

Board of Zoning Appeals

Munson Township

Minutes of August 21, 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 Friebertshouser present. Jim O'Neill was absent. Court Reporter Lynn Regovich 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 September 18, 2024.

Don Ondrejka moved and Joe Tomaric seconded to approve the minutes of July 17, 2024, as written. Motion carried, 5-0.

CASE 24-16: Jacob Sutter, 12570 Fowlers Mill Rd., Chardon OH – requests to construct a new residence in a Commercial District 30' from the east left side yard on their corner lot. Violates SEC. 407.2 Permitted Uses and Structures – constructing a residential home is not a permitted use in the Commercial District and SEC. 411 Minimum Dimensional Requirements-minimum side yard corner lot requirement in the Commercial District is 80'.

Chair Pilawa read the variance request and violations. Zoning Inspector Jim Herringshaw referred to the site plan and pointed out where the home would be located. He explained it is still a corner lot because of the area that meets Mayfield Road even though there is an easement owned by the State of Ohio. The home will face Mayfield Road. Inspector Herringshaw then referred to photos taken of the proposed site, driveway entrance, the view north, east (neighbor) and northeast; the view down Fowlers Mill looking southeast, northeast corner and east towards the church property. He provided setbacks from the road right-of-way of nearby properties which varied from 5 feet to 30 feet. Some are homes and others are businesses. The Brown Barn is 98 feet back, but some of the homes are 27 feet. Chair Pilawa asked him if he felt it would not change the character of the neighborhood. Inspector Herringshaw responded yes. He then asked him how he determined how many residences are in the neighborhood. He said he went down Fowlers Mill to the north and south. Chair Pilawa then asked him if using this property for a residence would fit in the area. In his opinion, he felt it would.

Jacob Charles Sutter of 12060 Pheasant Ct., Munson, was sworn in. He said they have lived in Munson for over 10 years. They built a home on Butternut near the NDCL baseball field and then they bought this lot in 2018 as an investment unsure of what they were going to do with it. The plan is to downsize when their daughter graduates. Mr. Sutter pointed out that the property to the west (on Mayfield Road) is a residence and across the street on Fowlers Mill is a residence. He did know it was in a commercial district.

Chair Pilawa asked Inspector Herringshaw if one variance follows the other. Inspector Herringshaw responded yes, because if Mr. Sutter does not get the use variance, he would not need the other.

Chair Pilawa stated for the record that 32 affected property owners were notified in Case 24-16. Kyle Schwind of 12577 Fowlers Mill and the neighbor across the street said he was in favor of the variance request and felt it would add to the neighborhood. Chair Pilawa explained that the Board must consider certain factors (for the area portion of the variance) as a result of a case in the Ohio Supreme Court, but not all factors are given equal weight. He asked Mr. Schwind if he felt the variance was substantial, he replied no. Does he feel the essential character of the neighborhood would be altered, Mr. Schwind replied no. Will adjoining properties suffer a detriment, he responded no. When asked if the variance would adversely affect the delivery of government services, Mr. Schwind had no idea. Chair Pilawa added that based on the owner's statement the predicament could not be feasibly relieved through some other method; and obviously he has admitted that he had knowledge of the zoning and the Board assumes everyone has knowledge or accessibility to the zoning requirements. Regarding the use variance, Chair Pilawa asked Mr. Schwind if he was against it being used for a residence, Mr. Schwind replied no. The appellant felt the hardship is unique to the property. Chair Pilawa commented that virtually every residence in the area pre-dates zoning. He asked the Board if anyone had questions or concerns relating to the use variance. There were no additional comments.

Chair Pilawa confirmed with Zoning Inspector Herringshaw that the area and use variances should be acted upon together as without the one the appellant would not need the area variance.

Don Ondrejka moved and Joe Tomaric seconded to grant the variance requested in Case 24-17, both a use and area variance, as written. It was determined that no further discussion was necessary as the factors were already covered. Upon the roll call, members voted unanimously to grant the variance, 5-0, motion carried.

CASE 24-17: Neal Goldweber 13289 Boulder Glen Dr., Chardon OH – requests to construct a 20' x 30' accessory building in front of the house. Violates Sec. 509.2 (in part) No freestanding garage or other accessory structure shall be erected within the front yard of any district.

Chair Pilawa read the variance request and violation. Inspector Herringshaw referred to the site map and explained that the structure would sit back 175 feet. He explained photos that were taken of the driveway view from Boulder Glen; view of the neighboring property to the east; view towards the west property line and existing accessory building in front of the home; and the proposed site.

Neil Goldweber was sworn in. He explained the house sits way back from the road and although they lost many trees from the tornado, their neighbor would not see the structure. The house faces south

and the structure would be to the left. They will use it for storage and feel it will add to the property value.

Chair Pilawa stated for the record that 31 affected property owners were notified in Case 24-17. Russell Warner of 13249 Boulder Glen attested to everything Mr. Goldweber said. He added that it is a beautiful property and it will increase the property value. He pointed out that the way the home sits, the building would not really be in front. Chair Pilawa commented that they typically do not trespass on properties but it surely cannot be seen from the street.

Roger Simpson moved and Don Ondrejka seconded that the variance requested in Case 24-17 be granted as written. Based on the sworn evidence and testimony the essential character of the neighborhood would not be altered; it is not substantial in view of the character of the neighborhood; adjoining properties would not suffer a detriment but welcome the beautiful addition; there is no evidence that the delivery of government services would be adversely affected; and the predicament cannot be feasibly relieved through some other method. Mr. Ondrejka supported that factor by commenting that it is an oddly shaped lot and the house does not point towards the driveway. Upon the roll call, all members voted unanimously to grant the variance, 5-0, motion carried.

CASE 24-18: Michael Hollowell Parcel #21-177118 Arborwood Way, Chardon OH – requests to split a 7.66-acre parcel in the R-2 District into 2 parcels approximately 3.83 acres each. Violates SEC. 411 Minimum Dimensional Requirements-R2 Zoning District requires a 5.0-acre lot size. SEC. 504 (in part) No lot shall be reduced in area or dimension making said area or dimension less than the minimum required by this Resolution.

Chair Pilawa read the variance request and violations. Inspector Herringshaw showed where the proposed property lines would be with homes on each with one driveway on Sherman and one on Arborwood. He referenced photos taken from the corner of Arborwood and Sherman looking northeast and views to the north and east. He pointed out the acreage of surrounding lots.

Mr. Tomaric referred to the minimum lot size requirement of five acres and that several of the adjoining lots are 2.52, and 2.53 acres. Some may be R-1 or when the subdivision went in, they may have gotten a variance. R-1 is 2.5 acres; R2-4 is 5 acres; and Mr. Hollowell's property is R-2. Chair Pilawa asked Inspector Herringshaw why the difference. Mr. Herringshaw explained that R-2 is shallow bedrock and R-3 is steep slope, but there is no historical data.

Andrew Bushman of 11210 Fowlers Mill explained that when zoning was enacted a district over base map was done that considered the slope and bedrock. Inspector Herringshaw added that it was pointed out to him that we are the only township whose zoning map is based on topography. Mr. Bushman commented that the county wanted the township to go to all three acres but the Zoning Commission thought it best to leave it.

Jacob Sutter explained he has surveyed some of the properties because he installs septic systems and 400 lineal feet is required per bedrooms. Septic rules have now changed because of the change in technology and policy.

Michael Hollowell of 13869 King Arthur Court in Newbury, was sworn in. He explained he purchased the property a year ago and got a soil representative that confirmed he could have a septic system on the upper portion. He spoke with Geauga Soil & Water and pulled up the wetlands that shows a little piece he would have to cross over. He then contacted the Army Corp of Engineers to confirm it was okay to build. They said it was a 200 square foot area. Chair Pilawa asked if this was documented. Mr. Hollowell responded yes and when asked, made it part of the record. He reiterated he received permission from the Army Corp and Geauga Soil & Water. Mr. Hollowell further explained that his grandson is getting married and he wants to split the property and give one lot to him as a wedding present. The soil scientist confirmed that the lot on Arborwood could have a septic system as well. He went on to explain that the lot that would be off Sherman where he would build is way in the back and sits on top of a hill. There is a waterfall also. When asked, Mr. Hollowell said his grandson does not know of the plan yet. Chair Pilawa asked what happens if the plan does not come to pass because the variance goes with the property forever. Mr. Hollowell said he would then keep the properties the way they are and added that they will conform with the HOA.

Mr. Simpson asked Mr. Hollowell if he felt the house on the upper lot can be built within the setback requirements. He responded that when he set up the septic, he had the septic designer build that in. It would be a spray system or mound for backup.

Chair Pilawa stated for the record there were 54 affected property owners notified in Case 24-18. Julie Fetchik of 12155 Arborwood Way wanted it on the record that if the lots should be split both would remain with the HOA. Mr. Hollowell said he did speak with Linda Crombie of the Planning Commission and she did say the lots would remain as part of the HOA.

Natalie Besser of 10670 & 10613 Sherman Road was sworn in and wanted to speak on behalf of her father Siegfried Besser. Chair Pilawa advised her that she cannot speak for him but it was noted on the record. She expressed concern that the lot split would set a precedence. Chair Pilawa explained that he has been on the Board 25 years and the policy has always been maintained that each case rises and falls on its own merit. The Board is required to apply proper standards to use and area variances to the facts that they find. They have limited authority. Ms. Besser explained they were at the first meetings when the developer was there and the acreage was preset because he did not want to make one-acre lots for the aesthetics of the development. Chair Pilawa responded that he would be shocked if that were ever to happen. He commented that the Board can only act on what is in front of them.

Mr. Hollowell said he was not aware of the R2 zoning. He looked at the property and many were supposed to be R2 but maybe had a variance. He showed Ms. Besser the site plan. Zoning Inspector Herringshaw added that the driveway would also be at least 15 feet from the Quiggle's neighboring property as well. Mr. Hollowell pointed out for reference that Carroll Drive across the street comes in between the lot split and that is where the driveway would approximately be.

Clyde Quiggle of 10616 Sherman Road was sworn in. He said when they first learned of S/L 1 they understood it was on Arborwood Way and any building on that property had to have an address on that street. There are wetlands, storm retention and a dike on the property. Mr. Quiggle said on September 23, Mr. Hollowell came and introduced himself and said he was going to build a residence with a walkout on the east end behind them due to the soil. Mr. Quiggle researched and the soil tests

performed said it had one of the best soils to build on, but Mr. Hollowell said he could not build because of soil compaction. He also does not show a septic area on the first lot (Arborwood). Mr. Hollowell told them he is working with the Corp of Engineers and placed flags to mark the proposed drive. Mr. Quiggle commented that Mr. Hollowell indicated that he did not feel the variance was substantial, but he and his wife do. He contacted Colleen Sharpe of Geauga Soil & Water who said there are a number of streams and wetland areas that must be preserved that would require approval from the Army Corp of Engineers.

Chair Pilawa explained that unless Colleen is here the Board cannot accept hearsay; she would need to substantiate in her own words or maybe do an affidavit. Mr. Quiggle commented that the deed restrictions would have to be modified as laid out by the Army Corp of Engineers. He felt it would require a lot of fill of the wetland and is a significant portion. Mr. Quiggle then referenced Mr. Hollowell's application and that he responded no to "Will adjoining properties suffer a detriment?" Mr. Quiggle said he would say yes to that because the area above rises about 25 feet on a graduated slope. It was heavily treed but has been cleared and burned. They got water in their basement and garage after the last storm. Mr. Hollowell also said no to "Did the property owner purchase the property with knowledge of the zoning restriction" and Mr. Quiggle says yes. Mr. Hollowell said he worked for the IX Center; Mr. Quiggle found it hard to believe he would not know about zoning. Mr. Quiggle felt it would be irreparable damage to wetland.

Mr. Simpson commented that Mr. Quiggle stated that a lot of fill would be needed, but the Board has a statement from the Army Corp and Mr. Hollowell must follow their guidelines. He understood Mr. Quiggle's concerns but it is not a large area as he indicated according to the drawing they have. The drawing was shown to Mr. Quiggle. Chair Pilawa reiterated that the Board has limited authority. This is just the first stop for Mr. Hollowell; if the Board grants the variance and he cannot put in a septic, it has nothing to do with the Board. There is nothing in the Zoning Resolution regarding the septic and how it must be installed. The Board has no evidence in front of them. If the Board finds that the Duncan Factors have been met, not very often have they been reversed. We have been named as defendants, we are just volunteers, just the way it is. There are a few things we are not able to zone for – one is aesthetics or neighborliness, but the Board understood his concerns.

Natalie Besser wanted to clarify under the HOA how can a separate address on a separate street be considered part of the HOA. Chair Pilawa explained that HOA bylaws in Munson Township are probably contrary to zoning in some way. The Board is not bound to HOA's. He was aware that they are challenged in court and are found unenforceable. Chair Pilawa said he has four court cases that challenge the ability of HOA's that they will probably lose because they are too broad. Ms. Besser asked for confirmation that the HOA bylaws have nothing to do with the variance. Chair Pilawa responded that they would say we voted to approve the variance requested; the Board does not have a clue what the bylaws are and in a lot of respects are glad they do not have to take them into consideration.

Mr. Quiggle asked if with the split, does it automatically permit the driveway off Sherman Road. Inspector Herringshaw responded that that is not part of the variance request. Chair Pilawa explained it is a simple request and is the first step of many for Mr. Hollowell. Mr. Quiggle asked if he would suggest he get legal counsel. Chair Pilawa responded the Board cannot do that. Mr. Ondrejka

commented that it is an equal amount of acreage. Chair Pilawa added there is nothing in the variance request that suggests Mr. Hollowell is going to build on both. Sue Quiggle asked if they are approving two lots, the only way to get to the I-shaped lot in the back is to install a driveway off Sherman. Mr. Ondrejka responded it is not the Board's decision; they are simply giving permission to split the parcel into two lots. Inspector Herringshaw further clarified they are not saying he could even build a house. He would also have to get a driveway permit. He had to get approval from the Army Corp which he did. Next is septic, driveway, home permits, etc. Mrs. Quiggle didn't feel it made sense. Mr. Simpson explained that when it comes time, Mr. Hollowell still must meet zoning requirements to build a residence. If he does not meet setback requirements he has to come for another variance. Mrs. Quiggle asked if they were on a list and would be notified. She said they did not get a letter for this case. BZA Secretary Paula Friebertshauser confirmed they were on the list for this variance request and would be notified of any future variance requests for this property. Chair Pilawa commented again that they have limited authority. When they did not win in court, they exceeded their authority.

Jacob Sutter commented that even if it were denied it does not stop Mr. Hollowell from putting a driveway where he wants and a house on the large lot.

Chair Pilawa reviewed and read the variance request. Danielle Konrad moved and Don Ondrejka seconded to grant the variance in Case 24-18 as requested. Discussion of the factors were as follows: Can there be a beneficial use of the property without a variance? Based on the discussion, yes, because a lot that could have one house or two separate but as stated would be able to use to the maximum extent.

- Is the variance substantial? No, based on the site map showing other lot sizes many of the lots are smaller than the proposed.
- Will the essential character of the neighborhood be altered? No for the same reasons just stated.
- Will adjoining properties suffer a detriment? No, based on the simple request to split the property.
- Will the variance adversely affect delivery of government services? No, there is no evidence it would be an issue.
- Can the predicament be feasibly relieved through some other method than a variance? No, there is no other way to accomplish what has been asked.
- Will the spirit and intent behind the zoning be observed and substantial justice done by granting a variance? Yes, the nature of the neighborhood and lot sizes would not make a big difference.
- Did the property owner purchase the property with knowledge of the zoning restriction? Even if he was not aware there is not much weight given to this factor.

Chair Pilawa added that the request is for a lot split and as the Duncan Factors relate to the lot split in and of itself it would not change the character of the neighborhood because there are smaller lots and bigger lots and as the request has been emphasized it is just for a lot split alone. Upon the roll call, all members voted unanimously to grant the variance, 5-0, motion carried.

CASE 24-19: Patrick Gannon 12680 Auburn Rd., Chardon OH – requests to construct a 24' x 28' detached garage in front of the home. Violates SEC. 509.2 (in part) No freestanding 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 referred to the site plan and said there is already a turnaround there. He referred to photos taken of the proposed location and view from Auburn Road, view toward the north/east lot line and the south/west lot line.

Patrick Gannon was sworn in. He explained he and his wife need a detached garage because their existing one cannot fit a vehicle in and they cannot take a car seat out. They are expecting another child in January. The proposed site is the only location to put the structure because of the septic system, south of the home is the leech field and in back there is a slope. It makes sense to have it where the existing turnaround it.

Chair Pilawa stated for the record that 36 affected property owners were notified of Case 24-19. There was no public comment.

Don Ondrejka moved and Joe Tomaric seconded to approve the variance in Case 24-19 as written. When asked if anyone thought they needed to go through the Duncan factors, it was thought that everything was straightforward. Upon the roll call, all members voted unanimously to approve the variance, 5-0, motion carried.

The meeting was adjourned at 8:15pm

<u>Danielle Korraal</u>	<u>9/18/2024</u>	<u>Paula Friebertshauer</u>	<u>9/18/24</u>
Dennis Pilawa, Chair	Date	Paula Friebertshauer, Secretary	Date
Danielle Korraal			