

# Board of Zoning Appeals

## Munson Township

Minutes of February 21, 2019

Chair Dennis Pilawa called the meeting to order at 6:47pm with Gabe Kezdi, Danielle Pitcock, Alternates Jim O'Neill and Tim Kearns, Secretary Paula Friebertshauser and Court Reporter Laura Ware present. Don Alexander and Joe Tomaric were absent. The Pledge of Allegiance was said.

Tim Kearns was reappointed as an alternate and sworn in for a two-year term through December 31, 2020.

Gabe Kezdi moved and Jim O'Neill seconded to approve the minutes of January 31, 2019 as written. Motion carried, 3-0.

CASE 19-01: Cynthia Gray, 12101 Bass Lake Rd., Chardon OH - request to split property into two parcels. Parcel #1 would have 100' of frontage; Parcel #2 the existing home would have a front setback of 30' from road right-of-way and would be 3.5 acres. Violates SEC. 411 Minimum Dimensional Requirements - Parcel #1 frontage required is 200'; Parcel #2 minimum setback from road right-of-way is 80' and the minimum lot size required in an R4 district is 5.0 acres.

Mr. Pilawa read the variance request and violations. Zoning Inspector Jim Herringshaw was sworn in. He explained photographs taken of the home and property. Mr. Pilawa asked him if the home was grandfathered in. Mr. Herringshaw responded that it was, but with the proposed split, it would be considered a new lot.

Cynthia Gray was sworn in. She explained she bought the house as a hobby and loves the property. She has renovated the house and put more money into the renovation than planned. She would like to build a similar style farmhouse on the split parcel and thought her son might move into the other or she would put it up for sale. When asked, Ms. Gray explained she has owned the property for a year. The house was in bad shape and had missing windows. She gutted half of the home.

Mr. Kezdi asked if she purchased the property with the intention to split. Ms. Gray responded no, she really appreciated the property; it backs up to the old quarry lake and there is a lot of nature to see. Mr. Herringshaw mentioned that Best Sand owns the property to the north.

Mr. Pilawa stated for the record that 23 affected property owners were notified in Case 19-01. Anissa Meziane of 12058 Bass Lake Road was sworn in. She purchased the farm across the street and was interested in purchasing Ms. Gray's property. She went over to talk with Ms. Gray who said she was renovating. The price was raised significantly from the initial price. Ms. Meziane explained she has bought up several properties in the area and did not want to see the parcel split. She put one million into her farm and bought it for one-half million. She commented that Ms. Gray's house still looks like an eyesore and the red front door has not been changed. She said if she bought it she would rip the house down and make the property agricultural.

Mr. Pilawa explained that whether or not Ms. Gray gets the variance, the home will stay because the building pre-dates zoning and is grandfathered in. He explained the law is you cannot require someone to retrofit a structure. Ms. Meziane commented that she assumed with the work she has put into her farm that the front door on Ms. Gray's house would be changed. She did not want another house across from her.

Mr. Pilawa explained the focus is the property split. Twenty-three people were notified and twenty-two others did not show up. Ms. Meziane said she could not speak for those people. She was in Dubai until this past Wednesday.

Ms. Gray mentioned she is still more than willing to sell. When the real estate agent set the price, they did not talk about splitting the property. Mr. Pilawa asked Ms. Gray if she had a lawyer. She responded she did not, just a builder, but his wife is a lawyer.

Mr. Kearns commented that what he was hearing is that there is a neighbor complaint, but no one else came to the meeting. There isn't anything the Board can do because some of the things do not have anything to do with the variance request.

Mr. Pilawa offered that sometimes they can resolve disputes but he did not know if that was possible in this case. In his experience, the realtors have their own idea of the fair market value. Mr. Pilawa told Ms. Meziane that he did not know whether she was going to be happy either way – approving or disapproving the variance. Ms. Meziane reiterated she did not want a building there. Mr. Pilawa countered that 22 people had time to review the variance request and no one came. He did not understand her objection to the lot split but she had a right to voice her opinion.

Mr. O'Neill asked about the septic requirement. Mr. Herringshaw explained that would come after. The variance request was the first step. Mr. Kearns commented that if the door were changed, perhaps that would help solve the scenario.

Danielle Pitcock moved and Tim Kearns seconded that the variance requested in Case 19-01 be approved. Mr. Pilawa explained there are two types of variances – an area variance and a use variance. Use variances are difficult to get approved. An area variance does not change the use but involves compliance with setbacks. The Board is required to consider the Duncan Factors which were based on an Ohio Supreme Court case long ago. The factors provide guidelines on how to approach these matters, none of which is more important than the other. They ask if there is a beneficial use to the property without the variance; is the variance substantial; will the essential character of the neighborhood be altered; will adjoining property owners suffer a detriment; will the delivery of government services be affected; can the request be feasibly relieved through some other manner; and is the spirit and intent behind the zoning observed and substantial justice done by granting the variance. Mr. Kearns asked what if the Board were to grant both of them a period to discuss the problem. Mr. Pilawa explained that from time to time an applicant can ask for a continuance, and perhaps an agreement could be reached between two people, but it is exclusively the applicant's choice. With a recommendation from the Board, the Trustees could waive the \$100 fee.

Ms. Gray agreed the front of the home still needs work, but she cannot paint until April. Mr. Pilawa explained that if a variance is granted it stays with the land forever; the Board is granting a property right. Ms. Gray commented that Ms. Meziane had told her she was done discussing a sale and now has dramatically changed her mind. Ms. Gray did not want a continuance.

Discussion regarding the motion was as follows: the essential character of the neighborhood would not be altered, in fact, with new houses, the character would be improved; the delivery of government services would not be affected; the affected property owners would not suffer a detriment – 22 out of the 23 are not present even though Ms. Meziane has a different idea. Ms. Meziane interjected that her property is long and runs the length of Lake Road to Blue Heron and other people are not as affected. Mr. Pilawa responded that the affected property owners are in fact all 23 so her comment is subjective. He continued with the discussion adding that the variance is substantial as property splits are always but things aren't going to change; there can be a beneficial use without the variance because it already is a residence; he wasn't sure the predicament could feasibly be relieved; and the spirit and intent provides for variances and would not do any disservice; and the Duncan Factors have been met in this case. Upon the roll call, members voted as follows: Mr. Kezdi, no; Ms. Pitcock, yes; Mr. O'Neill, yes; Mr. Kearns, yes; and Mr. Pilawa, yes. Motion carried 4-1.

Mr. Pilawa again reviewed the appeal timeline.

The meeting was adjourned at 7:47pm.

Danielle Pitcock 3/31/19  
Dennis Pilawa, Chair Date  
Danielle Pitcock Co-chair

Julie Johnston  
Paula Friebertshauser, Secretary Date  
Julie Johnston for Paula Friebertshauser