

Board of Zoning Appeals

Munson Township

Minutes of September 15, 2022

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

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 on October 20th.

Mr. Pilawa stated that he was an affected property owner in Case 22-15 and would recuse himself. Ms. Maver would serve in his place.

A resident asked if a case had several variances are each looked at separately or is it all or nothing. Mr. Pilawa explained that a variance has violations, not four variances and is heard all together.

Roger Simpson moved and Joe Tomaric seconded to approve the minutes of August 18, 2022, as written. Upon the roll call, the Board voted unanimously in favor, 4-0 (Ondrejka, Tomaric, Maver, Simpson), motion carried.

CASE 22-15 Capricia Penavic Marshall 10669 Wilson Mills, Chardon OH – requests to keep 2 existing accessory buildings – one approx. 28' from the rear property line; the other approx. 22' from the east side property line and approx. 14' from the rear property line; and a driveway extension approx. 12' from the west side property line. Violates SEC. 411 Minimum Dimensional Requirements – minimum side yard requirement is 25 feet; minimum rear yard is 40 feet. SEC. 511 Driveways (in part) Driveways shall be a minimum of 15' from any lot line.

Vice-Chair Danielle Pitcock read the variance request and violations. Zoning Inspector Jim Herringshaw was sworn in. He presented a notarized letter from Ms. Marshall stating that although she intended to attend the meeting her mother came down with COVID. Ms. Marshall's mother is 94 and she is selling the property. Her cousin, Geoff Mangino, would be her representative. Mr. Herringshaw explained that Ms. Marshall wants to clear up any issues for potential buyers. He referred to the aerial views and explained they are not exact. Label B is 22' from the lot line. Mr. Tomaric asked if any of the buildings

were occupiable residences. Mr. Herringshaw responded no they are not; they are just accessory buildings that need major repair. Mr. Simpson asked when they were constructed. Mr. Herringshaw explained the driveway was put in in 2006 and it appears the accessory buildings sometime between 2008 and 2010.

Ms. Pitcock read Ms. Marshall's notarized letter into the record. Geoff Mangino of 12091 Cora Ct., Concord, was sworn in. He explained that the building near the back property line (labeled A) was the original barn that his Uncle Frank did not build. He took it mostly down and kept the foundation and turned it into a workshop. He said his uncle built the others and the property was a gathering place for everyone to come visit. He put in the second driveway to accommodate all the visitor vehicles. He explained they are trying to sell the property as his aunt now lives in DC with his cousin who is her caretaker.

Mr. Herringshaw commented that Ms. Marshall flew in with her mother to fill out the application. Mrs. Penavic's husband had fallen and after that his memory was not the same and something was just not right. Up to that point, Mr. Penavic had come in for zoning permits. Ms. Maver commented that there was already a foundation for building B. Mr. Herringshaw clarified that Mr. Penavic came in for the middle structure not for A and B; those structures already existed.

Mr. Mangino reiterated that no one can live in or rent the structure. There was a leak, and it is damaged. Mr. Herringshaw said Ms. Marshall has a contractor removing a lot of the interior and it will be a large accessory building.

Mr. Pilawa stated for the record that 49 affected property owners were notified in Case 22-15.

Andrea Wolf of 11708 Fowlers Mill Road was sworn in. Her property buts up to where structures A and B are located. She asked that since they are already existing, if the variance does not pass do the buildings have to be removed. Mr. Pilawa responded that that would be the expectation. She commented there is a lot of stuff behind the building and on her property. Mr. Herringshaw offered that she could contact the property owner. Mr. Pilawa commented that that is a good example of the Board's limited authority. They act only on the variance as presented.

Dave Brentar of 10643 Wilson Mills lives next door and asked how far off the line the driveway is. Mr. Herringshaw responded that the auditor's website shows the closest edge to be approximately 12 to 15 feet. Mr. Brentar commented that Mr. Penavic got a permit but kept adding on. Mr. Herringshaw said the engineer's office has no permit for the driveway but normally when it goes to the road, they require one. Mr. Herringshaw said it was a farm road some time ago, but after 2008 a permit was required from the engineer's office and Mr. Penavic should have come in for an extension. Mr. Brentar commented that it was basically a party center; he added onto the barn and was living there. Mr. Herringshaw responded that he came in for a zoning permit in 2008 for a pole barn and porch. Whatever else was added Mr. Penavic did not file for a permit with anyone. Mr. Herringshaw noted that Ms. Marshall would be ripping all that out and it cannot be advertised as a living space. Mr. Brentar commented that the driveway is not 12 feet. Mr. Herringshaw said they cannot know for sure unless it were to be surveyed. Tia Brentar was sworn in. She said they have been there since 1985. They came in because of the unknown. They adored the Penavic's and did not care about the driveway.

Mr. Penavic worked until he fell. Mr. Herringshaw commented they are not taking down the building; they have a zoning permit for the accessory building/garage.

Ms. Pitcock reiterated that the variance in front of the Board is to keep two accessory buildings and get a variance for the driveway. Deborah Burt of 17511 GAR Highway and the Penavic's current realtor, agreed with everything Mr. Mangino said. She added that when she looked at the property, the driveway was one of the most beautiful things on the property. She said that Ms. Marshall wants to make everything right whatever she has to do. Mr. Mangino commented that no one can live in the one building, and he did not even know the garage was there. He had a greenhouse. He said he would let his cousin know about cleaning up the property. Ms. Burt said the people she has talked to that are interested in the property want to bring it back to life.

Carol Maver moved and Don Ondrejka seconded to approve the variance requested in Case 22-15. Discussion of the Duncan factors were as follows: there is a beneficial use of the property with the existing house and pole barn; the variance is not substantial as they are requesting to keep what is existing; the essential character of the neighborhood would not be altered as everything is existing; adjoining properties would not suffer because there is no additional detriment; the delivery of government services would not be adversely affected because there is a driveway to everything; the predicament can be feasibly relieved by removing and demolishing the structures; the spirit and intent behind the zoning would be observed and substantial justice done by granting the variance and it may increase the property value; and we don't know if the property owner knew of the zoning restriction because he is deceased. Mr. Tomaric confirmed that the original foundation was for the barn (A). Mr. Herringshaw said yes, and he did not think any of them were in great condition. Mr. Mangino said in the 70's the barn was falling down. Mr. Tomaric countered that if A and B were in such disrepair would they have to get a permit to take them down and rebuild. Mr. Herringshaw responded yes, if they were totally removed, they would have to rebuild them to our standards; otherwise, they can repair them. Upon the roll call, members voted as follows: Mr. Ondrejka, yes; Ms. Maver, yes; Mr. Tomaric, yes; Mr. Simpson, no; and Ms. Pitcock, yes. Motion carried 4-1.

CASE 22-16 David Payne of Payne & Tompkins 10690 Mayfield Rd., Chardon OH - requests to construct a 12' x 28' patio 3.3' from the rear property line. Violates SEC. 411 Minimum Dimensional Requirements – minimum rear yard is 50 feet.

Mr. Pilawa resumed his position and read the variance request and violation. Zoning Inspector Herringshaw referred to the site map/aerial view and explained the right corner of the building is on the lot line and is nonconforming. He explained that the property owner had come in for multiple variances including a lot split between the Brown Barn and Todd Petersen. The grey block indicated the patio location, and he commented that there is a big drop-off behind.

David Payne of 10634 Cedar Road, Munson, was sworn in. He said they have invested in the building and have made substantial renovations. They finished offices on the first and second floor. There is an unfinished basement with a walk out at grade level but is entirely buried in the front. He explained there is a 12-foot area that is flat and then slopes towards Alpine. They would like a concrete pad for a team break area. It would not be appropriate in the front of the building for their business. It would

not be seen from the front and there is a dense tree canopy. He added that the entire building is nonconforming so anything outside of the typical building envelope needs a variance.

Mr. Pilawa stated for the record that there were 28 affected property owners. There was no comment.

Joe Tomaric moved and Don Ondrejka seconded to accept the variance request for 10690 Mayfield Road. Discussion of the Duncan factors were as follows: adjoining properties would not suffer any detriment; the variance is substantial but we agree with the appellant that what is there is not significant; the essential character of the neighborhood would not be altered; the delivery of government services would not be adversely affected; the spirit and intent behind the zoning would be observed and substantial justice done by granting the variance; and the property owners did know of the zoning restriction. Upon the roll call, all members voted yes, 5-0. Motion carried.

CASE 22-17 Frank Blaha 12709 Ravenna Rd., Chardon OH – requests to construct an accessory building 2' from the south side property line and 5' from the principal structure. Violates SEC. 411 Minimum Dimensional Requirements – minimum side yard is 25'; SEC. 509.3 (in part) accessory structure shall not be closer than 15' to the principal structure.

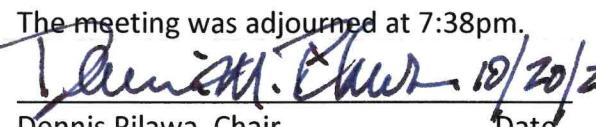
Mr. Pilawa read the variance request and violations. Zoning Inspector Herringshaw referred to the site map and showed the proposed location. He explained photos taken that showed what it would look like aesthetically and the view from all directions. He pointed out that the driveway to the south goes all the way back on a flag lot. The structure cannot go in the back because of the well. Mr. Simpson asked if the other building on the property is on a foundation. Mr. Herringshaw responded that Mr. Blaha would have to answer that.

Frank Blaha was sworn in. He explained he would like to construct an accessory building to house a tractor and truck. He said there is no where else to put it without having to cross over someone else's property for ingress or egress. It will be a single-story structure with a loft. When asked if it would have electricity or water Mr. Blaha said it would not. The loft area would just have extra attic space. Mr. Blaha responded that the other building is on a pad.

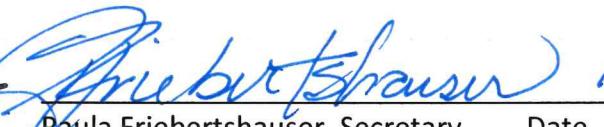
Mr. Pilawa stated for the record that there were 27 affected property owners notified in Case 22-17. There was no public comment. He acknowledged a letter from affected property owner Jacqueline Burkey and explained that the Board cannot accept it as evidence as it cannot be cross-examined.

Joe Tomaric moved and Don Ondrejka seconded to approve the variance requested for 12709 Ravenna Road to construct an accessory building two feet from the south side property line and five feet from the principal structure. Discussion included that there were no objections raised and with the circumstances of the well location, the request meets all the criteria of the factors. Mr. Pilawa explained that with respect to an area variance the Board considers the Duncan factors but does not have to give equal weight to any of them. Upon the roll call, members voted as follows: Mr. Ondrejka, yes; Ms. Maver, yes; Mr. Tomaric, yes; Mr. Simpson, no; and Ms. Pitcock, yes. Motion carried 4-1.

The meeting was adjourned at 7:38pm.

 Dennis Pilawa, Chair

Date

 Paula Frieberthausner, Secretary

Date