

Board of Zoning Appeals

Munson Township

Minutes of June 18, 2015

Chair Bobbie Nolan called the meeting to order at 6:30pm with Gabe Kezdi, Richard Wright, Alternates Danielle Pitcock and Michael Waclawski, Secretary Paula Friebertshauser and Court Reporter Kim Geil present. Don Alexander and Lucy Longo 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.

Michael Waclawski moved and Gabe Kezdi seconded to approve the minutes of May 21, 2015 as written. Motion carried.

CASE 15-08: Payne & Payne for Gregory & Karen DiMeolo, 11692 Overlook Rd., Chardon OH – request to construct a 12' x 20' deck 9.3 ft. from the rear property line and 23 ft. from the side property line to a nonconforming structure. Also, construct a 24' x 24' accessory building 65' from the road right of way and 36' from the rear property line. Violates SEC. 411 Minimum dimensional requirements – minimum side yard is 25 feet; minimum rear yard is 40 feet; minimum front setback is 80 feet; SEC. 704 Nonconforming Structures – no such nonconforming structure may be enlarged, altered, reconstructed in a way which increases its nonconformity.

Zoning Inspector Tim Kearns read the variance request and violations. Mr. Wright asked what the elevation to the ground was. Both Mr. Kearns and Mr. Waclawski thought about four feet.

Mrs. Nolan interjected that she forgot to say that a court reporter was present and when someone gets up to speak they will need to be sworn in and state their name and address.

Eric Payne of 10750 Mayfield Road was sworn in. He explained that the issue is a functional one. At the first floor level it would be difficult to get a patio off the back; they would need huge steps and to build up the dirt. Therefore, they decided that a deck structure would be the most feasible and esthetically pleasing way to go.

Mr. Wright asked what the elevation is relative to the house behind it. Mr. Payne did not know and approached the table to look at the site plan. He estimated it would be about eight feet above the grade level. Mr. Wright then asked if they had considered a fence along the back. Greg DiMeolo was sworn in. He commented he did not like the flat roof on the home behind them and said they decided

not to put a fence but privacy trees around the perimeter. They planted pear and arborvitae to create boundaries.

Mrs. Nolan stated for the record that eleven affected property owners were notified in Case 15-08. Patricia Bayer of 11703 Basswood was sworn in. She explained that Lee's home is directly behind the DiMeolo's and if he didn't like the roof he still built there anyway. She went on to say he had three parcels and could have moved the house and would not be disturbing people who have been there. Mr. Waclawski interjected that the variance is not about the house. Mrs. Bayer said if he had moved the house he would not have needed the side yard variance. Mrs. Nolan countered that any place Mr. DiMeolo would have chosen he would need a variance. Mr. Waclawski asked Mrs. Bayer if she would see the deck from her house. Mrs. Bayer responded that there is a stake in her yard. Mr. Waclawski commented that Mr. DiMeolo said he has spoken with the gentleman who lives directly behind him and he has no problem with the variance. Mrs. Bayer approached the table to indicate where her house is located.

Mr. Payne responded to the comment of where the DiMeolo house was located; they did not have flexibility in the placement of the home. Mrs. Nolan commented that the house has already been decided and none of the neighbors had a problem. There was a lady who had questions about the construction issues.

Kristen Bluemmel of 11711 Overlook was sworn in. She said she had been at the meeting and did not object to the home just the construction. She commented there are other issues and thinks the Board might want to follow up. She referenced a Duncan factor in terms of hardship; and pointed out the hardship was brought on by not thinking of doors eleven feet off the grade.

Kathleen Webb of Wilbert Road was sworn in. She commented that maybe people did not show up because they believed the Board would uphold the zoning. She added they are a true community and now the DiMeolo's want to add on – they did not scale back but built a large home and are hoping the Board will give in because they got the house.

Mr. Wright asked what the square footage is. Mr. DiMeolo responded "1,800 square feet". Mr. Wright asked if that was a large house. Mrs. Webb said hers is 1,500 square feet; Ms. Bluemmel's is 1,200 square feet; and Ms. Mayo's is 1,100 square feet.

Jacqueline Kennedy of 11769 Basswood was sworn in. She explained she moved there because of the space and the home hinders the view. She wondered if this happens, what is next? Mrs. Nolan responded that every case is taken on its own; it does not mean another neighbor would get the same thing.

Rick Webb of 11551 Wilbert was sworn in. He agreed with Ms. Kennedy. He felt it is a nature filled community and the code says 40 feet and with the deck it would be within 9 feet. The deck would be high enough to look down into the neighbor's living space.

Debbi Mayo of 11678 Overlook was sworn in. She explained she was in objection to the request and a deck has never been built within nine feet. She went on to say that the house has created an urban feel

in a rural setting and has dramatically altered her life and affected the neighborhood which she pointed out is relevant to a Duncan factor. She mentioned the home is in violation of the height requirements at 24 feet. Mrs. Nolan interjected that the height was not a violation. Ms. Mayo went on to say that the DiMeolo's knew the hardship before and could have adjusted the property. She has been there 20 years and felt it diminishes the neighborhood; she would be able to see the deck. She was advised by the previous zoning inspector, Don Zambory, not to build a deck because it would be too close to the Bayer's residence and she agreed. Ms. Mayo felt they could do something more reasonable.

Mrs. Nolan again wondered why there was so much concern now about the house when the variance was approved months ago and no one came. Ms. Mayo responded that she called Mr. Kearns and he said not even to ask about it because it was a done deal. She had a meeting out of town that day. Ms. Mayo added that when the builders cut the trees down it was the worst day of her life. Mr. Payne had told her it would be small. Her home is only on an acre. Ms. Kennedy spoke up saying her acreage is 1.67 and her house is on a corner and a little bigger. Ms. Mayo said she looked at buying that lot but the realtor told her she would not be able to build on it. She hears when the neighbor's garage opens up and is subjected to seeing them. Mrs. Bayer added that she had wanted to buy it too and kept talking to an attorney and the realtor. The two lots were owned by the Callow's and the other a third party. It had been on the market for a while and when the Callow's turned it over to relatives the price came down. Mrs. Bayer felt that living by the lake is very prestigious and they are clannish and it is sad to see it change. She added that she also understood that part of the land was in an easement with one of the utility companies, but she had no proof. Mrs. Nolan explained there is nothing showing on the plans and the DiMeolos would not have been able to build if there was an easement there.

Mr. Payne commented that obviously there are a lot of emotions and stressed that was not their intent. He went on to say that he lives in the community and grew up in Bass Lake. He felt the variables (sizes) of the lots and homes can be charming. He was heartbroken to hear all the emotions expressed and sitting next to Mr. DiMeolo he felt terrible. He wanted to bring the meeting back to the deck issue, and explained the space would be utilized esthetically. He thought the deck would be less imposing.

Ms. Bluemmel again reiterated that she did come to the first meeting and objected to the construction. She felt the result was different from what was presented at the meeting because the grade was adjusted. She added that several large trucks were brought in to raise the grade. She also commented they do not have decks that high in the area. Mr. Wright pointed out in Mr. Foster's case for a deck the elevation was left. Ms. Bluemmel responded that Mr. Foster has terrain that comes up high. Mr. Wright asked if any of the neighbors had met with or gone over and expressed concern with the DiMeolo's. Ms. Mayo commented they have not been compassionate and did not want to work with them. Mrs. Bayer responded she has not been home. Ms. Bluemmel said she has spoken with them over the phone. Mrs. Webb said she introduced herself. Ms. Kennedy said she has walked by but there is never anybody home. Ms. Webb commented this is a significant variance and she did not know of the first hearing. Most of the homes are cottages. Ms. Bluemmel objected to the structure and location of the deck. Mr. Webb explained he appreciated their efforts with the trees and plantings but 40 feet versus 9 feet with the elevation is way overboard. Ms. Mayo objected to the structure dramatically and felt that the neighborhood had gone from rural to urban.

Mrs. Nolan asked the people who were objecting if their lots were one lot. Ms. Mayo explained hers is four lots and her house was the first one built. Mrs. Nolan commented that anything Ms. Mayo would want to do would need a variance. Ms. Kennedy said she had one lot. Mrs. Nolan explained that most of the large lots are small lots put together and almost every property owner has to come for a variance. Mr. DiMeolo owns three lots. Mr. Payne commented that something will be built, if not a deck, some alternative – maybe some sort of buildup and patio. He was hoping to talk about issues and options. Mrs. Webb asked if the setback requirement is 40 feet and the deck would encroach wouldn't any additional living space encroach? Mrs. Nolan clarified that Mr. Payne said in some way Mr. DiMeolo wants to utilize his backyard. Ms. Bluemmel asked if he would consider a stairwell down to a patio. Mr. Payne said he understood the idea but was not sure how a stairwell would look – the deck would be most appropriate. Mr. Wright asked Mr. DiMeolo what he would think of the deck if he lived in the house behind it. Mr. DiMeolo responded that Mr. Lee was ok with it. Mrs. Bayer commented she does not want a deck nine feet from the rear line.

The Board recessed at 7:33pm. The meeting resumed at 8:12pm. Mrs. Nolan stated that obviously it is a very emotional issue for everyone concerned. She addressed Mr. DiMeolo and Mr. Payne and said the Board can either vote now or they can request a continuance for \$100 in order to come back with a different plan next month. She suggested that maybe they could talk to the neighbors if that is what they would like to do. Mr. Payne and Mr. DiMeolo took a short recess to discuss the option. Mr. Payne asked the neighbors if it would be okay to have a meeting if they go for a continuance because he would like to work this out in a friendlier manner. Ms. Mayo commented that the deck should not be on the house. Mr. DiMeolo explained that since they moved there Lee and many neighbors have been very welcoming. Lee was very excited about having them there and enjoys their home. Mr. DiMeolo thought it important that he be present. The neighbors agreed to meet.

Bobbie Nolan moved and Richard Wright seconded that Case 15-08 be continued for 90 days with a fee of \$100. All members were in favor, motion carried 5-0.

CASE 15-09: John Ricci, 13328 Rockhaven, Chesterland, OH – request to construct a 24' x 14' porch, 12' x 14' breezeway and a 24' x 32' garage in a flood prone district on a 2.72 acre lot. Violates SEC. 806.1 No structure will be built on the flood prone portion of a lot located in a flood prone district unless prior approval is obtained from the Board of Zoning Appeals. SEC. 405.1 Minimum lot size of a lot in the flood prone district shall be five acres.

Zoning Inspector Tim Kearns read the variance request and violations.

John Ricci was sworn in. He explained the home was purchased in April and prior to that the grandson was still living there. The home was built in 1955. When asked who would do the construction, Mr. Ricci responded that he would. He has been in the trades for 25 years and can do the electric, footers and all construction. Mr. Kezdi commented there is a lot of drainage work. Mr. Wright asked if he was pumping now. Mr. Ricci explained there is a pipe that comes through his property that runs at an angle and goes underneath the street. No one can tell him where it comes from. He commented that the last test hole was super wet. Mr. Kearns explained that he went down to the address with the Road Superintendent and the pipe is on the opposite side in the golf course area and beyond the five feet that the township addresses. He added that the Engineer's office has nothing on this. Mr. Ricci

commented it is the least of his concerns; he would not build with water running through the property. Mr. Waclawski asked Mr. Kearns if the pipe stops on Mr. Ricci's property. Mr. Kearns responded yes. Mr. Ricci added that he found it on the neighbor's property and the golf course. When asked how the addition would look, Mr. Ricci approached the table and showed a rendition of the home.

Allen Schindler of 13300 Rockhaven Road was sworn in. He explained the pipe looks like it predates the road. It does not flow but holds water below grade. His concern is what is the legality and what should they do because the township is allowed only within the road right-of-way. Mr. Ricci commented it does pass within five feet of the road; it goes under the road and he wondered if it were compromised there. Mr. Ricci shot test die in it and it does not drain. Mrs. Nolan asked Mr. Kearns what Mr. Ricci should do. Mr. Kearns thought he should go to the Engineer's department. Mr. Ricci commented that Mr. Teichman said he would get back to him but he has not heard anything. Mr. Ricci felt it had to be sewer jetted. Mr. Wright said the county can do that. Mrs. Nolan said that needless to say the pipe is not causing the water and there is a lot of water in the pictures. Mr. Ricci agreed because of the rain and his excavation.

Mrs. Nolan stated for the record that 11 affected property owners were notified in Case 15-09. Mr. Schindler wanted to know the township's view on the pipe because it is running under what Mr. Ricci is building. Mrs. Nolan said the Board does not address that issue.

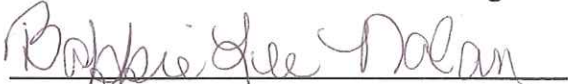
Richard Wright moved and Gabe Kezdi seconded to approve the request as stated for Case 15-09 for John Ricci. Discussion following the motion included: there is not a beneficial use, the home is a problem and the appellant is willing to invest time and money; the variance is substantial due to the amount of work; the essential character of the neighborhood would be improved for the betterment; adjoining properties will not suffer a detriment; the variance will not adversely affect the delivery of government services; the predicament cannot be feasibly relieved through some other method; the Board feels the spirit and intent will be upheld but the amount of work put in will be a reward for the owner and he is committed; and he did not know of the restrictions.

Mr. Schindler asked the reason for the variance. Mrs. Nolan explained it is in a flood prone area and requires five acres. He then asked what the Zoning Inspector does with this. Mr. Kearns responded that he enforces the resolution and has checked the property. Mr. Ricci commented that he thinks the flood prone part needs to be thrown out because at one time they were able to build a structure and should be grandfathered in.

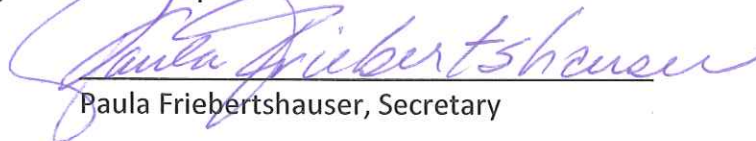
Andy Bushman of 11210 Fowlers Mill Road was sworn in. He commented that it is the same thing with old century homes – every time you want to do something you need a variance.

Upon the roll call all members voted yes, motion carried 5-0.

Michael Waclawski moved and Richard Wright seconded to approve the findings of fact for Cases 15-06 & 15-07. Motion carried. The meeting was adjourned at 8:45pm.



Bobbie Nolan, Chair



Paula Friebertshauser, Secretary