

Board of Zoning Appeals

Munson Township

Minutes of August 20, 2015

Chair Bobbie Nolan called the meeting to order at 6:30pm with Gabe Kezdi, Richard Wright, Alternates Danielle Pitcock and Michael Waclawski, Secretary Paula Friebertshauser and Court Reporter Nayann Pazyniak present. Don Alexander and Lucy Longo 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 Gabe Kezdi seconded to approve the July 16, 2015 minutes as written. Motion carried.

Mrs. Nolan read an email to Secretary Friebertshauser from Lucy Longo submitting her resignation to the Trustees. Mrs. Nolan acknowledged Mrs. Longo's many years of service to the Township and residents.

Continued: CASE 15-10: Todd Petersen, 11579 Lake Rd., Chardon OH – request to install an in-ground swimming pool with an automatic retractable safety cover in lieu of a fence. Violates SEC. 514.3 (in part) Private Swimming Pools – in ground swimming pools shall be walled or fenced prior to use in order to prevent uncontrolled access by children from any road or adjacent property.

Zoning Inspector Tim Kearns was sworn in. He read the variance request and violation and presented photos.

Todd and Susan Petersen were sworn in. Mr. Petersen approached the table and indicated where the lake is in proximity to the pool. He explained that the cover would have manual operation with a key override which was voiced as a prior concern. He summarized that it would hold 485 pounds - a mother, father and child; and that it would not pull away from the sides or accumulate water when someone is on it. These facts were supplied by the American Society for Testing and Materials. Mr. Petersen addressed a question that was raised at the prior hearing in that would there be liability on the Board or Township. He had followed up with legal counsel and discussed that it would be suggested the liability to the Township would be like a judge questioning "what if" and that a decision should be based on the factors. Mr. Petersen reiterated that he has a 12 foot wide bridge and the rest of the property is impenetrable by foot. He commented that the Smith's are probably the closest at 1000 feet. Mrs. Nolan commented that she thought they were around 550 feet. He explained someone

would have to come up the drive and go through the lawn and fence between the house and pavilion to get to the pool.

When asked how deep the trough was and if it was covered, Mr. Petersen said it is probably a foot in depth and is not covered or it would not function. Mrs. Nolan asked about the spa being covered. Mr. Petersen explained it has a hard cover which is locked down and allows them to save electricity. Mrs. Nolan asked if the trough is drained in the winter. Mr. Petersen responded yes or it would not continue flowing. She wondered how high the outer wall would be backfilled. Mr. Petersen responded all the way up because they want to make it look like the water is going into the lake. When asked if the other walls would be backfilled, Mr. Petersen approached the table and drew on the site plan explaining the dynamics of the property.

For the record, Mr. Petersen questioned his wife Susan. She confirmed she is his wife and they have four kids. She responded she is concerned about safety and they even call her "Safety Susan". She confirmed the cover can hold a mom, dad and child and can be locked as opposed to someone walking through a gate. She added they have researched and talked to individuals who have covers and the pool representative.

Mr. Petersen said they truly believe that a cover is safer than a fence. He pointed out that the fence required by the resolution has a 200 lb. give - their cover would hold a 485 lb. force. He provided examples of how serious they are about safety in that they have a liquor cabinet in the basement that is locked, and his wife has said no to a diving board and slide. She has been an injury lawyer for 17 years and does not take safety lightly. Mr. Petersen stated that the resolution says "prevent uncontrolled access by children from any road or adjacent property" - he pointed out it does not say from residence; they are there to prevent that.

Mrs. Nolan commented that she still has a problem with safety in regards to the neighbors. She asked if someone drives down Lake Road would they make a left or a right onto the driveway. Mr. Petersen approached the table and drew where the driveway starts as an exhibit. And, as he explained previously, there is an access that the Fire Department asked him to leave open. He is going to put in a manual gate hopefully this year. He explained the plans he has prior to completing the gate that would entail having the road repaved first. He offered to put up a temporary 15 foot farm gate if it would be a condition. He felt at that point they are getting far down the line of what else they can do.

Mrs. Nolan asked if the Board wanted to recess. The Board recessed at 6:59pm. The meeting resumed at 7:12pm. Mrs. Nolan asked if the Board had any further questions. There were none. She stated for the record that 16 affected property owners were notified in Case 15-10. There was no public comment. Mr. Petersen clarified that the trough was one foot deep and that it does not hold water, but catches it.

Richard Wright moved and Gabe Kezdi seconded that the variance requested in Case 15-10 by Todd Petersen as written be rejected and not approved. Discussion following the motion included: there is a beneficial use - a lot of houses don't have a pool; the variance is substantial the way the zoning is written; the essential character of the neighborhood would not be altered as it is out of sight; adjoining properties will not suffer a detriment from what you see but there are concerns as stated; the delivery

of government services will not be adversely affected; the predicament cannot be feasibly relieved through some other method than a variance; the spirit and intent behind the zoning would not be granted because of the community in total; and the property owner did not know of the zoning restriction. Mrs. Nolan added that under spirit and intent the zoning resolution is for the safety of all the residents of the township and all residents include you and your children would be safer with a fence around the pool. She added that she knows he had the pool guy's testimony regarding the cover, but from the US Consumer Product Safety Commission they also recommend a barrier, alarms and safety covers since no safety measure is foolproof and none of them are sufficient to serve as the sole safety system for a pool. Mrs. Nolan commented that she does have a pool with alarms and a fence. She is not trying to punish the Petersen's but keep their children safe. Mr. Petersen asked if all the considerations were discussed in executive session. Mrs. Nolan replied that some were and that they are allowed to meet in executive session. Upon the roll call all members voted yes, 4-0. Motion carried.

CASE 15-11: Walter Buehner, Parcel #21-176429 Ravenna Rd., Chardon OH – request to construct a 36' x 48' accessory building on a vacant lot with no frontage. Violates SEC. 502 Frontage Required – no new lot shall be created nor shall any building or structure be erected upon a lot which does not possess the required minimum frontage upon a public or private road established for the district in which such lot is located.

Zoning Inspector Tim Kearns read the variance request and violation and presented a picture of Mr. Buehner standing in the proposed location located on the northwest corner of the landlocked property. Walter Buehner was sworn in. Mr. Wacławski asked what the access drive next to his property was used for. Mr. Buehner responded it is access to a well and his son owns the property. Mr. Wright questioned that with all the land he has why does the structure need to be so close to the property line. Mr. Buehner responded that he wants it closer to the house. Mr. Wacławski asked if he bought the lots as two separate parcels. Mr. Buehner explained it used to be one lot of 100+ acres owned by his dad that went all the way to Aquilla. It was split up within the family. When asked who would build the structure, Mr. Buehner said he was waiting for quotes. It would have electricity and be used to house cows, chickens and maybe a horse. When asked why he wasn't applying for an agricultural permit, Mr. Buehner said he would probably put tractors and other stuff in there as well. When asked if he would continue the drive, Mr. Buehner said no. And, when asked how far it would be located from the drive in case of fire, he replied 150+ feet.

Mrs. Nolan stated for the record that 28 affected property owners were notified. There was no public comment.

Michael Wacławski moved and Danielle Pitcock seconded to approve the variance request in Case 15-11 as written for a pole building. Discussion following the motion included: there is a beneficial use as the appellant resides there; the variance is not substantial because it is a vacant property; the essential character of the neighborhood would not be altered because it is far back; adjoining properties will not suffer a detriment; the delivery of government services will not appear to be affected; the predicament cannot be feasibly resolved in any other manner; the spirit and intent would be observed and is deserved; and the property owner did not know of the zoning restriction. Upon the roll call all members voted yes, 5-0. Motion carried.

CASE 15-12: Ronald Nelson, 10250 Mulberry Rd., Chardon OH – request to construct a 1,605 square ft. accessory building 12 feet from the west side property line. Violates SEC. 411 Minimum Dimensional Requirements – minimum side yard requirement is 25 feet.

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

Ron Nelson was sworn in. He noted that his name is on the deed along with his daughter's. He presented a picture that showed where the structure would go and pointed out the septic field. He explained the driveway would be gravel and would continue straight back. The structure would be located 93 feet from the home. It was verified that the well is in the front. When asked who would build the structure, Mr. Nelson said he would with some help. It would have a cement floor and electric, but he was not sure about water. Mr. Wright commented that it seemed more than a garage. Mr. Nelson explained the structure will be used for a camping trailer; his son-in-law has a work van; there would be an open patio, and the area denoted for a kitchen would maybe have a sink and small refrigerator. They would also store bikes, lawn mower, snow blower, etc. Mr. Nelson thought the houses around there must have gotten a variance because the lots are only 150 foot wide. He referred back to the drawings and pointed out where the two gables would be located. Mrs. Nolan asked if his daughter would like to speak but she said no.

Mrs. Nolan stated for the record that 34 affected property owners were notified. Joe Tomaric of 10220 Mulberry was sworn in. He explained they are the immediate neighbor to the west and their home is 25 feet from the property line. He pointed out that the Green and Nelson families have owned the house for 8 years. There have been problems with noise and water run-off and they have gone to the Trustees with these issues. In the last month, the neighbor's habits have changed which they have really appreciated. Mr. Tomaric explained their property is lower and all the water runs down. Prior to the Green's home being built they had a swale, but the contractor destroyed it, and the curtain drain that was put in was destroyed as well. Mr. Tomaric felt if they put in this building it would be 1600 square feet of land that would not hold water; so instead of 25 feet of absorption it would be cut to 12 feet. Mr. Tomaric felt the size of the building, a 15 foot gutter, and a 55 foot long wall would destroy his property value. He designed his barn with gingerbread trim and nice trees so it would be a nice view from his house. He also pointed out that considering the dimensions the overhang may be 10 feet; and if a simple design, it would not fit in with the character of the neighborhood. Mr. Tomaric continued his objections by saying that when they plow the driveway at 12 foot off the line they will be shooting snow and stones which would increase the water problem. If the building is 18 foot tall it would give off shade in the only place he can put a garden away from the black walnut trees. In regards to the use, Mr. Tomaric explained the son-in-law would be cutting carpet in the building. Mr. Tomaric said he is a contractor and wondered how they would get a big roll of carpet into the building and wondered if it would be for a commercial purpose. He also questioned if a kitchen was put in how would gray water be handled. He pointed out that Geauga Soil & Water has rules and regulations and anything constructed over 300 square feet should have a water and sediment control management program. He addressed that with a young family that enjoys parties there would be speakers in the house and on the patio, and it has been enough of a challenge just coming from the house.

Mimi Tomaric was sworn in. She commented it has been an emotional issue for them, but wanted to thank Mr. Nelson and his daughter for their cooperation in the last month. She felt there has been a lot of misperceptions. She said Mr. Nelson had come over to their home and she felt the Green family has tried to curb things and does not want there to be any repercussions now. Mrs. Tomaric showed pictures taken from their deck that showed a white stake indicating the property line. Mrs. Tomaric explained they live in a unique place where the houses are closer and they live on a hill. She added they spent \$3,000 on trees along the property line. She showed a picture of the barn her husband built and pictures of their other neighbor's barn that does not impede on them. She mentioned a lot of trees had to be cut down for the proposed structure. She understood they need a place for their camper and truck, but if they moved it 25 feet in they would not see it. Sitting on their deck they do not want to see 55 feet of wall; and in reference to the essential character of the neighborhood, there is no neighbor around with a barn that big. Their concern is it is a party area - the police have been called about ATV's and noise and there is nowhere they can go in their home to get away from it. They are concerned with the driveway being 12 feet away from their gazebo. They have been there 35 years and were hoping for a better relationship. Mrs. Nolan asked the Tomarics to come up and look at the drawing. She pointed out that part of the problem in moving the building over is the septic. Mr. Tomaric agreed but suggested it could be rotated and put closer to the home.

Mr. Nelson explained it would be easier to move the building up but instead of 90 feet back it would only be 30 feet and closer to the Tomaric's home. He cut down shrubs and overgrown thistle. When he was asked if the size could be cut down and moved over 25 feet, Mr. Nelson explained the water was a big issue before they bought the property in 1990 and pointed out that the Tomaric's water runs down to the next neighbor - the building would not affect them. He explained the water drainage and that he had taken a transit out and it is flat in the back. The downspouts would go out to the ditch. Mr. Nelson also dug out the French drain even though their responsibility to maintain it for 20 years was long past. When questioned about the kitchen use, Mr. Nelson commented that it has the wrong connotation, it would not be a full kitchen. When asked if he could move the structure back, Mr. Nelson responded he could stay at 25 feet but he would have to bring the building up - there are no other options. Mr. Nelson pointed out that the water in the back runs away from the Tomarics. When the appearance of the structure was questioned, Mr. Nelson said it would be sided to match the house and the 55 foot side would have windows.

Kesley Green, Mr. Nelson's daughter, was sworn in. She explained her father has designed two homes, one was a million dollar home and he would not want to put something on her property that is not beautiful.

Frank Cercek of 10200 Mulberry Road was sworn in. He stated that in regards to the water runoff he has a retaining wall with a section that has to be taken down because of erosion. He was concerned there would be more runoff. He also questioned if the ATV's would run around the proposed barn because they are not pleasant to listen to. Mrs. Nolan explained the Board is present to hear about a variance for a barn. She noted she also lives at the bottom of the hill and water comes in their direction as well. Mr. Waclawski pointed out they are talking about the water from the front; the barn would be in the back. Mr. Waclawski asked how deep Mr. Cercek's house was because the structure is another 200 feet back and has nothing to do with the water in the front. Mr. Cercek commented that the other concern is parties. Mr. Nelson assured those present they have tried to be more considerate but his

daughter does have five children. Mr. Nelson also responded that with the building at 12 feet from the line the ATV's would not be going around it; but if it were to be at 25 feet, they probably would. He reiterated the water does not go that way. Mr. Tomaric commented that he worked 5 1/2 years surveying and has a lot of experience and pointed out that water does go around their deck and gazebo. Mr. Nelson responded he really tried to get it back farther even though his son-in-law did not want it that far. Mrs. Tomaric thought he really did think about that but is concerned with the noise issue and how the structure will be used with their lots so narrow. Mr. Nelson reiterated that 8 years ago his daughter did not have five kids; the structure will not be used for commercial use - it may be used to just trim a piece of carpet down so it will fit easier; and his son-in-law will not be bringing in trucks. Mrs. Nolan pointed out that it can be reported if there seem to be commercial use. When asked what is the furthest the building could go from the property line, Mr. Nelson replied 10 to 12 feet away. Mr. Kearns added it is already 15 feet from the leech bed. Mrs. Tomaric commented that if it were moved over their trees would hide it. David Mapes of 10260 Mulberry Road voiced concern regarding the size of the building because at 1600 square feet it is like another house. He is glad it could not be used commercially. Mr. Mapes explained he is on the east side so drainage is not an issue. Mr. Wacławski asked him how water is in his back yard. Mr. Mapes replied it isn't bad, it slopes down and there is a small pond in the back. Mr. Nelson said by putting the building back they left two huge bushy trees; if they moved it up he would have to take one down.

The Board recessed at 8:23pm. The hearing resumed as 8:32pm.

Mr. Nelson again said they did take some trees down where the garage would go but left a bank of trees. Mr. Wright asked where the ATV's are stored. Mr. Nelson replied they are currently stored in the garage and under the house.

Richard Wright moved and Danielle Pitcock seconded that Case 15-12 as requested by Ron Nelson be approved as written. Discussion following the motion included: there is a beneficial use - they have owned it for eight years; is the variance substantial? - no, you're looking for ways to store things; the essential character of the neighborhood would not be altered; adjoining properties - some neighbors stated strong opinions, but the Board would say there is no other option; the delivery of government services would not be adversely affected; the predicament cannot be feasibly relieved through some other method; the spirit and intent would be observed and substantial justice done - yes, the Board feels that there are not too many options with the lot sizes and allowing the outbuilding to be constructed is not violating the spirit and intent; and the property owner said no regarding having knowledge of the zoning restrictions. Mr. Wright added that with the nature of the topography there are definite issues to work together with the neighbors that don't relate to the 12 feet; they are moving it back whether 12 or 25 feet when you are looking back 100 feet in my opinion it is not significant. Upon the roll call, all members voted yes, 5-0. Motion carried.

CASE 15-13: Maria Nice, 12715 Klatka Dr., Chardon OH – request to construct a 30' x 32' accessory building in front of the home. Violates SEC. 509.2 No garage or other accessory structure shall be erected within the front yard of any district.

Zoning Inspector Tim Kearns read the variance request and violation and presented pictures of the property of the proposed site.

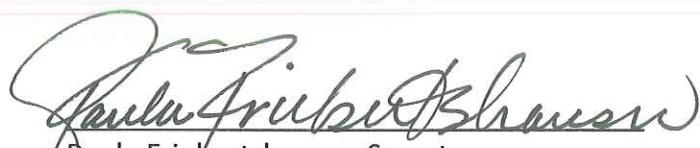
Dominic Laudato was sworn in. He explained the structure would be 50 feet in front of the home to the west of the corner of the house. Mr. Wright asked if it would be a garage or accessory structure. Mr. Laudato responded "pole barn". It would store an ATV, lawn furniture, lawn mower, etc. When asked who would be constructing the building, Mr. Laudato said he would - he is in the trades. When asked, he said it would have electric only. Mr. Wright asked if there were any possibility of moving it. Mr. Laudato explained there is a septic field on the west side of the garage and a 10 to 12 foot high boundary on the east side. Mr. Kezdi confirmed that the Laudato property is on the turnaround and the house cannot be seen from the road. Mr. Laudato confirmed it is all wood and the barn probably would not be seen from the road either. It would be sided to match the house.

Mrs. Nolan stated for the record that 31 affected property owners were notified in Case 15-13. There was no public comment.

Michael Waclawski moved and Gabe Kezdi seconded that in Case 15-13 for a variance request for an accessory building in front of the property be approved. Discussion included: there is a beneficial use; the variance is substantial due to the setback, but is not that substantial to the side because trees block it; the essential character of the neighborhood would not be altered because it won't be seen; adjoining properties would not be affected; the delivery of government services would not be affected because it is only 50 feet from the house and there is a driveway; the predicament cannot be feasibly relieved through some other method; the spirit and intent would be upheld and it would be constructed well; and the property owner did know of the zoning restrictions. Upon the roll call, all members voted yes, 5-0. Motion carried.

The meeting was adjourned at 8:50pm.


Bobbie Nolan, Chair


Paula Friebertshauser, Secretary