

# Board of Zoning Appeals

## Munson Township

Minutes of May 19, 2016

Vice-Chair Bobbie Nolan called the meeting to order at 6:30pm with Gabe Kezdi, Richard Wright and Alternates Don Alexander and Jim Herringshaw, Secretary Paula Friebertshouser and Court Reporter Kim Giel present. Dennis Pilawa and Danielle Pitcock were absent. The Pledge of Allegiance was said.

Mrs. 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 the evening of the hearing. 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.

Richard Wright moved and Gabe Kezdi seconded to approve the March 17, 2016 minutes. Motion carried.

**CASE 16-06: Dianne Cooke, 11805 Julie Dr., Chardon OH - request to keep an existing home 65.5 feet from the road right-of-way. Violates SEC. 411 Minimum Dimensional Requirement - minimum setback from road right-of-way is 80 feet.**

Zoning Inspector Tim Kearns was sworn in. It was noted that the home was built in 2012. Mrs. Nolan asked Mr. Kearns how they obtained a zoning certificate to build. Mr. Kearns explained that the builder came in to get the certificate. The original paperwork said the house would be at 80 feet. Mr. Wright asked how the current situation came about. Mr. Kearns explained he received a phone call from a bank informing him that the house is 65.5 feet from the road, and the accessory building (reference Case 16-07) was built on the property line. Mr. Wright pointed out on the site plan it says it is not a boundary survey. Mr. Kearns explained the builder measured from the centerline instead of the road right-of-way.

Mrs. Nolan commented that the house has been sold which she confirmed with Michael Lansky, the current owner who was present. She wondered why the Board was hearing this case. Mr. Lansky explained the house closed on April 21st. The bank had emailed him a few days before and their previous home was already sold. He thought this had to be taken care of before the bank gave him the money, but it did not. Mr. Wright commented the builder may have assumed that the measurement be taken from the centerline. Mrs. Nolan wondered why he did not catch it when it was built. Mr. Kearns replied that the building department starts with that and he did not get into it.

Dianne Cooke was sworn in. She stated she was the owner at the time as well as Rollin Cooke III and Rollin Cooke IV. Mrs. Nolan asked when she was made aware of the situation. She replied that she received a call from the realtor.

Mrs. Nolan asked Mr. Kearns if he would explain the process of obtaining a zoning certificate when someone wants to build. Mr. Kearns responded they first make an appointment; fill out the questions on the zoning certificate application; provide a site plan from an architect; and then he approves it. Mrs. Nolan asked if the builder showed him where the house was on his plan, and if the diagram showed it would be measured from the edge of the road. Mr. Kearns replied "yes".

Mr. Wright found it hard to believe that Rollin Cooke III had no knowledge of the zoning. Rollin Cooke IV was sworn in. He explained he and his wife Dianne had the house built and his dad was not involved. They trusted their builder.

The Board recessed at 6:50pm. The meeting resumed at 7:05pm.

Mrs. Nolan stated for the record that 18 affected property owners were notified in Case 16-06.

Rollin Cooke III of 11785 Julie Drive commented that he thought it was an honest mistake by the builder. He had no problem with it and thought it should be granted so the property owner does not have a problem down the road. Mr. Lansky concurred and said he hoped it would be granted because if they should ever sell he would not want it to be a problem. He added that in a lot of communities the measurement is taken from the centerline.

Gabe Kezdi moved and Don Alexander seconded that the variance requested in Case 16-06 for Dianne Cooke be approved. Mrs. Nolan stated the findings of fact as: the problem cannot be resolved without a variance; the variance is not substantial; the essential character of the neighborhood would not be altered; adjoining properties would not suffer a detriment; the delivery of government services would not be adversely affected; the predicament as it stands cannot be feasibly relieved and the spirit and intent behind the zoning would be observed and substantial justice done by granting the variance. Upon the roll call all members voted yes, 5-0. Motion carried.

**CASE 16-07: Dianne Cooke, 11805 Julie Dr., Chardon OH - request to keep an existing 12' x 16' accessory building zero feet from the east side property line. Violates SEC. 411 Minimum Dimensional Requirement - minimum side yard setback is 25 feet.**

Zoning Inspector Tim Kearns read the variance request and violation. He was asked when the picture of the shed was taken. Mr. Kearns replied a couple of years ago after the home was built.

Rollin Cooke IV explained there was a permit issued at the time with the measurement taken from a wooden stake. He thought it was 26 feet from the property line. The bank said it was right on the line. When asked, Mr. Cooke confirmed it is not on 4 x 4's, but has a treated floor sunk in the ground.

Mrs. Nolan asked Mr. Kearns if he measured it before. Mr. Kearns responded that they were building it without a permit; he tried to get in touch with them several times via letters. When they did not respond, the matter was turned over to the prosecutor's office. Mr. Cooke's ex-wife showed him where the stakes were. When he measured there was two feet of snow. At that time the stake was solid in the ground. There was no other house to go by so he measured from the stake. Mrs. Nolan

then confirmed with him that the bank came and did a survey and said the building was right on the line. She wondered how he could miss by 27 feet. She also wondered why the variances were separated. Mr. Kearns responded that the prosecutor got involved and they are two separate issues. Mrs. Nolan noted that is not the standard practice. She commented there are incorrect measurements by both the builder and the zoning inspector on each variance. Mr. Kearns pointed out on the pictures where he thought it was measured from.

Mrs. Nolan stated there were 19 affected property owners notified in Case 16-10. Michael Lansky, the current owner, explained the side of the shed that touches the property line is quite a distance from the neighbor's house. The neighbor has an accessory building with chickens between their home and his and he has never seen them in the corner by his accessory building.

Bobbie Nolan moved and Jim Herringshaw seconded that the variance requested in Case 16-07 be granted. The findings of fact are that there can be a beneficial use without a variance; the variance is substantial because it is on the property line; but the essential character of the neighborhood will not be altered because there is so much distance between and the neighbors are not here to object; adjoining properties will not suffer a detriment; the delivery of government services will not be adversely affected; the predicament cannot be feasibly relieved through some other method because it would be too expensive to move; and the spirit and intent behind the zoning would be observed. Mr. Wright added that it was observed only because the predicament the current owner has been put in. Upon the roll call, all members voted yes, 5-0. Motion carried.

Bobbie Nolan moved and Jim Herringshaw seconded that \$300 be returned to Dianne Cooke. She felt Cases 16-06 and 16-07 should have been combined into one as in past practice that is what has been done. Upon the roll call, all members voted yes, 5-0. Motion carried.

**CASE 16-08: Dustin Burkholder, 10221 Mulberry Rd., Chardon OH - request to construct a 24' x 42' accessory building in front of the residence. Violates SEC. 509.2 - no garage or other accessory structure shall be erected within the front yard of any district.**

Zoning Inspector Tim Kearns read the variance request. Mrs. Nolan asked if the property was all one complete lot. Mr. Kearns responded yes and stated that Mr. Burkholder has pictures showing the property.

Mr. Burkholder was sworn in. He distributed a map of his properties. Mrs. Nolan asked what the intent is for the accessory building. He responded he has an RV, trailer, tractor, etc. Mr. Wright asked when the existing barn was built and what it is used for. Dave Leber, the next door neighbor, interjected that it was built in 1982. Mr. Burkholder responded he uses it as a chicken coop and the front stores lawn mowing equipment. It has a wooden floor and is on a slope. It was there when Mr. Burkholder purchased the property.

Mr. Wright asked the reason for the proposed location. Mr. Burkholder explained the house sits back 1,200 feet from the road and his property is zoned R3 (severe slope). There is 170 feet of slope to the north and south. He has to have access to the driveway to back the machinery in. Mr. Burkholder showed the pictures depicting the severe slope. He explained that from the edge of the garage there

are underground utilities and it would not be practical to build anything there. When asked about the septic, he replied that west of the driveway is the old septic field with active tanks. The new septic field is located behind the building site. He further explained that drainage from the driveway goes under the large lot and looking from the house directly west there is an underground gas line and a ravine in the back. He pointed out dense, mature trees that would not be a practical area. Mr. Burkholder then showed a picture of the proposed site. The trailer, RV, and tractor are currently on the gravel lot.

Mrs. Nolan pointed out a residence on Flat Rock and asked how far away it was. Mr. Burkholder replied it is 305 feet away and he had spoken with them and they were ok with the request. He showed a picture taken in April from the proposed site looking at the Leber residence; and then one taken a week ago.

Mr. Wright asked about the height. Mr. Burkholder responded it would be 12 feet high with trusses. He will build most of it with help from contractors at the Fire Department. It will have metal siding and will be brown to blend in with the area. The floor will be gravel which is most cost effective. He said it would not need heat or insulation. Mr. Burkholder added there is 160 feet to the Leber's home with 100 feet of woods; and 305 feet to the west and 385 feet to the east are the closest residences. The building would be 900 feet off the road. He added he did not set the property up this way the builder did. He believes it will improve the property by not having to look at the equipment.

Mr. Burkholder explained he had come in and spoken with Mr. Kearns; obtained a permit; ordered concrete; and then received a call saying he would need a variance after the neighbor called on it. Mr. Burkholder expressed he does not want to do any harm. He said he and the Lebers both agreed there is a need for a building, and he offered to let them pick the color.

Mr. Wright commented that he sees no problem with neighbors on Mulberry Road; the only problem he would have is if a property is financially devalued. Mr. Burkholder pointed out the building would be 53 feet from the property line and 160 feet to their door. The Lebers' home is much higher than the building would be. Mr. Burkholder thought of possibly digging out the hill but that would be cost prohibitive and he wants to preserve the land. He already uses the site for parking.

Mrs. Nolan asked Mr. Burkholder to confirm there are no plans for electric, gas or heat. Mr. Burkholder agreed; the purpose is to protect the equipment from the weather. He would like to house the tractor he uses for snow plowing and he needs access to the driveway.

Mrs. Nolan stated for the record that 17 affected property owners were notified in Case 16-08.

Dave and Marlene Leber of 10195 Mulberry Road were sworn in. Mr. Leber presented a drawing of the properties and explained he bought two lots in 1978 and has a 30 foot easement. He pointed out the sugar bush house on Mr. Burkholder's property that was built in 1982 under agricultural use. He said theirs is an unique situation since they have rear lots. Mr. Leber showed that Mr. Burkholder owns an additional two acre parcel, and suggested if merged, he could use that area to build. As far as the utilities, he explained there is an overhead power line coming back and the underground utilities are four feet deep. To the rear of the property there is one and one-half acres with about 150 foot of grade. He commented it is not as steep where he could build behind the house. Mr. Leber referenced

Mr. Burkholder's comment that he could not build on the leech field; Mr. Leber had a letter from the health department saying he could. The Lebers felt the zoning variance should be given if no other options, but reiterated he could build on the leech field or behind the house. Mr. Leber added they have gotten along but are upset about this issue and feel it is not in the spirit of zoning. Mrs. Leber also commented she has never had problems and they want him to have the barn, they just do not want to look at it. She explained that when someone stands at the site looking at their home they cannot see much, but from their house looking at the site everything can be seen. She believes the site is closer to their home than the Burkholder's. They can see it looking up. She felt seeing a pole barn could be a deal breaker if they should sell.

Mr. Leber pointed out that picture #3 is the front of their home; #4 is their well and shows what they look at all fall and winter. Picture #5 showed what they have looked at over the years (equipment); and #6 showed an outline of the proposed building. Mr. Alexander asked if the picture was taken prior to the ground being leveled or after. Mr. Leber commented that Mr. Burkholder has been parking two travel trailers for the past four to five years which are not up to zoning code. Mr. Burkholder responded to the comment by saying one of the trailers was his Dad's who lives in the city. They have found another location for it.

Upon looking at picture #8, Mr. Burkholder commented that it looks like it was taken on his property. Mr. Leber replied he has a telephoto lens. He pointed out that on the last page they gave a synopsis on what the zoning points mean to them and that there are many other options.

Mr. Wright asked Mr. Leber if he had a discussion with Mr. Burkholder as to alternate sites. Mr. Leber said Mr. Burkholder had other answers. Mr. Burkholder explained that the utility lines are shallower than four feet. He added that he cannot do anything about the red building. Mr. Wright commented that the Leber's are closer than he is.

Mrs. Nolan asked the Lebers where they are getting the fact that the property will be devalued and asked if a realtor told them. Mr. Leber explained he has dealt with a lot of houses over the years. He pointed out where Mr. Burkholder could build and that it would enhance the property. Mr. Burkholder responded it would not serve the purpose because he could not back something up the hill. He commented the pictures represent more than the lines. Mr. Leber said his maps are from the county. When asked about building in front of the sugar house, Mr. Burkholder responded there are shallow gas lines that run along the driveway.

Mrs. Nolan asked Mr. Burkholder if the proposed site is level. He said it is within 12 inches. The Board reviewed the pictures from both Mr. Leber and Mr. Burkholder.

Mrs. Leber commented to Mr. Burkholder that he does not see a problem from his vantage point, but they do.

Mr. Herringshaw asked the Lebers if the RV's were closer to them. He commented he has a real estate license and in his opinion would rather see a building not the RV's. Mrs. Leber responded they would be looking at a wall.

Joe Tomaric of 10220 Mulberry Road was sworn in. He commented that he was before the Board last fall and was upset with their decision. The neighbor was granted a variance for a barn within 12 feet of his property line. When he bought his property there were certain zoning laws; he feels the laws are there for a reason to protect our rights. Mrs. Nolan responded that she appreciated his comments, but pointed out that everyone has a right to come before the Board.

Mr. Leber offered that he talked to other neighbors who did not think it was right. Mrs. Nolan explained they are not present to be cross-examined. Mr. Leber understood.

It was pointed out that Mr. Leber has an accessory building (24' x 38') in front of his house that was built in 1985. Mrs. Nolan explained there is no definition of front yard, it's arbitrary. Mr. Leber added they are in a unique situation because they are not a dedicated road.

Mrs. Leber reiterated that if there were no other options there would be no problem. Mrs. Nolan asked Mr. Burkholder if he thought there were other options. He responded no and that he has spent hours talking to contractors. One major point is cost and that it would not be useable in another location.

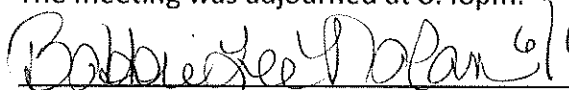
The Board recessed at 8:20pm and the meeting resumed at 8:37pm.

Mrs. Nolan asked Mr. Burkholder if he would be willing to plant shrubs three to four feet out from the building that would block the view. He said he would.

Richard Wright moved and Gabe Kezdi seconded that the variance requested in Case 16-08 with consideration for both property owners and the extent of detailed work by both, he felt sad that something could not be worked out between the parties. He added that based on topography and large things sitting out which to him was more of an eyesore and undesirable to look at; and with the proposal to get them under a roof, would be an advantage with consideration of shrubbery. Findings of fact were presented as the property can be used as is and the variance is substantial; but it would not affect the property values; the essential character of the neighborhood is personal with only one family affected; the delivery of government services will not be adversely affected; the predicament cannot be resolved in that it is an R3 area with slopes up and down; the intent is to work towards both sides and the decision most accommodating. Mrs. Nolan added that with the R3 district there would be a substantial cost in moving and leveling the dirt if placed anywhere else, and removal of trees which would not be cost effective. Upon the roll call, all members voted yes, 5-0. Motion carried.

Mrs. Nolan advised those present there are 30 days to object the decision of the Board. Mr. Leber verified it would have to be filed with the Common Pleas court. She thanked everyone for coming and presenting their cases. Mr. Leber commented to Mr. Burkholder that with the septic area he could build on he wondered where the cost would be. Mrs. Nolan pointed out that area is also on a slope.

The meeting was adjourned at 8:48pm.

  
Bobbie Nolan, Vice-Chair                      Date

  
Paula Friebertshouser, Secretary                      Date