

Board of Zoning Appeals

Munson Township

Minutes of July 17, 2024

Chair Dennis Pilawa called the meeting to order at 6:30pm with Danielle Konrad, Joe Tomaric, Don Ondrejka, Alternates Roger Simpson and Carol Maver, and Secretary Paula Friebertshauser present. Jim O'Neill was absent. Court Reporter Laura Ware 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. The next meeting is August 21, 2024.

Don Ondrejka moved and Joe Tomaric seconded to approve the minutes of June 18, 2024, as written. Motion carried, 4-0.

CASE 24-12: Noah Cloonan/CDS Construction 10310 Chartley Ct., Chardon OH – requests to install an in-ground swimming pool w/a power safety cover and without a fence. Violates SEC. 514.3 (in part) An outdoor in-ground swimming pool shall be surrounded by a barrier or fence.

Chair Pilawa read the variance request and violation. Zoning Inspector James Herringshaw was sworn in. He explained that Mr. Cloonan came in and was issued a zoning permit for the pool that included a fence but he would prefer to have a safety cover in its place. Inspector Herringshaw referred to the site map and explained there is over 200 feet of frontage at the road right-of-way; 125 feet on the sides and over 200 feet from the rear property line. He referenced photos taken towards the rear, from the street and the views to the east and west.

Patrick Cloonan of 38030 2nd St. Willoughby, explained that the property owner would like a safety cover in lieu of a fence. The cover would be to ASTM International Standards with a hydraulic motor and is able to be walked on. Mr. Ondrejka asked if it would have a manual override? Mr. Cloonan responded yes, and there is a lockbox that requires a key. Ms. Maver asked who owns the property and if they live there. Jason Bowden, the property owner who lives at the address, confirmed that safety is always the most important. He has a wife and two daughters aged 9 and 12. Ms. Maver commented that there is a high population of deer and they could end up in the pool. He responded

that the cover will be on when not in use for safety and cleanliness and would hold a deer. The property is a 5-acre lot and someone would have to go through the woods to access the pool.

Chair Pilawa stated for the record that there were 37 affected property owners notified in Case 24-12. There was no public comment.

Don Ondrejka moved and Danielle Konrad seconded that the variance requested in Case 24-12 be approved as written. Discussion following the motion included that there are eight Duncan factors to be considered. Each one does not have to be given equal weight; for example, did the property owner purchase the property with knowledge of the zoning restriction? - everyone has the opportunity to know the zoning regulations. Can there be a beneficial use without the variance? Yes, it can be used as a residence. Will the spirit and intent behind the zoning be observed? Yes, with the testimony of the applicant regarding the safety cover. Is the variance substantial? No. Will the essential character of the neighborhood be altered? Probably not because no one came to oppose. Can the predicament be feasibly relieved through some other method other than a variance? It does not seem so with a fence versus a state-of-the-art cover; we would not know what another method would be. Will the variance adversely affect delivery of government services? No. Upon the roll call, members voted unanimously to grant the variance, 5-0, motion carried.

CASE 24-13: Sarah Swearman 11505 Bass Lake Rd., Chardon OH – requests to construct a 12' x 24' accessory building and addition or large accessory building in the near future 6' from the north 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 referred to the site map and explained the smaller building is the accessory building and a possible future larger one would be either a detached structure or home addition it would have to be six feet from the property line because of the pond and septic locations. He pointed out the neighboring large barn and showed a picture of the accessory building. He had taken photos of the structures from the north side property line and views towards the property site from Bass Lake Road.

Mr. Ondrejka asked for clarification if the Board is acting on either accessory building. Inspector Herringshaw explained that a 12' x 24' building would initially go up and later be moved to the rear of the property and then they would either put up a home addition or a detached structure six feet from the lot line. Mr. Tomaric asked how far the house is from the side property line. Mr. Ondrejka responded it looks like twenty-five feet and Mrs. Swearman thought twenty-five feet to thirty feet.

Sarah & Johnathan Swearman were sworn in. Mr. Swearman explained their current need is for additional storage. The 12' x 24' building would be temporary and built on skids. Following that they would like an accessory garage addition; he is a mechanic by trade. The size and shape of the addition is currently being worked on with the architect but would not be closer to the lot line than six feet. Chair Pilawa asked Mrs. Swearman if everything he said was true. She said yes. They need storage for outdoor furniture as well.

Chair Pilawa stated for the record that 33 affected property owners were notified in Case 24-13. Ken Velardo of 11485 Bass Lake commented that the structure will be next to their property but there are trees and he would only see the garage pulling in his driveway. Mr. Pilawa asked if he would suffer any detriment? Mr. Velardo said no. Did he think the variance was substantial? Mr. Velardo responded no. Did he think the essential character of the neighborhood would be altered? Mr. Velardo responded no.

Jason Rodgers of 13537 Carter Road, Leroy, asked if Mr. Swearman's wife approved his garage already. Mr. Swearman said yes (insert laughter).

Robert Praetzel of 11511 Bass Lake Road, adjoining property to the south and owner of the HUGE barn referenced earlier, commented that everything the Spearman's have done so far has increased the property value. They have a pond that makes it harder for them to put anything on the property. He added (for Ms. Maver) that no deer has fallen in the pond. It has a fountain and looks like a resort and he fully supports the variance request. Don Ondrejka moved and Carol Maver seconded that the variance requested in Case 24-13 be approved as written. Chair Pilawa commented that the Board already went through the factors. Upon the roll call, members voted unanimously to grant the variance, 5-0, motion carried.

CASE 24-14: Eric Coffey/Flipping Lake County LTD, 11730 Legend Creek Dr., Chesterland OH – requests to keep recently constructed 12' x 24' accessory building 7' from the home and approximately 20' from the east side property line. Violates SEC. 411 Minimum Dimensional Requirements - minimum side yard setback is 25' and SEC. 509.3 (in part) Accessory structures shall not be closer than 15' to the principal structure.

Chair Pilawa read the variance request and violations. Zoning Inspector Herringshaw showed photos of the structure's location. Eric Coffey of Flipping Lake County was sworn in. When asked, Mr. Coffey said the building is on skids and has been there three months. He explained they renovated the whole house and had it up for sale. They purchased the prefab building and it did not register at the time that they required a zoning permit. Ms. Maver asked why it was on skids. Mr. Coffey responded that the company brought it that way, but the building department requires it to be pinned to the ground. They are waiting for the variance before they do anything else. Mr. Tomaric was surprised the contractor did not know this. Mr. Coffey explained that when they spoke with the building department, it was not mentioned that they needed to go to Munson zoning. The owner of the company purchased it. Mr. Tomaric asked what the grade was on the three sides. Mr. Coffey responded that it is level towards the house and down the driveway, but the rear and side slopes down. Inspector Herringshaw commented that sometimes people go to the building department first and they refer them to the Township but because of the turnover the department has had it did not happen this time. Mr. Tomaric asked if it could be placed behind the house. Mr. Coffey responded that the septic is located there. Mr. Tomaric commented that the development is full of hills.

Chair Pilawa stated for the record that 37 affected property owners were notified in Case 24-14. Darlene Burday of 11660 Legend Creek commented that the current owner cleaned up the property and has done a remarkable job, but they flip houses and should have researched the zoning before bringing in the building. The variance could have been eliminated by moving the structure to the back yard. The current character of the neighborhood does not have structures like this and if they do, they

are not seen or are behind the home. She felt this sets a precedent for the future. The structure could interfere with snow removal and could impact the adjoining neighbor and future market values.

Joanne Johns of 11625 Legend Creek lives across the street and a few houses down. She concurred with what Ms. Burday said and felt the building is an eyesore.

Mr. Ondrejka asked Mr. Coffey to verify that since the building is on skids, it is not intended for cars. Mr. Coffey responded just mowers. When asked, Mr. Coffey said there is an 8' x 10' shed in the back. When asked if the structure could be moved back there, Mr. Coffey said the septic and leech beds are located there. Inspector Herringshaw added that it would have to be ten feet from the fields. Mr. Coffey suggested that if he turned the building it would be 15 feet from the house and 25 feet from the side property line and he would not need a variance. Inspector Herringshaw concurred. Chair Pilawa added that the Board does not zone for aesthetics.

Dale Stillen of 11645 Legend Creek commented that the shed is not within eyesight but he does not care for it. Chair Pilawa asked if he felt the essential character of the neighborhood would be altered? He replied yes. Would adjoining property owners suffer a detriment? He replied yes. Does he think the variance is substantial? He replied yes.

Mr. Tomaric asked Mr. Coffey what the side looks like. Mr. Coffey replied that it is plain siding. Mr. Tomaric felt that the front elevation does not fit that on the street. Maybe the side would be more acceptable.

Mr. Stillen commented that when they bought their property, they were supposed to have side entrances. He felt it looks like a two-car garage and was told it is a shed. The appearance does not fit with the house.

Mr. Simpson asked Mr. Coffey where the current shed is in the back and would it be feasible to get the new shed to that location. Mr. Coffey said they would need forklifts but was not sure they could get it back there.

Mrs. Burday asked what the purpose of the building was. Mr. Coffey explained that the previous owners used the small shed in the back. Since they are selling the property, they thought they would offer more storage. Chair Pilawa asked why the structure is so big (12' x 24'). Mr. Coffey replied that the owner bought it. When asked if it would have utilities, Mr. Coffey said no.

Kurt Burday of 11660 Legend Creek commented that he can respect people flipping houses but the shed can be removed. He is not familiar with the backyard but unfortunately it would cost more money to move it there. Chair Pilawa explained that no case sets a precedence. Mr. Burday said that two years ago someone wanted to put in a garage and was turned down even though the backyard dropped down. Mr. Simpson said he would be concerned with moving the building to the side for access to the attached garage. Inspector Herringshaw said it could be rotated and moved back. Mr. Tomaric added that it would make snowplowing difficult. Chair Pilawa said that is not in front of the Board; they have limited authority.

Joanne Johns commented that nobody purchased the home yet; a new homeowner would not suffer if it were put somewhere else.

Don Ondrejka moved and Carol Maver seconded to deny the variance requested in Case 24-14 as noted. Discussion following the motion included that the structure is not the right fit and because of the swale and septic it could be adjusted or moved; the variance is substantial for the neighborhood; the essential character would be changed; the Board cannot quantify what the detriment would be and cannot speak to the delivery of government services but snowplowing would be difficult; and three alternatives were given to feasibly relieve the situation. Upon the roll call, members voted unanimously to deny the variance request, 5-0, motion carried.

CASE 24-15: Jason Rodgers of Paine Creek Builders 10480 Flat Rock Dr., Chardon OH – requests to construct a 30' x 44' detached garage 15.70' from the west side property line and a driveway extension 6.48' from the west side property line. Violates SEC. 411 Minimum Dimensional Requirements – minimum side yard setback is 25'. SEC. 511 Driveways (in part) Driveways shall be a minimum of 15' from any lot line.

Chair Pilawa read the variance request and violations. Zoning Inspector Herringshaw explained photos taken from the south side property line; view from Flat Rock (cul-de-sac); proposed site of garage and driveway site; and view to the rear lot line. In referring to the site plan, he pointed out that the terrain drops off in the rear and to the right. The appellant has to get closer to the lot line to access the garage.

Mr. Ondrejka questioned if the lot to the west was built on or vacant. Jason Rodgers was sworn in. He said it is vacant and he tried calling the owner but did not get any response.

Chair Pilawa stated for the record that 30 affected property owners were notified in Case 24-15. He thought the Board would get some outside input but no one was present to speak about it.

Mr. Rodgers referred to the site plan and discussed the elevations and a valley with a drop off on the southeast side. He approached the table and explained the pictures in greater detail and pointed out the septic tank and a riparian setback. Because of the grade, septic tanks and lines, he tried to keep the structure over so it would look nice aesthetically from the street. Mr. Rodgers explained that soil samples were done and pointed out where the fill was. There is a six-foot difference between the original grade and the house therefore he kept the wall shorter so it would not affect neighboring properties. Mr. Rodgers commented that during construction it showed going into the lake; the builder did not follow regulations. Mr. Ondrejka commented that the neighboring property is flatter and more accommodating to locate a house.

Chair Pilawa stated for the record that there were 30 affected property owners notified in Case 24-15. No one was present to speak to the case.

Danielle Konrad moved and Don Ondrejka seconded to grant the variance requested in Case 24-15 as written. In discussing the factors, Chair Pilawa asked the members if anyone believed granting the variance would affect the delivery of government services – they all said no, it would make it better.

They agreed that the variance is not substantial; the essential character of the neighborhood would not be altered; and the variance could not be feasibly relieved by some other method. Upon the roll call, all members voted unanimously to grant the variance, 5-0, motion carried.

The meeting was adjourned at 7:52pm.

	
<u>Dennis Pilawa, Chair</u>	<u>Paula Friebertshauser, Secretary</u>
8/21/2024	8/21/24
Date	Date