

# Board of Zoning Appeals Munson Township

Minutes of July 19, 2023

Chair Dennis Pilawa called the meeting to order at 6:30pm with Danielle Pitcock, Don Ondrejka, Jim O'Neill, Alternates Roger Simpson and Carol Maver, and Secretary Paula Friebertshauser present. Court Reporter Sarah Lane was present. 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 August 16, 2023.

Mr. Pilawa explained that there were three area variances that the Board needs to apply certain factors to called the Duncan Factors from a court case vs. Middlefield. The Board receives testimony and sometimes documentative evidence. The Board is required to consider all the factors but are not required to give equal weight to all, for example if the owner purchased the property with knowledge of the zoning restriction. When the Board makes a decision, they are granting a property right that stays with the land and is unique to the property itself.

Don Ondrejka moved and Jim O'Neill seconded to approve the minutes of June 21, 2023, as written. Motion carried, 4-0 (Mr. Pilawa, Mr. Ondrejka, Mr. O'Neill, and Mr. Simpson).

**CASE 23-12: Katie Harwood** 13455 Bass Lake Rd., Chardon – requests to install inground swimming pool without a fence. Violates SEC. 514.3 (in part) an outdoor inground swimming pool shall be surrounded by a barrier or fence.

Mr. Pilawa read the variance request and violation. Zoning Inspector Jim Herringshaw was sworn in. He referred to the site map and noted that the location is a fair distance back. He explained that the photos were taken from the road, and the view to the north, south and rear. The home is currently under construction. He further explained that the owners had gotten a zoning certificate for a pool and fence so they could move forward with the pool construction.

Katie Harwood was sworn in. She explained their request is to put a pool in with an electric power safety cover instead of a fence. They have young children and feel it would be safer – it can be walked on. They have worked with the landscaper on the distance from the home and the surrounding

concrete. Mrs. Harwood and her husband work from home and the pool would be in direct sight line. They currently have a pool with a fence and deal with snow issues.

Mr. Ondrejka asked if it would be an electric cover. She responded yes, they have paid for it already. Ms. Maver asked about deer walking on it. Ms. Harwood replied that they could run on it and easily get off.

Mr. Pilawa stated for the record that 27 affected property owners were notified in Case 23-12. Elizabeth McClintock, owner of the adjoining property at 13487 Bass Lake Road asked if the pool would be covered when not in use. Mrs. Harwood said that it would; their current one is not and debris gets in. She explained there is just a switch and anytime it is not in use it would be covered. Ms. McClintock commented that it would be very visible from the second story of her home. She was fearful for young children getting in the pool.

Mr. Pilawa asked Zoning Inspector Herringshaw how the zoning permit came about. Mr. Herringshaw replied that the Harwood's called and asked and he went over the regulations in Section 514 with them.

Don Ondrejka moved and Carol Maver seconded to approve the variance in Case 2023-12 as requested. Discussion following the motion included: can there be a beneficial use of the property without a variance? yes, with or without a pool it can be used as a residence; is the variance substantial? no; will the essential character of the neighborhood be altered? typically through testimony from neighbors, but 26 other people did not come; will adjoining properties suffer a detriment? it seems the concerns are satisfied; will the variance adversely affect delivery of government services? there has been a lot of experience with swimming pools – an electric cover on a pool does not really have an affect other than it seems safer; can the predicament be feasibly relieved through some method other than a variance? yes, they have already gotten a zoning permit to put a fence up if the variance is denied; will the spirit and intent behind the zoning be observed and substantial justice be done by granting a variance? Yes; and did the property owner purchase the property with knowledge of the zoning restriction? yes. Upon the roll call all members voted yes, 5-0; motion carried.

**CASE 23-13: Kathryn Gostola** 12989 Stanfield Dr., Chardon – requests to construct a 12' x 20' accessory building 70' from the road right-of-way and 20' from the south side property line. Violates SEC. 411 Minimum Dimensional Requirements – minimum setback from the road right-of-way is 80'; minimum side yard is 25'.

Alternate Roger Simpson served in place of Don Ondrejka (affected property owner) for this case. Mr. Pilawa read the variance request and violations. Zoning Inspector Herringshaw explained that when the existing shed was constructed the side yard requirement was 15 feet. The shed will come down. He explained photos taken from the proposed site towards Stanfield, the view east and from Stanfield. Mrs. Gostola's son-in-law Joshua Badovick of 13045 Ravenna Road was sworn in to speak on her behalf. He explained that she is looking to replace the existing shed that was put there in 1986 because it is falling down and is not big enough. It will be from Alpine Structures on limestone in the same spot but a little longer and will store a lawn mower, yard equipment, etc.

Mr. Pilawa stated for the record that 44 affected property owners were notified in Case 23-13. There was no public comment.

Roger Simpson moved and Jim O'Neill seconded to grant the variance for Case 23-13 as written. Mr. Pilawa asked the Board if there were anything about the Duncan Factors that would require them not to grant the variance. Members felt the factors were met. Mr. Simpson commented that the proposed structure would basically fill the same space but just be a bit longer. Upon the roll call, all members voted unanimously 5-0, motion carried.

**CASE 23-14: YESCO Sign & Lighting-Scott Thompson for Morningstar Evangelical Friends Church** 12550 Ravenna Rd., Chardon – requests to replace existing ground sign with a 22.6 sq. ft. sign area. Violates SEC. 1003.1 Measurement of Sign Area-The surface or face of a sign shall be computed as including the entire area within a regular, geometric form or combinations of regular geometric forms comprising all of the display area of the sign and including all of the elements of the matter displayed. Frames and structural members not displaying advertising matter shall not be included in computation of surface area. Sign area shall not exceed twenty (20) square feet, except as otherwise specified herein.

Mr. Ondrejka resumed his place on the Board for Case 23-14. Mr. Pilawa read the variance request and violation. Zoning Inspector Herringshaw explained the proposed sign is 2.6 square feet larger than what is allowed. The current sign is 16 square feet and is far back from the road with a lot of space surrounding it.

Scott Thompson of 38348 Apollo Parkway, Willoughby was sworn in. He explained they want to update the sign making it larger for better visibility. Mr. O'Neill asked if the current sign were illuminated. Mr. Thompson replied that it has floodlighting. Mr. Pilawa asked if new lights would be put in. Mr. Thompson was not sure but thought so and they would be equivalent to what is already there directed on the sign. Mr. Ondrejka commented that it is far enough off the road.

There were 27 affected property owners notified in Case 23-14. There was no public comment.

Don Ondrejka moved and Danielle Pitcock seconded to approve the variance requested in Case 23-14. The following findings of fact were reviewed: there can be a beneficial use of the property; the variance is not substantial; the essential character of the neighborhood would remain the same; there was no suggestion that adjoining properties would suffer a detriment or that the variance would adversely affect the delivery of government services - in fact, a brighter lit sign could assist; the predicament could be feasibly relieved through some other method but not if they want a bigger and brighter sign; the spirit and intent behind the zoning would be observed and substantial justice done and it was not known if the property owner knew of the zoning restriction. Upon the roll call, all members voted yes, 5-0; motion carried.

The meeting was adjourned at 7:06pm.

 8/16/23  
Dennis Pilawa, Chair Date

 8-16-23  
Paula Friebertshauser, Secretary Date