

Board of Zoning Appeals Munson Township

Minutes of September 17, 2015

Chair Bobbie Nolan called the meeting to order at 6:37pm with Richard Wright and Danielle Pitcock, Secretary Paula Friebertshauser and Court Reporter Nayann Pazyniak present. Don Alexander, Gabe Kezdi and Michael Waclawski were absent. The Pledge of Allegiance was said.

Mrs. Nolan explained that the Board of Zoning Appeals is a quasi-judicial Board which acts in the role of judges. They take facts as presented and apply 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 take the case to the Court of Common Pleas within 30 days after the minutes of the meeting are approved.

Richard Wright moved and Danielle Pitcock seconded to approve the August 20, 2015 minutes as written. Motion carried.

Mrs. Nolan informed the appellants there were only three members present and it was up to them if they wanted their case heard that evening or continued until next month.

CASE 15-14: Susan Valentine, 11715 Blue Heron Tr., Chardon OH - request to construct a 24' x 28' accessory building 4 ft. in front of the residence. Violates SEC.509.2 - No garage or other accessory structure shall be erected within the front yard of any district.

Zoning Inspector Tim Kearns was sworn in. He read the variance request and violation and presented pictures of the proposed location.

Susan Valentine said she wanted her case to be heard that evening. Ryan Hoar, the builder, was sworn in. He approached the table and pointed out that the house is 165 feet back; and with the septic system, drainage basin, and grade, the proposed structure would be four feet in front of the house. He mentioned they may want it to be 156 feet back which would make it nine feet out in front. Mrs. Friebertshauser, Secretary, pointed out that the request in the application was for four feet and they could not increase that without asking for a continuance. Mr. Hoar said he had told Mr. Kearns; however, it was not conveyed to Mrs. Friebertshauser.

Susan Valentine was sworn in. When asked what the accessory building would be used for, Mrs. Valentine explained she is an avid perennial gardener and would use the upstairs loft area for gardening tools. The bottom part would be an extra garage and potting area. She added that as the kids grow they would need more space for cars. Mrs. Valentine explained her husband put a lot of money into the property having the ditch piped and catch basins installed and they do not want to disrupt that area. They have also planted a lot of spruce trees. She explained they determined a slight

angle would look best and be the most functional. When asked if there would be a dormer, Mr. Hoar responded no, there would be limited height and the building would be an exact replica of the garage.

Mrs. Nolan stated for the record that 29 affected property owners were notified of Case 15-14. There was no public comment.

Richard Wright moved and Danielle Pitcock seconded that the variance requested in Case 15-14 by Susan Valentine be approved as written at four feet. Discussion following the motion included: they have lived there since 2000 so there is a beneficial use; the variance is substantial, however, dealing with minimum dimensions and the architecture, it will blend in and be back about 150 feet; the essential character of the neighborhood would not be altered; adjoining properties would not suffer any detriment; the delivery of government services would not be affected; the predicament cannot be feasibly relieved through some other method; the property owner did not know of the zoning restriction but the builder did; and we feel that the spirit and intent behind the zoning would be upheld and substantial justice done by granting the variance. Upon the roll call, all members voted yes, 3-0. Motion carried.

CASE 15-15: Victor Fedin, 13480 Rockhaven Rd., Chesterland OH - request to keep existing 6.3' x 8.25' porch 10.3' from the north side property line; keep existing 14.5' x 10.25' accessory building and 10' x 7.6' accessory building 4' from the south property line in a flood prone district. Violates SEC. 411 Minimum Dimensional Requirement - minimum side yard is 25 feet; SEC 806.1 No structure will be built on the flood-prone portion of a lot located in a flood-prone district unless prior approval is obtained from the Board of Zoning Appeals.

Zoning Inspector Tim Kearns read the variance request and violations and presented photographs of the two structures. Victor Fedin was sworn in and confirmed he wanted his case heard that evening.

Mrs. Nolan asked how long ago the existing porch was built. Mr. Fedin responded "last summer". She then asked when the large accessory building was built - Mr. Fedin responded "two years ago". When asked how he knew he needed a variance, Mr. Fedin explained that Mr. Kearns told him. He had been misinformed by neighbors that it was ok.

When asked about the larger accessory building, Mr. Fedin explained it has no foundation, just dirt, and no electricity. When asked about the purpose, he said it would be for storage of a lawn mower, tools and with two children, their stuff. He further explained there is no basement in the home. The small accessory building is just for firewood and has a roof with four poles. It was built this past summer.

Mr. Wright asked if it could have been moved over. Mr. Fedin explained that the property is only 48 feet in width with a septic system in the center. He added that it cannot be seen from the road. Mr. Fedin approached the table to show Mr. Wright the septic location.

Mr. Kearns commented as a point of fact that a variance had already been obtained for an accessory building to be located five feet from the side property line.

Mrs. Nolan stated for the record that 21 affected property owners were notified in Case 15-15. David Partington of Rockhaven Road was sworn in. He said they do not live adjacent to the Fedin's but on the northern leg of Rockhaven. He expressed concern that to the immediate rear of the Fedin's property is the Rookery, a wetland; and immediately to the north and west of the property is where Blue Heron's nest; and the area to the south and west holds waterfowl. In front of and adjacent are streams that flow towards the Rookery. He had no objection to the porch or the woodshed; however, with the larger building being in a flood prone area where it does flood annually, maybe not Mr. Fedin's property but the surrounding area, if there is gas and gardening chemicals they could flow into tributary streams. Mr. Wright asked where else would Mr. Fedin put the cans. Mr. Partington commented that in mitigating they would not be granting a variance that damages property and wildlife. He thought it should not be decided that evening, but Mr. Fedin should come back with a different type of storage.

Mr. Wright asked Mr. Fedin if his property has ever flooded since he has been there. Mr. Fedin responded that it has never flooded, but his neighbors have experienced about one-half of their property flooding. He added they are located a bit higher. Mr. Fedin explained he does not keep chemicals in the building and his lawn mower is electric. He said there is some paint in the garage, but no toxins on the ground. He said the shed has a wood floor. Mr. Wright confirmed that the wood floor is right on the ground and is treated lumber.

Mr. Wright commented that Mr. Partington had some valid concerns, but they do not address the dimensional portion of the variance. He suggested that perhaps a ditch or swale would help since the neighbor's property floods.

Kathleen Webb of 11551 Wilbert Road was sworn in. She commented that even though the current resident is not going to keep chemicals, she wondered about future residents. She suggested maybe he could put something on the walls of the building regarding storage of chemicals.

Richard Wright moved and Bobbie Nolan seconded that in Case 15-15 the variance requested by Victor Fedin be approved. The Board felt there was some good points brought up to behoove him to mitigate any possibility of water; and the fact that a building was approved previously for a 5 foot variance; to mitigate anything would be beneficial, especially for impact on zoning even though he has no basement and needs outside storage; the building sitting in the back is not substantial but the flood prone makes it substantial; essential character of the neighborhood would not be affected; the deck does not stick out; adjoining properties would not suffer any detriment; the delivery of government services would not be adversely affected; the predicament cannot be feasibly relieved through some other method; and we feel if you work with the neighborhood in regards to misusing structures the spirit and intent would be upheld; and you didn't know of the zoning until Tim pointed it out to you. Upon the roll call, all members voted 3-0, motion carried.

Mrs. Nolan wondered since Mr. Fedin is not the only homeowner in the neighborhood, if there were any association that neighbors could get together and he could make them aware of the possible issues.

Barb Partington thought it was a good idea and maybe some of the homeowners would be interested. Mrs. Nolan wanted them to let the Board know of possible ramifications. Mrs. Partington commented that she went over Munson in a helicopter and there is a lot of water. The Partingtons gave the Board a card from "Protect Geauga Parks".

Continued: CASE 15-08: Payne & Payne Builders for Gregory & Karen DiMeolo, 11692 Overlook Rd., Chardon OH - request to construct a 12' x 20' deck 9.3 feet from the rear property line and 23 feet from the side property line to a non-conforming structure. The deck will be lowered 12" from the first floor level. Violates SEC. 411 Minimum Dimensional Requirement - minimum side yard is 25 ft. and minimum rear yard is 40 ft.; SEC. 704.1 Nonconforming Structures - (in part) no such nonconforming structure may be enlarged, altered, or reconstructed in a way which increases its nonconformity.

Mr. DiMeolo said he wanted the Board to hear his case that evening. Zoning Inspector Tim Kearns read the variance request and violations.

Eric Payne of 10750 Mayfield Road was sworn in. He began with a few points the first being practicality. He explained that from the photos he presented the fill behind the house would not support a ground patio and they need something built to enjoy the property. The deck was first proposed to be level with the first floor, but after hearing from the neighbors, the DiMeolos lowered it 12 inches. The second point was the character of the neighborhood. He explained that the distance from the deck to the rear property line would be 9.3 feet; but out of 22 neighboring homes, approximately 12 of them have comparable or less setbacks from their structures to the property lines. He added that the distance from the rear of the deck to the closest neighbor's structure would be 27.7 feet. The third point was visibility. The deck cannot be seen from Overlook. He presented photos taken from the road and pointed out that any further down the road there are trees, or on Ms. Mayo's side, a fence. He showed a picture where it would be visible if you looked through the woods between two homes. Mr. Wright commented that it is not really obstructing anything. Mr. Paine agreed. He said it definitely impacts Mr. Hebebrand, but he had provided a supportive letter. Mr. Payne showed two panoramic views from the two corners of the proposed deck and only one home could be seen. He explained the DiMeolo's had planted \$6,000 worth of pine and pear trees. Mrs. Bayer asked if she could see the pictures and Mrs. Nolan responded "just a minute". Mr. Wright commented there is a stockade fence on one side and trees so there is not much impact. Mr. Payne pointed out a scaled drawing with the deck. He wanted to make sure the people saw the scale. Mrs. Nolan commented "that answers a lot of questions". Mrs. Nolan asked Mr. DiMeolo if he would want to add anything to the discussion. Mrs. Nolan swore Mr. DiMeolo in. He commented that he and his wife are not quite 60, but they built the home in anticipation of being older. He explained his mother stays with them quite a bit and they wanted to have the deck level, but in trying to be considerate, they lowered it. Mrs. Nolan confirmed that two steps would be needed and then it would step down to the ground. Mr. Payne responded yes, and showed they would be against the house towards Ms. Mayo's property because the land falls off in the other direction.

Mrs. Nolan invited those present to come up and see the pictures presented by Mr. Payne. She noted for the record that 13 affected property owners were notified in Case 15-08.

Pat Bayer of 11703 Basswood was sworn in. She explained she can see the property from the back of her home, and while she understood they need a way to get out, she asked why it has to be 9.3 feet. She felt it was not fair because they own three lots and it is against zoning and infringes on two properties. Mr. Payne commented the deck is only 12 feet. Mrs. Nolan pointed out that Mrs. Bayer had a chance to come in when the home was being proposed. Mrs. Bayer responded that she was sick in the hospital and did not get the letter. She added it is a substantial variance and is taking away from her backyard.

Rick Webb of 11551 Wilbert Road was sworn in. He commented that at the last meeting the extension was granted on the basis that they would come up with a solution that would satisfy all needs. He stressed they do want the DiMeolo's to enjoy their property, but after the previous meeting, Mr. Payne guaranteed him that he would come up with an alternate plan and they would discuss it as a group. He said they were not contacted, and the only change is one foot lower. Mr. Webb thought the integrity of the builder was questionable. He said he could empathize about making the deck easier to access, however, there are already steps from the garage to get into the house and three steps to the front porch. Mr. Wright commented that the steps are irrelevant to the variance, it's the nine feet in the back. Mr. Webb commented that not one of the photographs are from Lee's kitchen. Mr. Wright advised Mr. Webb that he cannot speak for the neighbor. Mr. Webb continued by saying that the property behind Mr. DiMeolo's is significantly lower than the deck and would be above Lee's window. Mr. Wright commented that the trees will grow and he would not see the deck. Mr. Webb said they were asked by the Board to have a meeting to come to an agreeable compromise. The deck is the same dimensions at 9.3 feet which far exceeds the 40 foot setback - a one foot drop accomplishes nothing. Mr. Webb felt they should not suffer the consequences and it would affect the character of the neighborhood.

Mrs. Nolan asked Mr. Webb how the neighbors are suffering. Mr. Webb responded that the neighbors enjoy the forest, woods, waterways and peaceful nature - the home is far higher when everyone walks by. He did agree that the deck with the fence and shrubs is not a huge problem for most, it's the elevation. He questioned why someone would want to buy Lee's property - the deck is above eye level. He added that the zoning laws are established to protect the community.

Mrs. Nolan commented that in her 17 years on the Board she has never seen a case like this where everyone's nerves are so raw. She explained that she drove by the home and did not think it was really elevated, but level with the road. Mr. Payne explained it was part of the construction process and there was a problem with leaks. Mr. Webb asked how many loads of dirt were trucked in after the home was built. Mrs. Nolan responded that the house is already built; and aside from Lee, there are no neighbors down below or that live across the street that could even see the deck.

Mr. DiMeolo commented that Lee has been mentioned often and he did write a letter; the neighbors would do well if they hear what he says. Lee has been a good neighbor and is being misrepresented.

Mrs. Nolan explained she has several letters but the Board cannot cross examine them. They can read them but they are not supposed to be factors in deciding a case. She told those present that she had a letter signed by Kathleen and Richard Webb, Jackie Kennedy and Debbie Mayo; one from Kristen Bluemmel and one from Lee Hebebrand ("Mr. Lee" as he had been called), but they are not admissible.

Mrs. Bayer commented she has lived in her home for 50 years and paid taxes; she urged the Board to honor the zoning and not let the variance through for nine feet. She added she was the Board of Zoning Appeals secretary for 12 years and Fiscal Officer for 28 years. Mrs. Bayer began speaking to Mr. Payne in a defamatory manner. Mr. Kearns told her if she did not stop he would escort her out.

The Board recessed at 8:05pm and resumed at 8:16pm. Mrs. Nolan informed those present that the Board took the time to read the letters, but again, they would not be entered into the record. She asked if any other affected property owners would like to speak to the matter.

Kathleen Webb commented she would buy a different lot for the family if she could and move their home. She explained she has learned to appreciate the process, and with every request she hears, the Board refers to factors and neighbors. She thought that zoning laws exist to protect her from her own folly or a neighbor's folly; and that zoning laws in some instances are known better by the Board, but of course she wants what she wants. She was glad the Board was open to learning more about wetlands as indicated in the previous case because zoning is for both the present and the future. Mrs. Webb commented that in regards to the deck, it seems Payne & Payne Builders exhibited poor planning in this project; they are asking neighbors to absorb the consequences and she wondered if that were fair according to guidelines they have heard.

Mrs. Nolan asked her what the consequences are. Mrs. Webb said there is a 23 foot side setback and it diminishes the property values. Mr. Payne pointed out that the 23 foot side setback does not pertain to the deck. Mrs. Nolan asked how the deck diminishes the property value. Mrs. Webb responded that adding the deck to what is already there is further infringement. She offered that she did not talk to Mr. Lee but his property would be more appealing with woods behind it than a structure. Mrs. Nolan asked who it would be affecting. Mrs. Webb again said the property value of the owner behind the DiMeolos. Mrs. Nolan asked if she were aware that many of the properties whether they built a house, deck or addition have had to come to the Board of Zoning Appeals because of how the lots are plotted. Mrs. Webb responded that her husband had been to a hearing for a front porch which he supported. Mrs. Nolan asked why this deck is imposing. Mrs. Webb replied there are bigger lots closer to the street and laws are meant to protect. Mrs. Nolan asked Mrs. Webb to come up and look at the plans. Mrs. Webb commented that the paper does not show where the land rises and looks down on the property behind. Mrs. Bayer wondered if they would consider moving it 15 feet instead of 9 feet.

Mrs. Nolan explained "Mr. Lee" was not there but he did not oppose or object and those present can only speak for themselves. She asked if there was anyone else that wanted to speak. There was no response. She asked the Board if they needed to recess again, but both Mr. Wright and Mrs. Pitcock did not.

Before the motion was made, Mr. Wright commented there is a huge amount of negativity and concern on the part of what appears to be a close-knit community, which to him was a bit surprising. He felt that if it were close-knit, you would think that without the builder's involvement, the neighbors would come forward and work something out if it's that obtrusive of an issue. And from the two meetings, he personally did not think it is that obtrusive of an issue.

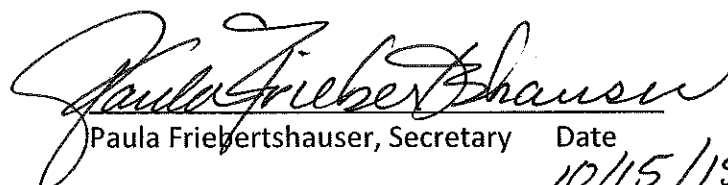
Richard Wright moved and Bobbie Nolan seconded that the variance in Case 15-08 requested by Greg DiMeolo (Mrs. Nolan corrected the appellant as Payne & Payne), that we approve the motion as written. Discussion following the motion included: there can be a beneficial use of the property without a deck; however, in today's society, I don't know anybody that really doesn't have a deck. I'm sure there is people that don't like decks, but they do serve a useful purpose for meeting together outside and enjoying the environment. Is the variance substantial? From the outcry and demeanor of everybody here, you would think it's beyond substantial. Most of the discussion drifts on to other subjects and other people and it also drifts back to the house, which is not the discussion of this variance at all, unfortunately for the people that keep bringing it up. I realize your frustration; however, you know, this is a deck. One person had mentioned that it's a large deck; if you put six people out on a 12' x 20' deck, it would be full. I personally, again, this is my opinion, don't think that is a very large structure. An attempt was made to make some accommodation by lowering it a foot which does help with the visibility, which again is meeting with resistance, and planting shrubs around the property. In three years, nobody is going to be able to see anything. I don't know if anyone disagrees with that, but maybe four years then. You all feel the essential character of the neighborhood is totally disrupted, and I think most of your grievance is with the house and not with the actual deck itself. As previously mentioned by Bobbie, nothing can be done in Bass Lake basically without a variance, so to take away a deck doesn't leave any opportunity for these people to have something outside or go outside and enjoy the yard without having to step down on the grass all the time. Will adjoining properties suffer a detriment? The main property which everybody feels free to speak to, except the owner, is the one in back, and he has spoken by way of a letter, let alone the fact that he can't attend and did not send a representative, and it appears to be he doesn't have a real problem. So I don't know where anyone has the right to really speak for him without talking to him and getting his personal permission. So I don't know about this detriment. Will the variance adversely affect government services? Not at all. The variance, as it's been admitted, Bass Lake it does require a variance, which is why everybody has been here. I personally believe, and I think maybe the Board does, but we'll know by a vote, that the intent of zoning will be upheld by this variance approval. And the property owners did know of the variance restriction, and that's why he came for the variance. Mrs. Nolan added that yes, we do have zoning laws and we have a zoning resolution, and not everything can be covered in this book, especially in Bass Lake. But one thing that is covered is that if you are building something or have something you want to do, you have the right to make an appeal to the Zoning Board of Appeals, and so that is why we are here. And so even though that may not be a finding of fact, I think that it is important and necessary for everybody to understand that the DiMeolos did have that right to come and ask for a variance for the deck. Upon the roll call, all members voted yes, 3-0. Motion carried.

Danielle Pitcock moved and Richard Wright seconded to approve the findings of fact for Cases 10, 11, 12 & 13. Motion carried.

The meeting was adjourned at 8:45pm.



Richard Wright, Vice-Chair 10/15/15
Date



Paula Friebertshauser, Secretary Date
10/15/15