

Board of Zoning Appeals

Munson Township

Minutes of July 21, 2022

Chair Dennis Pilawa called the meeting to order at 6:30pm with Danielle Pitcock, Jim O'Neill, Joe Tomaric, Don Ondrejka, Alternate Roger Simpson, and Secretary Paula Friebertshauser present. Court Reporter Laura Ware was also 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.

Mr. Pilawa announced that Case 22-12 for AJ Petersen was withdrawn. He stated that Don Ondrejka was now a regular member with the retirement of Don Alexander. Carol Maver was sworn in and welcomed as a new alternate member.

Danielle Pitcock moved and Jim O'Neill seconded to approve the minutes of June 16, 2022, as written. Upon the roll call, the Board voted unanimously in favor, 5-0, motion carried. Mr. Simpson voted on Cases 22-03 and 22-04 because Mr. Tomaric had recused himself from hearing them.

CASE 22-07 Greg Pizzino, 12000 Bean Rd., Chardon OH - requests to construct 30' x 50' accessory building approximately 15' from the east side property line. Violates SEC. 411 Minimum Dimensional Requirements – minimum side yard is 25 feet.

Mr. Pilawa read the variance request and violation. Zoning Inspector Jim Herringshaw was sworn in. He referred to the site map which showed the driveway extension and the proposed location for the pole barn. He explained photographs taken that showed the location and what neighboring property owners could see and commented it would be set back far off the road.

Greg Pizzino was sworn in. He explained he needs an accessory building for storage of vehicles. The house garage is too small for a full-size pickup, and he has lawn equipment, a travel trailer, and a total of three vehicles to store. When asked if it would have electricity, Mr. Pizzino responded yes, and it might have heat. Mr. Tomaric asked why it could not be built with the 25-foot requirement. Mr. Pizzino explained that with the size of the building it would put it in the middle of the backyard; and if put back further, there is a large swale. The septic system is in the middle of the backyard. Mr. Tomaric then asked about a small outbuilding on the site map. Mr. Pizzino clarified that it is a fire pit.

Mr. Pilawa stated for the record that there were 42 affected property owners notified in Case 22-07. Phillip Webster of 12020 Bean Road was sworn in. He said he lives next door to the east and had no problem with the variance request.

Joe Tomaric moved and Don Ondrejka seconded to approve the variance requested in Case 22-07 at 12000 Bean Road as noted. Mr. Pilawa explained that the Board needs to apply required Duncan factors, but they do not have to give equal weight to them. Discussion of the factors as applied to Case 22-07 were as follows: there is a beneficial use of course, but not particularly relevant; the variance is not substantial; the essential character of the neighborhood would not be altered with the evidence that was produced; adjoining properties would not suffer a detriment as the next door neighbor is in favor of the request; the delivery of government services would not be adversely affected; whether the predicament could be feasibly relieved through some other method – maybe, but not really given what he is putting up; the spirit and intent behind the zoning would be observed and substantial justice done; and not much weight is given to whether the property owner purchased the property with knowledge of the zoning in this case. Upon the roll call, all members voted yes, 5-0; motion carried.

CASE 22-08 Scott Maslar of K2M Design for ODOT, 12453 Bass Lake Rd., Chardon OH – requests to construct a principal commercial structure (office & garage space) 25' from the rear lot line; keep an accessory building (salt storage) in front of the principal building/structure while constructing another salt storage building 44' in height in front of the principal structure; all with 63% lot coverage. Violates SEC. 506 (in part) the height of all buildings shall be limited to 35 feet. SEC. 411 - Minimum Dimensional Requirements- minimum rear yard requirement is 50 feet; maximum lot coverage is 50%. SEC. 509.2 (in part) no accessory structure shall be erected within the front yard of any district; and SEC. 509.3 (in part) accessory structures shall be located in the side and rear yards.

Mr. Pilawa read the variance request and violations. Zoning Inspector Herringshaw referred to the aerial view plan and explained the round structure is the existing salt storage with the proposed salt storage structure next to it and a new office building to the rear. Mr. Tomaric confirmed that the existing office building (in white) would be taken down.

Mr. Maslar was unable to attend the meeting due to health reasons. Scot Etling from K2M Design was sworn in. He explained that the ODOT location handles most of the road clearing in Geauga County. The facility needs to be updated and they have designed to accommodate the existing operation while building the new salt storage building that will hold 3,000 tons of salt. Mr. Pilawa verified with Mr. Etling that the reason he wants to put the new maintenance building in the back is to keep it away from the traffic around the salt storage buildings for safety reasons. Mr. Etling responded that the rear setback is needed to maintain safe traffic flow; the lot coverage also is safety related; and regarding the building height, ODOT requires enough clearing for the truck bed when raised (44'); the principal building would come down, and there is no where else to put the new storage building.

Mr. Tomaric asked why the construction was started before obtaining an application. Sulaiman Bah, Facility Engineer from ODOT in Westerville was sworn in. He explained that part of the issue between the State and the Township is that they are not required to comply with the Township. He conceded that no one did due diligence and then the zoning inspector contacted ODOT. They are going to try and comply as much as possible because they want to be good neighbors. Mr. Etling confirmed they have

been working with zoning. Mr. Ondrejka questioned if the survey was done with the fence line. Mr. Etling responded yes, and it shouldn't affect anything. Mr. Ondrejka asked if the fence line is diagonal as shown. Mr. Etling thought what he was seeing is asphalt grindings, and they are not affecting the fence line. Mr. O'Neill asked what the current capacity is for the salt storage. They weren't sure but Mr. Bah explained they are looking at the past five-year usage for the new building.

Tony Coyne of 1100 Lakeside in Cleveland and Land Use counsel for Bertie Way was sworn in. He requested that the case be tabled. The variance is not insignificant with a 50% setback and 20% coverage of property difference. He said they just received the notice dated July 8th that day. He felt it could be tabled as recent as the next meeting. They are not opposing the request entirely and thought additional landscaping could help. They would like the opportunity to meet with them. Mr. Pilawa commented that it puts Mr. Etling in a tough spot – this is a courtesy that they are here. Mr. Bah commented that they service the whole area, and it needs upgrading to handle the requirements. Mr. Pilawa asked what the impact would be if the case were continued. Mr. Bah responded it would slow things down for 30 days and they need to go ahead for contracting. Mr. Etling added it is a very tight timeline. Mr. Pilawa commented that it seems to be a key thing to the community and asked what would happen if there were an appeal and it was put on hold. Mr. Bah reiterated that there is a strict timeline with the contractors.

Mr. Coyne again said they are not necessarily opposing the request and ODOT can say it's for health and safety, but they must go through the process. They can see the salt dome and they would like their general manager to meet with them. Zoning Inspector Herringshaw explained that in talking with Carmella Shale of Geauga Soil & Water is how the Township got notice of what ODOT was doing. In contacting the Building Department, they said ODOT does not have to go through them because it is a state entity. Township's legal counsel said as long as they make a reasonable attempt to comply with zoning, they can do it. Mr. Bah confirmed.

Roger Simpson of 11350 Butternut Road felt that if they don't need to come through the Township, why would we waste everyone's time in having a 30-day wait period. Zoning Inspector Herringshaw added that legal counsel did not say they had to get a zoning certificate, but they have come in the past for a variance and zoning certificate for the height of the existing salt building. Mr. Pilawa wondered if making an application is considered a reasonable attempt. Mr. Coyne said the dome is visible from their property and there is a 50% and 20% difference in the variance requests. Mr. Tomaric asked if the State could go back to the drawing board and add additional landscaping; and if they had no room, could landscaping be added to the golf course property. Mr. Pilawa thought they had the authority to continue but suggested the Board take five minutes. Phillip Haley with OFCC (construction management division) commented that the Board has provided waivers for previous requests. With the new structure, only a little bit of the tarp would be seen above the existing structure. Mr. Pilawa explained that every case rises and falls on its own merits.

The Board went into executive session at 7:18pm. The meeting resumed at 7:36pm.

Mr. Pilawa announced that the Board was going to move forward with the variance request, and they hoped things could be worked out between the two parties.

Mr. Coyne commented that they are required to make a reasonable accommodation and he did not think it was right. He said the ODOT representatives had been forthcoming but could not guarantee anything.

Mr. Pilawa responded that the Board does not have the authority or ability to grant a variance contingent upon something else. Mr. Coyne suggested they could change the color of the 44-foot canvas. Mr. Pilawa responded that the Board does not do "horse-trading" and have gotten smacked down for that because they may have exceeded their authority. They have been named individually in lawsuits. It was the belief of most of the Board to move forward.

Mr. Bah stated that they planned to reach out to the contractor to find a way to get a green top but was not sure because it may be too late to change the color.

Richard Ferlin of 11482 Fowlers Mill Road was sworn in. He suggested that if the Board denied the variance ODOT could come back and reapply with a different request or change. Mr. Pilawa responded that it could not be changed just a little bit.

Mr. Pilawa stated for the record that there were 18 affected property owners notified in Case 22-08. There was no further comment.

Don Ondrejka moved and Joe Tomaric seconded that Case 22-08 be approved as requested in all its aspects. Discussion of the factors included the following: there is a beneficial use, it has been used as it is, but as the variance request indicates, it will be used more effectively with more salt to maintain roadways; the variance is not substantial; the essential character of the neighborhood would not be altered; there is an argument from one neighbor that they need more time since they just received notice; the delivery of government services would not be adversely affected as there is no evidence, but will actually help with the snow removal; the predicament cannot be feasibly relieved through some other method than a variance; the spirit and intent behind the zoning would be observed and substantial justice done; and the property owner knowing the zoning restrictions does not come in to play. Mr. Pilawa contributed his thoughts in that he thought the variance is substantial and they have been aware of the zoning restrictions because ODOT has been here before. Upon the roll call members voted as follows: Mr. Tomaric, yes; Mr. O'Neill, yes; Mr. Ondrejka, yes; Ms. Pitcock, yes; and Mr. Pilawa, no. Motion carried 4-1.

CASE 22-09: Christopher & Diane Bird, 13340 Auburn Rd., Chardon OH – requesting to keep an existing 12' x 14' accessory building approximately 14' from the north side property line. Violates SEC. 411 Minimum Dimensional Requirements – minimum side yard for a corner lot is 60 feet.

Mr. Pilawa read the variance request and violation. Zoning Inspector Herringshaw explained that through a tax search request which are routinely sent to the Township, he found out that a permit was never obtained for the building. The property owner put it up in 2012 and was unaware they needed one. He referred to the aerial map for the location.

Chris Bird was sworn in. He said they needed the shed for gardening equipment and the location is on the flattest piece of land. Diane Bird added that they moved here from California where they did not

have a township. Mr. Bird had gone to the county and asked, but because it was under 200 square feet, they did not require anything from their department.

Mr. Pilawa stated that there were 54 affected property owners notified in Case 22-09. There was no public comment.

Danielle Pitcock moved and Jim O'Neill seconded to approve the variance requested in Case 22-09 as written. Discussion of the factors to be considered included the following: there is a beneficial use as a residence but with the size of the garage there is a strain; the variance is not substantial as it is a small shed; the essential character of the neighborhood would not be altered and it has existed there for eight-plus years; adjoining properties would not suffer a detriment for the same reason; the delivery of government services would not be adversely affected; the predicament could not be feasibly relieved through some other method other than taking it down; the spirit and intent behind the zoning would be observed and substantial justice done by granting the variance; and the property owner did not purchase the property with knowledge of the zoning. Upon the roll call, all members voted unanimously 5-0, motion carried.

CONDITIONAL USE 22-10: Richard Stovsky for Bertie Way LLC, 12150 & 12070 Mayfield Rd., Chardon OH – Change of ownership. SEC. 801.2o Conditional Use Standards – the conditional use shall be void upon change of ownership or use unless a new application is made for such a certificate within 30 days after change of ownership or use. The conditional zoning certificate shall be limited to whom it is originally issued and is not transferable.

Mr. Pilawa read the legal notice for the Conditional Use. Zoning Inspector Herringshaw explained that it had come to his attention when the manager of the golf course came in for a zoning certificate for a shed. In looking back at past records and the Auditor's website, it appears they should have applied for a Conditional Use permit in 2014 when ownership at Sand Ridge changed.

Tony Coyne commented that it was a public transfer, but no one contacted them. He was there to ask for forgiveness, and they are not changing anything.

Mr. Pilawa stated for the record that 57 affected property owners were notified in Case 22-10 for a Conditional Use permit. There was no public comment.

Joe Tomaric moved and Don Ondrejka seconded to accept Case 22-10 for a new Conditional Use permit for 12150 and 12070 Mayfield Road as written. Upon the roll call, members voted unanimously in favor, 5-0, motion carried.

CASE 22-11: Bryan Phelps, 11522 Mayfield Rd., Chardon OH – requests to have an in-ground swimming pool with a power safety cover in lieu of a fence. Violates SEC. 514.3 (in part) An outdoor in-ground swimming pool shall be surrounded by a barrier or fence.

Mr. Pilawa read the variance request and violation. Zoning Inspector Herringshaw explained that Mr. Phelps had come in for a zoning permit which included a fence but would like to install the pool with a power safety cover in lieu of a fence. The pool would be located 570 feet from Mayfield Road. He

referred to photos showing multiple ponds and a stream. There are no neighbors to be seen, just trees and woods.

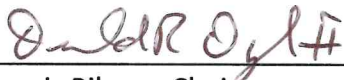
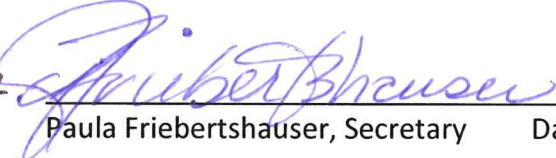
Bryan Phelps was sworn in. He identified his property as the old Munson water gardens. He verified the pool location would be 570 feet back and said there are three ponds and Beaver Creek. There is a split rail fence in front, and he plans to put iron gates back up. The specifications for the cover were sent separately by email. He felt the safety cover is more protective and can withstand 485 pounds. Mr. Phelps commented that he has 10 acres that are not fenced, and the cover will be more aesthetically pleasing. He added that the cover he is proposing exceeds ASTM standards.

Mr. Pilawa commented that at one time he had a pool, and he could not understand why a fence was required because a power safety cover would be more protective. Mr. Phelps commented that he has a baby girl, and she could get through a fence. The cover will be key activated.

Mr. Pilawa stated for the record that 25 affected property owners were notified in Case 22-11. There was no public comment.

Don Ondrejka moved and Joe Tomaric seconded to accept the variance requested in Case 22-11 as noted. When asked if the Board thought any of the Duncan factors to be considered would result in denial of the request, the Board collectively said no. Upon the roll call, all members voted unanimously, 5-0, motion carried.

The meeting was adjourned at 8:11pm.

	13 Aug 2022		8/13/22
Dennis Pilawa, Chair	Date	Paula Friebertshauser, Secretary	Date
Donald R Ondrejka II			