

# **Board of Zoning Appeals**

## **Munson Township**

Minutes of August 16, 2023

Chair Dennis Pilawa called the meeting to order at 6:30pm with Danielle Pitcock, Don Ondrejka, Jim O'Neill, Joe Tomaric, Alternates Roger Simpson and Carol Maver, and Secretary Paula Friebertshauser present. Court Reporter Laura Ware 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 September 20, 2023.

Don Ondrejka moved and Danielle Pitcock seconded to approve the minutes of July 19, 2023, as written. Motion carried, 5-0 (Mr. Pilawa, Mr. Ondrejka, Mr. O'Neill, Ms. Maver, and Mr. Simpson).

**CASE 23-15: Michelle & Nickolas Asad** 10651 Butternut Rd., Chesterland OH – request to construct an accessory building/garage approximately 29' from the east side corner lot line. Violates SEC. 411 Minimum Dimensional Requirements-minimum side yard corner lot is 60'.

Mr. Pilawa read the variance request and violation. Zoning Inspector Jim Herringshaw was sworn in. He pointed out on the aerial view that the back half of the property is in a flood prone area and with the location of the septic there were challenges where the house could be built. He explained that as a general rule of thumb the road right-of-way is measured about 30 feet from the centerline (could be a little more or a little less dependent on road width) not from the edge of the road. Mr. Herringshaw showed photographs taken from the intersection of Boulder Glen and Butternut; Butternut itself; the view south from the location of the proposed structure; and the proposed location looking east toward Boulder Glen. He said that everything else was compliant.

Michelle Asad was sworn in. The Asad's currently reside in Brunswick. They are looking to construct an accessory building for storage of a 1968 Volkswagen Bug, tools, snowblower, mower, etc. It would have a second story with electricity for a small woodworking area for her husband. It will be painted the same as the house and would be mostly obscured from three of the four sides. It will be 16' x 20' and approximately 14' to 17' tall.

Mr. Pilawa asked when construction would begin. Mrs. Asad thought the house would be done by the end of September and they would like to put the accessory building in before winter. Mr. Tomaric asked where the septic and well are. She responded the septic is on the opposite side of the home. And the well is 10 feet from the garage.

Mr. Pilawa stated for the record that there were 28 affected property owners notified in Case 23-15. Raymond Pikus of 11290 Elk Run explained he was present to represent his mother who lives there. He asked if 60' was always the requirement. Mr. Herringshaw explained that the side yard requirement used to be 15' but is now 25', however, for a corner lot it is 60'. He repeated that the right-of-way is generally measured to be 30' from the centerline and depending on the road width it can vary. This is the rule of thumb that the Road Superintendent uses. Mr. Pikus then asked what the minimum lot size is. Mr. Herringshaw explained that if it is a recorded lot, it does not have to comply, but if someone were creating a new lot it would have to. The lot is 1.71 acres. Mr. Pikus then asked how far the well needs to be from the house. Mr. Herringshaw responded 10' but that it is not a zoning requirement but a requirement of the Health Department. Mr. Pikus asked what the height limit is. Mr. Herringshaw replied, "35 feet."

Bonnie McVey of 10665 Butternut Road was confused about how the road right-of-way was measured. Mr. Herringshaw showed her the site plan and explained it in detail. Ms. McVey had thought it was the tree line and was glad it was not.

Carolyn Fandrich of 10665 Butternut Road asked for confirmation that they did not need a variance for the house and that the building would be painted the same as the home. Mr. Pilawa explained that the proposed building complies it is just the location that needs the variance. It could be painted pink. Ms. Fandrich asked if there would be a driveway to it. Mrs. Asad responded it may have just a "Y" to access it. Ms. Fandrich commented that the lot has some nice trees, but she knew they had to take some down. The Asad's neighbor, Walter Davis, had planted a lot of the trees there. Mrs. Asad responded that barring anything happening they want to leave the trees there because they provide a buffer.

Mr. Pilawa asked Trustee Andy Bushman when the resolution was enacted. Mr. Bushman said the original resolution was in 1948. Munson Township was the first township in Ohio to have zoning.

Joe Tomaric moved and Don Ondrejka seconded to accept the variance requested in Case 23-15 at 10651 Butternut Road to construct an accessory building/garage approximately 29' from the east side corner lot line. Mr. Pilawa explained that the Board is required to consider the Duncan Factors but not give equal weight to all for example, h. Did the property owner purchase the property with knowledge of the zoning restriction? – is given almost no weight because the resolution is readily available. Findings of fact included that there can be a beneficial use as a residence; the variance is not substantial once the measurement was clarified; the essential character of the neighborhood would not be altered as there was no evidence but in fact it was established that it would remain the same; there was no suggestion that adjoining properties would suffer a detriment and there would be no business use to the second floor; the variance would not adversely affect the delivery of government services; the predicament could not be feasibly relieved through some other method than a variance with the flood prone area in the back half; and the spirit and intent behind the zoning would be observed and substantial justice done by granting the variance because the zoning book provides for

the variance opportunity. When the book was written they could not possibly provide for everything. Upon the roll call, all members voted unanimously 5-0, motion carried.

The meeting was adjourned at 7:05pm.

Dennis Pilawa 9/20/23  
Dennis Pilawa, Chair Date

Paula Friebertshauser 9/20/23  
Paula Friebertshauser, Secretary Date