

Board of Zoning Appeals

Munson Township

Minutes of April 17, 2024

Chair Dennis Pilawa called the meeting to order at 6:33pm with Jim O'Neill, Don Ondrejka, Joe Tomaric, Alternate Roger Simpson (serving for Danielle Pitcock), Alternate Carol Maver, and Secretary Paula Friebertshauser present. Danielle Pitcock was absent. Court Reporter Laura Ware was present. The Pledge of Allegiance was said.

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. If it appears the Board acted properly, it would be upheld; if not, it would be overturned. The next meeting is May 15, 2024.

Mr. Pilawa commented that people might question "why not just follow the zoning"? The zoning regulations provide for both area and use variances.

Joe Tomaric moved and Don Ondrejka seconded to approve the minutes of February 21, 2024, as written. Motion carried, 4-0.

CASE 24-03: LLGC, LLC 11299 & 11303 Thwing Rd., Chardon OH – requesting to reconfigure 2 nonconforming lots making one conforming leaving the other nonconforming with 64' of frontage. Violates SEC. 502 Frontage Required – no new lot shall be created which does not possess the required minimum frontage (200') upon a public or private road established for the district in which such lot is located.

Chair Pilawa read the legal notice and violation. Zoning Inspector James Herringshaw was sworn in. He referred to the site plan and said the structures would be gone. The applicant wants to reconfigure to make one conforming and widen the other lot. The lot in front would have 250 feet of frontage.

Todd Petersen of Petersen & Petersen was sworn in. He explained that the one lot has 157 feet of frontage currently and is long. They would like to eliminate the nonconformity on one and get more spacing – 250 feet for the front lot that would put further distance from both neighbors allowing more room in the other; one would be 5 acres, the other 15. The lots were purchased in 2011 and have not been marketed. Mr. Petersen noted that all other regulations will be followed but they will not be stuck with a narrow lot.

Mr. Simpson clarified the intent to have the one lot with 250 feet of frontage and make the other narrower in the front. Mr. Petersen replied that configuring the front lot as such allows more clearance for a house and the other will only have a driveway there. The 15-acre lot will open up behind the front lot. Zoning Inspector Herringshaw pointed out the aerial view and commented there is no habitation. Mr. Petersen asked that his responses to the Duncan Factors be made part of the record.

Chair Pilawa stated for the record that 33 affected property owners were notified in Case 24-03.

Bruce Carson of 11275 Thwing Road commented that the buildings were being used by the golf course for storage. He questioned if based on the Board's decision, would they be able to subdivide in the future. Chair Pilawa responded that the Board does not know. They have limited authority and all they can do is act on the variance request. Mr. Petersen explained that pavement runs \$800-1000 per lineal foot and with the depth of the lot it would not be feasible.

Chair Pilawa explained that there are eight factors that need to be considered, but not all have to be given equal weight. For example, "did the property owner purchase the property with knowledge of the zoning restriction" – does not carry much weight because everyone now has access to the regulations.

Charles Bunnell of 11304 Thwing asked which side the flag lot would be on. Mr. Petersen replied "east" and mentioned locations of nearer lots.

Valerie Christani of 11405 Thwing and four driveways from the properties asked if there were deed restrictions that they could not add on. The house behind her burns and they must have their air conditioner running. Chair Pilawa explained that variance, if granted, is a property right and runs with the land forever. The concern seemed to be building more than two homes. He did not know if there were any deed restrictions. Mr. Petersen commented that the lots are approved for one home each. Zoning Inspector Herringshaw confirmed that only one single family home is allowed per lot.

Don Ondrejka moved and Joe Tomaric seconded to approve Case 24-03 as requested. Before discussion or roll call, Edward McCaslin of 11345 Thwing Road asked if he could see a picture of what it would look like. Mr. Petersen showed him the site plan. Kevin Reeves of 11363 Thwing Road commented that the 64-foot-wide frontage could be used as a road to the golf course if it is developed more. Mr. Petersen explained that the property does not connect with the golf course; the Carson property is in between. Discussion pertaining to the motion was as follows: there can be a beneficial use as it is; the variance is not substantial in terms of net impact; in fact, it eliminates one nonconformity in its entirety and creates an overall wider and better lot in both instances – so nothing to keep the variance from being granted; it does not seem the essential character of the neighborhood would be altered and in fact, one lot will be conforming; the adjoining properties will not suffer any detriment. No driveway will be any closer to a neighboring property than it already could have been and there will only be two homes where two homes are already permitted. The variance will not adversely affect the delivery of government services; it might even help. Whether the predicament can be feasibly relieved through some other method - this seems to be the best way to utilize two very long lots and relieves one of the problems making one lot conforming. Will the spirit and intent behind the zoning be observed and substantial justice done by granting a variance – the spirit and intent of the

zoning resolution, of which variances are an integral part, will be upheld. Where there were two nonconforming lots previously, there will now only be one. Substantial justice will be done – the two lots will be better utilized, the spacing for the neighbors along the frontage will be better and there is no overall increase in the impact because there are no additional building sites being created. The Board also heard testimony under oath. The property owner has had the property since 2011 and knew of the restrictions. The application of facts would suggest that the Duncan Factors have been met and the variance should be granted.

Mr. Reeves said he objects and commented that he sees no reason why the group needs to sell two lots rather than one. Mr. Simpson interjected that it already is two lots. Mr. Ondrejka added they are just being reconfigured. Upon the roll call, all members voted unanimously to grant the variance, 5-0 motion carried. Chair Pilawa once again summarized the appeal process.

CASE 24-04: Pave Kucinic 17760 Stonegate Dr., Chardon OH – requesting to construct a 30' x 50' garage in front of the home. Violates SEC. 509.2 (in part) no freestanding accessory structure shall be erected within the front yard of any district.

Chair Pilawa read the variance request and violation. Zoning Inspector Herringshaw referred to the site plan and photos taken towards the street and from every lot line.

Pave Kucinic was sworn in. He explained that he needed to put his truck and horse trailer under cover. His house sits on a hill and going up the drive it gets higher by 12 to 15 feet and then goes down in the back. He has a wide lot; the structure would be far from the borders and there is already a turnaround off to the side. Mr. Simpson confirmed that he would be using the turnaround location. When asked where the well and septic are located, Mr. Kucinic responded that the well is behind the house and the septic is to the left.

Mr. Ondrejka asked about the existing barn and commented that it cannot even be seen which confirmed the drop off behind the home. Chair Pilawa referred to the building drawings and asked how tall the structure would be. Mr. Kucinic said 12 feet. Mr. Simpson commented that technically the building is in front, but it is to the side. Zoning Inspector Herringshaw explained the front is determined when the house is built.

Chair Pilawa stated for the record that 32 affected property owners were notified in Case 24-04. Charles Dragmen of 11670 Stonegate commented that the street goes up and down and where Mr. Kucinic wants to build there is nothing wrong with it. He really has nowhere else. Mr. Dragmen's house is 270 feet from the road. He sees no reason to reject the request. Chair Pilawa asked Mr. Dragmen if he thought the variance was substantial – Mr. Dragman responded that it was not too big. Would the essential character of the neighborhood be altered – “no”. Would adjoining properties suffer a detriment? – “nope”. Would the delivery of government services be adversely affected? - “absolutely not”. Mr. Dragmen commented that it looks like it will be a nice building from the pictures.

Mr. O'Neill asked where the three garage doors would be facing. Mr. Kucinic replied they will face the driveway side and the windows would be to the north. Chair Pilawa asked Mr. Kucinic if he was planning a business. Mr. Kucinic said no that he is in the medical field. Mr. Tomaric said he had driven

up and down the street and there are several structures like this and the street curves a lot. The essential character of the neighborhood would not be altered.

Don Ondrejka moved and Jim O'Neill seconded to approve Case 24-04 as requested. Chair Pilawa said the Board already covered some of the Duncan factors but based on testimony the predicament cannot be feasibly relieved through some other method, and the spirit and intent would be observed and substantial justice done by granting the variance. There is nothing about the Duncan factors that would preclude the Board from granting the variance. Upon the roll call, all members voted unanimously to grant the variance, 5-0 motion carried.

CASE 24-05: Greg Hraster 11261 Bean Rd., Chardon OH – requesting an extension to the existing garage 19' from the west side property line. Violates SEC. 411 – Minimum Dimensional Requirements – side yard setback is 25'.

Chair Pilawa read the variance request and violation. Zoning Inspector Herringshaw explained that back in 2002 the previous owner was issued a zoning permit to put up an accessory building 30 feet from the line. Mr. Hraster measured 22 feet where it angles back. He is now asking for 19 feet. Chair Pilawa commented that Mr. Herringshaw would not have known if Mr. Hraster did not tell him. Zoning Inspector Herringshaw referred to the site plan and described photos he took of the proposed addition location; view looking west; view from Bean Road and of the accessory building to be added onto. Chair Pilawa asked Mr. Herringshaw if someone shows 30 feet on a plan who checks on it. Mr. Herringshaw responded it's the homeowner's responsibility to check the pins or have the property surveyed.

Jennifer Topp was sworn in to represent Mr. Hraster because he had to leave. She explained that he needs more storage for a tractor and a truck.

Chair Pilawa stated for the record that 21 affected property owners were notified of Case 24-05. There was no public comment.

Don Ondrejka moved and Joe Tomaric seconded to approve the variance for Case 24-05 as written. Discussion included that when no one (affected property owners) comes out and opposes the case it is significant. Can there be a beneficial use to the property – yes, as a residence. The essential character of the neighborhood would not be altered, neither neighbor came. It does not seem that adjoining properties will suffer a detriment for the same reason. The delivery of government services will not be adversely affected. The predicament cannot be feasibly relieved without a variance as Mr. Hraster described the previous owner misrepresented the area where the building was built. The spirit and intent behind the zoning would be observed and substantial justice done by granting the variance and the Board assumes the property owner knew or had the ability to know the zoning restriction. Based on this the Duncan factors have been met. Upon the roll call, all members voted unanimously to grant the variance, 5-0 motion carried.

CASE 24-06: Phil Smith 12426 Fowlers Mill Rd., Chardon OH – requesting to construct a new residence 38' from the front road right-of-way. Violates SEC. 411 Minimum Dimensional Requirements – minimum setback from the road right-of-way is 80 feet.

*Continued - did
from April - did
not vote on this on
May 15, 2024 - held for
4 June meeting
Chair Pilawa*

Chair Pilawa read the variance request and violation. Zoning Inspector Herringshaw referred to the site plan and commented that the original home was condemned and is 45 feet from the road right-of-way. The two outbuildings were granted a variance 45 feet back and 3 feet from the north property line and 12 feet from the rear line. Mr. Herringshaw explained that if Mr. Smith were adding to the side of the structure, it would be okay but because it is going forward it increases the nonconformity. Chair Pilawa explained that everything in Bass Lake community is nonconforming. Mr. Herringshaw explained Mr. Smith is requesting a ranch house to be 38 feet back from the road right-of-way. It is high on the hill. The house across the street is about 30 feet from the road right-of-way a little to the south.

Mr. Tomaric commented that several of the homes on Fowlers Mill are very close to the road right-of-way and the county widening project conflicted with many of the homes.

Phil Smith was sworn in. He explained that he and his wife are coming into the stage where they have worked hard and want to simplify their lives. They currently run Thistle House in Chardon. Their intent is to downsize and have a single floor home and keep with the character of the neighborhood. His wife grew up in Munson on Rockhaven. He knows the property has history and as a mechanical engineer he asked himself how they could build with the way the property falls in the back and the current home's location to the road. There are not many options to conform. The home would have a walkout basement facing the west. It was his understanding that the existing home was an old schoolhouse from 1897 (an audience member corrected it to 1875).

Chair Pilawa stated for the record that 27 affected property owners were notified in Case 24-06. Toni Atchley of 12435 Fowlers Mill Road lives across the street to the south. She wondered if the home would remain to the north. She was shown the site plan. She explained she has watched the house crumble for 25 years. She said that unfortunately it does not appear that it will remain. She would like to see some touches on the new home to fit in the neighborhood. Mrs. Atchley commented that they are fortunate to live in a quaint area. Mr. Simpson asked her if she felt the plans fit in the area. She responded not entirely but did not think it would stick out. Payne & Payne built one more contemporary down the road.

Chair Pilawa explained that the applicant is not asking for a variance for that house, just the setback. The rendering is not needed for the application. Mr. Ondrejka asked about the trees on the property. Mr. Smith said he appreciates trees and if they are healthy, they will be left but thinned out as to what is appropriate. Mr. Smith told Mrs. Atchley that her home is beautiful, and their home would not be contemporary but more in keeping with the area with a wraparound porch. It will be 2200 square feet with a portion of it as the garage that will face the driveway. There is a lot of work due to the geography.

Penrose Wolf of 10729 Allen Drive questioned how the zoning code handles a new home on a nonconforming lot. Zoning Inspector Herringshaw explained that if the home were destroyed or demolished it could be built in the same footprint, otherwise a new one must meet the setback requirements. Mr. Wolf questioned if there were no house, would the lot be buildable. Mr. Herringshaw explained that if it is a lot of record, it is a buildable lot. Mr. Wolf commented that all the houses are close to the road, but a new house with a different look will be prominent. He asked if there

was a reason for not putting the home further back. Mr. Smith responded that they are at the limit now in the rear and it drops off eight to ten feet. The home is also configured for a 30-to-35-foot turn radius into the garage. The house is proposed to sit on the existing footprint with more footage added. Zoning Inspector Herringshaw explained that they had to meet the 1600 square footage requirement, which does not include the garage. Mr. Wolf interjected it is 2400 square feet. Mr. Smith agreed the rendering is not that far off. Mr. Wolf thought one story was appropriate and what is suggested is a more modern farmhouse. He wondered if there were septic and well issues. Mr. Smith said the septic will be tricky, but the well behind the house is good. The septic would be on the south side.

Dean Richmond of 10703 Allen Drive commented that the Smiths would be tearing down a plaqued century home and putting up a ranch. Zoning Inspector Herringshaw mentioned he was told the Health Department condemned the home. Chair Pilawa asked who else would condemn the property, the bank? Bob Voss of 12480 Fowlers Mill Road responded that the bank would for safety reasons. Mr. Smith believes that it is formally condemned but the county said no. Mr. Pilawa said it has no bearing on the variance request. Mr. Voss explained it is a nationally recognized property and is very prominent. He has tried working with Mr. Smith because they all have pride in their properties. He spoke on behalf of the Fowlers Mill Historic Preservation Society which has allowed the area to be what it is. He questioned Mr. Smith why he would buy it if he were going to tear it down and put up something that does not look like it would fit. It will affect the neighborhood. They would like to work with him and had provided a lot of information to modify or salvage the building that could provide tax credits. Mr. Voss commented that he wanted to buy it but the Smiths paid more than he would have. He felt the area would be compromised. Mr. Pilawa explained this will not set a precedent but knows that it is not his only concern. Mr. Voss said there is a possibility the house could be shored up and salvaged. Mr. Pilawa asked Mr. Smith if he had presented plans. Mr. Smith said the variance request is the first step.

Mrs. Atchley questioned who has the authority to condemn the property. It was her understanding it was as told by the neighbor. Jim McCaskey of 11443 Thwing Road explained that to be condemned three letters are required – one from the Health District, the Sheriff, and the Building Department. Mr. Pilawa commented that as a lawyer, he had two cases where the ground shifted, and two houses being constructed were condemned by the Lake County Building Department. Mrs. Atchley said that would change her feelings a lot.

Kate Wheeler of 12480 Fowlers Mill Road commented that regarding the condemning, the bank repossessed the house and put condemned on it to cover the liability.

Mr. Smith explained he does value the historical area but got hung up on the condemned notifications. The way the structure sits, it could be rebuilt, but it would have to be taken down to the ground because the sandstone is crumbling. A basement would have to be dug and then the house put up, however, it does not have the layout that works for his family. Mr. Smith vowed to do all that he could to preserve the area. Mr. Voss said the Smiths' paid \$126,000 for $\frac{3}{4}$ of an acre and they could have had 5 acres elsewhere for the same amount. Mr. Smith responded that is not true. Mr. Voss said it is due to respect and what they have done with the area that attracts people and Mr. Smith is just brushing it aside. He could have gone anywhere and wondered why he bought the property.

Mr. Pilawa explained everyone needs to get back on track and to the issue before the Board. He was surprised at the pushback and thought the request was simple. The variance request itself is not substantial; the essential character of the neighborhood would not be altered; adjoining properties would not suffer a detriment because everyone has a home that is nonconforming; and the predicament cannot be feasibly relieved. Mr. Pilawa said the kinds of things the neighbors are talking about the Board cannot do anything about. He is hard pressed to find there is a beneficial use. Mr. Voss commented that it was a residence up until about a year ago and whatever the Board decides they will go to the next step. Mr. Pilawa reiterated he thought it was a simple request.

Mr. Voss said it is on the National Historic Registry. Chair Pilawa asked what that meant. Mr. Voss explained that people come in and do not want to bulldoze. Ms. Wheeler commented that the entire neighborhood is registered on the National Historic Registry. It will change the entire character of the neighborhood. Everyone has a plaque. They hired historians and went through hell and back. They were challenged when a cell tower was put up and it had to be taken down. Chair Pilawa said the cell tower was considered a utility and they were exempt. Mr. Voss commented that structures are not built like that anymore.

Chair Pilawa stated that the Board of Zoning Appeals is represented by counsel and suggested the matter be continued. He explained he would feel far more comfortable finding out the impact of the National Registry.

Mrs. Atchley commented that she and her husband bought their house and it was crumbling. They gutted it and replumbed, etc. There is an architect who specializes in historic properties. It is expensive to tear down and they spent a ton of money. Mr. Smith said he cannot use the structure the way it exists, but they will consider aesthetics.

Chair Pilawa asked Mr. Smith if they should extend the continuance 30 to 60 days. Mr. Smith responded that after hearing the passion he cannot move forward now but for at least 30 days.

Mr. Simpson asked Mrs. Atchley if she had a plaque. Mrs. Atchley replied yes, they were not required to but loved the area and wanted to have one. Mr. Simpson asked if the plaque must meet requirements. Mr. Voss responded that they would have had to develop a review board.

Chair Pilawa moved and Roger Simpson seconded to continue Case 24-06 for at least 30 days but no more than 90 days and request the Trustees to waive the continuance fee (\$100). Upon the roll call all members voted yes, 5-0 motion carried.

Mr. Smith asked if it was possible to have an answer from legal counsel for the May meeting. Zoning Inspector Herringshaw responded that he would be calling counsel and Mr. Smith would have until the end of April to apply for May.

The meeting was adjourned at 8:55pm.


Dennis Pilawa, Chair 5/15/24
Date


Paula Friebertshauser, Secretary 5/15/24
Date