

Board of Zoning Appeals

Munson Township

Minutes of August 18, 2021

Chair Dennis Pilawa called the meeting to order at 6:34pm with Jim O'Neill, Joe Tomaric, Danielle Pitcock, Secretary Paula Friebertshauser and Court Reporter Laura Ware present. Don Alexander was absent. The Pledge of Allegiance was said.

Chair Pilawa acknowledged former BZA members Gabe Kezdi and Tim Kearns for their years of service to the community. Mr. Kearns was present and was given a Resolution that the Trustees had read into record at their meeting on August 10th.

Chair Pilawa swore in Allison Kennedy and Don Ondrejka as new alternate members to fill the terms of Mr. Kezdi and Mr. Kearns. Mr. Ondrejka served in place of Don Alexander.

Joe Tomaric moved and Jim O'Neill seconded to approve the minutes of July 21, 2021, as written. Motion carried, 3-0.

Chair Pilawa explained the role of the Board of Zoning Appeals is to apply certain principles of law as required by the Ohio Supreme Court. The Board has limited authority and cannot change the zoning, but there is a provision in the zoning resolution for variances. He 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.

Chair Pilawa explained the difference between use and area variances. He explained that in July the Board only had four members and if there was a tie vote it would constitute a no vote. The appellant for Case 21-06 requested a continuance.

CASE 21-06 (Continued): Robert Zimmerman for 2015 Berkshire Hills LLC 9760 Mayfield Rd., Chesterland OH – requests to use the abandoned pro shop of the former golf course as an interim administrative office as another principal use of the property in a Residential District. Violates SEC. 401.2 R-1 Residential District - Permitted Principal Uses and Structures (in part)-operating an administrative business office in a Residential District is not a permitted principal use.

Chair Pilawa read the variance request and violation and stated it was a use variance.

Zoning Inspector Jim Herringshaw was sworn in. He pointed out that the letter of intent was clear, and the aerial views from the applicant showed where the building are located on the property.

Robert (Rob) Zimmerman of 200 Public Square, Cleveland, and attorney retained by Mr. Vukovic, was sworn in. He explained he is a councilman in Shaker Heights and a representative of their planning commission and board of zoning appeals. He expressed appreciation for the Board's service and felt they were representative of local government at its best. Mr. Zimmerman explained that Mr. Vukovic is relocating his business down the road and had obtained a variance a little more than a year ago. His hope is to have his "slice of heaven" for his family, grandchildren, etc. on the property. His intent is to use the former pro shop for a small interim noninvasive business. It would be an administrative function in the pro shop until the machine and gear shop is completed in a little over a year. It would have just a couple of desks, filing cabinets, etc. with no sales, commerce, or traffic. Mr. Zimmerman posed the question of why not operate out of the house and responded that Mr. Vukovic follows the rules and that is why he filed for a variance. Mr. Zimmerman reviewed the standards for a use variance. He felt the hardship is unique to the property in that the abandoned pro shop which was in use during the golf courses operation is now closed. There is no economically viable use. When the golf course was open there was a lot more traffic. The proposed use will be much less involved and is interim and would place no additional burden on services. The intent and purpose bring back a use for the building. The purpose is minimal to afford relief and is not suitable as a home. With the administrative interim use, the building will be fixed up. Once the building is completed down the road, the administrative business would be moved. Mr. Zimmerman conveyed Mr. Vukovic's appreciation for the beauty and rural nature of the area and that he enjoys the same things as the area residents. His family wants to maintain the residential neighborhood. Mr. Zimmerman emphasized that this is a very specific use asked to support only his business. If the property changed hands, it would have to be used in the exact manner. He drafted it specifically so it would not be useable for anyone else but Mr. Vukovic.

Chair Pilawa asked Mr. Zimmerman if he thought the Board could authorize a temporary use. Mr. Zimmerman felt it was specific to Mr. Vukovic's use. Chair Pilawa countered that it runs with the land. Mr. Zimmerman commented that Mr. Vukovic would be telling them he is not selling and wants to enjoy the property into perpetuity. However, if it were to be sold, and someone wanted to have a business there, they would have to come for a variance. Chair Pilawa clarified that Mr. Vukovic would always have that right if he needed a temporary use. Mr. Zimmerman again emphasized that is why they wrote is so specifically.

Chair Pilawa explained that the Board must focus on whether the situation and the hardship is unique. Mr. Zimmerman felt it was relevant; there was a business run on the property. Chair Pilawa responded that a conditional use was already permitted and was allowed, and he saw that differently.

Bernard Vukovic of 9760 Mayfield Road was sworn in. Mr. Zimmerman asked him why he was there and what his plans were. Mr. Vukovic responded that he is a Canadian citizen and showed a bit of emotion because this was his first pledge of allegiance. Mr. Vukovic's goal was to live on the property. His wife was raised in the area, and they want to raise their kids and grandchildren here. Mr. Vukovic said he is a successful businessman who employs 75 people in Canada. He conveyed that he has worked 25- or 26-years full time at 60 to 100 hours per week and wants to slow down. He purchased Pineview Lake first, then the owners of the golf course contacted him. He fell in love with the property. Mr. Vukovic said he will be opening an extension of his business in Munson and will work two to three

days per week. He applied for the permits and hired local contractors to build at 12200 Mayfield Road. He will be hiring six to eight people to support the business there. He has four daughters and a son on the way. Mr. Vukovic said he would need the pro shop for about a year and a half for day-to-day operations. His wife is the accountant, and he will have an engineer living on the premises. No one will hear or see the operation. Mr. Vukovic understood the concern that the variance goes with the property but was adamant that he would not sell. He said he was offered four times what he paid for the property, but it was not about the money. He wants to do everything legally and be a good neighbor and has been open and honest with the neighbors. Mr. Vukovic said that he is an honest man, has been a soccer coach, and a church man.

Chair Pilawa asked if it is his intent to live there. Mr. Vukovic replied they are moving in, and it is his intent to build another house on the property in the middle of the course.

Chair Pilawa explained to Mr. Vukovic that there are certain standards the Board needs to apply when considering a use variance. Can the property be used in an economically viable manner without a variance? – the fact that there is a residence, and he can live there can be an economical use. How does it compare to adjacent and nearby uses? – it would be different and prior was a conditional use. Mr. Vukovic suggested that others operate a business out of their home. His wife is pregnant, and he does not want her driving in the winter. Chair Pilawa commented that long after we are gone the property will have the variance attached and things can change. He said the Board was not challenging his intentions, but they do not like getting their decisions reversed.

Allison Kennedy of 11375 Bean Road asked why the request did not fall under a home occupation. Mr. Pilawa explained that the Board applies use standards.

Zoning Inspector Jim Herringshaw explained that the request does not qualify for a home occupation because in referring to Section 520, a home occupation shall not employ anyone not a member of the resident family.

Mark Kriwinski of 12485 Rockhaven Road, Chesterland, commented that rather than move into a dilapidated building Mr. Vukovic could rent a space in town. Chair Pilawa commented that he would like to have questions directed to the standards, i.e., hardship not being unique to the property. He clarified that if it were a conditional use they could get and operate a golf course.

Chris Luoma of 12347 Hillcrest, commented that the hardship does not exist. The conditional use expired and if the building is in disrepair, it is not on the citizens.

Joe Zuccaro of 12330 Waterfowl Lane questioned what the exact business is to be run out of the building. Mr. Vukovic explained that it would be an interim office that would have three desks, servers, and a filing cabinet. There would be no manufacturing or welding and zero traffic. It would be for himself, his wife, and an engineer. Mr. Zuccaro verified there would be no future intent. Mr. Vukovic affirmed and said that his business will be at 12200 Mayfield Road. Once that is built, he intends to build homes for the family.

Joe Otto of 13065 Heath Road commented that the Zoning Resolution is a guidance for what the Board does, and he has heard a use variance is not an easy one to get. He referred to *Section 1202.4.1* and stated, "Since the granting of a "use" variance represents de-facto re-zoning which is beyond further review by the Township, a "use" variance should be granted only if the circumstances leading to the variance are unusual and meet all of the specific standards." Mr. Otto continued to review the standards a. through g. He said that the property is intended to be zoned for single family dwellings and once there is a "stamp of approval" it goes on in perpetuity. Mr. Pilawa thanked Mr. Otto for keeping his remarks relevant to the standards.

Chair Pilawa explained to Mr. Otto and those present that there is a provision in the Resolution for variances. When the Resolution was written they could not possibly anticipate every situation in the future.

Mr. Vukovic referred to the mention that it was once used for commercial use. He explained it is a specific request for the use of that building alone. Chair Pilawa interjected that his variance request is for another principal use of the property. Mr. Zimmerman responded that their focus and the reason they wrote it so specifically was for this building alone. Chair Pilawa responded that if the variance were granted the building could forever be used as an administrative business.

Annie Vukovic questioned if the property is zoned R1 why does the Geauga County auditor's say the 147 acres is commercial on their tax bill. Chair Pilawa explained that the Township's zoning map is what they must go by, and it is zoned residential. Zoning Inspector Herringshaw said the auditor's office may have it that way because it was previously used as a golf course.

Kathleen Crawford of 9899 Wilson Mills Road asked where the hardship is and commented there are empty properties in Chesterland for lease.

Charles Royer of 950 Main Avenue, Cleveland was sworn in. He has been retained and represents eight landowners. He said neither application shows hardship. He said there is a provision for the request in *Section 519.01* in the resolution. Mr. Royer said that 15 months ago Mr. Ianiro appeared before the board with a request to manufacture guns. A use variance needs to establish that he could not do anything else. Mr. Royer had 11 pages of photos of properties within five to ten minutes that could be leased. Mr. Zimmerman objected for the point of relevance. Chair Pilawa asked to what standard was Mr. Royer referring to. He replied lack of hardship and the Board must apply some core values. Chair Pilawa responded yes, use standards.

Dan Clark of 12579 Rockhaven was opposed to the variance request. He explained that in 2015 the owner purchased the property knowing it was residential. The prior variance was in place for six decades since 1953. In 2016, Thomas Lee stated the conditional use was old and he did not know there was a need to reapply for a change of ownership. Mr. Lee had also commented that he felt the best use was a well-run golf course. Mr. Clark said that the golf course closed in 2019 and in 2021 the conditional use was not renewed. In reference to the letter he received dated July 2, 2021, regarding the request for a use variance for the use of the existing pro shop, Mr. Clark referred to the standards. Is the hardship self-induced? – it was created by the applicant; the hardship is not unique to the property – the owner's action caused his own hardship. Mr. Zimmerman interjected he was not the

applicant for the golf course. Mr. Vukovic added that was someone who leased the property. Mr. Otto asked Mr. Vukovic what the hardship was in relationship to Pineview Lake. Mr. Vukovic responded it is residential use, but a variance was granted for a restaurant. It is also allowed to be a campground. Mr. Pilawa recalled that Mr. Miraglia had come for a variance for the sign for Cana Winery. Mr. Vukovic said he has a building sitting there that is vacant. Mr. Clark commented it would be setting a precedence. Mr. Pilawa said the Duncan factors are not applicable, they are for an area variance. He added that every case rises and falls on its facts.

Joseph Bastulli of 12505 Heath Road said he would like to submit an affidavit. He commented that the property valued at \$7 to \$8 million proves no hardship. Chair Pilawa commented that the standards relate to use of the property. Mr. Bastulli then referred to his affidavit by saying that use variances are the "nuclear option" of zoning exceptions. It authorizes a land use not normally permitted and has much in common with a conditional use permit. Some municipalities do not allow use variances. They may be considered spot zoning in some cases. The variance request is justified only if special conditions exist that create a hardship such as physical configuration. Financial situations should not be taken into consideration. Mr. Bastulli commented that when a variance is granted, any other property owner with similar conditions should be able to obtain a similar variance. Mr. Bastulli referred to *Section 1202.4.1* of the Zoning Resolution but said he wouldn't repeat it. He provided reasons why the variance request did not meet the standards such as the request does not stem from a condition of the property that is unique and prohibiting its compliance with a residential district; the building could be used for storage, agriculture, etc.; the applicant purchased the property with full knowledge of the zoning; the granting of the variance could adversely affect the rights of adjacent property owners; it could set a precedence. He expressed concern that a temporary use would fall upon zoning enforcement, and he felt the Township takes a non-enforcement approach. Mr. Bastulli commented that the Township has moved in the past to block an appeal for zoning inspector error. He felt a use variance has the potential to create additional burden on public health, safety, or general welfare. He did not feel the variance request was consistent with the spirit and intent of the Township's zoning. Mr. Bastulli said that if granted, the variance would stay with the property in perpetuity. He referred to a past case for a nursery on the property in 1998 where an affidavit from Irene McMullen was presented as evidence. He felt it was similar to this case. Chair Pilawa responded that the Board has a good idea of the standards they need to apply, and Mr. Bastulli was mixing some of the Duncan Factors in.

Joan Otto of 10365 Heath Road said the last variance led to a Christmas light show. Mr. Vukovic responded he had nothing to do with the light show he just leased the land to another party who ran the golf course and operated the light show. He knew it was permitted and there was no profit.

Bernadette Alpers of 12525 Rockhaven Road, Chesterland asked if there was a variance that would not go into perpetuity. Mr. Pilawa explained that the Board is asked to grant a property right and they have very limited authority.

Mr. Zimmerman respectfully disagreed that there was no hardship. They are talking about a specific structure use for a business not a residence. The structure is unique to itself; it was a pro shop. It is a much less invasive use. He commented that the essence of hardship is if it is unique to the property which essentially is the definition of hardship.

Dennis Pilawa moved and Danielle Pitcock seconded that the use variance requested in Case 21-06 to use the abandoned pro shop of the former golf course as an interim administrative office as another principal use of the property in a Residential District and violating operating an administrative business office in a Residential District is not a permitted principal use, be denied. Discussion and findings of fact following the motion included that the hardship was not unique to the property; the zoning regulation does not deprive the owner of a substantial property right; there was a lot of evidence that the property can be reasonably used in an economical manner without a variance; it is clear the proposed use is not comparable to nearby uses; the hardship is self-induced; and the submitted evidence shows adjoining properties would be harmed. Upon the roll call all members voted yes; motion carried 5-0.

CASE 21-07: Robert Praetzel 11511 Bass Lake Rd, Chardon OH – requests to construct an 80' x 84' pole barn 56' in height. Violates SEC. 506 Maximum Building and Structure Height (in part)-unless otherwise provided for by this Resolution, the height of all buildings shall be limited to 35 feet.

Chair Pilawa read the variance request and violation. Zoning Inspector Herringshaw presented photos and commented that Mr. Praetzel only wanted to take a few trees down. There would also be a pavilion. He pointed out that the proposed location is far back.

Robert Sean Praetzel of 11511 Bass Lake Road was sworn in. He affirmed the building would be further back on the property. The first floor would be a 16-foot ground floor for his camper/trailer and would include a lift for working on his own cars. The second floor would have a gravity-fed system for maple syrup and brewing his own beer. He wanted the roof high to make it look like a barn. He referred to the water treatment plant and how much he liked the look of it. He also hoped to have some basketball hoops. There would be no living space.

Mr. Tomaric commented that with his experience over the years, the Fire Department needs complete access around the building. He was concerned about access if fire broke out while Mr. Praetzel was brewing or making syrup. Mr. Praetzel responded that there will be a driveway that would go around two sides (front and one side) of the building. He pointed it out on the site plan and indicated the concrete in red.

Zoning Inspector Herringshaw referred to *Section 506 Maximum Building and Structure Height* regarding structures that are placed above roof level that shall be limited to 60 feet. Mr. Ondrejka asked if he had spoken with his neighbors. He said he did not talk to the park district but neighbors across the street.

Chair Pilawa stated for the record there were 31 affected property owners notified in Case 21-07. Joseph Scafidi of 11525 Bass Lake Road lives next door and had no problem with how high the structure would be.

Danielle Pitcock moved and Joe Tomaric seconded to grant the variance requested in Case 21-07 as written. Discussion following the motion included there is a beneficial use however, there is not much concern; the variance is not substantial; the essential character of the neighborhood would not be altered but enhanced from the testimony provided and the comparison to the water treatment facility; adjoining properties would not suffer a detriment and the next door neighbor has approved; the

delivery of government services would not be adversely affected because there will be access driveways; the predicament can be feasibly relieved through some other method but it does not matter in this case. Chair Pilawa explained that with the Duncan factors, the Board does not have to give equal weight; they just need to consider and discuss. Lastly, the spirit and intent behind the zoning would be observed and substantial justice done by granting the variance. Upon the roll call, members voted unanimously to grant the variance; motion carried, 5-0.

CASE 21-10: Payne & Payne Custom Builders, Inc. 12523 Fowlers Mill Rd., Chardon OH – requests a sunroom and deck addition to the rear of the home located in the Commercial District. Violates SEC. 703.1 Nonconforming Uses of Land (in part) no such nonconforming uses shall be enlarged or increased or extended to occupy a greater area of land that was occupied at the effective date of adoption or amendment of this Resolution.

Chair Pilawa read the variance request and violation. Zoning Inspector Herringshaw commented that the Zoning Commission did not want to change this language; it needed to be in there because of the Commercial District. They are going to replace part of the structure thus reducing the square footage being added on. He explained photos he had taken.

Michael Payne of 10616 Mitchells Mills Road was sworn in. He explained they were going to use the home for an office, but his mom decided to live there for part of the year. They would like to enlarge the sunroom by five or six feet, and the deck would be a little smaller. Zoning Inspector Herringshaw said it would be 80 feet from the road right-of-way, so it would not be in violation of that.

Chair Pilawa stated for the record that 35 affected property owners were notified in Case 21-10. There was no public comment.

Don Ondrejka moved and Joe Tomaric seconded that the variance requested in Case 21-10 for Payne & Payne be approved as written. Discussion following the motion included that other than everything about the application applies to the Duncan factors, the variance is not substantial because it reduces the nonconformity; the essential character of the neighborhood would not be altered but enhanced; adjoining properties would not suffer a detriment; the delivery of government services would not be adversely affected; and there was probably not any zoning when the home was even built. Upon the roll call, all members voted unanimously to grant the variance; motion carried, 5-0.

CASE 21-11: Todd Timco 10435 Mulberry Rd., Chardon OH - requests to construct a 16' x 24' accessory structure in front of the home. Violates SEC. 509.2 Accessory Structures (in part) no garage or other accessory structure shall be erected within the front yard of any district.

Chair Pilawa read the variance request and violation. Zoning Inspector Herringshaw explained the home is located far back on the lot with a lot of trees in front. There is a little clearing where the structure would go. Mr. Timco would not be extending the driveway.

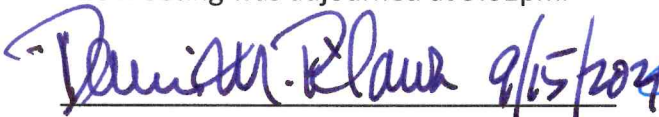

Mr. Tomaric commented that he lives across the road about a half mile down and asked if the septic system was to the left. Todd Timco was sworn in. He responded that it is directly west of the house and pointed it out on the map. He explained that the small clearing is the only option for the location

because of the septic lines and he would otherwise have to take trees down. The building would be used for storage of tools, etc. When asked, Mr. Timco said he was purchasing the building, not building it.

Chair Pilawa stated for the record that 42 affected property owners were notified in Case 21-11. There was no public comment.

Don Ondrejka moved and Jim O'Neill seconded that the variance requested in Case 21-11 be approved as written for Todd Timco. Mr. Pilawa asked the Board if anyone thought that the factors were not met. Members said no. Upon the roll call, all members voted unanimously to grant the variance; motion carried, 5-0.

The meeting was adjourned at 9:01pm.

	
<u>Dennis Pilawa, Chair</u>	<u>Paula Friebertshauser, Secretary</u>
9/15/2021	9/15/21
Date	Date