

# Board of Zoning Appeals

## Munson Township

Minutes of May 19, 2021

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

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. The Board has limited authority and cannot change the zoning, but there is a provision in the zoning resolution for variances. He explained that the Board of Zoning Appeals is a quasi-judicial Board which acts in the role of judges. 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.

Mr. Pilawa asked if anyone present had any questions prior to proceeding with the hearing.

Mr. O'Neill asked and received clarification that the zoning would not change if the variance was approved. Resident Joe Bastulli commented he was confused. In reading Section 1202.4.1 of the Township's Zoning Resolution in part, it says "since the granting of a "use" variance represents de-facto re-zoning which is beyond further review by the Township, a "use" variance should be granted only if the circumstances leading to the variance are unusual and meet all of the specific standards." Mr. Pilawa responded that the variance request would not change the R-1 District to a Commercial District.

Resident Dave Krynsky of Sylvanhurst wanted to know what would happen if the variance was turned down. Mr. Pilawa responded the Board has nothing to do with that process; it would be up to the court. The Board of Zoning Appeals has limited authority.

Resident Lester LaGatta of 12709 Heath Road asked if it were changed from residential to commercial for a pool what would happen if they decided to close the pool down. Mr. Pilawa responded that the case is limited to the request being made; that is all the Board considers – not a bakery, etc.

Resident Joe Otto asked what the difference is between a variance and a conditional use permit. Mr. Pilawa explained that a conditional use request is not before the Board, only a use variance.

Joe Tomaric moved and Jim O'Neill seconded to approve the minutes of March 3, 2021 as written. Motion carried, 4-0.

**CASE 21-04: Gerald J. Spuzzillo 12860 Walden Oaks Dr., Chardon OH – requests to keep an existing driveway approximately 5 feet from the south side property line. Violates SEC. 511 Driveways (in part) Driveways shall be a minimum of 15 feet from any lot line.**

Mr. Pilawa read the variance request and violation. Mr. Alexander disclosed that he is an affected property owner that lives diagonally across from the appellant but felt he could be fair and impartial. No one present had an issue with his participation.

Zoning Inspector Jim Herringshaw was sworn in. He explained the driveway was put in five to six years ago and it just came to Mr. Spuzzillo's attention that the turnaround is three to five feet off the property line. He explained photos he had taken and the aerial view.

Gerald Spuzzillo was sworn in. He explained that he extended his driveway not knowing exactly where the lot line was. The lot next door was a cesspool with no house; then the neighbors built a house and had no problem with it. He came in on his own free will once he saw it staked.

Mr. Pilawa stated for the record that 38 affected property owners were notified in Case 21-04. There was no public comment.

Danielle Pitcock moved and Don Alexander seconded to grant the variance requested in Case 21-04 as written. Discussion following the motion included: Mr. Pilawa explained that for an area variance the Board has to consider all eight factors but are not required to give the same weight to all. There is a beneficial use as a residence; the variance is not substantial based on the facts presented; the essential character of the neighborhood would not be altered; adjoining properties would not suffer a detriment – there is no resistance which says a lot; the delivery of government services would not be adversely affected; the predicament cannot be relieved through some other method; the spirit and intent would be observed and substantial justice done by granting the variance based on the evidence presented and whether the property owner knew of the zoning restrictions, I don't give much weight to. Upon the roll call, all members voted unanimously 5-0. Motion carried.

**CASE 21-05: Rodger Gergacs 9760 Mayfield Road, Chesterland OH – requests to use an existing pool to operate a commercial swimming pool as a principal use in a Residential District. Violates SEC. 401.2 R-1 Residential District Permitted Principal Uses and Structures (in part) commercial swimming pools are not a permitted principal use in a Residential District.**

Mrs. Pitcock disclosed that she has had a pool membership but was not planning on renewing this year. She felt she could be fair and impartial. No one objected to her hearing the case. Resident Barbara Partington felt it was not up to the audience but the Board. Mr. Pilawa responded that historically, this is the way it has been done. The Board does not decide their power.

Zoning Inspector Jim Herringshaw explained that Rodger has operated the pool for 15 years and it has been in existence for 57 years. The variance request is to continue to use the existing pool. The reason he had to apply for a variance is because the conditional use was not renewed. It had formally been a permitted accessory use under the Golf Course Conditional Use which expired on February 1, 2021. Mr. Herringshaw pointed out the pool area on the aerial map and said there would be no changes.

Rodger Gergacs was sworn in. He stated there would be no change in operations including hours, the parking area, or structurally for now. Mr. Herringshaw added that Mr. Gergacs submitted very detailed plans. Mr. Gergacs explained he has run the business for the past 15 years as a permitted use under the conditional use. He is the last remaining business. When asked, he explained it is a membership only club and there is a morning swim team. Mr. Pilawa pointed out that Mr. Gergacs had said "for now." Mr. Gergacs clarified that he meant there would be no changes while he operates the pool. He has owned the business for 15 years and operated it for 16. He has 18 to 20 employees, primarily certified lifeguards, and a check-in person.

Mr. Pilawa stated for the record that 94 affected property owners were notified in Case 21-05.

Bernadette Alpers of 12525 Rockhaven questioned if a variance is given in perpetuity, and in two-year's time the pool is destroyed what happens. Mr. Pilawa responded the variance runs with the land; it could be a pool. She wondered if a person could cut out a parcel and come in for something else. Mr. Pilawa responded there would have to be serial applications for a variance – someone could come in and the room would be full. Mr. Pilawa explained he has been on the Board 22 years; the people in the Township have the same appreciation for the Township as she does. There have been a couple of variances for gun stores, and they have been turned down.

Joe Otto of 13065 Heath Road commented he has no problem with what Mr. Gergacs has done but thought he should apply for a conditional use. Mr. Pilawa responded that would be an enforcement issue which is where the zoning inspector and the prosecutor comes in. Mr. Otto commented that a conditional use would put conditions on things. Mr. Pilawa explained that a request for a conditional use permit is not before the Board. Mr. Otto commented that a long-term conditional use versus a commercial use would unlikely require 137 acres. He felt there is an unspoken motive and perhaps Mr. Gergacs is functioning as an agent for the property owner because the owner wants to create the biggest light show east of the Mississippi. Mr. Otto referred to the Duncan factors and said it would dramatically change the zoning; and mentioned Irene McMullen's affidavit several years ago from a previous variance. Mr. Pilawa summarized that Mr. Otto did not have a problem with how the pool has been run in the past; his concern is allowing something that lasts in perpetuity because the Board would be conferring a property right.

Lester R. LaGatta of 12709 Heath Road commented he is a 40-year resident, and his six daughters went to the pool. He did not have a problem with the pool itself but asked what if it became a waterpark? Mr. Pilawa explained that the Township tries to make the request as narrow as possible. They have not had that problem in the past.

Dave Krysinaky of 9714 Sylvanhurst asked who owns the property and if Mr. Gergacs leases from them. Mr. Gergacs responded that the property is owned by a private investor from Canada and he does lease.

Joe Bastulli of 12505 Heath Road commented that this is not a private attack on Rodger. They have been residents since 1996 and live close to the pool. He has researched the property; it is zoned R-1, and under the conditional use there were ancillary uses. He has no issue with the pool. With a use

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variance it gives the owner permission to do other things. Mr. Pilawa said that a use variance is not an easy process and must show unnecessary hardship. Mr. Bastulli referred to several of the factors – is the hardship unique to the property and may the property be reasonably used in an economically viable manner. In referring to (c), Mr. Pilawa pointed out that the owner is not present to respond. Mr. Bastulli continued with the factors – is the hardship self-induced – the owner had a conditional use before, and it could have been maintained. Mr. Pilawa felt that in (d) how does the proposed use compare to adjacent and nearby uses, is not a subjective test. Mr. Bastulli asked if the pool ceases to operate could a new pool be built elsewhere. Mr. Pilawa responded they would be granting what exists now. Mr. Bastulli returned to the factors (f) how does the zoning regulation protect the public health, safety and morals – he asked if one of the things built in could be that Mr. Gergacs not use the well to fill the pool. He would like to propose that he does not need 137 acres – it could be subdivided. In referring to Section 805 in the Zoning Resolution, Mr. Bastulli suggested the pool should be under conditional use for Commercial and Recreational. In addition, he wanted to propose that the Board prohibit use of the well. Mr. Pilawa responded that the Board does not engage in horse trading. They can only decide those cases that are brought before them. Mr. Pilawa provided the example that if UH received a suggestion, they could table their request and take the path of least resistance – there is a mechanism for that, and it almost worked with UH except for one neighbor. Mr. Bastulli pointed out that in the Township's Land Use Plan that district was slated to be Medical Use in the future. He added that in Chapter 4 of the Land Use Plan it refers to preserving the rural character on Sherman, Fowlers Mill and Heath Roads. Mr. Pilawa asked if he were suggesting taking time to find common ground. Mr. Bastulli responded that 137 acres is a leap; a conditional use would be more supportive. Mr. Bastulli commented that the owner has to pay a higher tax bill; it would be a benefit to the owner. Mr. Pilawa responded that is way above the Board's pay grade. Mr. Otto commented that if the variance were tabled, it would allow for discussion.

The Board took a recess at 7:50pm. The hearing resumed at 8:16pm.

Leanne Berkeley of 12825 Sperry Road commented that the people present over 40 had their children go to the pool. She has used the pool for 4 years. The pandemic has affected children and they need to get out. Things should be kept on par for the children; she felt it was not fair that the older residents present took their children to the pool. She added that Mr. Gergacs is a shining example of a small business and he indicated he is going to continue to operate the same.

Dawn Bastulli commented that she works in social services and is aware of what the pandemic has done, but felt it is about the owner from Canada who is living behind his attorneys; this is everyone's right; it is a permanent variance on 137 acres. She added this is the same guy who owns Pineview Lake that was supposed to be Cana Winery but fell apart because of the septic. She added they like Rodger, but the conditional use was not renewed. They would like to see an amicable result.

Patricia Levan of 7549 Oak Hill asked if the variance refers to just the 5 acres the pool is located on. Board Member Don Alexander explained that Mr. Gergacs cannot build another pool on the 137 acres. Nothing else can happen if contrary to the variance as presented. Zoning Inspector Herringshaw added that the owner would need a use variance to do anything different.

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Robert Steinberg of 9750 Sylvanhurst asked how long the lease was. Mr. Gergacs responded he has a 2-year lease. Mr. Steinberg said he would be more comfortable if the property were subdivided. Mr. Pilawa commented that would be up to the owner. Zoning Inspector Herringshaw added it would have to go to the Planning Commission.

Jessica Alpers of 12525 Rockhaven asked Mr. Gergacs if the swim club were private and if he received the variance, would it still be. He responded yes.

Lester R. LaGatta asked if the Board was going to vote that night. Mr. Otto commented that he did not think anyone was against the pool; and they would like to try to keep it going. Mr. Pilawa commented that the Board acts on the variance request that is before them.

Patricia Levan commented that if Mr. Gergacs does not get the variance, the pool may not be open again. There are circumstances that exist.

Rick Gerald of 12851 Heath Road commented that if he were going to buy a house and there was a commercial lot next door, he would not buy it. He was against the variance request.

Marie Valince of 9805 Mayfield Road asked Mr. Gergacs why he did not focus on the five acres. Mr. Gergacs clarified they are just going for the part of the property the pool is on. When asked why it is not a conditional use, it was explained that if it were, it would only be allowed in the commercial district.

Andrew Res of 7939 Sherman Road felt it was a reasonable request because they are asking for a specific pool and the emotions and noise need to be filtered out.

Mr. Pilawa reiterated that the Board votes on what they are asked for specifically.

Mr. Bastulli commented that 805.1 says they are allowed to have a community swimming pool. Zoning Inspector Herringshaw explained that Mr. Bastulli needs to look at the whole section. Mr. Herringshaw clarified that all the other uses identify the district in which they are allowed. He has conferred with the prosecutor's office and the Planning Commission and it is the only conditional use that does not specifically mention a district. A use variance is needed to have a commercial swimming pool in a residential district. Mr. Herringshaw read the first paragraph of Section 805 in part "All commercial recreational facilities other than those specifically described elsewhere in Section 805 shall be limited to Commercial Districts."

Teresa Santoiemmo of 12535 Heath Road commented she lives directly next to the pool and is the most affected property owner. She has children ages 8 and 10 who enjoy the pool. When the Zoning Inspector outlines specific parameters, everyone has to remember it is a very specific request.

Zoning Inspector Herringshaw provided specific examples: Places of Worship may be permitted as a conditional use within Residential Districts; Sexually Oriented Businesses may be allowed in the Industrial District. Every other conditional use states the district it can be in. It does not say swimming



pools can be in the Residential District; if it were, the fence surrounding the pool would have to be higher. Mr. Herringshaw commented he did not write the zoning.

Charles Royer of 1250 Main Avenue, Cleveland, and attorney representing the Bastullis, commented if the variance as drafted is granted and Mr. Gergacs does not operate within two years, it runs with the property. If denied, he asked if Mr. Gergacs could come back with a difference scope. Mr. Pilawa responded that there is the res judicata effect where subsequent owners come back to ask for what came before and if he was suggesting Mr. Gergacs come back, it would have to be substantially different. Mr. Pilawa did not see the request as being for use of 137 acres – it is for use of the existing pool – to take what has already been there for 57 years. Mr. Royer commented that as he understands it, Mr. Herringshaw's bosses are the Trustees, and he had the ability to decide on the light show and it did not reach the Board because he granted a conditional use permit. Mr. Herringshaw interjected that he was not zoning inspector when they got their conditional use. He added that the light show did not need a conditional use permit. Mr. Royer began questioning Mr. Herringshaw regarding the light show. Mr. Pilawa interrupted as it was not related to the variance request and asked if Mr. Royer was looking for free discovery for the lawsuit.

Mr. Pilawa asked Mr. Gergacs if he would like the Board to vote on his request that evening. Mr. Gergacs said he would.

Don Alexander moved and Danielle Pitcock seconded that the variance for Case 21-05 be approved as requested. Discussion following the motion included: Mr. O'Neill asked if it would affect the full 137 acres. Mr. Pilawa responded that he does not read it that way; the pool is existing and a variance was needed just because of the cessation of the golf course. I think the record is clear if it becomes something other than that it would be investigated. Mr. Tomaric asked if it were legal to evaluate the request from the tenant. Mr. Pilawa explained there is a letter of authorization in file from the owner. Mrs. Pitcock then provided discussion regarding the use variance as follows: is the hardship unique to the property – yes, it is a unique situation as the pool was in operation for nearly 60 years; does the zoning regulation deprive the owners of a substantial property right – in this case it does, under the current situation it cannot be used by the applicant without a variance; may the property be reasonably used in an economically viable manner without a variance – not in this situation by the applicant; how does the proposed use compare to adjacent and nearby uses – it is a commercial use for a pool in a residential district but again it has been a pool for almost 60 years and has been operated the same for 15 years; is the hardship self-induced - the hardship is not self-induced as the applicant was not part of the other business; how does the zoning regulations protect the public health, safety and morals – nothing is going to be different - it does fulfill the health and safety as the applicant states he complies with the Geauga County Health Department; and adjoining properties will not be harmed; the pool has been operated under Mr. Gergacs since 2007. Upon the roll call members voted as follows: Mr. Alexander, yes; Mrs. Pitcock, yes; Mr. O'Neill, yes; Mr. Tomaric, yes; and Mr. Pilawa, no; motion carried 4-1.

The meeting was adjourned at 9:06pm.

 6/19/2021  
Dennis Pilawa, Chair Date

 6/15/2021  
Paula Friebertshauer, Secretary Date