

Board of Zoning Appeals

Munson Township

Minutes of June 17, 2020

Chair Dennis Pilawa called the meeting to order at 6:40pm with Danielle Pitcock, Joe Tomaric, Alternate Jim O'Neill, Secretary Paula Friebertshouser and Court Reporter Laura Ware present. Alternate Tim Kearns arrived at 6:46pm. Don Alexander and Gabe Kezdi were absent. 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. 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.

Joe Tomaric moved and Jim O'Neill seconded to approve the minutes of May 20, 2020 as written. Motion carried 4-0.

CASE 20-10: Jacqueline Finomore 12185 Falls Rd., Chardon OH – requests to construct a 28' x 51' in ground swimming pool w/concrete pad 15' from south side property line. Violates SEC. 411 Minimum Dimensional Requirements – minimum side yard setback is 25'.

Mr. Pilawa read the variance request and violation. Zoning Inspector Jim Herringshaw was sworn in. He explained the aerial view showing the angle of the home which was the reason for the pool location as well as the septic field.

Jacqueline Finomore was sworn in. She explained that it is an in-ground fiberglass pool, and because of the septic field location they had to apply for the variance. She clarified that the measurements given include the concrete pad. Mr. Tomaric asked her if her contractor knew to get a permit before starting. She was not sure, but the pool is already in. They had to proceed with excavating because of the pools delivery date. The builder was not involved at first; it was her husband doing the work. Mr. Pilawa asked her how she became aware she needed a permit and asked if she applied before construction. She said no, when the surveyor came out he did not make her aware she needed a permit then.

Mr. Pilawa stated for the record there were 29 affected property owners notified of Case 20-10. Gary Stricker of 12095 Quartermane Circle was sworn in. He explained he did not have a problem with them building a pool, but just with a precedent being set. Mr. Pilawa responded that the case does not set a precedent. The Board acts in the manner of judges and each case is heard with its own set of evidence. James Jones of 12005 Falls Road was sworn in. He is the next door neighbor and had no problem with

the variance request. Mrs. Finomore explained that the reason for the 15 foot variance is that they are a corner lot or they would meet the zoning requirements.

Danielle Pitcock moved and Tim Kearns seconded to grant the variance requested in Case 20-10 as written. Discussion following the motion included that the Board is required to apply certain factors called Duncan Factors for an area variance none of which are more important than the other. There can be a beneficial use but the variance is not substantial from the evidence produced; the essential character of the neighborhood would not be altered; adjoining properties will not suffer a detriment as the Board heard from the most affected property owner under oath that he would not suffer; the delivery of government services would not be adversely affected; the predicament cannot be feasibly relieved through some other method as established by Mrs. Finomore and the zoning inspector given the layout, it being a corner lot and location of septic; the spirit and intent behind the zoning would be observed and substantial justice done by granting the variance; and they were aware of the zoning restriction. Upon the roll call all members voted yes, 5-0, motion carried.

CASE 20-11: Robert Zimmerman for Bernard Vukovic Parcels 21-051560 & 21-051561 Mayfield Rd., Chardon OH – requesting to operate a small machine shop/service center in the Commercial District. Violates SEC. 407.2 Permitted Uses and Structures – operating a small machine shop/service center is not a permitted use in the Commercial District.

Mr. Pilawa read the variance request and violation. Zoning Inspector Jim Herringshaw pointed out the two parcels on the site map and explained that the purchase is contingent upon the variance being granted. He explained that one-third of one of the parcels is in the Industrial District and the other pretty close. The owner also owns the adjacent property.

Robert Zimmerman of Benesch law firm, representing Mr. Vukovic and Mr. DiNardo, was sworn in. He offered that he is a member of Shaker Heights council and BZA and was impressed with the explanation of the Duncan Factors, and the professionalism and record of the Board. Mr. Zimmerman explained that part of the property once consolidated would be properly zoned except for the part in front being commercial. The owner is Mr. Vukovic, a Canadian and President of NAMCO, a high end small machine shop that manufactures gears and gear boxes etc. The work is done inside and is quiet. Maybe one to two vehicles would come per month.

Mr. Pilawa commented to Zoning Inspector Herringshaw that this type of use was not anticipated long ago. Mr. Herringshaw pointed out it is toward the Industrial District end. Mr. Pilawa explained to Mr. Zimmerman that the Board finds people want to work near where they live and certain uses were not foreseen 60 years ago when the resolution was created. Mr. Zimmerman commented that in preparing the application, he drove out to see the site. The sale will be contingent upon the zoning; the next step would be to consolidate the parcels. In referring to the site plan, Mr. Tomaric asked Zoning Inspector Herringshaw if the man who had the trailer company had to get a variance because it is similar. Mr. Herringshaw responded his use was permitted in the Commercial District. Mr. Pilawa added that he did have to get a variance for signage etc. Mr. Kearns asked Mr. Zimmerman how many employees there would be. Mr. Zimmerman responded five to six people.

Mr. Pilawa stated for the record that 10 affected property owners were notified in Case 20-11.

Joy Black, co-owner of Joy's Place at 12222 Mayfield Road was sworn in. She explained they do not repair cars but are pleased for someone to use the property. Joy's Place is a daytime operation and they care for people from 35 to 97 years old. She was pleased it is an industrial use for a clean business.

Jim O'Neill moved and Joe Tomaric seconded to grant the variance requested in Case 20-11 as written. Discussion following the motion included: the findings of fact are based on an application of principles of law – the temperature of the neighborhood is important; the hardship may not be unique or maybe it is because part is in the Industrial District and part in the Commercial District; evidence suggests zoning itself is a hardship; does the zoning regulation deprive the owner of a substantial property right – it is an unusual lot; it could be used in an economically viable manner but the people in the neighborhood say they will be glad it will be used and compares favorably to nearby uses; the hardship is not self-induced; does the zoning regulation protect the health, safety and morals – it has nothing to do with today's request; will adjoining properties be harmed – Mrs. Black says welcome; and the evidence supports the granting of the use variance. Upon the roll call all members voted yes, 5-0, motion carried.

The meeting was adjourned at 7:22pm.

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