

Board of Zoning Appeals

Munson Township

Minutes of May 17, 2012

Chair Bobbie Nolan called the meeting to order at 6:30pm with Don Alexander, Sophie Horvath, Richard Wright, Lucy Longo, Alternate Heather Crawford, Zoning Inspector Tim Kearns, and Court Reporter Nayann Pazyniak present. Gabe Kezdi and Secretary Paula Friebertshauser were absent. Minutes were taken by Andy Bushman and also recorded. Julie Johnston was also present to call the roll. The Pledge of Allegiance was said.

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.

Ms. Horvath had a question regarding a motion she thought had been made at the April 19, 2012 meeting that was omitted from the minutes. Ms. Nolan commented she did understand the motion matters to Ms. Horvath, but the matter has already been addressed. Ms. Horvath just wanted the Board to know how she felt about the case, but the total vote of the Board is what counts. Ms. Horvath moved to approve the minutes of April 19, 2012 and Lucy Longo seconded. Motion carried. (Please note: Secretary Paula Friebertshauser had checked her handwritten minutes and had gone over them with Ms. Horvath prior to the May meeting – a formal motion was not made, but Ms. Horvath had expressed the opinion that she hoped the request in Case 12-03 would be passed).

Mr. Kearns asked that the order in which the cases are heard be changed. He asked that Case 12-12 be heard first because one of the individuals involved has to leave early. There was no problem with the request. Tim Kearns, Zoning Inspector, was sworn in.

CASE 12-12: Tinka Lampic, Parcel #21-177046 Lake Rd., Chardon OH – request to build an in-law suite attached to a residence. Violates SEC. 402.2a R-1 Residential District – Permitted Principal Uses and Structures – single family dwelling – an in-law suite is not a permitted principal use.

Mr. Kearns read the variance request. He explained that one of the questions brought up before the meeting is why there weren't any pictures - it is a vacant lot. Mr. Kearns went on to say that what the Board needs to understand is that if the variance is granted, the appellant will then come in with a set of plans. What needs to be discussed is not the actual structure, but whether that structure can be built on this property with an in-law suite. Ms. Nolan pointed out that this is a use variance not an area variance.

Tinka Lampic was sworn in, and requested an in-law suite for her parents. She explained they are also purchasing a neighboring lot for her sister's family if the variance is approved. Her husband has MS which is unfortunately getting worse and she needs family in close proximity. Ms. Nolan asked who would be living in the home with the in-law suite. Ms. Lampic responded her mother and father. Ms. Nolan asked what she envisions the in-law suite to be, is it like two houses put together, and would there

be common or separate kitchens. Ms. Lampic responded it would be attached to a breezeway and the in-law suite would have its own small kitchen. Mr. Wright asked if it would be behind the house or to the side. Ms. Lampic said it would be to the side behind the garage. Ms. Lampic offered to show them some pictures of what she has in mind, however, could not find them. Mr. Alexander asked what the relationship to the garage would be and would they both have access. Ms. Lampic said the garage would be utilized for both. Mr. Wright asked Mr. Kearns if the structures connected by the breezeway would be considered separate. Mr. Kearns said they would not be considered separate. He added that he has not seen any plans so it is just conjecture at this point. Ms. Lampic explained that eventually, hopefully a long time down the road, she and her husband would settle into the in-law suite and one of their children would be in their part of the home and take care of them. Ms. Nolan explained that whatever the Board decides tonight regarding the in-law suite, they have to consider that eventually the Lampics could move out and they can't have it becoming a rental property. Ms. Horvath asked what their intention is of using the in-law suite when not inhabited, and would it become a rental suite. Ms. Lampic replied no, and when the time comes, they would retire to that suite. She further explained there is another house next door that also has an in-law suite that was approved. Mr. Alexander asked if there would be one set of utilities, and realized that is hard to discuss right now. He also asked if the breezeway would be heated. Ms. Lampic replied yes, it would be a utilized place. She also commented it is a little too early, but knows everything has to pass through Munson zoning to make it work.

Ms. Nolan noted for the record that there were 10 affected property owners notified in this case. Patricia Rivera of 11786 Lake Road was sworn in. She wanted to come in support of the Lampic family. She is a physical therapist and respects Mr. Lampic's debilitating disease; and added that they have parents with them. It's a wonderful situation to be in and to be able to take care of them.

The Board recessed for executive session at 6:52pm to discuss the case. Upon the Board's return at 7:12pm, Ms. Nolan explained they are having a very hard time with this because there are no plans and the Board is reluctant to vote on an idea. The Board suggested that the case be continued until next month so there would be time to bring in plans - not definite blueprints, but an idea of Ms. Lampic's interpretation. Ms. Lampic agreed she could do that. Ms. Nolan further explained that most people have a set of drawings, or at least a concept so the Board can visualize. Ms. Lampic commented this is her first time doing this and she would come back. Ms. Nolan thanked her for her time.

CASE 12-08: Joseph Pestello, 11655 Pinehurst, Chardon, OH – request to construct a 12' x 16' accessory building 9' from the east side property line. Violates SEC. 411 - Minimum Dimensional Requirements-the minimum side yard requirement is 25ft.

Mr. Kearns read the variance request and violations, and presented drawings from a surveyor showing the proposed location of the shed. The foundation is already there.

Joseph Pestello was sworn in. He explained the need for an accessory building, and explained he is landlocked between existing buildings, the septic system and pool. He explained that aesthetically it would be pleasing and would not be very visible because of a line of trees separating the neighbor's property. When asked, Mr. Pestello explained the shed off the driveway is more of a barn on a foundation. This building would house a lawn mower and his many toys. He explained the septic is in the backyard.

Ms. Nolan noted for the record that there were 22 affected property owners in Case 12-08. There was no public comment.

Ms. Nolan asked if there were any other questions from the Board, and if not, was there a motion. Mr. Wright moved that in Case 12-08 for Joseph Pestello, that we approve the request as written. Mr. Alexander seconded the motion. Discussion included the following: there can be a beneficial use of the property that you currently have – it sounds like you have too many toys; the variance, personally speaking, I don't think is very substantial even though it violates the zoning; in review of the property, it's quite heavily wooded and aesthetically it will fit in so it blends in very nice, I think, with the whole neighborhood; the essential character of the neighborhood is not going to be affected at all; I doubt you'll be able to see it very much at all from the road; adjoining properties won't suffer detriment due to its location; government services are not affected whatsoever; there's full access with the structure as proposed and as laid out on the field plan; this predicament has to be relieved by a variance which is why Joseph is here for approval, and we believe that the spirit and intent of the zoning, which is to help our neighbors and stay within the zoning regulations, would be upheld; and the property owner did purchase the property with knowledge of the zoning and came forward, which is appreciated. Upon the roll call, all members voted yes – motion carried 5-0.

Ms. Lampic reentered the building and said she found the plans she wanted to show the Board. Ms. Nolan said she could be heard after all the cases if she could wait. Ms. Lampic agreed.

CASE 12-09: Curt Burday, 11660 Legend Creek Dr., Chesterland, OH – request to construct a 16' x 20' accessory building without first constructing a principal structure. Violates SEC. 402.2a R-1 Residential District – Permitted Principal Uses and Structures - one single family dwelling.

Mr. Kearns read the variance request and violations. He pointed out that he had a discussion with the prosecutor and she also agreed to address this by a variance because if down the line he would sell the property, the buyer would have to come in for a variance. Ms. Longo wondered if it would have to have two variances then. Mr. Kearns explained that no, just the future buyer would because there would not be a principal structure on the property.

Curt Burday was sworn in. He explained he did try to place the new accessory building on his property with the primary home, but there are extensive wetlands and a septic system, and he would be too close to both property lines. With the additional lot, Mr. Burday wanted to place the building as close to his home as possible staying within the minimum dimensional requirements. When asked, he explained the building would house lawn tractors, ladders, and yard equipment. Mr. Wright noted that the existing house slopes down quite a bit. Mr. Burday explained that the first floor elevation is 20 feet lower than the street and the side property is pretty much the same – probably 15 feet lower. It would not be visible at all. Ms. Longo confirmed there is no intention to build a house on the vacant property. Mr. Burday concurred and also added there would be no driveway. The building would be constructed with a contractor friend. When asked, he responded that the primary residence is in his name, and the vacant lot is in both he and his wife's name. He has no intention of selling the lot. Ms. Nolan commented that the house is pretty far back. Ms. Horvath asked Mr. Kearns if the property is sold would it become a problem if there is an existing building on the lot without a principal structure. Mr. Kearns explained that if the variance is granted whoever buys the lot does not have to worry about it because the variance goes with the property. If there wasn't a variance, then the new owners would have to come in front of the Board. Mr. Burday said if that were the case, he could destroy the building. Ms. Nolan asked if Mr. Burday were to sell his house, would he also sell the lot with it. Mr. Burday said that would be the intent. Ms. Nolan said that would be a safeguard.

Ms. Nolan stated for the record that 17 affected property owners were notified in Case 12-09. Scott Larrick of 11640 Legend Creek was sworn in. He explained he owns the house next door to the vacant parcel. No one will see the shed from the street because the property drops down 2-300 feet. He didn't think they would be able to see the shed because it's a heavily wooded lot. He had no objections.

Ms. Nolan asked if there were any more questions from the Board, and if not, was there a motion. Ms. Horvath moved to grant the variance as requested by Mr. Burday on Legend Creek Drive in Case 12-09. Ms. Longo seconded the motion. Discussion following the motion included: there is a beneficial use of the existing property as it stands, and I understand the inconvenience by not being able to place a structure on your existing property with the accessories that you do have; this variance with its location is not seen as substantial; the essential character of the neighborhood is not affected whatsoever due to its location and the size of what you are proposing; existing properties do not suffer a detriment and your neighbor has voiced his approval – he'd be the only one that could possibly see it I think; the variance does not affect delivery of government services whatsoever; and if there is a fire, it's going to be very hard to get at with all the wooded area as it is, but it's not affected by the structure; the predicament that's created by this, the variance is required and you've come forward to get that approval; we feel that the spirit and intent of zoning is to help the citizens of Munson is justly observed by approving this variance; and you did know of the variance and did come forward for approval. Upon the roll call, all members voted yes – motion carried 5-0.

Mr. Kearns asked if the Board would like to hear Cases 12-10 and 12-11 together. They agreed.

CASE 12-10: Jerry Pollack, 11570 Edgewood Rd., Chardon OH – request to reconstruct a 14' x 20' deck 3.29' from the north side property line and 0' from the rear property line. Violates SEC. 411 Minimum Dimensional Requirements – minimum side yard requirement is 25 ft.; and minimum rear yard requirement is 40ft.

CASE 12-11: Jerry Pollack, Parcel #21-124900, Chardon OH – request to reconstruct a 14' x 20' deck 0' from the west side property line. This will be the only structure on the lot. Violates SEC. 411 Minimum Dimensional Requirements – minimum side yard requirement is 25 ft.; and SEC. 402.2a R-1 Residential District – Permitted Principal Uses and Structures – one single family dwelling.

Mr. Kearns read the variance requests and violations. He explained that the deck would be rebuilt larger. All the properties are deeded separately, and are a typical scenario in the Bass Lake community. Ms. Nolan verified the position of the deck on the site plan. Mr. Kearns showed where it was being removed and then reconstructed.

Barbara Pollack was sworn in. She explained that her husband thought he needed a variance and that is why they were there. They own the three properties and are encroaching on their own land. Mr. Pollack is looking into combining them. Mr. Wright asked why they aren't leaving the old deck. Mrs. Pollack said it is falling apart and isn't treated lumber, and with grandsons she doesn't want the hazard.

Ms. Nolan stated for the record that there were 13 affected property owners notified of Cases 12-10 and 12-11. There was no public comment.

Ms. Nolan asked if there was any further questions from the Board, and if not, was there a motion. Ms. Horvath moved that the variance as requested by Jerry and Barbara Pollack on Edgewood Road be granted as requested in Case 12-10. Ms. Nolan explained that Cases 12-10 and 12-11 were heard

together and wanted to know if the Board wished to vote on them together or separately. Ms. Horvath said they could be voted on together, both Cases 12-10 and 11. Mr. Alexander seconded the motion. Discussion following the motion included the following: the property can be used without a deck, but it's appreciated very much the need for a deck, especially with grandchildren running around; the variance appears to be substantial, however, when the facts of Bass Lake are known, it's clearly understood that it's realistically not substantial and is necessary. The essential character of the neighborhood, if it's constructed properly, which I assume it will be, will not be altered, but aesthetically improved a bit considering the other one is falling down. The properties will not suffer a detriment. The delivery of government services will not be affected. This predicament cannot be alleviated except through a variance; thus the spirit and intent of zoning will be upheld. And the property owner purchased the property unaware of the restrictions at the time of purchase. Upon the roll call, all members voted yes – 5-0 motion carried for Cases 12-10 and 12-11.

The Board then revisited Case 12-12 for Tinka Lampic. Ms. Lampic presented a similar plan to what they would like to build– and pointed out the home, the breezeway and the in-law suite. Ms. Nolan commented that the in-law suite would be behind the garage. Ms. Horvath asked if it would have a separate exit. Ms. Lampic replied it would be through the breezeway. The Board discussed the entrances and the possibility of enclosing the breezeway, possibly as a mudroom instead of a screened porch. Ms. Nolan explained that one of the problems they are having is the definition of breezeway – the Board sees it as more of a screened in area making it two separate houses. Ms. Lampic understood what the Board was indicating. She said it could be enclosed and be maybe more of a mudroom. Ms. Nolan commented that on the drawing it's indicated as a screened breezeway, but these are not the plans the Lampics will be using, just an idea of what they would like to do.

Ms. Nolan asked the Board if they needed another recess, but they felt they were ready to make a motion. Rollin Cooke III of 11990 Bass Lake Road was sworn in. He lives on the corner of Bass Lake and Lake Roads. He explained he sold the lot to the Rivera's and was at the meeting when they got their variance. At that time there was no drawings, but obviously they had to comply with zoning. He felt the idea of the breezeway or an all season porch wasn't the issue and doesn't really matter, just the fact that they are a family that wants to live together which he has respect for.

Ms. Nolan asked if there were any more questions, and if not, was there a motion. Mr. Wright moved that the variance requested in Case 12-12 presented by Tinka Lampic be approved as further described. Ms. Longo seconded the motion. Discussion following the motion included: Mr. Wright commented that they have had a lot of discussion, but I think we can finalize discussion by saying this is a use variance, and the hardship is unique to this property. It is self-induced because the house could be constructed without an in-law suite. We understand the requested need for that. The zoning regulation doesn't deprive the owner of the substantial use of the property; it requires them to come for approval of a variance of the property which is what's been done. The property again could be used as a single family dwelling. That's understood. In comparison to other properties, we had presentation earlier that there is a similar structure which has been approved, so it's understood. From what was presented as far as the concept of which way this is going, it appears that it will fit in very nicely with the neighborhood when it's constructed. And this hardship is self-induced again, because it could be a single-family dwelling. Property zoning for public health and safety and morals will not be affected being that this is pretty much a new structure. And from appearances of what's been discussed in terms of concept, it will fit in very nicely with the neighborhood as it develops. Adjoining properties thusly will not be harmed. And the property owner, by coming forward for the variance, clearly understands the need for the variance prior to purchase.

Mr. Kearns interrupted to say that he believes the Board has to rescind the first motion. Ms. Nolan responded that they never made a motion. The appellant said they did and Mr. Kearns said they made a motion to continue. Ms. Nolan said that actually no, they didn't vote on it. They asked her if we could continue it but it was not voted upon. The Board just asked her if we could. Ms. Nolan understood what he is saying but the Board did not vote on whether they were going to continue it or not.

Ms. Nolan commented that before the Board votes; she wanted to personally thank Ms. Lampic for coming in. She explained that the reason this is so hard is when Ms. Lampic first came in she just asked for the variance and didn't provide the Board with a drawing or a concept. The other part is that the Zoning Commission needs to help the Board by clarifying what they can do with an in-law suite and what they can't. Ms. Nolan thought Mr. Wright did a very good job in discussion. She commended Ms. Lampic for wanting to take care of her husband and parents and then have the children take care of them. Ms. Lampic replied "thank you". Upon the roll call members voted as follows: Mr. Alexander, yes; Ms. Horvath, no; Mr. Wright, yes; Ms. Longo, yes; and Ms. Nolan, yes. Motion carried 4-1.

Ms. Longo moved to approve the findings of facts for Case 12-03, 12-05, 12-06, and 12-07 and Ms. Crawford seconded. Motion carried.

Don Alexander moved and Sophie Horvath seconded to adjourn the meeting at 8:42pm. Motion carried.

Bobbie Nolan, Chair

Julie Johnston, Acting Secretary