will know tomorrow. If they find out the tenant would like to add on to the building, they would like to amend the application and consider the addition – therefore, he asked for a continuance for another month. Mr. Wright asked if they get the tenant, would they still want to build the separate storage unit. Mr. Weiss said no, they understand the issue. Mrs. Nolan asked if they would withdraw and reapply for a variance. Mr. Weiss said they would just like a continuance, because they do not want to pay another \$300.00. Mrs. Nolan thought they should consult with legal counsel as to whether it needed to be continued or a new variance applied for. In the meantime, Mrs. Nolan moved and Gabe Kezdi seconded to extend Case 12-17 for one month with a fee of \$100.00, and if they get a decision that it cannot be amended, the \$100.00 would be applied to the \$300.00 variance fee. Upon the roll call, all members voted yes, 5-0. Motion carried. Mr. Weiss thought that was fair enough. Mr.

Kearns said he would call the prosecutor, but it was his opinion that the appellant would have to apply for a new variance.

Ms. Longo asked if the building were added onto the back would it still be considered nonconforming. Both Mrs. Nolan and Mr. Kearns said yes. Mr. Kezdi explained the request is for a second principal structure which is nonconforming to the zoning, but the possible request to add onto a nonconforming building would probably require a separate variance.

**CASE 13-02: Joe Perfetto/Enzoco Homes for Paul & Megan Vredenburg, 11175 River Rd., Chardon OH – request to construct a new home 38.6 ft. in height in a flood prone district. Violates SEC. 506 Maximum Building and Structure Height-(in part) the height of all buildings shall be limited to 35 feet. Under Conditional Use-SEC. 807.1 Flood-Prone District Structures-No structure will be built on the flood-prone portion of a lot located in a flood-prone district unless prior approval is obtained from the Board of Zoning Appeals.**

Mr. Kearns read the variance request and violations. He pointed out on the site plan how he measured. Joe Perfetto was sworn in. Mr. Wright asked about the drawing and Mr. Perfetto pointed out the correct chimney location because the CAD drawing was wrong. He explained the home would be three stories but would not exceed 28 feet from the first floor to the top of the third (27.5 feet). The design of the home with the roof pitches would be 35 feet at the highest peak. Mr. Alexander asked for the dimensions of the roof line. Mr. Perfetto replied that it is 35 feet. When asked, he showed the side elevation and pointed out the portion that is the highest. He said there are lots of peaks and elevations with the design. Mr. Kezdi asked for confirmation that there is less than 28 feet of living space. Mr. Perfetto replied “yes”. Mr. Kearns verified for the record that there would be no one living above 28 feet. Mr. Perfetto replied “correct”.

Mr. Wright commented that it appears from the road that the property keeps going down. Mr. Perfetto explained it does, but the pond makes up for the grade going back and it was the best location for the house. Mr. Wright asked if he had any idea when the flood plain is up. Enzo Perfetto commented it would be built outside the flood prone area. Joe Perfetto pointed out the flood plain on the map. He explained to the Board that in doing their surveying and laying out the septic with the existing driveway and culverts, they have found that the driveway is closer to the lot line than 15 feet in some spots. This came up after the original filing. He wondered if they had to continue the case. Mrs. Nolan explained that they can only act on what the variance was originally requested for. Enzo Perfetto was sworn in. He asked if there was the possibility of approving the case for what was asked and then continuing for a \$100.00 fee. Mrs. Nolan explained the case could be amended and continued. Mr. Alexander added that people need to be notified of the new request. Enzo Perfetto preferred that the Board act on the current variance request and they would apply for a separate variance for the driveway.

Mrs. Nolan stated for the record that there were 18 affected property owners notified in Case 13-02. Fred Gurkey of 12130 Falls Road was sworn in. He was concerned about the flood prone portion and wondered if the footprint was within the flood plain. Enzo Perfetto responded no, they were outside of the riparian setback. Joe Perfetto added that it would complement the property. Ms. Longo asked if there was a building there before. Joe Perfetto replied no, the developers put the driveway in.

Bobbie Nolan moved and Gabe Kezdi seconded that the variance requested in Case 13-02 be granted. Discussion included the following: there cannot be a beneficial use unless it is a park; the variance is not substantial because it is outside of the flood prone area and with the height, there is no living space

above the requirement; the essential character of the neighborhood will be altered in a positive way; adjoining property owners will not be adversely affected; the delivery of government services will not be impacted and will have access through the driveway; the predicament cannot be feasibly relieved through some other method; the spirit and intent behind the zoning would be upheld with approval; and the property owner did know about the request and came forward. Upon the roll call, all members voted yes, 5-0. Motion carried.

**CASE 13-03: Payne & Payne Builders for Munson Pond Preservation Co., 11579 Lake Rd., Chardon, OH** – request to construct a home 41 ft. in height with another principal structure on the lot. Violates SEC. 506 Maximum Building and Structure Height-(in part) the height of all buildings shall be limited to 35 feet. There shall be no living space above 28 feet. SEC. 503 Principal Structures Per Lot – no more than one principal structure may be constructed upon any one lot for the purposes 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. Kearns read the variance request and violations. He explained there were no pictures because the building on the lot would be removed. He pointed out the existing building and the other primary structure.

Mrs. Nolan asked if Parcel A and Parcel B were two different lots. Todd Petersen was sworn in. He presented a map and explained there is roughly 4.962 acres that cannot be split right now because of the septic layout. He explained that they are hoping that in less than a year when they build and have a mortgage, they can do the split with the health department's approval. Mr. Petersen explained the other building is basically a cottage and is owned by his Mother and Father and Aunt and Uncle. They purchased the other home in 2006 or 2007 from Leo Petronzio and Bob Zella. It has its own septic. Mr. Petersen went on to explain it has some of the best soils for drainage. Mrs. Longo asked which part would be split off. Mr. Petersen pointed it out and explained it would go up Lake Road and curve in front of the pavilion. He added there is not enough acreage for a third lot. He said the home that will be torn down was built as a fishing and hunting cabin. The top portion was put on as a dormitory in the 1950's and has seven bedrooms with toilets right next to each other. Mr. Wright asked if the 41 feet would be at the highest peak or is the whole roof. Mr. Petersen explained it took a long time for them to decide, but it would be a shingle-style home characterized by sharp angles and steep roofs. He showed the home from the front and indicated that in between the two chimneys is where it reaches 29 feet which would be inhabited. He met with the Fire Chief who had already checked the island for accessibility. He explained the third floor would be their boys' room and there would be a sprinkler system in place. Mr. Kearns reiterated that they met with the Fire Chief and he stated that with the boys upstairs, a fire suppression system would be needed. It is 29 feet at the ceiling. Mr. Kearns added it was the same scenario with the Arko case several years back. Chief Harchar at the time came in and said the same thing. Mr. Petersen explained that everything was discussed with the Fire Chief – including the capacity of the bridge.

Susan Petersen and Dean Tompkins, Construction Manager from Payne & Payne, were sworn in. Mr. Petersen explained that with their good fortune they own Lake Road. He said the mound will be coming out and will provide a straight line, and a gate with a code will be installed.

Mrs. Nolan stated for the record that 16 affected property owners were notified in Case 13-03. There was no public comment.


Gabe Kezdi moved and Lucy Longo seconded that the variance requested in Case 13-03 to build the residence at 11579 Lake Road be approved as requested. Discussion included the following: because there is a residence there, there is a beneficial use without a variance, but the variance is necessary; it is substantial but there appears to be good due diligence about safety as far as access; the essential character of the neighborhood would be improved; adjacent property owners would suffer no detriment; the delivery of government services would not be adversely affected as they have complete access; the predicament cannot be feasibly relieved through some other method; the spirit and intent will be upheld and supported upon documentation and thorough study has been done; and the appellant did know of the zoning requirements. Upon the roll call, all members voted yes, 5-0. Motion carried.

Regarding the rescinding of Case 13-01 for Alpine Valley, Mrs. Nolan asked Mr. Kearns to explain the issue. He said Peak Resorts bought the business not the property and upon meeting with the prosecutor, the conditional use applies only to the property. Therefore, a variance was not required. Mr. Kearns conveyed this to Peak Resorts' legal counsel, and because the property is still under Sycamore Lake, they were instructed to send a letter to the Board requesting to rescind the case. Mrs. Nolan commented that she had asked Mr. Kearns to consult legal counsel regarding the case; then she read in the paper that Alpine did not require a variance. She felt Mr. Kearns should have let them know about legal counsel's response. The newspaper incorrectly reported that the Board had approved the case. Mr. Kearns replied that he was waiting for the letters from the attorneys before notifying her. Mrs. Nolan commented that when the prosecutor gives him a decision, she would like him to let the Board know right away.

Mrs. Nolan then read letters from Helfrey, Neiers & Jones, P.C.; one stated that Sycamore Lake was still the owner, and the other requested that Case 13-01 be rescinded. Bobbie Nolan moved to accept the letters from Helfrey, Neiers & Jones, P.C. and Richard Wright seconded the motion. Upon the roll call, all members voted yes, 5-0. Motion carried.

Bobbie Nolan moved and Don Alexander seconded to adjourn the meeting at 8:03pm. Motion carried.

  
Bobbie Nolan, Chair

  
Paula Friebertshauser, Secretary