

Board of Zoning Appeals Munson Township

Minutes of September 16, 2020

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

Mrs. Pitcock explained the role of the Board of Zoning Appeals is to apply certain principles of law as required by the Ohio Supreme Court. She explained that the Board of Zoning Appeals is a quasi-judicial Board which acts in the role of judges. The Board interprets the Zoning Resolution specifically on what is brought before them. 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.

Don Alexander moved and Joe Tomaric seconded to approve the minutes of August 19, 2020 as written. Upon the roll call, all members present who had been at the August hearing voted yes, motion carried 4-0.

Continued-CASE 20-14: Jonah Pike 10300 Wye Rd., Chesterland OH – requests to keep a shared driveway extension 0 feet from the east side property line. Violates SEC. 511 Driveways (in part) Driveways shall be a minimum of 15' from any lot line.

Continued-CASE 20-15: Mike Mirenda 10320 Wye Rd., Chesterland OH – requests to keep a shared driveway extension 0 feet from the west side property line. Violates SEC. 511 Driveways (in part) Driveways shall be a minimum of 15' from any lot line.

It was agreed upon to hear continued Cases 20-14 and 20-15 together. Mrs. Pitcock read the variance requests and violations. Zoning Inspector Jim Herringshaw was sworn in. He presented photos of the two properties and referred to the site map. He explained Mr. Mirenda owned both properties and sold the one on the left to his daughter and son-in-law. He will keep the other lot for himself. A driveway was not initially put in because it was too wet.

Todd Petersen, representing the two parties, explained that he owned the property before Mr. Mirenda and that it had been approved for a subdivision of four lots. He wanted to clarify there is a driveway for each home; the application is just for a pass through between the two. The driveway extension is 160 feet from the road right-of-way. The pass through allows access between the two properties and saves them from pulling out and in on a 45mph road that does not have great site distance. It eliminates the ins and outs and allows for delivery vehicles to make a turn and go out without having to back out or park on the road.

Mr. Alexander commented that he assumes a buyer later on would want it removed. He did not see it as a permanent drive. Mr. Petersen responded that it could certainly be removed as there is nothing requiring it to be kept.

Mrs. Pitcock noted for the record that 18 affected property owners were notified in Cases 20-14 and 20-15. There was no public comment.

Don Alexander moved and Joe Tomaric seconded to approve Case 20-14 as requested. Don Alexander moved and Joe Tomaric seconded to approve Case 20-15 as requested. Discussion following the motions included: there can be a beneficial use because they are living there; the variance is not substantial as it is just a gravel connection; the essential character of the neighborhood would not be altered; adjoining properties would not suffer a detriment; the delivery of government services would not be adversely affected but it actually may help; the predicament cannot be feasibly relieved through some other method; the spirit and intent behind the zoning would be observed and substantial justice done by granting the variance; and the property owner did have knowledge of the zoning restriction. Upon the roll call, it was a unanimous vote for both cases; motions carried 5-0.

CASE 20-17: Don Ondrejka 12061 Bradford Dr., Chardon OH – requests to construct a 40' x 50' accessory building 15' from the west side property line. Violates SEC. 411 Minimum Dimensional Requirements – minimum side yard is 25'.

Mrs. Pitcock read the variance request and violation. Zoning Inspector Herringshaw explained photos that showed the view to the most affected property owner; the proposed location; one taken from the road; and one showing it is heavily wooded.

Mr. Ondrejka explained that if the building were to be 25 feet from the property lines, it would be challenging to back up his trailer. The proposed location allows a tractor to go right onto the yard. He added there would be no driveway extension and the building would just be used for storage. Mr. Alexander asked if trees would be taken down. Mr. Ondrejka responded they are already gone. Mr. Tomaric commented that it looks like the driveway curves a bit and is not well defined. He did not see a need to make it closer to the property line and was concerned about run-off. He pointed out that the door seemed large at 16 feet. Mr. Ondrejka responded there are french drains on the east and west sides and there would be a french drain there. He already had approval from Geauga Soil & Water. He said there is dense clay and he has had flooding issues with the house in the past. Mr. Tomaric asked if the neighbor had water issues. Chris Coon of 12059 Bradford responded that he has no water issues. Mr. Alexander asked when Mr. Ondrejka installed a french drain. He responded 10 to 13 years ago when his basement would flood. He contacted Geauga Soil & Water and the drains have stopped all his flooding. There are surface drains on the west side and the east side drains are underground. He will tie them in with the new building. Mr. Tomaric asked him to show the Board the location of the drains. Mr. Ondrejka drew them on the site plan. He showed where the building would go and how each gutter would go to a drain. Mr. Ondrejka already got an okay from the building department. Mr. Tomaric commented that if the building were to be moved 10 feet more to the east it would be on top of the existing french drain. Mr. O'Neill asked several questions about the proposed structure. Mr. Ondrejka responded it would have a concrete floor, is a pole barn construction and would not have

electricity. Mr. Ondrejka would be storing a front end loader, back hoe, trailer and use it for a work room. Mr. Alexander asked Zoning Inspector Herringshaw if there was a copy of the letter from Geauga Soil & Water. He responded yes. Mr. O'Neill pointed out the second page that showed the layout. Mr. Tomaric asked if he would build it himself. Mr. Ondrejka responded Angelo Fiucci would be the builder.

Mrs. Pitcock noted for the record that 41 affected property owners were notified in Case 2020-17. Edward Bushik, the next door neighbor, commented that Mr. Ondrejka is a good neighbor and that he helped him log trees out. He had no problem with the request.

Neighbor Chris Coon asked how tall the building would be and concurred with Mr. Bushik's comments. Mr. Ondrejka responded the building would be 19 feet tall.

Mr. Kearns commented that a 50 x 40 foot building is large. He was bothered a bit by the water issue, but Mr. Ondrejka's neighbors coming forward are an asset. Mr. Ondrejka said he reached out to Geauga Soil & Water and there should not be a problem.

Mr. Tomaric asked if the existing driveway is 15 feet from the line. Mr. Ondrejka replied yes, it was grandfathered in from when the house was built.

Don Alexander moved and Tim Kearns seconded to approve Case 20-17 as requested. Mr. Alexander said he appreciated Mr. Ondrejka's due diligence with Geauga Soil & Water and the french drains. Discussion following the motion included: there is a beneficial use as a home; the variance is not substantial because it is still 15 feet from the property line and there are trees; the essential character of the neighborhood would not be altered because the structure is behind the home; adjoining property owners would not suffer a detriment because it is not visible; the delivery of government services would not be affected; the predicament cannot be feasibly relieved given the layout and location of french drains; the spirit and intent behind zoning would be observed and substantial justice done by granting the variance; and the property owner did not know of the zoning restriction upon purchase. Upon the roll call, members voted as follows: Don Alexander, yes; Jim O'Neill, yes; Tim Kearns, Yes, Joe Tomaric, no; and Danielle Pitcock, yes; motion carried 4-1.

CASE 20-19: Gregory Nau 11690 Legend Creek, Chesterland OH – requests to construct a 22' x 22' detached garage 10' from and in front of the principal structure; 16' from the north side property line; and 68' from the road right-of-way. Violates SEC. 411 Minimum Dimensional Requirements-minimum side yard is 25 ft.; minimum setback from road right-of-way is 80 ft.; SEC 509.2 (in part) no garage or other accessory structure shall be erected within the front yard of any district; and SEC. 509.3 (in part) accessory structures shall not be closer than 15 ft. to the principal structure.

Mrs. Pitcock read the variance request and violations. She informed those present that she is an affected property owner but felt she could be fair and impartial. She stated if anyone had a problem she would recuse herself; however, it would leave a four member board and a tie vote would be a no vote. She offered that the appellant could then opt for a continuance. No one had an objection.

Zoning Inspector Herringshaw explained that Mr. Nau supplied nice photographs and he added four more, two that were taken from the road, one from the neighbor's home and one of the items for storage.

Gregory Nau explained he has accumulated toys and equipment and would like an additional building for a car, tractor and implements. He explained it is very difficult to get to the south side for vehicle access. The structure would be 10 feet from the residence. On the side where the building would be located there are no trees there; it would go on top of the driveway turnaround. The front view would be like an L-shaped house with a garage to the side and the siding would match. He pointed out that where the most affected neighbor is to the north there are no trees to take down. The structure would be 16 feet from the property line; he is asking for a nine foot variance. Visibility through the trees would be fairly difficult during the summertime; during winter everyone sees everything. He explained the request of 10 feet from the existing structure is required because the lay of the land where the slope is at 25 degrees is almost impossible to drive into the backyard. Mr. Nau referred to his illustrations: the topographical showed property lines and amount of trees; the photo showed items to store that have been outside. Mr. Nau added that he also stores the yard tractor under the deck because he does not have another building.

Mr. Alexander asked if the garage would be like the existing home. Mr. Nau said it would be a pole building with the intent to match the existing garage with shake-type shingles. Mr. Tomaric asked if the face of the proposed garage would line up with the outside edge of the existing garage. Mr. Nau responded that it sets back six feet from the existing garage. Mr. Tomaric then asked if it would be built at the edge of the existing turnaround. Mr. Nau explained the turnaround has to be cut to accommodate the building. Mr. Tomaric asked why he could not bring the garage six feet forward away from the property line. Mr. Nau explained that with the sidewalk and the curve of the turnaround and driveway angles, the car would not be able to be turned into the garage. Mr. Tomaric observed that with the topography he is limited, but he would like to see the garage minimized. Mr. O'Neill asked if the opening of the structure would match that of the existing turnaround. Mr. Nau responded almost but pointed out where the cement is would be where it would be cut. It would be very close to matching the arc of the driveway. It would have a cement floor. Mr. Tomaric commented that to get a building permit there is a 10 foot minimum for a breezeway. Mr. Alexander countered that is not in the Ohio Code. Mr. Tomaric complimented Mr. Nau on his proposal. Mr. O'Neill asked if with the 25 degree slope, would he have to build up the back end. Mr. Nau responded no because it is level at that crest. Mr. Tomaric commented that the house was built at a plateau and everything else is at a severe grade change.

Mrs. Pitcock noted for the record there were 43 affected property owners notified in Case 20-19.

Todd Cipollo, representing the neighbors to the north Jason Snider and Christina Yaros, passed out a packet to each Board member. Mr. Cipollo explained the initial variance being sought is a use variance and they must apply practical stricter standards showing undue hardship. The variance requested is beyond the practical difficulty standards because Mr. Nau is able to utilize the property; the area variances are substantial with 36 percent encroachment; one-third of the variance is seeking a closer location to the principal structure; the building in front is going to affect other property owners; Mr. Nau can feasibly alleviate the issue without building in the front-there is a building behind the house

that could be enlarged; and the spirit behind the zoning is affected with the front yard variance and visibility from the road.

Jason Snider of 11676 Legend Creek referred to the photographs in the packets that were distributed. In referring to photo #10, he explained that if the garage has to be lifted, which he thought it would, the current gravel pad is raised up so it would make their view higher. Their home is an A-frame with all windows and when they look out, they will see the garage in summer or winter. In addition, with the clearing in the woods, they will face the back of the garage when they leave their driveway. Mr. Snider referred to page 12 that showed the driveway going up. Photo #13 showed Mr. Nau's proposed garage location where there are no trees. Mr. Snider conceded that the Nau's do have stuff outside which they currently cannot see from their home; they see cars and the landscape trailer. Photo #15 showed the proposed area coming down the road. Photo #19 showed the view looking out their window. Mr. Snider explained that they purchased their home a year ago to not see any neighbors. The variance request violates four codes-three area and one use. He then referred to photo #1 which showed the view of the approximate location from the street going north and commented that this is a development not like farm land with multiple outbuildings. Photo #7 showed stakes the neighbor put where the garage would be close to the street on the right side where there are multiple trees to remove. Mr. Nau interjected that no trees would be removed towards their house. He pointed out to Mr. Snider where it would go. Mr. Snider referred to photo #8 that showed the same stake at the corner and thought that at least three trees would be removed. In photo #9 he showed that the back of the proposed garage towards the back of the property would be closer and bigger than the current pad. Photo #10 showed the cleared out area. He commented that the garage would be even taller in the back.

Mr. Nau explained he needs additional storage space and was asking the Board to approve his variance request so he could make a nice appearance. He said the back of the garage would be maybe one foot higher. He explained that previously there was a logging trail and the trees are a little thinner in places and that is where the turnaround is. He asked what the zoning for a storage trailer would be.

Mr. Snider agreed it would be nice to put away the stuff but he did not think piling stuff up should warrant the violations. There are tires and a plastic kid's table. Mrs. Pitcock informed him that that is not what the Board is here for. Mr. Snider asked why they could not be stored somewhere else. He felt it would be fine if it were built behind the house where there would not be a vinyl wall.

Mr. Cipollo commented it is feasible to accommodate without providing variances in the code. There are ways to provide additional storage and again said there are three area variances and one use variance.

Adam Andrews of 11702 Legend Creek and Mr. Nau's neighbor on the south side, said he was not opposed to the request, and the Nau's have always been generous neighbors. He said there are limitations to their lots and he had no issue with the variance request.

The Board recessed at 7:50pm. The hearing resumed at 8:13pm.

Mr. Alexander asked if there was any additional discussion. Mr. Cipollo requested the record reflect there was no testimony put on record for the rationale of the Board recessing. He pointed out the entire Board went in a meeting room and had a discussion excluding the public without any means of necessity and he does not know if business was conducted. Mrs. Pitcock explained the Board was presented with a packet at the beginning of Case 20-19 and they took a few minutes to go over it. Mr. Alexander explained it is not uncommon where additional information is provided. He pointed out one topic they disagreed with is Mr. Cipollo saying there was a use variance involved. The accessory structure is in terms of an area variance; if it were to be used for a business, etc. it would be a use variance. The Board is in agreement with the area variances. They discussed use versus area.

Christina Yaros mentioned they are aware another letter was sent from a resident. Mrs. Pitcock explained that the letter was sent anonymously and letters in general are not accepted because they cannot be cross-examined.

Joe Tomaric moved and Tim Kearns seconded that the variance requested in Case 20-19 at 11690 Legend Creek not be granted. Discussion following the motion included there are a couple of variances beyond acceptable; there are more extensive alternatives to be designed; and even though they don't agree with the proposal it was a nice design; and zoning codes are written to give assurances to neighbors. Mr. Kearns added the essential character of the neighborhood is important. Upon the roll call, members voted as follows: Jim O'Neill, yes; Don Alexander, no; Tim Kearns, yes; Joe Tomaric, yes; and Danielle Pitcock, no. The motion carried 3-2.

Mr. Nau thanked the Board for their time. The meeting was adjourned at 8:24pm.



Danielle Pitcock, Vice Chair Date

 10-21-20

Paula Friebertshauser, Secretary Date