

# **Board of Zoning Appeals**

## **Munson Township**

### **Minutes of August 15, 2019**

Chair Dennis Pilawa called the meeting to order at 6:30pm with Gabe Kezdi, Danielle Pitcock, Joe Tomaric, Alternate Jim O'Neill, Secretary Paula Friebertshauser and Court Reporter Laura Ware present. Alternate Tim Kearns was also present. Don Alexander was absent. The Pledge of Allegiance was said.

Joe Tomaric moved and Gabe Kezdi seconded to accept the minutes of July 18, 2019 as written. Motion carried, 4-0.

Mr. Pilawa explained that the Board of Zoning Appeals is a quasi-judicial Board which acts in the role of judges. 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.

**CASE 19-08: Payne & Payne Construction** 10690 Mayfield Rd., Chardon OH - request to locate a deck landing and concrete pad 10.6 ft. from the rear property line. Violates SEC. 411 Minimum Dimensional Requirements - minimum rear yard setback is 50 ft.

Mr. Pilawa read the variance request and violation. Zoning Inspector Jim Herringshaw was sworn in. He explained photos he had taken and pointed out that the property with the white building had recently been in front of the Board for a variance to split the property off. The building sits 0.3 feet from the rear property line where the land drops off to a ravine. The building is closest to Alpine Valley Ski Resort.

David Payne of 10634 Cedar Road was sworn in. He explained the purpose of the variance was to request a deck as a second form of egress. The building is full with 26 employees, 16 of which are on the second floor; they are leasing part of the first floor and basement. There is no room in the rear and the proposed deck would not look good on the front. It would be brought down to the existing patio. They are hoping to start construction soon.

Mr. Pilawa stated for the record that 29 affected property owners were notified in Case 19-08. There was no public comment.

Gabe Kezdi moved and Joe Tomaric seconded that the variance in Case 19-08 requesting a deck be approved. Discussion following the motion included: there are certain factors to consider for area variances, the Duncan factors, but not one is more significant than the other; no one came out and there were no questions from the Board; there is a beneficial use, but the variance is not substantial

and there is no evidence as such; the character of the neighborhood would not be altered because they are just adding on and no one came forward; adjoining properties would not suffer a detriment; the delivery of governmental services would not be affected except that an additional exit method would add to safety; the predicament cannot be feasibly relieved through some other method; and substantial justice would be done by granting the variance. Payne & Payne knows the zoning restriction because they have been before the Board. Upon the roll call, all members voted yes, 5-0, motion carried.

**CASE 19-09: Guy Cad Jr. 11527 Wilbert, Chardon OH** - request to put a 26 x 34 accessory building 16 ft. from the west side property line. Violates SEC. 411 Minimum Dimensional Requirements - minimum side yard setback is 25 ft.

Mr. Pilawa read the variance request and violation. Mr. Herringshaw explained photos taken showing the west property line, east and west lines, and a straight on view of the proposed location.

Guy Cad was sworn in. He explained he lives on Wilson Mills and has owned the property on Wilbert for 10 years. His wife's grandmother and aunt lived there a number of years. Currently his home on Wilson Mills is up for sale so they can move to the Wilbert property. He needs a barn for storage of lawn furniture, mowers, etc. Mr. Pilawa asked if the barn would be heated, and have water or electricity. Mr. Cad replied it would have electric.

Mr. Pilawa stated for the record there were 81 affected property owners in Case 19-09. There was no public comment.

Joe Tomaric moved and Jim O'Neill seconded that the variance requested in Case 19-09 for 11527 Wilbert be approved as requested. Discussion following the motion included that the same factors stated for the Payne & Payne case applied to Case 19-09 and there was no opposition present. Upon the roll call, all members voted yes, 5-0, motion carried.

**CASE 19-10: Robert Gaglione-University Hospital 13193 Ravenna Rd., Chardon OH**- request to keep existing parking lot in a Residential District that will be used for a different lot located in the Medical District. Violates SEC. 521 General Requirements for Parking and Loading/Unloading Spaces (in part) 521(c) All parking and loading/unloading spaces shall be located on the same lot as the use to be served.

**CASE 19-11: Robert Gaglione-University Hospital 13193 Ravenna Rd., Chardon OH**- request to keep an existing parking lot 32 ft. from the south property line and 0 ft. from the north property line on a corner lot. Violates SEC. 411 Minimum Dimensional Requirements-minimum side yard setback for a corner lot is 60 ft.; minimum side yard setback is 25 ft. SEC. 521(k) (in part)- Parking shall not be located in the minimum setback for front, side or rear yard of any lot.

**CASE 19-12: Robert Gaglione-University Hospital 13181 Ravenna Rd., Chardon OH**- request to keep an existing parking lot in a Residential District that will be used for a different lot located in the Medical District. Violates SEC. 521 General Requirements for Parking and Loading/Unloading Spaces (in part)

521(c) All parking and loading/unloading spaces shall be located on the same lot as the use to be served.

**CASE 19-13: Robert Gaglione-University Hospital** 13181 Ravenna Rd., Chardon OH- request to keep an existing parking lot 0 ft. from the south property line and 0 ft. from the rear property line. Violates SEC. 411 Minimum Dimensional Requirements-minimum side yard setback is 25 ft.; minimum rear yard setback is 40 ft. SEC. 521(k) (in part) - Parking shall not be located in the minimum setback for front, side or rear yard of any lot.

**CASE 19-14: Robert Gaglione-University Hospital** 13193 Ravenna Rd., Chardon OH- request to utilize structure to provide overnight housing for doctors and nurses on call which is not a permitted use in the Residential District. Violates SEC. 401 R-1 Residential District; SEC. 401.2 Permitted Principal Uses and Structures. Doctors and nurses on call overnight housing is not a permitted use.

**CASE 19-15: Robert Gaglione-University Hospital** 13193 Ravenna Rd., Chardon OH- request to construct a parking lot off of the existing driveway that is 60 ft. from the road right-of-way and 50 ft. from the south side yard on a corner lot. Violates SEC. 411 Minimum Dimensional Requirements-minimum setback from the road right-of-way is 80 ft.; minimum side yard corner lot is 60 ft.

Mr. Pilawa explained there were six cases for University Hospital – Cases 19-10 through 19-15. Zoning Inspector Herringshaw suggested the first four be heard together as they were all related to the parking lot. It was confirmed with the University Hospital representatives that would be ok. Mr. Pilawa read the variance requests and the subsequent violations for Cases 19-10 through 13. Zoning Inspector Herringshaw explained photos he had taken of the parking lot and that University Hospital had purchased two residential lots to the north of Hospital Drive. The rest of their property is in the Medical District. He put both site maps together for the two different properties showing how the parking lot crosses over the property lines. He added that 13193 Ravenna is a corner lot. He included an aerial view so that the neighboring properties could be seen better.

Chip Hess of 12121 Kinsman Road in Newbury and engineer on the project, was sworn in along with other members on the UH staff – Dr. DeCarlo, President; Dewy Novak, and Amy Gallo of Sodexo. His firm was hired three years ago to come up with a storm water sewage plan to correct flooding along the western side of the hospital where an outdated and undersized drainage system was the problem. Part of the hospital was closed during the flooding and the trauma center was unusable. Mr. Hess provided a slide show showing water in the halls of the hospital following a 2017 Memorial Day rain. There are currently sandbags on the south side of the hospital just in case. The hospital purchased the residential properties in 2018 and razed several buildings. In 2018, the hospital was granted a variance to construct a wound care building. It was determined that replacement parking on the new properties would be best and the system would pick up water from the ditches along Hospital Drive and doctor's parking and take it out to Merritt Road. Late in 2018, plans were submitted to Geauga Soil & Water and the EPA; permits were received in the spring of 2019. They had to work with the Geauga County Commissioners for a storm sewer easement along Ravenwood. Mr. Pilawa questioned how they could bypass local zoning. Mr. Hess explained that two different teams of people worked on the project; one designed the hyperbaric building and his team had the master site plan. When the hyperbaric project

was approved they thought the whole project was covered. Claridon Township granted a zoning permit for a small portion of the lot.

Mr. Hess referred the Board to the parking lot layout and showed tree screening. Mr. Pilawa clarified that the parking lot layout plan was done for the purpose of the hearing. Mr. Hess agreed. Mr. Pilawa then asked if Claridon gave them a variance or they rezoned. Mr. Hess responded they were given a permit. Mr. Pilawa asked if there was a thought to rezone the property. Mr. Hess said yes, but every day it rains flooding can occur and the rezoning process would take longer. Rezoning is on the back burner but is a future option. Mr. Hess showed a view to the northwest of the tree line. Per Munson zoning the requirement is four to six foot high trees or a fence. They propose approximately 20 pine trees to screen the area and block car lights. They conducted a site distance profile that showed tree screening would completely block car lights. The parking lot lighting would have baffles and would shine downward.

Mr. Pilawa questioned that before they started the project and got every permit necessary, didn't anyone ask him about obtaining local zoning permits. John Lewins of Hess & Associates, explained the two projects – the hyperbaric chamber and the sewer was one project at the time; only during the bidding process did they separate. They thought they were all approved together. He said the parking lot and plans would take care of all the flooding.

Zoning Inspector Herringshaw said that had UH mentioned the project at the previous variance hearing or if he had any idea he would have suggested rezoning at that time or combining the parcels. They could have alleviated some variances.

Mr. Pilawa stated for the record that 21 affected property owners were notified in the University Hospital cases.

Michael Bauer of 10850 Scranton Woods, Newbury was sworn in. He felt Mr. Hess knew all about the process and thought it was hard to believe this was just an oversight. In regards to the flooding issue, he wondered why there is so much storm water; with all the buildings, additions, and parking lots, those all had to be submitted and reviewed – where were the previous calculations? How did it become inadequate?

Mr. Pilawa explained the Duncan Factors for an area variance and that a use variance is harder to get.

Mr. Lewins explained that film showed broken or disconnected pipes. Mr. Bauer commented that the hardship is self-inflicted and it was not their problem that UH is not maintaining their system. Mr. Lewins interjected that most of the water comes from the west and is not on their property. Mr. Bauer commented it is the first drawing he has seen that shows screening and the first mention of lighting. He asked where the snow is going to be pushed. Mr. Lewins explained the design will divert water from the neighbor's property. Mr. Hess agreed that it will reduce water going to the north. Mr. Bauer said there would be snow melting and running onto his parent's property.

Mr. Pilawa read the factors used in determining a use variance. Mr. Bauer explained that he comes from a construction background and one major issue is knocking down trees. There is federal law that



from April 1<sup>st</sup> to September 30<sup>th</sup> no trees are to be taken down to protect the Indiana bat species. Mr. Hess responded that he checked with the Fish and Wildlife Service and that is a recommendation, not a requirement; it is strictly for federally funded projects. Mr. Pilawa commented that is not the Board's issue. Mr. Bauer mentioned disturbing the wetlands. Mr. Hess explained that prior to doing all projects they check soil maps and wetlands. They submitted plans to Geauga Soil & Water and there was a comment to avoid a certain area and that is why the parking lot is somewhat skewed.

Mr. Bauer said the hospital reached out to his parents, walked the property and assured them there would be a buffer. They received no return calls. They tried to get a current evaluation of their property value but the agent cancelled last minute because they did not want to get involved. Mr. Pilawa reminded him there is no sworn testimony to that issue. Mr. Bauer commented that the hospital admitted to breaking laws, and he wondered if they are just easily going to get a variance.

Dorothy Bauer of 13149 Ravenna Road was sworn in. She commented that this residential property was bought after the flood. Amy Gallo of Sodexo said the property was purchased after flooding to prevent water coming from the two lots to attempt to make that water go away. Mrs. Bauer said the outbuildings were in a flooded area and that it also flows towards her property. She presented pictures of the flooding. She said after the trees were cleared, they can see ambulance lights at the hospital. She asked if the property was bought knowing a parking lot was going there. She was concerned with the addition of more impervious surface and asked if the parking lot was inspected after it was put in. Mr. Hess said it was and there would be an as built survey done upon completion. Mr. Hess explained that connecting the two lots would allow for better circulation for the hospital staff from the existing lot. They wanted to keep pedestrians off of Hospital Drive. A helipad was shown on the original plans. Mr. Hess said it would require a substantial investment and was just there to show a size for some day. Mrs. Bauer felt the parking lot was bigger than it needs to be. She has been told the hospital is a good neighbor but has not felt that way since she has been there. When they moved in there was a house next door; all of a sudden things changed. She wanted to know about future plans. Her cottage windows are 88 feet from the property line. The height of trees might be adequate but there is space in between. Mr. Lewins countered they could increase the height of the hump. Mr. Hess said they would have to take more trees down if they did that. Ms. Gallo said they are going to stagger the trees so before they grow it will fill in.

Andy Bushman of 11210 Fowlers Mill Road was sworn in. He commented he has heard a lot about the engineering, but this is about zoning; the factors are not being met.

Mr. Pilawa commented he does not think the Board has acted as a rubber stamp. For a use variance there are very different factors and all of them need to be considered. An area variance is very different.

Mr. Bushman said the hospital has been in front of the Board of Zoning Appeals many times before and have said (Mr. Ellenberger and Mr. Gaglione) they would meet with the Trustees once a year; it has never happened. Mr. Pilawa explained the Board of Zoning Appeals does not become involved with the Trustees or Zoning Commission. They are impartial.



Joe Bastulli of 12505 Heath Road was sworn in. He asked if there were six separate variances and how many variances can a property have. Mr. Pilawa said he was unaware of any limits although an appellant cannot keep coming for the same request. Mr. Bastulli commented that he sees a trend of the township overlooking local residents' rights. Mr. Pilawa responded that the Board applies certain principals of law and if they are wrong they are overturned. There are at least two levels of appeal after the Board of Zoning Appeals.

Mrs. Bauer said she did not know anything about local government until last October when she came to the hearing for the wound care center. She started to read the land use plan. It was her understanding that there are surveys done, and experts come in and then the zoning is based off of the land use plan. Mr. Pilawa responded that in a general sense, yes. She said that in a survey of what Munson Township residents want, 87% wanted the Township to protect property values; 80% character of community; 80% control of the types of development; and 76% quality of environment. Mrs. Bauer asked if the Board bases their decision only on the factors. Mr. Pilawa said yes, they act in the manner of judges and consider factors given to them by the Ohio Supreme Court. There are no precedents set.

Mrs. Bauer said if development keeps going and next year something else comes up they are afraid as homeowners, with the greatest worth their property, the value could be cut in half as years go by. Mr. Pilawa explained that one of the factors is if adjoining properties will be harmed. Ms. Gallo of Sodexo commented that the two residential properties UH purchased have been greatly improved. The white house was abandoned and outbuildings were falling down. They cleaned up other structures and mowed the grass. She feels they improved the value of surrounding homes. Mrs. Bauer felt their life was much better with the property as it was with less noise and a nicer view.

Mr. Hess said the hospital is interested in being a good neighbor and would welcome discussing what is planned. Mr. Pilawa suggested the hospital could always request a continuance and meet with the neighbors.

The Board recessed at 8:15pm. The meeting resumed at 8:27pm.

Mr. Pilawa asked if the appellant wished to continue. Dr. Donald DeCarlo explained they discussed with the Bauers and offered to restore the barrier as much as possible with 50 to 75 trees staggered at a 4-6' height as referenced in the resolution or they would be alright with putting taller trees up to 10'. They can build up without mitigating water drainage.

Mr. Pilawa commented that it seemed like some progress had been made during the recess, but the immediate concern is whether the Board votes tonight or if there was going to be a request to continue for a period of time. Dr. DeCarlo responded that he thought they are going to need to request to continue for a short time so they can meet with the Bauers. Mr. Pilawa advised they would have to check with zoning to see when the cut-off period would be to file. Mr. Herringshaw said it is typically the end of the month. Mr. Pilawa said they would vote on the request for continuance and leave it up to the hospital or whoever is acting on their behalf to come back to the Zoning Inspector to be put on the agenda. When asked all in favor of granting the continuance and if there was any opposition to it, no members opposed, motion carried, 5-0.

Mr. Hess asked if they wanted to hear the presentation for Cases 14 and 15. Mr. Pilawa acknowledged that they only considered and made the motion pertaining to the first four variances. He advised they may want to amend their request for a continuance to include Case 14 because it also is a use variance. Dr. DeCarlo agreed to include Case 19-14 in the continuance request. Mr. Pilawa AKWS that as it relates to Cases 19-10 through 19-15 did it change anyone's vote. It did not. Mr. Hess asked if it would make sense to go through the discussion and their presentation now for Case 19-14 and let the audience speak their concerns so they can be addressed. Mr. Pilawa responded not with the Board present.

John Lewins asked if they could use the open lot temporarily until the pond was constructed. Mr. Pilawa said they hear and decide variances and there is nothing else they can do as a Board. Dr. DeCarlo said if the variance is not approved a Trustee is on record saying it could be removed. Mr. Pilawa explained the Board does not enforce; the Zoning Inspector is the enforcement. If he makes a determination something has to be done he could cite them and if not in compliance go to the prosecutor. Mr. Bushman said they have had structures torn down if not in compliance.

Steve Moore of 12255 Ravenna Road asked if the Board takes in consideration if the immediate neighbor is happy. Mr. Pilawa said yes. Mrs. Bauer said they may be happy with the screening but not the overall project. Mr. Moore explained he has been through the variance process and had gone to the neighbors in the area. Zoning Inspector Herringshaw explained that if they agree amongst themselves about what could be done they could amend the variance request.

Ms. Gallo asked the Board if they would consider hearing Case 19-15. It was clarified that the request for continuance did not include Case 19-15. Mr. Hess said it would make the traffic safer to have the driveway off of Hospital Drive and remove it from Ravenna Road.

Danielle Pitcock moved and Jim O'Neill seconded to approve the variance requested in Case 19-15 as written. Discussion following the motion included that the Duncan factors in area variances really relate to practical difficulties and as set out with regard to the various factors that the Board is to consider, it seems they have been met. Upon the roll call, all members voted yes, motion carried 5-0.

When asked, Mrs. Bauer wanted her photographs to be part of the record.

The meeting was adjourned at 8:48pm

  
Dennis Pilawa, Chair

Date

  
Paula Friebertshauser, Secretary

Date