

Board of Zoning Appeals

Munson Township

Minutes of September 15, 2021

Chair Dennis Pilawa called the meeting to order at 6:30pm with Don Alexander, Jim O'Neill, Danielle Pitcock, Alternate Don Ondrejka, Secretary Paula Friebertshauser and Court Reporter Nick Glatzhofer present. Joe Tomaric was absent. The Pledge of Allegiance was said.

Don Ondrejka moved and Jim O'Neill seconded to approve the minutes of August 18, 2021, as written. Motion carried, 4-0.

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.

CASE 21-12: Andy Bushman for the Munson Township Trustees, 12641 Bass Lake Rd., Chardon OH – requesting two electronic scoreboard signs – one 72 sq. ft. & one 126 sq. ft., 18 ft. and 19 ft. in height in a Residential District. Violates SEC. 1004.9 No sign shall be placed anywhere in a residential district, except as noted in this Resolution, that is permitted in a commercial, institutional or medical use district; SEC. 1003.2 Measurement of Sign Area (in part) sign height shall not exceed 6 feet; and SEC. 1003.7 Electronic Changeable Signs (in part) a. The maximum area per sign face shall be 10 square feet; j. No more than one (1) electronic changeable sign is permitted for premises regardless of the number of signs permitted or the number of uses on the premises.

Chair Pilawa read the variance request and violations. Zoning Inspector Jim Herringshaw was sworn in. He referred to the site plan and indicated that the scoreboards would be located at the end of the blue lines, in left center for the high school field and right center for the softball field.

Trustee Andy Bushman was sworn in. Chair Pilawa asked Mr. Herringshaw if he reported to Mr. Bushman. Mr. Herringshaw responded that he reports to all three Trustees. When asked if he was comfortable with the process, he said yes.

Trustee Bushman explained the smaller scoreboard would be for the girls' softball team and the larger one would be located on Zambory field for the Chardon High School team. They have raised money and gotten sponsorships for the scoreboards. He indicated he did negotiate for them to be a bit smaller. The scoreboard at Shannon field would be similar to that at NDCL. Mr. Bushman reviewed the

following factors to be considered: there is a beneficial use but the manufacturer mandates that the scoreboard must be 10 feet off the ground; it will not be lit at night; the variance is substantial with the size and height; the essential character of the neighborhood would not be altered because it cannot be seen; adjoining properties would not suffer a detriment because there are a lot of trees; the delivery of government services would not be adversely affected; the predicament cannot be feasibly relieved through some other method because of the 10 square foot requirement it would not be seen if conforming; and the spirit and intent behind the zoning would be observed and substantial justice done by granting the variance. When asked, Trustee Bushman confirmed that the background on the scoreboards would be red.

Chair Pilawa stated for the record that 34 affected property owners were notified in Case 21-12. Jim Trzaska of 12715 Bass Lake Road said he lives next door to the park and felt the area is residential and there does not need to be billboard signs. Regarding the front of the scoreboards, Chair Pilawa asked what effect they have on him personally. Mr. Trzaska responded they would have little affect; he is south of the property.

Mr. Alexander asked Trustee Bushman about power to the scoreboards. He responded the power would be run back from the pavilions and be on a timer. Mr. O'Neill noted there is a substantial difference in the size between the two signs. Trustee Bushman explained that the girls' softball field fence is 200 feet, and the high school field fence is 360 feet so for readability purposes the signs are in proportion to the fields.

Don Alexander moved and Don Ondrejka seconded that the variance requested in Case 21-12 be granted as submitted. Discussion following the motion included that there can be a beneficial use as a park, but the fields are set back in the woods; the variance is substantial, but the scoreboards would be better for student athletes and are 1500 feet back; the essential character of the neighborhood would not be altered again with a setback of 1500 feet and the high school field a few hundred feet past that; adjoining properties would not suffer a detriment for the same reason because of proximity to residences and the roadway; the delivery of government services would not be adversely affected; the predicament cannot be feasibly relieved through some other method; and the spirit and intent behind the zoning would be observed and substantial justice done by granting the variance.

When asked how long the park has been there, Trustee Bushman responded 1995. Chair Pilawa agreed on all the points made. Upon the roll call, all members voted yes, 5-0, motion carried.

CASE 21-13: Anthony Trivisonno 12680 Millview Ln., Chardon OH – requests a garage with the front setback from the road right-of-way of approximately 60 feet. Violates SEC. 411 Minimum Dimensional Requirements- minimum setback from the road right-of-way is 80 feet.

Chair Pilawa read the variance request and violation. He asked if Mr. Herringshaw were an affected property owner. Mr. Herringshaw responded that they are very close to his home. He referred to the site plan and pointed out where the home is 70 feet from the road right-of-way in order to follow the angle of the home on a winding road. The garage would be attached to the addition. He showed the angle of the home on his photos and the view from all directions and pointed out the lot is heavily wooded, and this would not be out of character with the other properties on the private drive.

Jamie Trivisonno was sworn in. She introduced her brother Ryan Dudich of 14718 Munnberry Oval in Newbury. He explained that the addition is for their mother who will be moving in on the ground floor. The extension would be from the current garage extending out. He works for a commercial contractor and will be doing the work. They will stick with the same Tudor concept and stucco. The addition will make it symmetrical with a reverse gable adding some height. When asked what the timeframe for building was, Mr. Dudich responded six months. Mr. Ondrejka asked what the distance would be from the corner of the new addition to the old and if there were enough space to get around. Mr. Dudich responded it would be approximately 12 feet; Mr. Herringshaw said he was told it would be more like 15 or 16 feet. The applicant also needs to get a variance from the health department for being too close to the well.

Chair Pilawa stated for the record that 32 affected property owners were notified in Case 21-13. Mr. Herringshaw commented there are nine houses on the street separated by woods. He did not believe it would have any negative effect. Chair Pilawa verified with Mr. Herringshaw that he did not feel it would change the neighborhood, affect the delivery of government services or that adjoining properties would suffer a detriment. Mr. Herringshaw responded no to all.

Mr. Alexander commented that due to the grade the front edge of the garage would be buried. Mr. Dudich concurred that the entrance would be on the basement level.

Danielle Pitcock moved and Jim O'Neill seconded that the variance requested in Case 21-13 be approved as written. Discussion following the motion included that 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; and there is a beneficial use without the variance. Upon the roll call, all members voted yes, 5- 0, motion carried.

CASE 21-08: Todd Petersen for Paolucci Management Co., LLC 11850 Mayfield Rd., Chardon OH – requesting to construct an 80' x 30' seven-bay commercial storage building. Violates SEC. 407.2 Permitted Uses and Structures (in part) a commercial storage building is not a permitted use in the Commercial District.

CASE 21-09: Todd Petersen for Paolucci Management Co., LLC 11850 Mayfield Rd., Chardon OH – requesting to put a commercial building, driveway, and parking area 40' from the rear property line, with 62% lot coverage, 38% open space, and 0' from the west side property line for the existing and proposed new driveway extension. Violates SEC. 411 Minimum Dimensional Requirements-minimum rear yard setback is 50', maximum lot coverage is 50%. SEC. 407.5 General Requirements for Commercial District (in part) a. Maximum Lot Coverage-the maximum lot coverage for all buildings, parking, driveways, service areas, and other site improvements or amenities shall not exceed 50% of the total area of the lot; b. Minimum Open Space-the minimum open space shall be 50% of the total area of the lot. SEC. 511 Driveways (in part) driveways shall be a minimum of 15' from any lot line.

After asking Mr. Petersen and Mr. Herringshaw, it was decided that Cases 21-08 and 21-09 would be heard together. Chair Pilawa read the variance requests and violations. Mr. Herringshaw referred to the aerial view and explained the building would go behind the current structure; the driveway on the

west side is right against the property line as it goes back it is zero feet and has been there since 1994. Mr. Herringshaw explained photos he had taken showing the view to the south (towards Mayfield Road); view from Mayfield looking north; the proposed site of the commercial building with ODOT behind and views to the east and west. Mr. Ondrejka asked for clarification on lot coverage which Mr. Herringshaw confirmed included walkways, gravel, and parking areas.

Todd Petersen of 10680 Mayfield Road was sworn in. He referred to the aerial map and explained that a portion of the grassy area is going to be used to increase the parking area in the front. Historically one unit out of the three is empty but currently they are all leased.

George Paolucci Jr. of 11510 Butternut Road, Newbury explained that his father had previously requested storage units in 2012 when there was only one principal structure permitted. Mr. Herringshaw added that at the time res judicata was determined, but zoning changes had been made since and they are now asking for a seven-unit commercial storage facility. He explained that the property next door will have 90-units with two standalone buildings and a building in front. In 1994, the driveway was supposed to be put in at 15 feet but ended up being 0 feet. Mr. Petersen pointed out that the State of Ohio owns property to the rear, and they have two principal structures; and laniros to the west have three principal structures – a landscaping company, a residence, and a bakery. Mr. Petersen said they did their best to calculate percentages and setbacks. In reference to the use variance (21-08), Mr. Petersen explained that in combining the standards of if the hardship is unique to the property and does the regulation deprive the owner of a substantial property right, he said together it is unique by the manner in which the property is surrounded by all the structures. With respect to how the proposed use compares with nearby uses, Mr. Petersen compared it to the 90-units being put in next door. He commented there have been issues with the neighbor regarding where the water flows. In reference to if the property can be used in an economically viable manner, he explained the proposed use would provide economical flexibility when only two of the three units are rented. One was empty for five years. The property owner knew of the zoning restriction but with the zoning change was able to apply. There would be no impact on the public health, safety, and morals; it would be cold storage with no additional septic facility or drawing from the well and would have access for fire safety.

Chair Pilawa asked what the substantial property right was that is being denied. Mr. Petersen referred to the minutes of Case 19-19 in which the property owner next door to Mr. Paolucci's came to request a use variance for a 90-unit storage facility. He said he knows that no case sets a precedent, but felt if it hits on specific facts, it should be considered. He read a portion of the minutes into the record as follows: "Mr. Pilawa explained that a use variance is harder to get because the requirements are stricter. He provided the example that the community would not want a gun shop in proximity of a school. One of the questions is if the zoning regulations deprives the owner of a substantial property right. Mr. Pilawa felt this should probably be the focus since the requested use seems to fit the area." Mr. Petersen then referred to the discussion that followed the motion to approve that variance request and commented that it is rare to hit on all the facts. In that previous case they were requesting 81% lot coverage. Chair Pilawa asked again what property right he felt was being denied. Mr. Petersen responded that he ought to be able to use the property if nothing was negatively impacted, and referenced that in 1948 when zoning originated in Munson it was based on health, safety, and morals or welfare and said he never understood that when it is not. He could not find a reason not to have

this; he could understand if it were to be a car wash or something with 40 bathrooms. He said the next-door project was 12 or 13 times larger and was found to have no negative impact on neighbors. Chair Pilawa clarified that under a use variance application it asks how the zoning regulation itself deprives the owner of a substantial property right. Mr. Petersen commented that he does not know how to respond other than in Case 19-19 he felt he established the facts and was confused it is not considered the same. He repeated that there must be a good reason why this cannot be done – the project fits; the scoreboards are an appropriate fit; and 90-units were allowed and there is nothing to differentiate between the two. He commented that he still cannot figure out why it is not a permitted use; there will be no people there and the units will be locked.

Mr. Petersen then referred to Case 21-09 for the area variance. He supplied the following substantiation to the factors to be considered: there is a beneficial use; the variance is not substantial, and the driveway has been in existence since 1994. He explained that the driveway portion going back would go back to the rear of the storage units; the essential character of the neighborhood would not be altered and adjoining properties would not suffer a detriment for previously stated reasons; the delivery of government services would not be adversely affected; the predicament cannot be feasibly relieved through some other method for a storage building when they could put a more intensive use; the spirit and intent would be observed and substantial justice done; and the property owner presumed it could now be allowed with two buildings making it more palatable to the Board.

Chair Pilawa stated for the record there were 19 affected property owners notified in Case 21-09. Gerald Roberts of 8050 Wilson Mills, Chesterland had questions regarding the percentage of coverage. In looking at the diagram, he said the fence line in the rear is not the property line. The State of Ohio came in and re-marked the lines. Mr. Roberts asked who did the survey on the Paolucci property because he lost 20 feet and felt the proposed building would not be 40 feet from the rear property line. He added that the Ianiro and Rising Sun properties also lost footage. Mr. Roberts then asked Mr. Petersen to clarify where the drains go. Mr. Paolucci Jr. responded they all go south except for the curtain drain and leech field. Chair Pilawa explained the Board does not do investigations; that would be up to the zoning inspector. Mr. Herringshaw commented that he would need a survey; he goes by the stakes in the ground. Mr. Roberts met with the State of Ohio and between his property and their survey it is off by a foot. Mr. Petersen said he had no knowledge of the survey. Richard Beck submitted the map, and they used the existing pins. Mr. Petersen referred to the map and regarding the site plan asked Mr. Paolucci if it was his understanding that the two pins were the property line. Mr. Paolucci responded "correct." Mr. Ondrejka pointed out the site plan says 134 feet. Mr. Petersen responded he could not attest to that with the disclaimer that Geauga Realink is approximate. Mr. Roberts approached the Board and showed a photo on his cell phone that the pin is not next to the fence. He added that his objection is not about the building but the numbers. Mr. Petersen responded that he has no means to verify or not from a cell phone picture, and does not have a survey from the State of Ohio.

Chair Pilawa explained to Mr. Roberts that the Board has received his information, but they do not conduct surveys. Their role is like that of judges where people bring evidence to them. He said it would be wonderful evidence if he had something to back it up. Mr. Roberts felt the pins supported his argument. Chair Pilawa commented that he felt the time for that supporting evidence was before the meeting that evening. They do not investigate and there needs to be evidence in place for the meeting.

He explained the appeal process that begins 30 days after the approval of the minutes, and that the court does not take additional evidence after the evenings meeting.

Don Alexander moved and Danielle Pitcock seconded to approve the variance requested in Case 21-08 as submitted. Discussion following the motion included that Chair Pilawa thanked Mr. Petersen for going through the factors and felt they were met, and although he initially struggled with the substantial property right, he was convinced after the reference to what was discussed in the neighboring case two years ago. The hardship is unique to the property with how the zoning requirement caused it. Even though the property can be used in a reasonable economically viable manner it is still denying the property right. There would be minimal impact because they would not be occupied, and it could have easily been listed as a commercial use. Chair Pilawa explained that the Zoning Commission does the best they can but cannot possibly account for every use. He felt that seven of the eight factors were met and was inclined to believe that the zoning regulation denies the owner of a substantial property right. Upon the roll call, all members voted yes, 5-0, motion carried.

Chair Pilawa commented that he could not remember the last time he voted in favor of a use variance. Mrs. Pitcock responded probably two years ago in reference to the earlier cited Case 19-19.

Danielle Pitcock moved and Jim O'Neill seconded to approve the variance requested in Case 21-09 as written. Discussion following the motion included that the variance is not substantial; the essential character of the neighborhood would not be altered; affected property owners would not be affected with only one person against in regards to the numbers with no evidence to support the claim; the delivery of government services would not be adversely affected; with the change in zoning the predicament could not be feasibly relieved through some other method; the spirit and intent would be observed and substantial justice done by granting the variance; and although the applicant always loses with whether they know of the zoning restrictions or not the Board can consider all or some of the factors. Upon the roll call, all members voted yes, 5-0, motion carried.

The meeting was adjourned at 7:50pm.


Danielle Pitcock, Vice-Chair Date 10/20/2021


Paula Friebertsmauser, Secretary Date 10/20/2021