

Board of Zoning Appeals

Munson Township

Minutes of July 21, 2016

Vice-Chair Bobbie Nolan called the meeting to order at 6:30pm with Gabe Kezdi, Richard Wright, Danielle Pitcock, Alternate Jim Herringshaw, Secretary Paula Friebertshauser and Court Reporter Kurt Spencer present. Dennis Pilawa and Don Alexander 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.

Jim Herringshaw moved and Gabe Kezdi seconded to approve the March 17, 2016 minutes. Motion carried.

CASE 16-20: Chris Roettger, 11629 Edgewood Rd., Chardon OH - request to construct a 12' x 16' accessory building 50' from the road right-of-way and within the front yard. Violates SEC. 411 Minimum Dimensional Requirements - minimum setback from road right-of-way is 80 feet; SEC. 509 Accessory Structures - no garage or other accessory building shall be erected within the front yard of any district.

Mrs. Nolan read the variance request and violations. George Roettger, the appellant's father, was sworn in. He explained it is a corner lot and commented he did not see how it was figured as being in the front yard. When asked who was going to build the structure, Mr. Roettger explained it would be pre-constructed. It would have no electric or water and no separate driveway. When asked how the location was chosen, Mr. Roettger responded the land was fairly flat and near trees. He explained it could not be put back farther because of a hill. Mr. Roettger approached the table and looked at photos taken by the zoning inspector. He pointed out where the structure would go and commented there would be no trees taken down. He mentioned the structure would be seen by only one neighbor.

Mrs. Nolan stated for the record that 26 affected property owners were notified in Case 16-20. Mike Lanese of 11632 Edgewood saw no problem with the request. He thought it would be a beautiful shed and would be in a wooded area. He commented it was well off to the left of the house and confirmed if it were to be moved back there is a big ravine.

Dwayne Gorman of 11621 Edgewood agreed with Mr. Lanese. He said there is a buffer of trees around it and it would not adversely affect anyone.

Gabe Kezdi moved and Richard Wright seconded that in Case 16-20 the variance be approved as requested. Findings of fact included: neighbors are satisfied as stated; there is a beneficial use of the house as it exists; the variance is not substantial; the essential character of the neighborhood would not be disrupted thus adjoining properties are satisfied; the delivery of government services would not be adversely affected; the predicament cannot be feasibly relieved through some other method and the spirit and intent by approval of the variance would be upheld. Upon the roll call all members voted yes, 5-0; motion carried.

Mrs. Nolan explained that Cases 16-14 through 16-19 had been withdrawn by the Sisters of Notre Dame. The Board would be hearing Cases 16-12 and 16-13. She explained they are area variances and they would not be going over the use.

CASE 16-12: J. Greydon Petznick for Sisters of Notre Dame, 13000 Auburn Rd., Chardon OH - request to construct a 53'5" x 111'9" residence 90 feet from the centerline of Auburn Rd. Violation amended from SEC. 411 to SEC. 406.4c.1 -Building Location and Configuration-No Building, Structure or parking area shall be located closer than two hundred (200) feet from the centerline of the road on which it fronts.

Mrs. Nolan read the variance request and violation. The variance was amended to reflect the violation of Section 406.4c1 because of two sections that conflicted within the resolution. In talking with the prosecutor they were advised to go with the section that was most recent according to Section 109 of the zoning resolution which she read out loud. It was determined that Section 406 is the most recent (amended in 2010) so the setback requirement of 200 feet would be required. She explained that with four members present there has to be at least three votes in favor of the variance to pass.

Howard Shergalis, architect and Sister Margaret Gorman were sworn in. Mr. Shergalis distributed material that listed their responses to the Duncan factors. Sister Gorman explained they withdrew the six variances along the southern property line out of consideration for their neighbors. All the cottages would be at least 200 feet from the neighbors. She explained there are three objectives to be accomplished. In 2011 the Geauga Department of Aging conducted a survey and statistics showed that the population of Geauga County would grow by 36% by 2030. In Munson it would be higher for those aged 60 and over. They are planning specifically for both the township and the county. They are expanding their mission to aging seniors and it would be built specifically for seniors. The two variances they are requesting would permit construction most efficiently to create a campus consistent with the residential nature that surrounds them including wetlands, the orchard, and open space. It is the only location open enough for this project. She commented that in regards to practical difficulty it would maintain the residential character and provide new senior housing while maintaining the wetlands. She felt it met the standards and was in the best interest of the Township.

Mr. Shergalis pointed out the revised site plan in the packets and reviewed the Duncan factor criteria for Variance 16-12 as follows:

A. *Can there be any beneficial use of the property without a variance?* Yes. However, using the entire parcel maximizes the benefits that the project offers to Munson Township residents by preserving more open space and wetlands.

B. *Is the variance substantial?* No. The proposed cottages are designed to be similar in scale and appearance to the neighboring houses. The requested variance is relatively insubstantial since the 90 feet is measured to one corner of one single story duplex cottage building. The existing adjacent farmhouse is less than 70 feet from the centerline of Auburn Road. The existing homes to the south and some to the north, are also less than 200 feet to the centerline of the road. Our contention is that the 200 feet Institutional setback was intended to buffer residential areas from buildings of institutional size and character and in this case could be considered excessive.

C. *Will the essential character of the neighborhood be altered?* No. The new cottage matches the neighboring houses' scale and is no closer to Auburn Road than some of the existing homes. The essential character of the adjoining properties along Auburn Road are preserved by permitting this variance.

D. *Will the adjoining properties suffer a detriment?* No. This cottage building is well beyond the 200 foot setback to the south. The adjoining properties would not suffer a substantial detriment since the existing tree buffer will be maintained and enhanced with additional evergreen plantings.

E. *Will the variance adversely affect delivery of government services?* No. The variance would not impact the delivery of government services.

F. *Can the predicament be feasibly relieved through some method other than a variance?* No. The topography of the site and the location of the existing wetlands restrict the Owners ability to feasibly relieve its predicament. The Owner will be incorporating the existing wetlands into the design of the overall project. This will preserve an important environmental aspect of the property and enhance the livability of the community.

G. *Will the spirit and intent behind the zoning be observed and substantial justice be done by granting a variance?* Yes. The cottages are similar in design to the existing farmhouse and therefore help maintain the prevailing residential character of Munson Township. The arrangement of the cottages around the linear wetland minimizes the project's impact on the natural environment. The compact site plan preserves significant areas of open space on the property. The density of the proposed development is substantially less than permitted in the zoning code. In the design, the Owner has elected to preserve substantial portions of the remaining undeveloped land on their property. There would be no adverse impact from the granting of variances on adjacent residential property. Further, we believe that the intent of the 200 foot setback is to buffer adjacent residential properties from large scale institutional buildings and in this case the proposed cottage is a one-story residence. The design intentionally locates the larger buildings closer to the center of the site and adjacent to the existing institutional buildings. The one-story cottages were placed adjacent to the existing residential properties to act as a buffer for the rest of the development.

H. *Did the property owner purchase the property with knowledge of the zoning restriction?* No. The owner purchased the property before the current zoning requirements were established.

Mrs. Nolan asked what the dotted line represented on the drawing. Mr. Shergalis responded the dotted line represents the 200 foot setback, and only one cottage would be within that setback. When she asked about eliminating it, Mr. Shergalis commented that it meets the density. Mrs. Nolan asked if that one were to be eliminated would it make the project not viable. Mr. Shergalis responded not necessarily, but they did not feel it would be a significant detriment to the adjacent property. Mrs. Nolan commented that 200 feet versus 90 feet is substantial. Mr. Shergalis pointed out that it is 90 feet to the corner of the cottage and 200 feet to the back. Mrs. Nolan commented that the farmhouse was there before zoning. Mr. Shergalis commented that the homes in the area are much closer. Mrs. Nolan

countered that they are within the Residential district and the Notre Dame property is Institutional and there is a reason the resolution was written for 200 feet. She did not know how he could say it is not substantial. Mr. Shergalis responded that zoning codes cannot cover every instance, and it is essentially a residential building. Mrs. Nolan felt he was mixing apples and oranges and that he was mixing area and use.

Mr. Herringshaw asked if the main reason they were grouped together was based on the amount of inhabitants they wanted? Mr. Shergalis responded yes, two couples per two units.

Mrs. Nolan stated for the record that 39 affected property owners were notified in Case 16-12.

Cindy Cesen of 11390 Sutton Place wanted to know where the proposed structure would be and where the road would come out. Mr. Shergalis pointed out where the existing driveway is to the north and where the orchard is. She asked what the full occupancy would be. Mr. Shergalis replied "186". When asked how many students were enrolled, it was answered 1,250. She wanted to know what the separation was between the congregate care facility and the school. Mr. Shergalis pointed out the elementary school, the chapel, the high school and where the congregate care structure would be. Ms. Cesen was concerned with vendors coming in and keeping the children safe. Mr. Shergalis commented that might be outside of what was being requested. Mrs. Nolan concurred that was outside of the variance request. They are dealing with a variance for a setback.

Ray Painter of 12491 Fowlers Mill Road commented he has been in Munson Township for 24 years. He felt Notre Dame is an anchor in the community and has been proud to have them as stewards of the land. He felt they have gone out of their way to make it valuable to the community. He would like to think he can keep up with his property, but would like the option.

Mrs. Nolan clarified to those present that the Sisters can build everything proposed except for the cottage that is shaded and located close to the road. If not approved, they can still build the others.

Louise Kimmich of 10936 Bridle Trail inquired where the second driveway would be. It was pointed out it would be south of the farmhouse. She wondered how many senior residents would be driving. Mr. Shergalis commented that a traffic study was conducted. Ms. Kimmich commented that the school driveway is heavily used. She felt it would be busy with seniors driving also. Mr. Shergalis explained if it were a market rate community there would be more traffic, but with senior housing there would be less drivers.

Ronald Kimmich asked what was to prevent high school kids from coming through. Mr. Shergalis replied it only connects for service and they have talked about putting a barrier there.

Bob Fill of 13166 Paddock Drive questioned if a car count was done and commented that if standing there the road drops and they have to look twice or you could miss a car from Bean Road. Mr. Shergalis explained they did counts and site line. When asked what the square footage of a cottage is, Mr. Shergalis responded 2100 square feet with the garage; and the living space is 1600 square feet with a two-car garage. Mr. Fill inquired if there was a predetermined rent. In meeting with the Sisters he was informed it would be \$2,000 per side. Mr. Shergalis said it had not yet been decided.

John Gehring of 13170 Paddock Drive followed up on Mr. Fill's question. His concern was if they are in compliance and have to move the cottage, would it make or break the project. If it were not economically feasible they should apply for something more viable. He was concerned if they do not make enough they would have to repurpose. Mrs. Nolan commented it is still zoned Institutional. Mr. Fill thought they were taking a risk. Mr. Gehring added that somebody else could come in and repurpose. Mrs. Nolan responded they would have to follow institutional guidelines. Mr. Shergalis commented it would work from the positive evidence they have received. Mrs. Nolan commented she does not foresee them selling the property. Mr. Gehring commented there are religious organizations in Cleveland that have been forced to sell. Mrs. Nolan explained the Board cannot discern on speculation. She asked Sister Gorman if the project would still continue if the variance was not approved. Ms. Cesen asked what percentage of the buildings would be for retired sisters. Sister Gorman responded up to half of the two institutional buildings for a limited number of years as Sisters withdraw, and 50+ for public. She added the peak need would be within the next 15 years; after that the present building would be sufficient.

Mr. Fill referred to page 4-8 of the Resolution, letter g. Residential Use - he felt it sounded like they would not be able to use if for the public. Mr. Shergalis referred to Section 406 Intent and Purpose. Mr. Fill wondered what trumps what. Mrs. Nolan asked if the Board wished to recess; however, Eric Bergsman of 11300 Sutton Place questioned how many skilled and maintenance people were employed at Notre Dame. Sister Gorman responded that presently there are 100 employees in the health care and administrative center. The assisted living would employ 6 people per 8 hour shift 24/7; the apartment building would have 1-1 1/2 persons. The maintenance and kitchen would partially share employees. Mr. Bergsman asked if new employees are vetted properly. Sister Gorman said they do background checks. The Jennings Center has the same procedure.

The Board recessed at 7:33pm and the hearing resumed at 7:46pm.

Gabe Kezdi moved and Jim Herringshaw seconded that for Case 16-12 the variance request be denied. The findings of fact included there is a beneficial use without a variance; the project can be built; the variance is substantial because they are in the Institutional district; the essential character of the neighborhood would not be altered and adjacent properties - subjective to the Sisters willingness to eliminate the side setbacks - I don't think adjoining properties would suffer as long as they stay in the Institutional guidelines; the delivery of government services would not be affected; the predicament can be feasibly relieved through reconfiguring the placement or eliminating it; and the spirit and intent would be observed by denying the variance. Upon the roll call all members voted to deny the variance, 4-0. Motion carried.

CASE 16-13: J. Greydon Petznick for Sisters of Notre Dame, 13000 Auburn Rd., Chardon OH - request to construct a congregate care apartment building 57'2" at its highest point with no living space above 28'. Violates SEC. 506 Maximum Building and Structure Height (in part) - the height of all buildings shall be limited to 35 feet.

Mrs. Nolan read the variance request and violation. Mr. Shergalis addressed the Duncan factors in the case as follows:

A. *Can there be a beneficial use of the property without a variance?* The purpose of the project is to provide new senior housing options to the residents of Geauga County. Denial of the variance would materially alter the economics and design scheme of the proposed development. The variance is required in order to permit sufficient density of residential congregate care units in close proximity to the existing facility and create a residential character consistent with the community. In addition, a new commercial kitchen will supply food for the existing nursing home. The building could be lowered to cover more ground but the proposed design will preserve more open space on the site and serve to reduce the internal walking distance for staff and aging residents. The beneficial use and residential character of the property will be compromised if the density in the apartment building is not permitted.

B. *Is the variance substantial?* No. The height of a building is defined in Section 202 as "The vertical distance of the building as measured from the finished lot grade level at midpoint of the front of the building to its highest point." Section 506 lists two limiting factors for height; a maximum of 35 feet and no living space shall be above 28 feet. The proposed maximum height of the apartment building as calculated per Section 202 is 57'-2". However a large portion of the height, almost 25 feet, is actually sloped shingled roof. The height of the eave is generally only 32'-8" which is below the limitation of Section 506 and is no taller than the existing 3 story buildings. The highest habitable floor is 23'-4" which is below the limitation of Section 506.

C. *Will the essential character of the neighborhood be altered?* No. The apartment building is adjacent to the existing flat-roofed institutional buildings. The intent is for the new buildings to project a residential character by providing a pitched, shingled roof similar in character to the adjoining properties and the wider community.

D. *Will the adjoining properties suffer a detriment?* No. The building is more than 500 feet from the nearest residence and has a dense screening of mature trees in between. The adjoining properties would not suffer a substantial detriment since the existing tree buffer will be maintained and enhanced with additional evergreen plantings. The building is over 1200 feet from Auburn Road.

E. *Will the variance adversely affect delivery of government services?* No. The variance would not impact the delivery of governmental services. The Munson fire department has reviewed the height and has no concerns.

F. *Can the predicament be feasibly relieved through some method other than a variance?* No. The building could be designed with a flat roof to meet the height limitation but that would not be compatible with the residential character.

G. *Will the spirit and intent behind the zoning be observed and substantial justice be done by granting a variance?* Yes. The pitched roof design, compared to a more commercial-looking flat roof maintains the prevailing residential character of Munson Township. The compact footprint of the building and its close proximity to the existing facility minimize the impact to the natural environment and preserve significant areas of open space. There would be no adverse impact on adjacent residential properties. The portion of the building that exceeds the height limit is only roof which slopes back from the exterior walls as it rises. Further, the building substantially exceeds the setback requirements.

H. *Did the property owner purchase the property with knowledge of the zoning restriction?* No. The owner purchased the property before the current zoning requirements were established.

Mrs. Nolan read a letter from Fire Chief Lynn that answered the Board's safety concerns as to the height of the building. She asked if there were going to be hydrants around the grounds. Mr. Shergalis

responded they are working with the Fire Chief and the building would be fully sprinklered. There are dry hydrants at the existing pond.

Mrs. Nolan stated for the record that 39 affected property owners were notified in Case 16-13.

Mr. Fill asked if there was a gallons per minute survey done and if there would be enough pressure. Mr. Shergalis responded by explaining that the dry hydrants attached to the pond are charged, and the sprinkler system would be supported by the central pump house. They would be two separate systems.


Mr. Gehring asked if the height issue could be addressed by changing the pitch. Mr. Shergalis replied the building would have to have a flat roof. When asked if it would be a wooden structure, Mr. Shergalis responded "yes". In regards to flood and water damage they will use fire walls in the building. When questioned about other building practices, Mr. Shergalis explained that the first step in the process is to obtain the variance through the township. Mr. Gehring commented that the pump house has to have an emergency back-up. Mr. Shergalis responded there are emergency generators. Mr. Fill asked if there were other variance requests at what point in the future would the Board say no. Mrs. Nolan responded that every variance is taken on its own merit.

Dan Fitzpatrick of Paddock Drive questioned the height of the building from 35 feet to the request of 57.2 feet. Mrs. Nolan referred to Chief Lynn's letter that addressed the height concern. Mr. Shergalis responded they meet the living space requirement not the other. Mr. Fitzpatrick clarified he was not looking at the living space but at the height request. Mr. Fill commented it is not listed in the Institutional district. Secretary Friebertshauser informed him it is listed separately under Supplementary District Regulations Section 506. Mrs. Nolan read the section.

Danielle Pitcock moved and Jim Herringshaw seconded that the variance requested in Case 16-13 be approved. Findings of fact were given as follows: there is a beneficial use because the building could be built without the variance; however, it has been shown the building meets the living area height request; the variance is not substantial for the same reason as discussed with fire services; the essential character will not be altered because it won't be seen and will blend in; adjoining properties will not suffer a detriment; the delivery of government services will not be adversely affected per the Fire Chief; the predicament cannot be feasibly relieved, however, the proposed roof would keep the building looking like the community; and the spirit and intent behind the zoning would be observed as discussed by the installation of a full sprinkler system and it is far enough back from the neighbors; and the property owner purchased the property well in advance of zoning restrictions. Upon the roll call members voted 4-0. Motion carried.

Mrs. Nolan addressed Mr. Fill's previous comment in regards to the use and said they cannot address it as a Board. He would have to go to the Zoning Commission or the Trustees. We can only make a decision on the variance put before us. We are considering an area variance not a use variance.

The meeting was adjourned at 8:19pm.


Bobbie Nolan, Vice-Chair
Danielle Pitcock

8/25/16
Date


Paula Friebertshauser, Secretary
8/25/16
Date