

# Board of Zoning Appeals

## Munson Township

Minutes of March 15, 2023

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

Mr. Pilawa then explained the role of the Board of Zoning Appeals is to apply certain principles of law as required by the Ohio Supreme Court. He explained that the Board of Zoning Appeals is a quasi-judicial Board which acts in the role of judges. The Board has limited authority and cannot change the zoning, but there is a provision in the zoning resolution for variances. A variance confers a legal right that lasts forever. 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. The next meeting will be April 19, 2023.

Don Ondrejka moved and Danielle Pitcock seconded to approve the minutes of February 15, 2023, as written. Motion carried, 4-0.

**CASE 23-01: Kyle Freeman** 12690 Ravenna Rd., Chardon OH – requests to construct a 30' x 50' accessory building (pole barn) 12' from the north side property line and a driveway extension 1' from the north side property line. Violates SEC. 411 Minimum Dimensional Requirements-minimum side yard is 25' and SEC. 511 Driveways (in part) driveways shall be a minimum of 15' from any lot line.

Mr. Pilawa read the variance request and violations. Zoning Inspector Jim Herringshaw was sworn in. He referred to the site plan and photos he had taken looking from the north, south, from the road, and from what the neighbors behind could possibly see. Mr. Herringshaw pointed out that of the 10 nearby properties, most are nonconforming and none of them appeared to meet the 15-foot requirement for driveways; 6 of the 11 appear to be on the next parcel.

Kyle Freeman was sworn in. He explained that he wanted to put the barn in the northwest corner to not take up the yard. He has two small children. There is a large front yard, but he is next to the recovery house and would rather not expose them. The barn would be for storage. Mr. Tomaric asked where the septic was located. Mr. Freeman responded it is in the front to the east. Mr. Tomaric followed up by asking where the wellhead was located. Mr. Freeman said it was directly behind the home five feet to the west.

Mr. Pilawa stated for the record that there were 27 affected property owners notified in Case 23-01. Joe Zuccaro of 12330 Waterfowl Lane was sworn in. He is Mr. Freeman's back door neighbor and had

no problem with the request. There is a buffer between the yards and Mr. Freeman has been a good neighbor.

Don Burkley, representing his mother, was sworn in. His mother's property borders the north side of Mr. Freeman's property. She intends to sell the lot and the variance would diminish the value of the property. His mother built her home in 1990. He had tried to sell the lot to Mr. Freeman, but he did not want to buy half of it. Mr. Burkley commented that the driveway is already too close. Mr. Pilawa asked if he had checked with a realtor. Mr. Burkley responded that he was a realtor. The barn will be too close to the line. The remedy would be to purchase half of the lot.

Mr. Freeman countered that if the major concern is the driveway, he could withdraw that portion of the variance, but would like to keep the barn as proposed. Mr. Pilawa interjected that the Board usually does not do horse trading but acts on what is brought before them. However, they have acted on amended applications if Mr. Freeman would want to amend his application. Mr. Tomaric commented that it would solve part of the issue and he did not see a problem with it. Zoning Inspector Herringshaw explained that he had spoken with Dave Dietrich, the former Planning Director, who had written the zoning model back in the 80's. Mr. Freeman could amend his request as Mr. Pilawa suggested as long as it was reasonable. In the model zoning, the current language now reflects this. The previous language had been misconstrued.

Mr. Pilawa explained that the BZA does not write the zoning regulations; the Zoning Commission does. The BZA are required to interpret it. Mr. Herringshaw clarified that the closest part of the driveway appeared to be approximately seven feet; Mr. Freeman would like to go straight back seven or eight feet away.

Mr. Simpson asked Mr. Burkley what his thoughts were. He explained that his mother purchased the lot because her house was too close to the lot line; which is the reason she bought the extra lot.

Mr. Ondrejka commented that even if Mr. Freeman made an adjustment and shifted the building 13 feet south, he would still need a variance. Mr. Herringshaw confirmed that he would still require a variance for the driveway extension.

Mr. Burkley commented that his mother would fight this tooth and nail, which is why she bought the lot; she does not want the barn there. Mr. Pilawa explained that Mr. Burkley is under oath, but his mother is not; the Board bases their decision on what is on the record and would probably not accord with his mother's wishes because she is not there. The variance process is built into the zoning resolution to allow reasonable accommodations. Mr. Burkley said they would appeal. Mr. Freeman commented that as far as the driveway, it would be seven feet.

Mr. Simpson pointed out that Mr. Freeman could turn the building or move it, but in looking at the area the buildings are as close as Mr. Burkley's mothers. The request follows suit with the neighborhood. Mr. Pilawa explained that one of the principals to be considered is "will the essential character of the neighborhood be altered?" The request is in accordance with the character of the neighborhood as the zoning inspector pointed out. Mr. Herringshaw explained that the driveways went in prior to 1996 when the driveway statute was put in. Mr. Burkley commented that it is a new building

and there is a choice to build it in the right manner. Mr. Tomaric commented that if there is an appeal it is based on what is taken today. Mr. Pilawa concurred that when an appeal is made it is based on what is on record. The Township is represented by Assistant Prosecuting Attorney Susan Wieland. His mom could represent herself; but there would be no new evidence she could introduce.

Danielle Pitcock moved and Don Ondrejka seconded to approve the variance requested in Case 23-01 as amended. Mr. Pilawa explained that the Board considers the Duncan factors which were a result of an Ohio State court case vs. Middlefield. The Board does not have to give equal weight to all the factors; some get less consideration for example “did the property owner purchase the property with knowledge of the zoning” the answer is usually yes – typically the Board does not give much weight to. The Board gives a fair amount of weight if the essential character of the neighborhood would be altered – in this case it would not be; the variance is not substantial in terms of what the neighbors have; the delivery of government services would not be adversely affected; can the variance be feasibly relieved through some other method than a variance –there are probably two ways, yes or no to resolve but not sure it can be feasibly relieved; will the spirit and intent behind the zoning be observed and substantial justice done is given a fair amount of weight to – the Board is pro-variance typically. It is believed the application meets the factors fairly and should be granted. Upon the roll call, all members voted yes, 5-0, motion carried.

**CASE 23-02: Pete Ianiro** 12850 Ravenna Rd., Chardon OH – requests to add a 52’ x 39’ addition to an existing accessory building located in front of the principal structure. Violates SEC. 704.1 Nonconforming Structures (in part) No such nonconforming structure may be enlarged in a way which increases its nonconformity within the minimum dimensional requirements of Section 411.

Mr. Pilawa read the variance request and violation. He pointed out that a former zoning inspector believed everything increased the nonconformity. He expressed sympathy for the residents of Bass Lake community who need a variance to do anything. Zoning Inspector Herringshaw explained that he has photos and the applicant supplied computer drawings. He referred to the site map that showed the proposed addition. The other structure was granted a variance in 1993 to locate it in front of the home. Mr. Tomaric commented that he visited the site but did not see anything. Mr. Herringshaw explained the wood barn rotted and just the floor and a portion of the walls remain. If the walls were not there Mr. Ianiro would have needed a variance for the whole structure. As it is it is still considered a structure per zoning.

Mr. Ianiro was sworn in. He explained that the majority of the old barn fell 10 to 15 years ago. He has acquired a few more “toys” that are currently stored at his business. He would like to take his personal stuff out of there and the neighbors may want to store items too.

Mr. Pilawa asked if he was just building up. Mr. Tomaric commented that the new building would be 100 x 50 feet overall. Mr. Ianiro responded it would be 20 feet towards the back and 30 feet to the front and 10 feet wider. He would like to use as much of the base that is there. When asked if he would just be storing personal things he responded “I hope so.” Mr. Tomaric commented that a few years ago he was granted a variance for sheds in the front of the home. Mr. Ianiro said they cannot be seen when looking going down the street.

Mr. Pilawa stated for the record that 35 affected property owners were notified in Case 23-02. Dan McCaskey of 12826 Ravenna Road was sworn in. He explained he is the neighbor to the north and has no problem with the expansion because it would not be any closer to his property. Howard Gregorich of 12862 Ravenna Road commented he is a neighbor and has no problem with the variance request. He mentioned that he did not get a letter but was told by someone else. BZA Secretary Paula Friebertshauser told him that the Geauga Realink system had his mailing address as somewhere in California.

Don Ondrejka moved and Joe Tomaric seconded that the variance requested in Case 23-02 be approved as written. It was noted that the Duncan factors have been met. The variance is not substantial; the essential character of the neighborhood would not be altered; adjoining property owners already said they had no problem and would welcome the additional storage space; the delivery of government services would not be adversely affected; there is no feasible relief other than selling; the spirit and intent behind the zoning would be observed and the property owner did know of the zoning restriction before purchasing. Upon the roll call, all members voted yes, 5-0, motion carried.

**CASE 23-03: Karl Klebenow** 11220 Highland View Dr., Chardon OH – requests to put in an in-ground pool/concrete pad 10.4' from the right side yard. Violates SEC. 411 Minimum Dimensional Requirements-minimum side yard is 25'.

Mr. Pilawa read the variance request and violation. Mr. Herringshaw pointed out that the property is on a cul-de-sac and the septic system is behind the home. He described photos taken looking at the neighbors and it would not be seen from the road. There is not much room because of the shape of the lot.

Mr. Tomaric informed those present that he was an affected property owner. Mr. Klebenow was okay with him hearing the case.

Karl Klebenow was sworn in. He explained that part of the bargain with his wife in moving to Munson was being able to have a pool. There are not a lot of options. Mr. Ondrejka asked where his well was. Mr. Klebenow approached the table and pointed it out. Mr. Pilawa commented that he should not use well water to fill it. Mr. Klebenow said they had a problem with the well and it was only pumping four gallons per minute. Mr. Tomaric asked where the septic was. Mr. Klebenow responded it was in the back of the house and would interfere with where the pool could go.

Mr. Pilawa stated there were 53 affected property owners notified in Case 23-03. Mary Brennan of 11230 Highland View commented that her concern was regarding the well water and how he was going to fill the pool. Mr. Pilawa advised that as a former pool owner always bring in a truck.

Mr. Tomaric asked if there would be a fence. Mr. Klebenow responded yes. Mr. Herringshaw added that the fence would be around the edge of the concrete pad approximately 10 feet from the lot line. Mr. Ondrejka asked if there was a retaining wall on the east side. Mr. Klebenow said yes and explained that the pool company was concerned with water running down.


Joe Tomaric moved and Roger Simpson seconded to approve the variance requested in Case 23-03 for 11220 Highland View Drive as written. When Mr. Pilawa asked the Board if anyone believed that the Duncan factors weren't supported; no one believed they would preclude the variance from being granted. Upon the roll call all members voted yes, 5-0. Motion carried.

The meeting was adjourned at 7:35pm.

  
Dennis Pilawa, Chair

  
Date

  
Paula Friebertshauser, Secretary

  
Date

