

# Board of Zoning Appeals

## Munson Township

Minutes of May 15, 2024

Chair Dennis Pilawa called the meeting to order at 6:30pm with Danielle Pitcock, Jim O'Neill, Don Ondrejka, Alternate Roger Simpson (serving for Joe Tomaric), Alternate Carol Maver, and Secretary Paula Friebertshauser present. Joe Tomaric 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.

Don Ondrejka moved and Roger Simpson seconded to approve the minutes of April 17, 2024, except for Case 24-06, as written. Motion carried, 4-0.

Case 24-06 was heard on April 17, 2024, but was excluded from the approval of those minutes because it was continued to the May 15, 2024 hearing. The following is the portion from the April meeting.

**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.

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 following is the continued portion of Case 24-06 from the May 15<sup>th</sup> meeting.

**Continued 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.**

Chair Pilawa read the variance request and violation. The case was continued for the purpose of seeking advice from the assistant county prosecutor as to whether the Board had the authority to hear the case because of the historical aspect. An opinion was received and the Board has the authority to move forward and hear the variance request.

Zoning Inspector Jim Herringshaw was sworn in. He affirmed Chair Pilawa’s statement and added that legal counsel said any issues from wanting to rebuild a historic building are separate and apart from a variance. Chair Pilawa commented that he emailed back and forth with her and as a result all the Board is discussing will be the zoning regulation. He thought that if it were granted it may not be the end of the inquiry but is not related to zoning. He offered that the Board has limited authority and their job is to interpret the zoning regulations.

Phil Smith of 12426 Fowlers Mill Road explained he took the liberty to reach out to some neighbors and invited them to come look at the property and that will be ongoing. He feels that although the structure has significance it is not in its original state and has been added onto. He and his wife are still open to a design in keeping with surrounding properties. Chair Pilawa responded that the Board is not permitted to zone or judge the aesthetics but on health, safety and welfare. He reiterated they are just discussing the setback.

Chair Pilawa stated for the record that 27 affected property owners were notified of Case 24-06. Penrose Wolf of 10729 Allen Drive asked for clarification on two points. He asked if any construction is allowed in front of the setback. Zoning Inspector Herringshaw responded that the porch would be the point of setback, an awning would not count. Mr. Wolf's second point and primary focus was if the house could be positioned in such a way to minimize the impact as someone drives to the south because the front elevation of the house would be prominent. Mr. Wolf asked Mr. Smith if he had considered moving it back for a rear setback instead. Mr. Smith responded that they are geographically constrained and want a decent depth and width. They did look at several options but they are already at 40 feet to the rear property line. He explained the real issue is that the property drops off significantly. They did look at several different options. Mr. Wolf wondered if it would be problematic to ask for a front and rear setback. Chair Pilawa responded it would have to comply with the variance process and there would have to be an amended variance.

Kathy Rakovan of 10694 Allen Drive asked Mr. Smith if he had any plans for the two accessory structures. Her property borders the Smiths' rear property line. Mr. Smith responded that both structures are nonconforming. Zoning Inspector Herringshaw added that there are variances for both. Mr. Smith explained that the smaller building is in disrepair and he would not expand it but is keeping his options open. Mr. Herringshaw explained that the variance goes with the land and if he is not increasing the footprint of the structures they are fine.

Dean Richmond of 10703 Allen Drive felt that regarding the Duncan factors, there are unique circumstances because of the historic district. Chair Pilawa responded that there is a claim of such, but the Board does not take hearsay. Mr. Richmond asked if there was anything determined at the zoning meeting. Chair Pilawa said there had been nothing determined. The Township's APA had given the Board advice at their request. There is nothing about that opinion that would suggest there is anything confrontational.

Lawrence Fulton of 12380 Raymond Drive commented that one of his family members owned the house on the east side of Fowlers Mill. He did not know how far north but it included the mill house.

Kate Wheeler of 12480 Fowlers Mill thought she had made it clear that the entire neighborhood is registered with the Department of Interior and referenced Mr. Pilawa's comment that he said there were no plaques. Chair Pilawa responded that it's irrelevant.

Kathy Rakovan commented that Mr. Bushman's mother wrote a book that included this unique historic area and it was celebrated as part of the Bicentennial celebration. Chair Pilawa reiterated that they have been told that the Board can proceed with the case as it is requested. Mr. Simpson added that he

thought it was fair to say that they all appreciate the area but that does not have anything to do with the variance request. Chair Pilawa explained that their authority is more limited than they think.

Mr. Smith asked Ms. Rakovan if her home is in the historic district; she said no. He then asked Mr. Wolf the same question; he said no, only those homes on Fowlers Mill Road.

Elaine Richmond of Allen Drive asked if the Board was going to go through the eight Duncan factors. Chair Pilawa explained they consider each factor but are not required to give equal weight to them all. For instance, whether the property owner knew of the zoning restriction or not, everyone can now access the zoning regulations so the Board does not give that nearly as much consideration. Mrs. Richmond felt it should be considered in this case because they are not considering the uniqueness. She thought number 4 (will adjoining properties suffer a detriment?) is important because they are in a historic district and not immaterial. She felt it was important if he took the property with the knowledge of the setback requirement and she wondered why people should feel they can ask for a change in the zoning. Chair Pilawa explained that the Zoning Resolution has a variance process built in. When it was originally written they could not have possibly accounted for every situation. The Board has never been reversed because they exceeded what they can do. Mrs. Richmond felt it was a substantial variance. Chair Pilawa did not see how given that most of the homes are closer to the road. Mrs. Richmond commented that right now the house does not comply and should not be made even worse. Mr. Ondrejka explained that there were no restrictions when the house was built before zoning. Mr. Simpson pointed out that the house across the street is already closer than what Mr. Smith wants. Mrs. Richmond referenced previous variances granted. Chair Pilawa responded that no single variance sets a precedence. Mr. Simpson felt the plan fits with the character of the neighborhood. Mr. Ondrejka added that some homes are closer. Chair Pilawa explained the example of homes in Bass Lake community that are never in compliance because of when they were built; Fowlers Mill is similar. Mr. Ondrejka pointed out that the original house is 65' back and 39' to the rear. The lot size does not allow a house to fit. Mrs. Richmond felt the existing house fits on the property and Mr. Smith's should fit on the lot.

Bob Voss of 12480 Fowlers Mill Road explained that after the last meeting, he met with Phil and his wife Annette and looked at the house. He asked if the Board looked at the property. Chair Pilawa responded that he did. Mr. Voss thanked Mr. Smith and his wife for taking the time. He went on to explain that it has been a residence for 120 years and has been modified and renovated to degrade the value. However, he made phone calls and learned that a schoolhouse was moved to Pittsfield, Ohio. They did an amazing job showing what can be done. Mr. Voss commented that it doesn't take rocket science to see bronze plaques. He knew what the APA was going to say. He has tried to persuade the Smiths to make it look like a Western Reserve home. Mr. Pilawa responded there is no guarantee what the house is going to look like. Mr. Voss asked if it could be pushed back because it is a prominent hill and will affect the character of the neighborhood. He also asked if the Smiths would consider something more with the Western Reserve style. He felt 38 feet was arbitrary since they don't have a final plan. Mr. Voss offered that he has historic architects willing to help. Mr. Simpson stated that the Board is here for what Mr. Smith has asked for and they have nothing to do with what Mr. Voss is asking. Mr. Ondrejka commented that Mr. Smith is as close as he can go; it cannot be 38 feet or closer without another variance. Mr. Pilawa added that they are not talking about aesthetics. Mr. Voss asked where the 38 feet came from. Mr. Smith responded that the dimensions were not chosen arbitrarily; it

is pushed to the back as far as it can go. He commented that he believes the Board has him on record that they will do their best to aesthetically consider the best option. Mr. Voss responded that he is sure the Smiths will do a nice job but is fighting for what little authority they have because it is part of the historic district. He offered to be a resource to Mr. Smith.

Chair Pilawa asked if there was anyone else that wished to speak in response to continued Case 24-06 requesting to construct a new residence 38 feet from the front road right-of-way. There was no further comment.

Roger Simpson moved and Don Ondrejka seconded to approve Case 24-06 with a setback of 38 feet as requested. Discussion of the Duncan Factors were as follows:

Can there be a beneficial use of the property without a variance? No, because the older house is not habitable, and there was no evidence heard.

Is the variance substantial? No, as discussed, multiple houses in the area have similar setbacks.

Will the essential character of the neighborhood be altered? No, the setback would be conforming to what is asked and based on the evidence heard there would be no alteration in terms of the zoning issue.

Will adjoining properties suffer a detriment? No, no detriment was discussed and there is no evidence as a result of the setback in view of all the properties.

Will the variance adversely affect delivery of government services? No, there is no evidence.

Can the predicament be feasibly relieved through some method other than a variance? No, there was testimony about moving the house back, but the land and drop off cannot accommodate that.

Will the spirit and intent behind the zoning be observed and substantial justice be done by granting a variance? Yes, many houses were built before zoning. The spirit and intent of zoning makes for exceptions when necessary.

And whether the property owner purchased the property with knowledge of the zoning the Board does not give equal weight or any weight to this factor but is just considered. Mr. Simpson added that they do have sympathy for the Historic District setback.

Upon the roll call, all members voted unanimously to grant the variance, 5-0. Motion carried.

It was explained that anyone would have essentially 60 days to appeal their decision.

The meeting was adjourned at 7:30pm.

	
<u>Dennis Pilawa, Chair</u>	<u>Paula Friebertshauser, Secretary</u>
Date	Date