

Board of Zoning Appeals

Munson Township

Minutes of January 17, 2024

Chair Dennis Pilawa called the meeting to order at 6:32pm with Danielle Pitcock, Jim O'Neill, Don Ondrejka, Joe Tomaric, Alternate Carol Maver, and Secretary Paula Frieberthshauser present. Roger Simpson was absent. Court Reporter Laura Ware was present. The Pledge of Allegiance was said.

Joe Tomaric was reappointed and sworn in for a five-year term through December 31, 2028. Carol Maver was reappointed as an alternate and sworn in for a two-year term through December 31, 2026.

Danielle Pitcock moved and Jim O'Neill seconded to approve the minutes of October 18, 2023, as written. Motion carried, 3-0 (Ms. Pitcock, Mr. O'Neill, and Mr. Pilawa).

Danielle Pitcock moved to nominate Dennis Pilawa as Chair. Don Ondrejka seconded and with an unanimous vote, the motion was carried 5-0.

Dennis Pilawa moved to nominate Danielle Pitcock as Vice-Chair. Don Ondrejka seconded and with an unanimous vote, the motion was carried 5-0.

Note: Case 24-01: Sister Margaret Gorman, Sisters of Notre Dame was continued with a \$100 fee paid.

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. If it appears the Board acted properly, it would be upheld; if not, it would be overturned.

CASE 24-02: Angela Ricci 10648 Butternut Rd., Chesterland OH – requesting to keep a pre-existing accessory building in front of the home. Violates SEC. 509.2 (in part) no freestanding accessory structure shall be erected within the front yard of any district. SEC. 509.3 (in part) accessory structures shall be located within the side and rear yards.

Mr. Pilawa read the legal notice. Zoning Inspector Jim Herringshaw was sworn in. Referring to an overall aerial he clarified the parcel is an odd shape surrounded by neighbors two of which share the driveway easement. On the site map, he explained the barn was existing and was initially going to be torn down but the appellant decided to keep it. Mr. Herringshaw explained photos that he took with

views from Butternut Road looking east where the home or structure cannot be seen; view of the home and barn from the driveway (south fork); the fork at the north driveway; from the shared drive that goes through the Ricci property to the east; view toward Butternut (west) from the barn; and the view south from the barn and neighbors' homes that share the driveway. He pointed out an additional photo that showed how far the barn is in front of the home.

Angela Ricci was sworn in. She answered a previous question regarding when the barn was built; she thought in the 80's. When asked, Mr. Herringshaw said the barn was used for storage. Mrs. Ricci explained that when they bought the property, they were not sure they were going to build there. Their life changed when they were going to adopt a child and they decided two and a half years ago to build. Originally, they were going to take the barn down, but four months later they adopted a nephew. Mrs. Ricci explained the barn serves a purpose now and there is no reason to take it down. She was aware of the easement when they purchased the property. With one failed adoption and then the second adoption which was more than \$100K, they do not have the funds to tear it down and rebuild. Mr. Pilawa asked her if it ever was an option. She said it was and they had plans but with the life changes it did not happen. Mr. Pilawa asked her how she was notified of the violation. She responded that when the permit for the house was applied for by the builder, they signed an agreement (D-1 authorization form) to take it down. They had two years from 2021 to do so. Mr. Pilawa asked what intentions she had with the barn. Mrs. Ricci responded that she hopes to sort through the contents; they store UTV's and property maintenance equipment. Mr. Pilawa asked if it was used for commercial purposes. Mrs. Ricci responded "no".

Mr. Pilawa stated for the record there were 27 affected property owners notified in Case 24-02. Todd Petersen of Petersen & Petersen 10680 Mayfield Road was sworn in. He explained he was asked to come on behalf of the neighbors. He has dealt a long time with the neighbors and Mr. Ricci. His understanding of this request is that the agreement signed by Joe Perfetto and authorized by Mr. Ricci was to remove the building. He felt it should have been addressed at that time before the home was built. Everyone in the area has a devil split – four or five of the properties are very steep so an easement was created before the Ricci's owned the property. The driveway has been used by his clients for a long time. Since that point, his involvement was with the Shatz family who came to him because Mr. Ricci was harassing them; he put up signs with guns, etc. They got a restraining order and eventually moved. Mr. Behnke suffered the same issues and ended up in court with a restraining order. The only way was to get the court involved. In this case, Mr. Petersen pointed out that there is a document that was signed because they agreed to take it down. He said the practical difficulty was self-created; they knew because the waiver was signed. In reference to practical difficulty, Mr. Pilawa explained to those present that it is a standard the Board uses as to whether to grant a variance. The Board must have evidence of practical difficulty before they can grant a variance. In this case, someone is asking for forgiveness, not permission after the fact.

Mr. Petersen stated that he has never spoken with Mrs. Ricci. He pointed out that if the lot were looked at, there is a fence that should not be there, and outside storage from an occupation. He again reiterated there is a signed agreement.

Cheryl Tropf of 11595 Bass Lake Road asked why the barn is a problem. Mr. Pilawa commented that he thought they were getting to that.

Responding to some of the comments from Mr. Petersen, Mrs. Ricci said that the easement is an underground utility easement; and that she was unaware of the prior neighbor's and a temporary restraining order. Mr. Pilawa commented that a utility easement is not for egress and ingress. Mr. Petersen explained that Mr. Ricci was first represented by Bob Wantz and then someone else. There is an easement for egress and ingress. It was in court and described in writing.

Elizabeth Lynch of 10638 Butternut Road read a statement (Ms. Lynch provided the court reporter with her statement – it is attached as part of the minutes). Mr. Pilawa asked her what the impact would be if the accessory building remained. Ms. Lynch responded it is an eyesore including the junk vehicle. Mr. Pilawa asked if the junk were there with no building what would be the impact of the structure. Ms. Lynch said the structure's proximity to the house; it is in front of the house, and visually - property value is a concern.

Mr. Pilawa asked Mr. Herringshaw if there were other zoning issues. Mr. Herringshaw explained that there is what appears to be junk over the property line (Behnke) but it has been moved back. He also just found out about another driveway. He explained that a junk vehicle is over three years old, inoperable, or missing tires or a transmission. He had not seen the mentioned junk vehicle. He commented that it is difficult to enforce junk violations.

Mrs. Ricci remarked that the items along the driveway were moved, and that the vehicle was not junk. It runs and is good to have if they need it for snowplowing, etc. The landscaping stones are there when they are ready to do a retaining wall.

Mr. Ondrejka asked the order of when the barn and driveway went in. James Heighway of 10634 Butternut has lived adjacent to the property for 43 years. Mr. Petersen asked him if the easement driveway and barn preceded Mr. Ricci. He said the driveway was part of the construction of the Tasler house that was built in 1969. The barn was built in 1990 and predates the Ricci's. He said it is a pole barn and is no longer structurally sound. It is not square and the roof leaks. Mr. Petersen asked if the property was originally part of the larger lot. Mr. Heighway responded that it was originally part of a 16-acre parcel. The house with 10-acres was sold to the Taslers and the 6-acre lot was purchased by the Ricci's. He added that the building will eventually come down. Mr. Petersen asked him if he heard what Ms. Lynch had to say about the impact of the building on the neighborhood. Mr. Heighway said he heard a bit and concurred with Ms. Lynch. He added that they do not maintain and cut the grass primarily around the barn. Mrs. Ricci said they have had totes and dining room furniture in the barn and nothing has been ruined. In looking at it, she said there is nothing that indicates it will fall.

Mitchell Behnke of 10642 Butternut and adjacent neighbor was sworn in. Mr. Petersen asked if he heard him and Ms. Lynch regarding the back story and if he concurred with them. Mr. Behnke responded that it impacts the value of the properties. It sits in the center in the front and there is junk all around it. He did not know if the stake body truck was inoperable but it had pipes stacked in it. They have always protested the easement. He has been harassed.

Mr. Pilawa commented that one of the factors to be considered is whether the adjoining property owners will suffer a detriment. Ms. Ricci asked Mr. Behnke when she had harassed him. She said her husband's character has already been marred and she does not want hers marred.

Mr. Pilawa explained there are factors the Board needs to consider and read the following: Can there be any beneficial use of the property without a variance? Is the variance substantial? Will the essential character of the neighborhood be altered? Will adjoining properties suffer a detriment? Will the variance adversely affect delivery of government services? Can the predicament be feasibly relieved through some other method than a variance? Will the spirit and intent behind the zoning be observed and substantial justice done by granting a variance? And did the property owner purchase the property with knowledge of the zoning restriction? He thought the last one to be immaterial to the Board because the Zoning Resolution has been available. He explained that because of those factors, the Board is asking questions, it has nothing to do with harassment or a junk vehicle.

Mr. Petersen commented that he is a firm believer that a person's property is their property to do what they want. However, they knew about the zoning code. Mr. Pilawa responded he was discussing in general that some factors are immaterial (in regard to if the property owner purchased the property with knowledge of the zoning). Mr. Petersen did think that what is done on day one impacts what is done on day one hundred. He felt the Ricci's had time to follow through. If someone says they are going to do something and does not, it impacts the neighborhood. Mr. Pilawa commented that the agreement will hold a lot of weight and the Board does need to consider all the factors but does not have to give them an equal amount of weight.

Mrs. Ricci commented that the other drive is not a through drive and has asphalt grindings.

Johnny Willis of 10676 Butternut Road said he and Mr. Ricci have had some very unpleasant times. He supports the neighbors' comments even though he is not impacted by the barn, his house fronts on Butternut.

Mr. Pilawa asked if anyone had the agreement. Mr. Herringshaw presented it to the Board. The provision states the structure will not stay.

Mr. Tomaric confirmed with Mrs. Ricci that on the 6.5 acres when they decided to build to the north almost anything they would build would be in front of the home. Mrs. Ricci explained there are drainage issues and the property slopes. They are 40 feet from the property line and far from the barn. They positioned the home for the view.

Don Ondrejka moved and Joe Tomaric seconded to deny Case 24-02 as written. Discussion following the motion included that there can be a beneficial use of the property because they are living there on 6.5 acres whether the barn exists or not; whether the variance is substantial there is no real formula as far as setback, but the evidence suggests the variance is substantial because of the prior agreement; I do not know if the character of the neighborhood will be altered but the character of the neighborhood will be maintained in the absence of the variance; all of the evidence presented suggests adjoining properties will suffer a detriment; there was no evidence heard that it would adversely affect the delivery of government services; the predicament cannot be feasibly relieved because it was self-

imposed and they were aware before the construction of the home; the spirit and intent behind zoning would not be observed because adjoining properties would suffer a detriment and is not in favor of the applicant; and of course the property owner did purchase the property with knowledge of the zoning restriction. Mr. Ondrejka added that as stated the property owner did position the house for the view, so the house was intended when built. Mr. Tomaric asked if it was possible to move the structure or build a new one. Mrs. Ricci responded that they do not have a backyard. Upon the roll call, all members voted unanimously to deny the variance, 5-0.

Mr. Pilawa again explained the appeal process to Mrs. Ricci. It was noted that the minutes would be approved on February 21.

The meeting was adjourned at 7:47pm.

Dennis Pilawa 2/21/24 Paula Frieberthshauser 2/21/24
Dennis Pilawa, Chair Date Paula Frieberthshauser, Secretary Date

Notes for Zoning Meeting

Good evening, my name is Elizabeth Lynch and I am here with my husband Ted Westerhold. Our address is 10638 Butternut. We acquired our property in April of 2018.

So as to better appreciate the comments that follow, it is likely helpful to briefly describe the property characteristics. Our property is one of four that are so called “flag lot” parcels. In addition to the dynamics of the flag lot characteristic, there is additionally a deeded easement that bisects the applicant’s lot and is used as the principal access to the adjacent lots. These characteristics come into play as there are many home owners with property lines that either abut or are immediately adjacent to the subject property owner’s lot and therefore well within the visual sight line of the condition of this property.

What that means, is that zoning violations as they occur are highly visible and therefore impactful.

My husband and I are objecting to this requested appeal for variance due to the fact that this request is directly the result of the applicant renegeing on their prior written agreement to tear this structure down. This Township’s own definitional language contained in Article 2 of the zoning resolution notes that the issue giving rise to the need for a variance (and I quote) “is not the result of the action of the applicant” (end quote). This is exactly that scenario and should be denied for that reason alone.

It is most unfair to ask this board and the impacted property owners to fix a problem that is being willfully created.

Additionally, and problematically, this board should be aware that this particular violation is not an isolated event, but rather is part

of a pattern of repetitive zoning violations which is highly relevant in order to properly evaluate the request at hand.

For the benefit of the board, some examples of these violations include lack of required set back from property lines for a driveway, accumulating trash and junk scattered along property lines and around the structure that is the subject of the requested variance including, 50 gallon barrels, outdoor storage of what appears to be an apparently inoperable junk vehicle, and disposing of waste material along a water run off path. Each of these things are specifically disallowed per district regulations. To be clear and to be fair to Mr. Herringshaw, he has only formally been made aware of some, but not all, of these violations.

There has, however, been correspondence from Munson Township to the property owners formally notifying them in a letter dated October 31, 2022 that they were in violation of Munson zoning resolutions regarding the aforementioned junk. That letter asked for the junk to be removed from the property by November 13, 2022. This letter also included a reminder of the need to demolish the accessory building per their written agreement. None of the items included in Mr. Herringshaw's letter have been acted upon with the only activity being the current request for a variance that is the subject of today's meeting.

If this request for variance is denied as we believe it should be, I would like noted in the minutes of this meeting and, if possible in the further communication to applicants, that all material contained in and around the structure to be demolished shall NOT be littered in and around the property as this would represent a worsening public nuisance from that which currently exists. It would also seem relevant to further reference the October 31, 2022 letter asking for the junk to be removed from the property, if you so deem fit.

My husband and I are keenly aware that our willingness to stand here today and offer these comments and objection comes with a risk. The risk is that of being subject to possible retaliatory actions given the longstanding history of such behavior. This concern exists no matter what the ultimate decision of this board should be. I would like to make certain that these comments are fully reflected in the court reporter's transcript should I need them for future use.

Thank you for your time and I am happy to answer any questions.