

Board of Zoning Appeals

Munson Township

Minutes of May 20, 2020

Chair Dennis Pilawa called the meeting to order at 6:30pm with Danielle Pitcock, Don Alexander, Joe Tomaric, Alternate Jim O'Neill, Secretary Paula Friebertshauser and Court Reporter Laura Ware present. Alternate Tim Kearns was also present. Gabe Kezdi was absent. The Pledge of Allegiance was said.

Don Alexander moved and Danielle Pitcock seconded to approve the minutes of February 20, 2020 as written. Motion carried 4-0.

Mr. Pilawa 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 interprets the Zoning Resolution specifically on what is brought before them. 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.

CASE 20-03: Michael Ripley of Ripley Tree Service, 12012 Mayfield Rd., Chardon OH – requests to operate a tree service in a Commercial District. Violates SEC. 407/407.2 Commercial District Permitted Uses and Structures – operating a tree service is not a permitted use.

Mr. Pilawa read the variance request and violation. Zoning Inspector Jim Herringshaw was sworn in. He said he found out about Ripley Tree Service because he received a call from another tree service looking to purchase property down the road. They wanted to know if they were allowed to do that and subsequently brought up Ripley. Mr. Herringshaw explained that Ripley Tree Service has been operating for several months (Mr. Ripley clarified they have been there for a year) and he has received no complaints. They are near to the Industrial District with Best Sand located behind. Mr. Pilawa commented that a tree service does not really stand out in the Commercial District.

Michael Ripley was sworn in. He said "I'm guilty" – he thought being a commercial type of service that he was allowed to have his business there. He talked to Jim McCaskey and he had said it would be a great place to work out of; he did not know it was not permitted. Mr. Tomaric asked Mr. Ripley if he was storing logs. Mr. Ripley responded that he is not storing wood, he is just housing equipment and employees meet there to go to work. Mr. Ripley explained he is a certified arborist and named several accreditations that he feels sets his company above others.

Mr. Pilawa stated for the record that 12 affected property owners were notified in Case 20-03. Pete Ianiro of 11858 Mayfield Road was sworn in. He said he drives by every day and the area is kept

spotless and blends in with other service companies all around him. David Cvelbar of 11868 Mayfield Road was sworn in. He agreed with Mr. Ianiro and said it does not look like a tree service company. Mr. Pilawa asked Mr. Herringshaw if he thought there were any reasons to prohibit a tree service. He responded that he spoke with Linda Crombie from the Planning Commission and while a tree service may not be on our list, we cannot plan for every use. Mr. Pilawa agreed and explained that is the sole reason the Board exists; there is recognition that you can't see the future – it is built into the Zoning Resolution.

Danielle Pitcock moved and Don Alexander seconded to grant variance Case 20-03 as requested. Discussion following the motion included that from the facts heard and in applying the elements of law of a use variance, there is no evidence that adjoining property owners would be harmed, but has shown the opposite; the proposed use compares favorably with adjacent and nearby uses. These are two main factors developed here today. Upon the roll call, all members voted yes, motion carried 5-0.

CASE 20-06: Lawrence Fedorko 11605 Edgewood Rd., Chardon OH – requests to place a 7' x 7' accessory building in front of home, 51.18' from the road right-of-way. Violates SEC. 411 Minimum Dimensional Requirements-minimum setback from the road right-of-way is 80 feet; and SEC. 509.2 (in part) No garage or accessory structure shall be erected within the front yard of any district.

Mr. Pilawa read the variance request and violations. Zoning Inspector Jim Herringshaw explained the photographs were taken at an earlier time and show the proposed location is in front far to the left and hidden in the woods. In back of the home there is a drop off.

Lawrence Fedorko was sworn in. He explained he wants a 7' x 7' shed to store garden equipment and a pressure washer, etc. He is an avid gardener. The way the home is set and the land falls, there is not a good location. It will be inconspicuous to the neighbor and would not require excavation. Mr. Pilawa stated for the record there were 102 affected property owners notified in Case 20-06. There was no public comment.

Joe Tomaric moved and Jim O'Neill seconded to accept Case 20-06 for Lawrence Fedorko at 11605 Edgewood as requested. Discussion following the motion included that the Board is required to apply certain factors of law to every area variance and that the evidence presented has established that Mr. Fedorko has met the following: even though there is a beneficial use, 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 cannot be feasibly relieved through some other method; 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, motion carried 5-0.

CASE 20-07: Ronald Delisio Jr. Parcel #21-164800, Chardon OH – requests to construct a new residence 25' from the road right-of-way; 10' from north side property line and 15.3' from the south side property line. Violates SEC. 411 Minimum Dimensional Requirements- minimum setback from the road right-of-way is 80 feet; minimum side yard is 25'.

Mr. Pilawa read the variance request and violation. Mr. Herringshaw explained it is located in the Bass Lake Community and is similar to a variance earlier in the year. He has 0.57 acres and is the last parcel on Beachside.

Ronald Delisio of 8862 Beechwood Road in Novelty, was sworn in. He explained they are downsizing and the proposed home would fit in with the neighborhood aesthetically. It will be the last house on the street with woods next door.

Mr. Pilawa stated for the record that 28 affected property owners were notified in Case 20-07. Sandra Royle was sworn in. She lives down the street and saw the plans and thought they were beautiful and it will fit in with the neighborhood. It is the last lot that borders the park district. Lisa Brown of 11651 Lake Road commented she has seen the plans and feels it will fit in as well.

Don Alexander moved and Joe Tomaric seconded to approve the variance requested in Case 20-07 as requested. Mr. Pilawa explained that because it is an area variance they look at the same principals as Mr. Fedorko's case and he thought the Board would agree that the Duncan Factors would apply – 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 obstructed and clearly the spirit and intent would be observed and substantial justice done by granting the variance. He explained that no single factor is more important than the other and because the facts were established the appellant should be granted the variance. Upon the roll call, all members voted yes, motion carried 5-0.

CASE 20-09: Todd & Susan Petersen 11579 Lake Rd., Chardon OH – requesting, as part of a proposed lot consolidation and split (parcels A & B), to allow 0' driveway clearance for both parcels since they share the same existing driveway. Also, requesting the existing pavilion located on parcel B to be 12.5' from the south property line and parcel A to have 78.81' of frontage. Violates SEC. 511 Driveways (in part) Driveways shall be a minimum of 15' from any lot line. SEC. 411 Minimum Dimensional Requirements-minimum frontage at road right-of-way is 200'.

Mr. Pilawa read the variance request and violations. Zoning Inspector Jim Herringshaw explained the site plan and that Mr. Petersen had originally come for a variance about seven years ago to have two principal structures on one lot but now is proposing to make seven parcels they own into two which makes the situation more conforming. He referenced photographs and pointed out the existing pavilion and shared driveway. Mr. Tomaric asked if what is presented is the same as what is on the application because it was very hard to read. Mr. Petersen and Mr. Herringshaw confirmed it was.

Todd Petersen was sworn in. He explained that his home is on a 5-acre parcel that has been there since 1932 and had 2 cottages on it. In 2013, he applied for a variance on the site of the 1932 cottage; the other one has been there since 1927 and the pavilion since 1996. He owns the road (driveway) parcel from Bass Lake to Lake Road. He has purchased other parcels off of Julie Drive. He and his wife have the house and pavilion and the other cottage is owned by his father and aunt since 1987. He is scheduled to go in front of the Planning Commission next month. He explained it is more difficult to combine properties because the vacation process has been gotten rid of. He is making it into 25 acres except for the small cottage. He has no plans other than to live there and not see other houses. He

explained that the driveway has been improved since 1987 and has had 60,000 pounds driven over it. It has three 18' I-beams for fire department access. In regards to the frontage, there were notations that the road ends before the bridge but he always thought it went through. The resulting lots are in the 2.5-acre zone and are good for septic systems which left the cottage with 3 acres.

Mr. Pilawa stated for the record that 14 affected property owners were notified in Case 20-09. There was no public comment.

Don Alexander moved and Jim O'Neill seconded to approve the variance for Case 20-09 as requested. Discussion following the motion included: although there is a beneficial use, the variance is not necessarily substantial in view of what is being done; the essential character of the neighborhood will not be altered; adjoining properties will not suffer a detriment; the delivery of government services could not have been addressed any better; the predicament cannot be feasibly relieved in some other manner; 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, motion carried 5-0.

CASE 20-04: Pete Ianiro 12850 Ravenna Rd., Chardon OH – request to keep two existing 10' x 16' sheds in front of home. Violates SEC. 509.2 (in part) No garage or other accessory structure shall be erected within the front yard of any district.

Mr. Pilawa read the variance request and violation. Mr. Herringshaw explained photographs that showed the sheds could not be seen from the road. They are two smaller sheds used as shooting blinds and are located to the side but in front of the home which is why a variance is needed. The appellant was unaware he needed to get permits.

Pete Ianiro was sworn in. He explained it is a shooting range put in the safest area on his property. The sheds are staggered at 50 yards and 100 yards and help muffle sound. If the sheds were to be moved behind the house he would have to move the backstop which would make it closer to the neighboring property. Mr. Ianiro commented that quite a few Sheriffs have said it is one of the safest shooting environments they have seen. Mr. Ianiro showed pictures of the sheds, backstop and view to the adjoining property and said he cannot see the neighbor's house. When asked how far the sheds were in front of the home, Mr. Herringshaw responded that the one closest to the road is 100 feet and the other approximately 30 to 40 feet in front of the home. Mr. Tomaric asked if the sheds were for gun restoration. Mr. Ianiro responded yes for personal use. When asked how often he shoots, Mr. Ianiro responded once a week for 15 minutes. When asked if there was any other use for the sheds, Mr. Ianiro said he stores miscellaneous items and some ammo which is locked in a safe bolted to the floor and wall. He added that the sheds are secured by deadbolts on all four corners and he has a camera and two sensors on the doors.

Mr. Pilawa stated for the record there were 34 affected property owners notified in Case 20-04. Michael McGreevy of 12926 Ravenna Road was sworn in. He said he lives pretty close to the backyard and cannot see the sheds. He felt the issue is the shooting itself because it is pretty loud and frequent last year. With four kids, other houses around and a park adjacent to the property, he saw it as a safety issue. He felt it decreases his property's value. Mr. Pilawa commented that he did not want to minimize Mr. McGreevy's concerns, but the variance is not regarding the shooting, but for structures

located in the front yard. Mr. McGreevy expressed surprise that there are no zoning laws for firing weapons. Mr. Pilawa explained that is not something the Board of Zoning Appeals has authority to do.

Patricia Ray of 12346 Bean Road was sworn in. She is a 35-year resident and her husband a 50-year resident. He was not in attendance due to his immune system being compromised. Mrs. Ray explained their north property line borders Mr. Ianiro's. She referenced handouts she had dropped off earlier for each board member. She pointed out a satellite view that showed the two sheds 124 feet from their property line. On page two, it showed their house where her grandchild plays right behind the one shed and the backstop with the park property behind it. She felt that park visitors would be frightened and the paths would allow children to come onto Mr. Ianiro's property. She felt the essential character of the neighborhood would be altered because who would choose to live next door? She commented that the sheds were installed in November 2019 without permits. She referred to Section 401.3a. Accessory structures necessary for domestic activities and storage, and expressed concern with the use of the property. She said there is often more than one fire arm used. In referring to Section 1202.4.2a, she felt there could be a beneficial use and he could shoot without the sheds. She referred to shooting records on August 14 when school opened; and late day gun fire on the 15th at 8pm and the 25th at 7:25pm, both school nights and referred to Article 601 (610) Objectionable uses by reason of noise. She explained the backstop was constructed over a 10-day period and that the Zoning Inspector consulted with legal counsel and failed to identify it as a structure. She went back to Article 1202.4.2 referring to whether the property owner's predicament can feasibly be obviated by something other than a variance; one of the sheds is 124 feet from their property and does not have to be placed at that location when there is five acres of land. She contacted the Health Department and they have received no final permit. She suggested it be moved to the Ianiro's commercial property and felt the spirit and intent would not be observed by approving commercial grade zoning.

Mr. Pilawa commented that much of what Mrs. Ray implied the Board does is not correct. The BZA hears variance requests as narrowly as possible; they do not make policy and do not do investigations. She needs to talk to the Zoning Commission regarding shooting. There is nothing the Board can do to stop the shooting they are not there to judge the activity but only that within the confines of the factors. Mrs. Ray said she understood.

Mr. Ianiro explained that he constructed the shooting range for personal use. His son is an avid shooter and it was something for them to do together. He did not want to drive somewhere but put it in the safest place he could. If he would move the sheds behind the house he would have to relocate the backstop and it would be closer to her property and he does not want to do that. He reiterated that he has had every sheriff come out and they have said it is the nicest and safest range they have seen. He is not doing anything against the law. Mr. Ianiro said they shoot 20 to 30 rounds which costs approximately \$100 maybe once a week at most.

Dan McCaskey of 12826 Ravenna Road and adjoining neighbor to the north, was sworn in. He said he can see the sheds outside of his kitchen window. He did not have a problem with them.

Dennis Pilawa moved and Danielle Pitcock seconded to grant the area variance as requested in Case 20-04. Mr. Tomaric explained some conflict with the variance request versus the use. Whether the sheds are in front of the house equal to the neighboring property or placed behind where they would

not require a variance; but ultimately it is not a use variance. Mr. Pilawa added that regardless of what the Board does with the location of the sheds, the shooting is going to occur. The Board cannot make a determination by considering the use, but must consider the Duncan Factors. This Mr. Ianiro commented that he could move them but he would still shoot. Mr. Pilawa identified the following factors that were considered in Case 20-04: even though the predicament could be relieved through some other method and there can be a beneficial use; the delivery of government services would not be affected; he did not think the variance was substantial; and the Board witnessed Mr. McCaskey saying he would not be affected. Upon the roll call, all members voted yes, motion carried 5-0. Mr. Pilawa referred to one of the factors being will the spirit and intent behind the zoning be observed and substantial justice done by granting the variance and explained the zoning resolution is not a bright line and as long as there is a process from the resolution that can be made, they have to consider it. It is there just for someone who asks for something outside of what is permitted. The community has changed substantially. He felt the spirit and intent will be observed and substantial justice done by granting the variance. Mr. Tomaric added that besides the location of the structure and referring to Article 6 and the noise, many people move out to enjoy the solitude but also move out to the country to enjoy their ATV's, loud music, etc., but when it goes to extremes that is taking away from someone else's property rights. Mr. Pilawa asked Mrs. Ray if she wanted to make the documents she had provided the Board part of the record; she did.

CASE 20-05: P. Ianiro's Lawn & Garden Inc. 11858 Mayfield Rd., Chardon OH – requesting to build collector retro rifles as part of business in the Commercial District. Violates SEC. 407 Commercial District-407.2 Permitted Uses & Structures – building collector's retro rifles is not a permitted use.

Mr. Pilawa read the variance request and violation. Mr. Herringshaw explained he found out about this proposed use because he had received a call from the Federal Bureau of Tobacco and Firearms regarding an application received from a resident. Mr. Ianiro could sell firearms but cannot manufacturer them without a variance in the Commercial District. When asked how far the Industrial District is, Mr. Herringshaw pointed out it is about halfway down the road behind the Commercial District designation. Mr. Pilawa clarified that Mr. Ianiro could manufacture them about a half mile down the road and sell where he is now. Mr. Herringshaw confirmed and said he could sell them under sporting goods. He explained Mr. Ianiro's plan is to make four to five collectors rifles per year. The reason he would like to use his current business location is that he needs to use some of the equipment located there.

Mr. Pilawa voiced concern that if the variance is granted it lasts forever and even though it might be Mr. Ianiro's intent to make five per year for personal use if he were to sell the property someone else could manufacture hundreds. The Board is granting a property right. Mr. Ianiro responded that he thought it ironic that he could sell thousands of guns a month but to build just a few and not make any money it is not permitted. Mr. Pilawa explained there is an anomaly within the zoning. He asked Mr. Ianiro if it was his intent to sell. Mr. Ianiro responded yes, he would like to build a couple to sell to offset the cost. He said it is a hobby. He pointed out the Industrial zone is close and that nothing would really change.

Mr. Pilawa stated that there were 20 affected property owners notified in Case 20-05. David Cvelbar of 11868 Mayfield Road questioned Mr. Pilawa's statement regarding the amount of guns that could be

manufactured and wondered what the difference is. He sees a lot of UPS trucks at the gun place in Chesterland and saw that as the only difference. Mr. Ianiro added that there is already a deli there with nonstop traffic. Mr. Cvelbar lives next door to the landscape business and there are trucks in and out. The gun issue needs to be separate from the manufacturing issue. Mr. Pilawa again stated that is the anomaly in the zoning as it could be done a mile down the road but not at this location. The Board has to balance what is going on today; the people who wrote the zoning could not possibly have accounted for every issue. Mr. Ianiro explained there are strict regulations for gun manufacturing and inspectors would come.

Mrs. Ray voiced her opposition to the variance request. She pointed out that Mr. Ianiro wrote that all the equipment would be manufactured on site and probably not fired. There is no commercial range and her fear is the guns would be tested at his home both personally and by customers.

Sarah Fetheroff of 12335 Waterfowl Lane was sworn in. She was concerned that there are rules for a reason and the business is not in the proper location. He could purchase property down the road. She felt the Board should not keep changing the nature of zoning.

Mr. Pilawa explained it is very difficult to get a use variance. For a use variance, the applicant needs to establish that they cannot do anything else with the property. The reason he raised the issue of where the Industrial District was located was to point out that he did not have any good explanation why something can be done down the road and not at Mr. Ianiro's property. Mr. Ianiro asked if it was about the guns. Mr. Pilawa responded it did not have anything to do with the manufacturing of guns. He explained that the Board would have to find that the zoning deprives the owner of a substantial property right and if the property could be used in an economically viable manner without the variance. Mr. Ianiro commented that other than the fact that it is for guns he did not see how it would affect anything in any way. Mr. Pilawa responded that the factors he just identified are exactly why he cannot and they do not relate to guns.

Ms. Fetheroff commented it is not necessarily the guns but proper use of the property and adhering to the laws as written. Mr. Pilawa did not agree; as previously explained they do have the variance process. The Board has to find that economic hardship is unique to the property. Mr. Ianiro commented he did not understand the reasoning at all; whether selling or manufacturing, there are businesses surrounding him. Mr. Herringshaw responded that it is where the districts are and he is in the Commercial District. There are significant differences between the Commercial and Industrial Districts. He referred to a variance request from a couple of months ago for storage units that are also not listed under the Commercial District. He spoke with the Planning Commission Director and she advised not to add to the permitted uses in the Commercial District but leave it open for discussion in the variance process. Commercial uses are more for things like salons, deli's, retail, etc. A tree company was allowed in Newbury and they have big mounds of stuff; there are reasons the Board asked questions of the previous applicant for the tree service. In referring to the tree service, Mr. Ianiro commented if the variance goes with the property there could be mounds of stuff there in the future. Mr. Pilawa responded they could refer back to the records to see what happened.

Mr. Pilawa read the factors to be considered for a use variance and stressed that every one of them has to be applied.

Danielle Pitcock moved and Don Alexander seconded to deny the variance requested in Case 20-05. Mr. Tomaric pointed out that Mr. Ianiro said he could use the property in an economically viable manner without a variance. Mr. Pilawa added that the evidence presented does not establish a substantial property right and the hardship is not unique to the property; adjacent and nearby uses are commercial and the request does not fit. Upon the roll call, all members voted yes, motion carried 5-0.

The meeting was adjourned at 8:46pm.

Dennis Pilawa 6/17/2020 Paula Friebertshauer 6/17/2020
Dennis Pilawa, Chair Date Paula Friebertshauer, Secretary Date

NOTE: The following case was published in the legal notice but was withdrawn prior to the hearing:
CASE 20-08: Brian Gray 11190 River Rd., Chardon OH – request to construct a 14' x 22' utility/storage shed 15' from west side property line. Violates SEC. 411 Minimum Dimensional Requirements- minimum side yard requirement is 25'.