

# Board of Zoning Appeals Munson Township

Minutes of September 20, 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 Sarah Lane was also 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 October 18, 2023.

Don Ondrejka moved and Jim O'Neill seconded to approve the August 16, 2023, minutes as written. Motion carried 5-0.

**CASE 23-16: Joseph DiBlasio** 13170 Ravenna Rd., Chardon OH – requests to lease office space in a medical building to non-healthcare related professionals in the Medical Use District. Violates SEC. 409.2 Permitted Use-the permitted use in a Medical District is the occupancy; not including actual residency, by State-licensed health professionals devoted to the treatment of human beings, including M.D.'s, D.D.S.'s, chiropractors, and osteopaths.

Chair Pilawa read the variance request and violation. Zoning Inspector Jim Herringshaw was sworn in. He showed a photo of the exterior of the building that is on the west side of Ravenna Road. He said the only outward appearance would be a change in the sign. He clarified that there is no sign variance, he was just looking at the whole picture.

Dr. Joseph Anthony DiBlasio was sworn in. He explained he was asking permission to lease space to non-medical professionals. In 1959 the idea was to develop a Medical District and for years there really was an uptick, but medical use has changed in the last 8 to 10 years. Physicians are employed by either UH or the Cleveland Clinic and where they place their offices are guided by that. There are only a few physical buildings left for independent doctors - there is only their building, Dr. Gardner's, and Dr. Naft's prosthetics that are privately owned. All the rest have been purchased by University Hospitals. He is proud of UH but the field has changed. He has two vacant spaces in the building for the past 2 and ½ years. He had a sign up and was on loop net and received one response; they have had multiple

inquiries from lawyers, finance people, and tax professionals and have consistently said no. The new Geauga County offices have opened by the hospital and he felt even that speaks to the changes. Chair Pilawa asked if there were any potential tenants waiting for the results of the hearing. Dr. DiBlasio said no, but he had two inquiries in the last couple of months – a tax person and a psych person.

Chair Pilawa stated for the record that 43 affected property owners were notified in Case 23-16. Evelyn Siu of 12220 Nantucket Drive was sworn in. She requested that the Board respect the comprehensive Zoning Resolution in the interest of public health, safety, prosperity, or general welfare. They chose this rural area for those reasons. She expressed a safety concern in that the additional business would increase traffic on the street. Secondly, regarding prosperity, she felt the maintenance of their property value would be impacted. There are 25 homes on the street and one recently sold for \$573K and one for \$505K sold in February. There is \$10 million of real estate value in the neighborhood; five times that of the building in question. She stated that their neighborhood provides \$150K in taxes; two and a half times more than Dr. DiBlasio. Ms. Siu wanted to know who defines non-healthcare professionals and who polices this. She was concerned with what kind of customers clients would bring into their neighborhood. She said the property has 250 feet of frontage on Nantucket and who knows what buildings or driveway could go in. Geauga County mental health office building fought for a driveway to be on Route 44 instead. While she sympathized with Dr. DiBlasio's situation, it has always been a residential area. She is not sure why they would want to expand. She asked for the variance to be denied.

Chair Pilawa viewed the Board's duty differently than Ms. Siu. He explained that what is being asked for is permitted in zoning. They are not doing something contrary to zoning. They are limited to reviewing and granting or denying variances which is provided for in the book. Ms. Siu referred once again to Article 1 where the Township is responsible for safeguarding public health, safety, etc. Zoning Inspector Herringshaw commented that she brought up it was a residential district, however, it is the medical use district and would remain that. Mr. Ondrejka commented that they are not requesting to change the access to the building, just the use. Ms. Siu pointed out that non-healthcare professionals are not defined. Chair Pilawa responded that he understood her concern with a lack of definition, but no one knows who is going to the existing offices now; it is the same issue. Mr. Ondrejka added that if additional spaces were used for medical or other use the traffic would be the same.

Elizabeth Hoelzle of 12696 Klatka Drive had some concerns but saw it more as a benefit.

Dr. DiBlasio commented that he has been there 30 years and was aggrieved that his neighbors feel threatened. The 250 feet of frontage is fully wooded and would be left untouched. In the rear there are 200 feet of woods. Ms. Siu said she hoped they took no offense to it, but with no definition of what to expect she was concerned.

Patrick Lavelle of 12696 Klatka Drive commented that no one knows who is going to medical or non-medical and he did not think it mattered.

Roger Simpson of 11350 Butternut, thought they have a nice building and he would hate to see it fall. He reiterated that we do not really know what type of person is going in there.

Chair Pilawa commented that with a couple of vacant offices in a medical district he would expect there would be few tattoo parlors there; maybe a marijuana distributor if the issue passes but doubted a motorcycle repair would move in there. Ms. Pitcock commented that a medical equipment office would be a good fit. Mr. Ondrejka added that you go where your customers are. Mr. Tomaric explained that he has been in the building many times and has never passed anyone in the corridors. The building looks professional and he thinks it will attract professionals. He provided an example of a doctor's office seeing 10-plus people a day versus an accountant meeting one to two people. He felt we should trust that it will attract professional people.

Don Ondrejka moved and Joe Tomaric seconded to approve the use variance requested in Case 23-16 as written. Discussion following the motion included: the hardship is zoning itself as the use has changed in the industry; the zoning regulation originally did not deprive the owner of a property right; the property cannot be used in an economically viable manner as it is going to sit empty due to the fact that there are no longer independent medical professionals; the medical use not residential compares uniquely with nearby uses; the hardship is not self-induced, but zoning induced; as stated in the application, the current regulation allows medical care for the area, however independent medical practitioners are almost non-existent and as a result the rental market is changed; adjoining properties will not be harmed, there will be no change in the ingress and egress and the barriers will remain; and the property owner did have knowledge of the zoning restriction. Mr. Tomaric pointed out that there are many appointments via the phone or zoom and medical dynamics have changed. Upon the roll call, all members voted unanimously, 5-0, motion carried.

Ms. Siu asked if the Board had the authority to say someone needs to define non-professional means. Chair Pilawa responded they do not – they say yes or no. It happens at times when two parties go out of the room and discuss the situation. Ms. Siu questioned what would be done if there was some situation where a tenant was creating something unhealthy. Chair Pilawa explained the granting of the variance does not change the law as far as criminal activity. They have very little authority. They do not write the regulations and are impartial board members. The policing authority would be the zoning inspector.

Susan DiBlasio was sworn in. She assured Ms. Siu that with an OB/GYN in the building and elderly people no one would be inappropriate there. She handles the leasing. They have a track record and plan to continue.

**CASE 23-17: Breanne Evans** 11678 Sycamore Rd., Chardon OH – requests to construct a deck/patio 9' from the rear property line. Violates SEC. 411 Minimum Dimensional Requirements-the minimum rear yard setback is 40'.

Chair Pilawa read the variance request and violation. Zoning Inspector Herringshaw pointed out on the site plan that the site is made up of four parcels and because they got an Affidavit of Fact which allows him to ignore the interior lines, they only need a variance for the rear setback. He explained they are part of Bass Lake community and the home itself is 31 feet from the rear lot line. He took photos of the view toward the rear property line, proposed location, and what the neighbors would see. Chair Pilawa commented that it is not unlike many of the cases before from the Bass Lake community.

Breanne Evans was sworn in. She commented that the zoning inspector did a good job of presenting their case. Their request is to put a deck on the back. The area that would be the closest to their neighbors is wooded. She explained that most of their space is in width not depth. Chair Pilawa commented that in the past they have talked about nonconforming language in the book which has now been fixed.

Chair Pilawa stated for the record that 36 affected property owners were notified in Case 23-17. There was no public comment.

Joe Tomaric moved and Jim O'Neill seconded to accept the variance requested for 11678 Sycamore as written. Findings of fact following the motion included: there can be a beneficial use but it will always be nonconforming; the variance is not substantial in Bass Lake community, the essential character of the neighborhood would not be altered in accord with what has been done historically in Bass Lake community; adjoining properties would not suffer a detriment based on evidence; the variance will not adversely affect the delivery of government services; 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 when the Board talks about the factors they have to consider, they feel that whether the property owner purchased the property with knowledge of the zoning should always be yes. Upon the roll call all members voted yes, 5-0, motion carried.

**CASE 23-18: Rocco Orlando** 12679 Klatka Dr., Chardon OH – requests to keep an existing 13' x 24' detached garage 7' from the existing principal structure. SEC. 509.3 (in part) Accessory structures shall not be closer than 15' to the principal structure.

Chair Pilawa read the variance request and violation. Zoning Inspector Herringshaw pointed out the building on the site plan. He explained that when they came in to put an addition on the home, he noticed the accessory building. He showed a photo taken from the road and the most affected property owner.

Rocco Orlando was sworn in. He explained they moved in 10 years ago and needed space for a vehicle and odds and ends. He did not want to spend a lot and did not know the rules. Unfortunately, it is too close to the principal structure.

Chair Pilawa stated for the record that there were 37 affected property owners notified in Case 23-18. Elizabeth Hoelzle commented that she and her husband Patrick live across the street and are in support of the variance. She felt the Orlando's are respectful and thoughtful and they have no concerns regarding aesthetics or safety and felt it was reasonable to allow them to keep the structure. Patrick Lavelle added that the color matches the house and it looks like it belongs there.

Don Ondrejka moved and Joe Tomaric seconded to approve the variance requested for 12679 Klatka Drive Case 23-18 as written. Chair Pilawa asked the Board if they thought any one of the Duncan Factors should be denied. The Board members said no and upon the roll call, all voted 5-0, motion carried.

The meeting was adjourned at 7:42pm.  
 10/18/2023  
Dennis Pilawa, Chair Date  
 10/18/23  
Paula Friebertshauser, Secretary Date