

Board of Zoning Appeals

Munson Township

Minutes of June 21, 2023

Chair Dennis Pilawa called the meeting to order at 6:30pm with Don Ondrejka, Jim O'Neill, Joe Tomaric Alternates Roger Simpson and Carol Maver, and Secretary Paula Friebertshauser present. Court Reporter Laura Ware was present. Danielle Pitcock was absent. The Pledge of Allegiance was recited.

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. The next meeting will be July 19, 2023.

Due to resident comments over the past months indicating the Board "must follow the book" Mr. Pilawa was compelled to explain that the Board does in fact follow the book (resolution). The Township's Resolution complies with Ohio State law in allowing the variance process. The Board then decides cases on sworn testimony only; letters from neighbors are not accepted.

Don Ondrejka moved and Carol Maver seconded to approve the minutes of May 17, 2023, as written. Motion carried, 4-0.

CASE 23-09: Best Sand Corporation Parcel 21-043100 at 11873 Ravenna Rd., Parcel #21-084000 & Parcel #21-084100 Ravenna Rd. – amend existing Conditional Use Permit to add three parcels. Per SEC. 801.2(o) The conditional use shall be void upon change of ownership or use unless a new application is made for such a certificate within thirty days after change of ownership or use.

Mr. Pilawa read the Conditional Use request. Zoning Inspector James Herringshaw was sworn in. He explained that a Conditional Use is not a variance. The mineral extractions use is permitted and meets the conditions, they are just adding three parcels to the permit. Mr. Pilawa reiterated that the Conditional Use has been permitted for a long time; they are just asking to amend it for the three parcels. Mr. Herringshaw pointed out on the site plan that the parcels to be added are in yellow.

Dale Markowitz, representative for Best Sand, was sworn in. He referred to a large map indicating the grandfathered properties and others that needed permits. He commented that most of the properties on the west side have been mined. The larger property in yellow (former Wozniak property) they want to mine and the remaining two parcels in yellow are required by ODNR as part of a buffer. Best Sand

owns other parcels but have no plans to do additional mining on them currently. He indicated they have land in adjacent Claridon Township they will be mining. Mr. Markowitz stated they will continue adhering to all the conditions as well as ODNR regulations. It is a prerequisite to obtaining a zoning permit. He has been coming in front of Munson Township since 1977 and has represented the ownership of Walter Best, then William Conway and now Covia.

Mr. Pilawa stated that 47 affected property owners were notified in Case 23-09. There was no public comment. It was noted that Best Sand had two years remaining on their current permit but with the amendment, the new renewal date would be June 21, 2028.

Roger Simpson moved and Don Ondrejka seconded to grant the amended Conditional Use as presented. Upon the roll call all members voted yes, 5-0, motion carried.

CASE 23-10: Mark Mallon 12268 Valley Vista, Chesterland, OH – requests to construct a 20' x 40' accessory building in front of the principal structure and 10' from the south side property line and 10' to 15' from the front road right-of-way. Violates SEC. 509.2 Accessory structures (in part) -No garage or other accessory structure shall be erected within the front yard of any district; and SEC. 411 Minimum Dimensional Requirements – the minimum setback from the road right-of-way is 80 feet; and the minimum side yard setback is 25 feet.

Mr. Pilawa read the legal notice and violations. Zoning Inspector Herringshaw referred to the site plan and noted the accessory building would be in front of the principal structure. The home is nonconforming because of the slope in the rear and only 56 feet from the front road right-of-way. He explained the photos he had taken from several different angles. Mr. Pilawa confirmed that the issues would require a variance in and of themselves not because of the nonconformity.

Mark Mallon was sworn in. He explained that with the sloping hill in the back the side is the only area for the accessory building. It would be for storage of mowers, a snowplow, etc. He has started doing landscaping across the front, along with concrete stone and plantings. He is trying to work himself down the hill. He spoke to his next-door neighbors and they have no problem with the request; if he followed the zoning regulations, they would see the building from their kitchen. They commented that right now the wood, etc. down below is more of an eyesore. He told them he would put up a fence. Mr. Mallon commented that if he does not have an accessory building, it will take a couple of years to get the stuff out of sight. He has owned the property since 2014 and made many improvements – a concrete driveway and plantings. Mr. Mallon explained that when he looks out across the street (Sherman Road) he sees a large shed.

Mr. Tomaric commented that according to the proposal, he would be using two shipping containers and with his large equipment he wondered how it would fit. Mr. Mallon responded that his equipment is seasonal but the containers are 8' x 9.5' high. He could drive a truck in. He said the green truck will be leaving the property. Mr. Tomaric commented that he has done a nice job on the house.

Mr. Pilawa explained that the Board would be granting a property right and that whoever buys the property the variance will be there forever.

Mr. Mallon commented that the neighbors talk about what he has down the hill, but he does not operate a business out of his house.

Mr. Pilawa stated for the record that 42 affected property owners were notified in Case 23-10. Kevin Higgins of 11257 Valley Vista (directly across the street) was sworn in. He said he received a variance last year. He felt there was a need for the building, but his problem is that all the stuff will not fit in shipping containers. Mr. Pilawa interjected that Mr. Mallon was not sure what he is going to build. Mr. Higgins distributed pictures. He explained that he built a \$40,000 porch and guests ask him what is going on across the street. Mr. Higgins said that Mr. Mallon has a business, and he opposed the request. If he were building on the north side and attaching it to the home it would be okay.

Mr. Mallon commented he has three vehicles and Mr. Higgins has a truck, trailer, and an RV. He is trying to do a lot with the landscaping and the building would be down aways on the road. He could put up a fence.

Zoning Inspector Herringshaw clarified that the shipping containers individually are not allowed but can be used as part of a structure if they are covered and sided with a peaked roof. Mr. Mallon is only seeking a variance for the location and would still have to meet the building department's codes.

Tim Sabula of 12305 Valley Vista commented that upon receipt of the notice he was concerned that the structure would be in front of the home. He would not have a problem with it on the north side. Mr. Pilawa informed those present that with the violation of a building in front of a principal structure, the whole thing does not need to be in front, it could extend only one foot. Whenever a variance is granted, the Board tries to do it as narrowly as possible.

Mr. Mallon commented that the Sabula's live down the street, and if he moves it back, the closest neighbor would be the most affected. He said he has two Silverado F250's, only one works. He does not have other employees. The truck would fit in a shipping container if he should go with that option. He has moved most of the stuff part-way down the hill. He has a personal car and motorcycle and is clearing out the garage. Mr. Mallon pointed out that Mr. Higgins has a work van and almost everyone has an accessory building. He commented that he sees the neighbor's red barn in winter behind him.

Joyce Sabula of 12305 Valley Vista asked if the Township allows businesses to be run from a home. Zoning Inspector Herringshaw explained there is not a statute, but there are Home Occupations. The principal use is residential. Residents can park their trucks on their property, but oftentimes their business address is outside of Munson. Mrs. Sabula did not care for all the vehicles and said he could rent space elsewhere; only one vehicle is driven at a time. Zoning Inspector Herringshaw commented that he does not write the resolution but is governed by the ORC and a resident can have those things as the current resolution is written. He confers with the prosecutor every week and as a township that's the way it is. If anyone wants to run a commercial business it would be a use variance. Mr. Pilawa commented that this is an area variance that the Board has factors they need to consider. Mr. Mallon mentioned that the Sabula's have four vehicles – two in and two out. Everyone has multiple vehicles and Mr. Higgins has a van he uses for work. Mr. Mallon reiterated he does not run a business out of his home. He knows there is a guy on the street who does taxes and other people who work out of their homes, but he himself travels to his jobs.

Mr. Pilawa explained that one of the principal factors from the Duncan vs. Middlefield case that the Board is directed to apply but not give equal weight to is whether the predicament can be feasibly relieved through some other method. Mr. Mallon felt it would benefit the street. Other options would be a metal roof. Mr. Pilawa responded that the Board does not enforce things like that; they have limited authority. Mr. Pilawa went forward with another factor "will the essential character of the neighborhood be altered. Mr. Mallon responded that almost everyone has an accessory building and three to four vehicles in every driveway. He wished his neighbors would have approached him. He has no problem with Mr. Higgins who has flower boxes and listens to country music in the front yard. He felt he is making improvements. Mr. Higgins confirmed he has flower boxes and listens to country music but does not dump concrete over the hill.

Timothy Golling of 104 Club Side Ct. in Chardon was sworn in. He and his wife purchased a home at 12032 Valley Vista in 1968 and were 52-year residents of the street. They had pride in their property and it doesn't seem to be the case currently.

John Paynick of 12316 Valley Vista and a 35-year resident commented that when he turned onto Valley Vista he had to go around a truck and a trailer. Mr. Mallon dumps concrete from his business over the hill; and it is an eyesore; he doesn't know how it is allowed. He asked where the setback from the street begins. Zoning Inspector Herringshaw explained it starts at the road right-of-way approximately 30 feet from the centerline. Mr. Paynick said he was against the variance requested.

Mr. Mallon commented he feels attacked. He has been making improvements to the property and is making good progress. He is bringing in materials for a waterfall and pallets of paper. The vehicle that was in the street was there to get towed. Mr. Tomaric questioned it being parked in the street. Mr. Mallon had called a towing company and parked it there because he has hills on his property and thought it would be difficult to move.

Mr. Tomaric pointed out that Mr. Mallon has replied "yes" to purchasing the property with knowledge of the zoning restrictions. Mr. Mallon responded it should be "no". Mr. Pilawa explained that the Board needs to consider each factor, but with respect to "h" there is not much weight given to that. The Zoning Resolution is always available.

Keith Wilt of 9769 Sherman Road commented that they try to remain openminded but it appears that it has a negative affect on the neighbors. It is an offensive dumpsite and it is hard to believe it is allowed in zoning. Mr. Pilawa commented that the zoning inspector has an open ear. Mr. Wilt said they have communicated.

Mr. Mallon responded that not once have the neighbors called; they talk behind his back. The neighbor has a 36' x 60' barn and a chicken coop. He explained he lives on the corner and did not think he needs to be punished. He uses concrete to make garden beds. He thought people would be happier if they thought about it. Mr. Mallon asked Mr. Wilt how he can see the stuff because the concrete is layered and there is arborvitae. The only site line is the next-door neighbor. He put concrete down on their driveway for their RV. Mr. Wilt presented photos as part of the record. He explained that as you look north to south there is concrete dumped, not stacked. Mr. Pilawa asked where the photos were taken

from. Mr. Wilt said he took them from his property yesterday (all but the last one). Mr. Wilt pointed out his property.

William "Tom" Matthews of 12370 Valley Vista (cul-de-sac) was opposed to the variance. He admitted there has been recent progress on the corner lots and he does think Mr. Mallon needs a building but it should be down the hill.

Mr. Tomaric asked Mr. Mallon if in 2014 he was a contractor. Mr. Mallon responded that he was a soccer coach and then had to reinvent himself. He is a single dad and had to move here for custody reasons. He had a lot going on with a camp property and between soccer and parenting Monday through Thursdays, he did not have a lot of time to do things. He said he has made a lot of effort with the concrete and wants to make a waterfall and retaining walls which require bringing materials in.

Mr. Pilawa explained that whether the Board grants the variance or not, there will be an opportunity to appeal based on the record that evening 30 days from the date of the approval of the minutes. The next meeting will be July 19th. He pointed out that someone must pay for the record from the court reporter.

Dennis Pilawa moved and Don Ondrejka seconded that the variance requested in Case 23-10 by Mark Mallon of 12268 Valley Vista Drive, be denied. The factors were reviewed with "h" not having much import. Can there be a beneficial use? – yes, as a residence. Is the variance substantial? – before the meeting Mr. Pilawa was not sure until after he heard the evidence of the neighbors. Will the essential character of the neighborhood be altered? – what is being asked for would alter the character of the neighborhood. Will adjoining properties suffer a detriment? – all evidence was against the appellant and documents suggest they would suffer. Will the variance adversely affect the delivery of government services? – no. Can the predicament be feasibly relieved through some method other than a variance? – it would be time consuming and Mr. Mallon also has a plan in his mind if he does not receive the variance based on the evidence of record. Will the spirit and intent behind the zoning be observed and substantial justice done by granting the variance? – 50/50 on this factor because he is entitled to a variance. Mr. Mallon responded that he accepts that, but the complaints from the neighbors don't affect the building, they are from the past. Mr. Ondrejka commented that everyone seems against it. Mr. Tomaric said it was a difficult situation and Mr. Simpson commented that he agreed with the Duncan Factors. Upon the roll call, members voted 5-0, motion carried.

CASE 23-11: Michael Husain 11655 Regent Park Dr., Chardon OH – requests to install a wrought iron fence 6' in height in front of the home. Violates SEC. 509.5c (in part) – fences and walls shall be a maximum of 4' in height in any front yard.

Mr. Pilawa read the variance request and violation. Zoning Inspector Jim Herringshaw informed the Board that Mr. Husain had already come for a zoning permit for the privacy fence that will be 6 feet in height for the sides and rear of the property. He showed a picture what it would look like. Mr. Husain would like a wrought iron fence in front of the home also six feet high indicated by a dotted line on the site map. Mr. Pilawa clarified that if he wanted four feet in height, he would just need a zoning permit. Upon Mr. Simpson's request, Mr. Herringshaw approached the table and explained the location.

Michael Husain was sworn in. He explained the main reason for a privacy fence is that he has five kids who move fast and do not pay attention. In addition, his wife has a decorative area in the front and the deer eat their roses and peonies. There would be a gated entryway. Mr. Pilawa asked if the fence in the back was up. Mr. Husain said no. Mr. Ondrejka was concerned with Fire Department access with a gate. Mr. Husain explained the gate would have an emergency release.

Mr. Pilawa stated that there were 32 affected property owners in Case 23-11. James Pitten said he was new to the street and his home is currently under construction. He had previously lived in Munson but moved away in 2002. Zoning Inspector Herringshaw showed him the site plan. The gate would be across from Mr. Pitten's driveway. Mr. Simpson asked about part of the fence being a privacy fence in the back. Mr. Pilawa commented that is not part of the variance. Mr. Pitten commented that there are no other fences like it in the development. Mr. Pilawa asked how many houses have five kids. He commented that he has six kids and rope works well.

Joe Tomaric moved and Jim O'Neill seconded to approve the variance requested in Case 23-11 as written. Members did not find any Duncan Factors that were significant in Mr. Husain's case. Mr. Simpson added that Mr. Husain addressed the delivery of government services factor. Upon the roll call, all members voted yes, 5-0, motion carried.

The meeting was adjourned at 8:27pm.

			
Dennis Pilawa, Chair	Date	Paula Friebertshauser, Secretary	Date