

# Board of Zoning Appeals Munson Township

Minutes of June 18, 2024

Chair Dennis Pilawa called the meeting to order at 6:30pm with Danielle Pitcock, Jim O'Neill, Joe Tomaric, Don Ondrejka, Alternates Roger Simpson and Carol Maver, and Secretary Paula Friebertshouser present. Court Reporter Ivy Gantberg 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 Jim O'Neill seconded to approve the minutes of May 15, 2024, as written. Motion carried, 5-0 (Roger Simpson voted as he served for Joe Tomaric who was absent from this meeting).

**CASE 24-07: Jacob Doerger** 11679 Mayfield Rd., Chardon OH – requesting to construct a detached garage approximately 8' from the west side property line. Violates SEC. 411 Minimum Dimensional Requirements – minimum side yard setback is 25'.

Chair Pilawa read the variance request and violation. Zoning Inspector James Herringshaw was sworn in. He explained photos taken from the road and on the west side of the property of the proposed location and the view to the closest neighbor.

Jacob Doerger was sworn in. He explained that his house has no basement and the attached garage is used for storage. He would like to replace the existing 10' x 12' shed with a 20' x 32' garage for more storage. Mr. Tomaric asked why it could not be moved more toward the west. Mr. Doerger responded that the septic is there.

Ricky Deakins of 11661 Mayfield Road and the next-door neighbor said he had no problem with the request. Their garage is on that side so it would not affect their view. Chair Pilawa asked Mr. Deakins if he thought the variance was substantial? Mr. Deakins responded yes and felt Mr. Doerger needed it. Chair Pilawa asked him if he thought the essential character of the neighborhood would be changed? Mr. Deakins responded no, others have accessory buildings. Would adjoining properties suffer a detriment? Mr. Deakins responded no.

Chair Pilawa stated for the record that there were 33 affected property owners notified in Case 24-07. There was no further public comment.

Joe Tomaric moved and Don Ondrejka seconded that the variance requested in Case 24-07 be accepted as written. Chair Pilawa asked the Board if they felt the questions he asked Mr. Deakins that reviewed some of the Duncan factors should be incorporated as the discussion. The Board agreed. Chair Pilawa added that there was no evidence that showed the variance was substantial. Upon the roll call, all members voted yes to grant the variance, 5-0. Motion carried.

**CASE 24-08: Brandon Wosotowsky** 11130 Elk Run Rd., Chardon OH – requesting to keep an existing accessory structure that is 36’ from the rear property line and 34’ from the corner side yard. Violates SEC. 411 Minimum Dimensional Requirements – minimum side yard corner lot is 60’; minimum rear yard is 40’.

Chair Pilawa read the variance request and violation. Zoning Inspector Herringshaw referenced an aerial view that shows the existing structure. He also referred to a 2017 site map that showed the structure was supposed to be even with the house. Mr. Herringshaw explained photos taken from the east and west and added that the barn has been there for five to six years.

Brandon Wosotowsky was sworn in. He confirmed the barn was there for five to six years and there had been no complaints. He provided an Amish man with plans and a site plan, and it was built. Mr. Wosotowsky explained he should have caught it but he never knew quite where to measure from and should have checked with the builder. It has solar panels on it and a garden attached. There are trees and neither of the neighbor’s care. Mr. Wosotowsky commented that it is a substantial variance for him. Chair Pilawa offered that on the other hand, it is not substantial to the community.

A resident named Louis asked that since the barn was there before why wasn’t the previous owner told. Mr. Wosotowsky counteracted that he built it. Chair Pilawa asked Louis if he was under the impression that someone complained about it. Mr. Wosotowsky explained he has agricultural buildings in the front that somebody complained about which led Mr. Herringshaw to find out about the barn. Chair Pilawa commented to Louis that he did happen to agree with him but the Board has limited authority relating to the variance request. Louis commented that the complainant does not even live where they live. Chair Pilawa asked Louis if the Board were to let the building remain, would it affect the delivery of governmental services? Louis responded no. Would the essential character of the neighborhood be altered? Louis responded no. Would adjoining properties suffer a detriment? Louis responded no.

Jean Know of 11150 Elk Run and an adjoining neighbor commented that the building does not bother her at all. She said it makes her smile when she drives by and with the solar arrays, rain barrels, etc. they are teaching children to be good stewards of the earth.

Chair Pilawa stated for the record that 52 affected property owners were notified in case 24-08. There was no further comment.

Don Ondrejka moved and Joe Tomaric seconded that the variance requested in Case 24-08 be approved as written. Chair Pilawa asked if anyone thought the variance was substantial. Mr. Ondrejka responded no that it was already covered. Upon the roll call, all members voted yes, 5-0. Motion carried.

**CASE 24-09: James Byers** 12285 Rockhaven Rd., Chesterland OH – requesting to construct a detached garage approximately 10’ in front of the home. Violates SEC. 509.2 no freestanding garage or other accessory structure shall be erected within the front yard of any district.

Chair Pilawa read the variance request and violation. Zoning Inspector James Herringshaw referenced photos he had taken from Rockhaven; the view towards the rear and south side property lines; and from the front where the location was marked by small stakes. He commented that the terrain makes it prohibitive.

James Byers was sworn in. He explained he has some old cars he would like to store. There is a flat spot on Sherman but that is where the leech field is located. And the property drops off about 75 feet. There is no other place to build. When asked what types of cars he has, Mr. Byers responded a ’76 Triumph and an old pick-up.

Chair Pilawa stated for the record that 28 affected property owners were notified in Case 24-09. Doug Riedel of 12301 Rockhaven and next-door neighbor to the south, said he had no problem with the request and would not really see it. Mr. Riedel confirmed he was the closest neighbor. Chair Pilawa asked him if he felt he would suffer a detriment? Mr. Riedel responded no. Would the delivery of government services be affected? Mr. Riedel responded no. Would the essential character of the neighborhood be altered? Mr. Riedel responded no; he would not be able to see it. Can the predicament be feasibly relieved through some other method? Mr. Riedel responded not with the property Mr. Byers has.

Don Ondrejka moved and Danielle Pitcock seconded that the variance requested in Case 24-09 be approved as written. Chair Pilawa explained that one of the factors “Did the property owner purchase the property with knowledge of the zoning restrictions?” goes back to a time before the internet; now the Board assumes everyone knows what the zoning is or has access to it so they do not give much weight to this. Upon the roll call, all members voted yes, 5-0. Motion carried.

**CASE 24-10: Scott Pritchett** 11505 Bass Lake Rd., Chardon OH – requesting to keep recently constructed partially covered deck approximately 13’ from the south side property line. Violates SEC. 411 Minimum Dimensional Requirements – minimum side yard setback is 25’.

Chair Pilawa read the variance request and violation. Zoning Inspector Herringshaw explained two photos and commented that it can be seen from the road because it is next to the neighboring 56-foot-high barn. The property owners did not think they needed a permit because it was not attached to the home.

Scott Pritchett was sworn in on behalf of the Swearmans. He confessed he was lazy and did not do his due diligence. He thought the setback was 10 feet. Mr. Tomaric asked if it was a finished product. Mr.

Pritchett explained it has a partial roof and is fenced on two sides to help obstruct the view of the neighboring 56-foot structure.

Chair Pilawa stated there were 33 affected property owners notified in Case 24-10. Jonathan Swearman, current property owner, apologized for not coming to the Township; he did not know a permit was required. He explained that the way the property sits, they are in front of both neighboring homes. He added that both neighbors were fine with the project. Chair Pilawa explained the Board takes that for what its worth. They only accept sworn testimony. The Board's experience is if a lot of neighbors were upset, they would have come.

Mr. Ondrejka asked if Mr. Swearman felt there was any detriment to the delivery of governmental services? Mr. Swearman responded that his wife's father was Doug Riedel, Fire Safety Inspector, and he made sure there would not be. They also have access to a large pond.

Joe Tomaric moved and Don Ondrejka seconded that the variance requested in Case 24-10 be accepted as written. All members voted yes, 5-0. Motion carried. Mr. Ondrejka commented that they need privacy with the large building next door and felt it was pretty straightforward.

**CASE 24 -11: Patricia Palcic** 9852 Mulberry Rd., Chardon OH – requesting to install a 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 and no more than 6' in height in any side or rear yard.

Chair Pilawa read the variance request and violation. Zoning Inspector Herringshaw explained that the property to the right used to be undeveloped land but now there will be a home built. Mrs. Palcic would like to have a privacy fence on both sides. Chair Pilawa asked him if the fence would be conforming once it is behind the house. Mr. Herringshaw responded yes.

Patricia Palcic was sworn in. She said she has been there for 30 years and the land next door has been undeveloped. She has a dog and a pool and where the fence goes it will be shorter than the trees. The neighbors have a small child and the dog could jump the fence and with a pool she would like the fence to be taller for safety. Mr. Ondrejka asked if it would go across the driveway. She responded no and was not worried about the front. She added that she has two boys and knows what they can do. When asked about an invisible fence, Mrs. Palcic said she had one but her German Shephard has high drive and with a small child next door she would rather have a physical barrier. She wants to continue living the way she has and is working with an Amish gentleman and it will look nice. Chair Pilawa explained the Board does not vote on aesthetics.

Chair Pilawa stated for the record that 23 affected property owners were notified of Case 24-11. There was no public comment.

Mr. Tomaric asked Mrs. Palcic why the fence was marked at two and half feet inside the property line. She explained she wanted to be generous and make sure it was not encroaching. She wanted to also be able to maintain the fence. Mr. O'Neill asked if the fence would go across the back. She responded no there is a cliff where the property drops off.

Danielle Pitcock moved and Joe Tomaric seconded to approve the variance requested in Case 24-11 as written. Discussion of the Duncan factors included: the variance is not substantial; the essential character of the neighborhood would not be altered; there was no evidence that adjoining properties would suffer a detriment; the delivery of government services would not be affected; and the predicament could not be feasibly relieved through some other method as an invisible fence was tried; and the spirit and intent behind the zoning would be observed. Upon the roll call, all members voted yes, 5-0. Motion carried.

The meeting was adjourned at 7:24pm.

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

