

Board of Zoning Appeals

Munson Township

Minutes of June 16, 2022

Chair Dennis Pilawa called the meeting to order at 6:30pm with Danielle Pitcock, Don Alexander, Jim O'Neill, Joe Tomaric, Alternates Don Ondrejka and Roger Simpson, and Secretary Paula Friebertshauser present. Court Reporter Sarah Lane was also present. The Pledge of Allegiance was said.

Mr. Pilawa read Resolution 2022-23 from the Munson Board of Trustees commending Don Alexander for his years of service. After 13 years of dedication, Don and his family are leaving the Township.

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.

Jim O'Neill moved and Danielle Pitcock seconded to approve the minutes of April 20, 2022 as written. Upon the roll call, which included Don Ondrejka who substituted for Don Alexander in April, the Board voted unanimously in favor of the motion, 5-0, motion carried.

It was agreed that the two variances for Mr. Wood would be heard together. Alternate Roger Simpson sat in for Joe Tomaric for these two cases because he knows Mr. Wood and recused himself.

CASE 22-03 Richard T. Wood, 10379 Mulberry Rd., Chardon OH - requests to extend an existing driveway 0' from the east side property line. Violates SEC. 511 Driveways (in part) - Driveways shall be a minimum of 15 feet from any lot line.

CASE 22- 04 Richard T. Wood, Parcel #21-177235 Mulberry Rd., Chardon OH – requests to create a new lot with 20' of frontage and 0' driveway clearance from the west side property line with no apron at the road pavement. Violates SEC. 511 Driveways – Driveways shall be a minimum of 15' from any lot line, and a minimum apron width of 20' at the road pavement. SEC. 411 Minimum Dimensional Requirements – minimum frontage for R-2 is 250'. SEC. 502 Frontage Required (in part) – no new lot shall be created which does not possess the required minimum frontage.

Mr. Pilawa read the variance requests and violations. Zoning Inspector Jim Herringshaw was sworn in. He referenced photos he took from the road, to the rear and from the east and west property lines. He commented that the homes are far back and referred to the site map. He pointed out the green land-

locked parcel that is part of the lot split that would provide the parcel frontage. The driveway comes off of a CEI access. The proposed driveway would come off the existing drive. Zoning Inspector Herringshaw had spoken with Linda Crombie of the Planning Commission about this situation. She mentioned that the proposed shared driveway might make sense for safety reasons since the alternative would be them both close together but adding the frontage could allow for a driveway if needed later on.

Richard Wood was sworn in. He explained that his request is the most logical way to access the back lot. There would be no noticeable change from the road.

There were 73 affected property owners notified in Cases 22-03 and 22-04. William Peseski, Parcel #21-161900 Mulberry Road, was sworn in. He attested that he is the closest neighbor to Mr. Wood and moved there in December. He had no objection to the request because in fact, someone could build closer to him.

Don Alexander moved and Jim O'Neill seconded that Case 22-03 be approved as requested. Discussion following the motion included: there can be a beneficial use as Mr. Wood could continue to live on the property and could have moved the driveway, but as presented, it is feasible to move where proposed; the variance is not substantial; the essential character of the neighborhood would not be altered; adjoining properties would not suffer a detriment as the closest neighbor has supported; there is no evidence that the delivery of government services would be adversely affected; the predicament cannot be feasibly relieved through some other method; the spirit and intent behind the zoning would be observed and substantial justice done by granting the variance; and Mr. Wood said he had no knowledge of the zoning restriction as he purchased the property 60 years ago. Upon the roll call, all members voted yes, 5-0. Motion carried.

Don Alexander moved and Jim O'Neill seconded that the variance requested in Case 22-04 be granted. There was no additional discussion as all the Duncan factors had been met. Mr. Pilawa explained that the Board does not have to give equal or any weight to any one of the factors. Upon the roll call, all member voted yes, 5-0. Motion carried.

For the following two cases, Mr. Tomaric resumed his position on the Board.

CASE 22-05: Katherine A. Briggs, 9684 Mulberry Rd., Chardon OH – as part of a lot reconfiguration, requests to create a 2.2272-acre lot. Violates SEC. 411 Minimum dimensional requirements (in part)- minimum lot size for R-3 District is 5.0 acres.

CASE 22-06: Katherine A. Briggs, 9714 Mulberry Rd., Chardon OH – as part of a lot reconfiguration, requests to reduce the size of the existing property thus creating a 1.5-acre lot w/171' of frontage at the road right-of-way. Violates SEC. 411 Minimum dimensional requirements (in part)- minimum lot size for R-1 District is 2.5 acres; minimum frontage at the road right-of-way is 200'. SEC. 502 Supplementary District Regulations (in part)- Frontage required-no new lot shall be created which does not possess the required minimum frontage. SEC. 504 Reduction of Space (in part)-no lot shall be reduced in area or dimension, thus making said area or dimension less than the minimum required by

this Resolution, and if said area or dimension is already less than the minimum required by this Resolution, it shall not be further reduced.

Chair Pilawa read the variance requests and violations. Zoning Inspector Herringshaw explained that Ms. Briggs' father's property is to the right from the street; the turnaround driveway on her property is on the line and is grandfathered. She wants to allow a bit more space (taking off .2 acres of her father's (Novotny) lot to add to hers). Mr. Alexander asked if there was information on the secondary septic fields.

Katherine Briggs was sworn in. Mr. Alexander explained that typically there has to be a secondary septic field and asked if she knew where they are because the variances could impact the location. Ms. Briggs responded that the septic fields are currently on opposite sides of the homes. Mr. Tomaric commented that from the aerial view it looks like the septic field might be further back – one to the west and one to the east.

Ms. Briggs thought the rear driveway was put there in 1978. Her dad's house was already there but when they went to put hers in, it was swampy, so they flip-flopped the house location but kept the driveway where it was. Her parents are gone so she is selling the property and wanted a little more room between the properties.

There were 20 affected property owners notified in Cases 22-05 and 22-06. Carol Maver of 10492 Sherman Road wanted to make Ms. Briggs aware that septic laws are no longer a point-of-sale as of June 1st. As a realtor, she wanted to advise her that someone may want to consult with the Health Department. Ms. Briggs commented that they are in a contract with someone.

Don Ondrejka of 12061 Bradford Drive commented that with the change in the property line the location of gas lines should be observed. Ms. Briggs responded that the gas lines run behind her from the gas well. Dominion put the lines down the street. The line for 9714 Mulberry (her dad's property) is on the west side of the home, not near her lot line.

Danielle Pitcock moved and Don Alexander seconded that the variance requested in Case 22-05 be granted as written. Discussion following the motion included that the request does not run afoul of the Duncan Factors – there is no evidence that the variance is substantial, no evidence that the essential character of the neighborhood would be altered or adjoining properties would suffer a detriment; no evidence that the delivery of government services would be adversely affected; we do not see how the predicament could be feasibly relieved; the spirit and intent would be observed and substantial justice done by granting the variance; and regarding this request, we do not care if the property owners have knowledge of the zoning restriction or not. Upon the roll call, all members voted yes, 5-0. Motion carried.

Don Alexander moved and Joe Tomaric seconded that the variance requested in Case 22-06 be approved. Discussion following the motion was no different as stated in Case 22-05. Upon the roll call, all members voted yes, 5-0. Motion carried.

The meeting was adjourned at 7:20pm.

Dennis Pilawa 7/21/22

Dennis Pilawa, Chair

Date

Paula Friebertshauer 7/21/22

Paula Friebertshauer, Secretary

Date