

Board of Zoning Appeals

Munson Township

Minutes of January 18, 2018

Chair Dennis Pilawa called the meeting to order at 6:30pm with Don Alexander, Danielle Pitcock, Joe Tomaric, Alternate Tim Kearns, Secretary Paula Friebertshauer and Court Report Kim Giel present. Gabe Kezdi was absent. The Pledge of Allegiance was said.

Mr. Pilawa 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.

Tim Kearns moved and Joe Tomaric seconded to approve the minutes of December 7, 2017 as written. Motion carried.

Don Alexander was reappointed and sworn in for a five-year term through December 31, 2022.

Case 18-01: Petersen & Petersen, Inc./Mayfield-Fowlers, LLC 10680 Mayfield Rd. Chardon OH - request one additional wall sign visible from the west. Violates SEC. 1003.5 a1 (in part) - each commercial, industrial or medical complex may be permitted the following signs on the premises: One wall sign per business entity which shall have a maximum area of 40 square feet.

Mr. Pilawa read the legal notice. Zoning Inspector Jim Herringshaw was sworn in. He approached the table and pointed out photos of two signs that Mr. Petersen has already. He indicated the proposed sign's location.

Todd Petersen was sworn in. He explained that when he came for the first variance, signs were not an issue. A plan was initially drawn with five signs. Mr. Petersen explained that when someone comes over the hill from the east they will see the one wall sign, but with the angle of the building, people traveling from the west would not see it. He felt putting a sign on the red wall would break up the space and make it visible from the west.

Mr. Pilawa was confused by the written application and asked for clarification of the variance request in terms of visibility from the east or the west. Mr. Petersen verified he does not have visibility coming from the west. Mr. Pilawa asked Mr. Herringshaw about the size of the sign. Mr. Herringshaw explained the sign is much smaller than zoning requires. Mr. Tomaric asked if it was the only building between him and Alpine Valley. Mr. Petersen responded that the white building and small brown building are still there. Mr. Tomaric felt it was easy to define the first building from Alpine. Mr. Petersen explained the building sits at a 45-degree angle and acts as a barrier coming from either way.

He offered that the sign would not alter the character of the neighborhood as it is reasonably sized and not electric; it would not affect the delivery of government services; and cannot be feasibly relieved through some other method because the one wall sign can only be seen from the east. Mr. Pilawa commented that the proposed sign is far less intrusive than some of their typical requests.

Mr. Pilawa stated for the record there were 25 affected property owners notified in Case 18-01. Jason Boyd of 10620 Mayfield Road (Alpine Valley) was sworn in. He issued support of his neighbors and said he was able to go through the building. He felt they have invested money into the corner which was always a concern.

Eric Payne of 10750 Mayfield Road was sworn in. He is a neighboring property owner and was in full support of Mr. Petersen's request. He felt branding was important for the investment and improvement, and was necessary for east bound traffic.

Don Alexander moved and Danielle Pitcock seconded to approve the variance request for Case 18-01. Mr. Pilawa explained it was fair to say that the factors were already gone through and hearing from the neighbors filled in the gap. The Board has received evidence that the neighbors will not suffer a detriment. Upon the roll call, all members voted unanimously in favor, 5-0. Motion carried.

Case 18-02: Walter Miraglia for Alberta Limited Partnership 10036 Wilson Mills Rd. Chardon OH - request to operate a restaurant/catering business. Violates SEC 401.2 - Permitted Principle Uses and Structures - a commercial use of the property is not permitted in a Residential District.

For the people that were not present at the beginning of the previous case, Mr. Pilawa reiterated the hearing process. He verified with the secretary that affected property owners are those that are within a 1,000 foot radius. Mr. Pilawa read the legal notice. He explained a use variance is a request for a use that the property currently is not permitted.

Zoning Inspector Jim Herringshaw approached the Board and pointed out photos of the actual building. If approved, Mr. Herringshaw said it would have enough parking and has the required loading dock and would not need any further variances. He added that if the variance were approved, the sign would be made to conform. The sign is the reason the variance came about because people saw it and called the zoning office.

Mr. Tomaric asked Mr. Herringshaw what other activities were allowed on the property. Mr. Herringshaw responded it could be residential, and in the past it was a campground. Past activities on the property were discussed. Mr. Pilawa asked Mr. Herringshaw if there was a permit for commercial use. Mr. Herringshaw said no.

Walter Miraglia of 9760 Mayfield Road was sworn in. Mr. Pilawa pointed out that with a use variance there are high standards to be met. Mr. Miraglia commented he took ownership of Berkshire Hills three years ago and it is under a conditional use. He grew up in Munson and used to go swimming at the Wilson Mills Road property. It was a great place to hang out. It was his understanding there used to be gambling there back in the 70's and he saw the band Rush in 1972. Mr. Miraglia said he is not planning to do anything like that because it would be too impactful to the surrounding area. He knew

the prior owner Bob Yui, and purchased the property at the auction. He thought it would be a great place for a winery. He would use the existing building. There would be no new construction. His intent is to sell food Wednesday through Sunday. It would be a 140-seat kid-friendly restaurant with no hard liquor. He said there may be use of paddleboats, a gazebo, pavilion, and grill. The building has a commercial kitchen which is one reason Mr. Miraglia did not know he needed a variance. It has new carpeting and a bar and the bathrooms have been updated. Mr. Pilawa asked how long it has been inactive. Mr. Miraglia responded four years. He said he has to get other permits. He has pulled one permit for fire suppression. He explained the building is in the middle of the property with 1000 feet from one side and 500 feet from the other. He anticipates employing about 40 people in the summer.

Mr. Tomaric asked if there would be any bands or a disc jockey. Mr. Miraglia responded that on occasion for a tent wedding and maybe one to two musicians inside. However, it would not go past 10pm. He anticipated maybe doing 10 to 15 weddings per year.

When asked about street lighting, Mr. Miraglia said there is one there already. He would be happy to conform with any requirements.

Mr. Pilawa asked if there were any traffic studies done because he had noticed that railings are knocked down and the speed limit is 45mph. Mr. Miraglia responded there had not been a traffic study conducted.

Mr. Alexander asked if there had been a fire suppression system there already. Mr. Miraglia replied that it was there and ABCO is doing the current work. Mr. Alexander asked when the last time the well and septic systems had been reviewed. Mr. Miraglia did not know and did not want to put the cart before the horse.

Mr. Pilawa stated for the record that 81 affected property owners were notified in Case 18-02.

Richard Wright of 10052 Wilson Mills Road was sworn in. He lives right next door to the property. He explained that having been on the Board of Zoning Appeals he always found it was considerate if the appellant spoke with the neighbors. Mr. Miraglia interjected that he had spoken with some of the neighbors. Mr. Wright had the following points: the property is owned by a party in Canada since three years ago and has not been transferred to a partner so there would be no profits to help the community; the hours of operation would be until 2:30am; they have no liquor license yet; the speed limit on Wilson Mills Road is not adhered to and they have to run across the road to get their mail; there would be people coming out of the winery having had hard liquor; on two accounts, someone has gone through the fence; and the building close to the road has been rented out several times and he wondered what the plans are. Mr. Wright felt they would suffer a detriment if they should want to resell their property. He pointed out that Munson is a residential community. In 2010, the census was 6,000; and he felt this is not an area for this type of thing.

When asked how long the Wright's have lived there, Mr. Wright responded 23 years. Mr. Pilawa asked him about the prior use. Mr. Wright replied there were approximately eight events per year with no liquor and they were out by 8pm. He said there are four-wheelers now and it would be an intrusion by a commercial business. Mr. Pilawa asked if the use was consistent in his 23 years there. Mr. Wright

responded it was while Mr. Yui was there. Mr. Pilawa questioned Mr. Wright as to why there would be no revenue. Mr. Wright said the profits would go to Canada. Mr. Pilawa pointed out there would be tax revenue to the Township.

Mr. Miraglia responded to some of Mr. Wright's points with the following explanations. He concurred the owner is Alberta Limited, but he is leasing the property from them and has no escape clause. He is a U.S. citizen and a veteran. He said all profits will remain in the U.S. other than lease monies. He does not have and will not be getting a license for hard liquor. They have applied for a D1/D2 license for beer and wine; it would not be a bar. He refuted Mr. Wright's comments by saying the liquor license would not go to 2:30am; in the summer 10pm would be the latest. He pointed out that he wants to do the same thing that Mr. Yui did with the only exception would be having a small restaurant. He added that traffic accidents happen all over the state.

Bill Hickey of 10019 Wilson Mills Road was sworn in. He has lived there 21 years and is directly across the street. His main concern is that the area between the top of the hill and Mr. Wright's property is the worst corner but he could not find any data. Mr. Miraglia agreed; he grew up on Route 44 by the hospital and there were always accidents there. He commented it is a county road and perhaps the speed could be lowered, but he does not have control over that.

David Lonsway of Raintree Drive was sworn in. His property backs up to the land in question. His main concern is noise. He explained that on occasion there have been some loud parties there. He added that his street is just before the property to the west and when he goes to the YMCA at 6:15am the traffic is bad.

Dustin Burkholder of 10221 Mulberry Road offered support of the proposed use and thinks the land is very unique, is setback from the road, and it would be a professional venture. Mr. Burkholder is a paramedic and felt that additional traffic is not a reason; he sees incidents with people pulling out everywhere. He suggested they could maybe put up a flashing warning sign. Mr. Pilawa made comment that with the amount of additional traffic there would be more opportunity for accidents. He added, however, that Mr. Miraglia entered a lease with the intent to operate a restaurant; and he did not know what else he would do with it.

Madeline Meyerholt of 11611 Stonegate lives at the end of the cul-de-sac. She has heard noise faintly in the past, but was in support of the proposed use.

Martin Simicevic of 11660 Twin Mills was in support of the idea. He felt it would be great for the community and knows the owner is part Canadian part American. He had a different view of the traffic situation; if people are slowing down to turn into the property, he felt that would cause traffic to slow down as they come up to it. Mr. Simicevic knows the appellant in relation to Berkshire Hills and loves what he has done. He felt it would help put Munson on the map.

Mr. Pilawa explained that as a Board, they are required to protect health, safety and morals.

Christina Joss of 11760 Stonegate commented that her kids went swimming there and she has lived through everything on that property. There were rock concerts, weddings, people walking through

their properties, but over the years they enjoyed listening to the music. She commented they have heard shooting on the property and a bullet had come through their house. As far as the traffic, when she needs to turn into the street she puts her turn signal on early. Mrs. Joss said she would enjoy going to the restaurant but will be moving. She said at one time the former property owner wanted to have snowmobiles and lights. Mr. Herringshaw and Mrs. Friebertshauer mentioned that a previous variance for cross country skiing and snowmobiling had been withdrawn. Mr. Miraglia commented that he does not shoot on the property.

Joseph Klukan of 10891 Mayfield Road explained he was there for the sale of the property and was the second bidder. He felt the proposed use is conducive to the property. He said where he lives he obtained a permit to move his driveway and did not know if that would be an option for that area. Mr. Miraglia responded that they looked at adding a driveway but the existing one is positioned for maximum sight. He commented there is a tree that hangs over the road about 100 feet away that could be trimmed a little. Mr. Wright commented that it was trimmed five months ago.

Susan Brill of 11877 Raintree Drive commented that in 22 years of living on Raintree they only called over once to complain to the property owner. She felt it is a unique property in that it is higher in front and lower where the building is located.

Lisa Leonardi Dragman of 11670 Stonegate has an abutting property with a gorge in between. They moved there three years ago. She always wondered what the property was used for and then she saw the sign. She thought it was a great idea and was very supportive of the venture.

James Ellis of 11905 Wellesley Lane suggested looking at the speed limit if the variance is approved. It was noted that it would be a county issue.

Mr. Tomaric asked if anybody had bought their house before the property had become a 100-acre parcel. No one responded that they did.

Sharon Wright explained they bought their home 23 years ago. The seller's daughter walked them in the back and told them there were parties and motorcycles; they tried to back out of the purchase, but the seller was going to take them to court. Mr. Wright added there have been four-wheelers, big trucks and gunfire. Mr. Pilawa commented that there are 52 acres behind him on Wellesley Lane and there is shooting back there and they are all accustomed to that. Mr. Tomaric asked Mr. Miraglia if he was going to permit ATV's. Mr. Miraglia responded he would not. He currently rides an ATV to check the gas well and to go fishing. It is a 2016 model and has a muffler.

Mr. Pilawa explained that the concern they have is that when the Board acts they are conferring a property right that stays with the property forever. He believed everything Mr. Miraglia said, but when he retires, the right stays with the property. Mr. Pilawa felt that the Township should have what was being planned.

Mrs. Meyerholt asked if the request could be narrowed. Mr. Pilawa responded it could. Mr. Klukan asked if it could be for this property owner only. Mr. Pilawa explained it could not; the Board can only

grant a use variance for the property for a 140-seat restaurant open until 10pm with no hard liquor sales. Mr. Pilawa asked Mr. Miraglia if he were prepared to alter his request or ask for a continuance.

Mr. Simicevic again commended Mr. Miraglia for his due diligence and pointed out that the property had been used illegally for a commercial business and Mr. Miraglia wants to do it lawfully.

Mrs. Joss asked about the proposed use of the two lakes and 100+ acres. Mr. Miraglia responded he has no current plans other than what has been asked for. As far as the house in front, it is privately owned; the owner stays there when he is in town. The house was rented out previously, but not now.

Mr. Miraglia reiterated his intention is to be a good neighbor. He has been a business owner for 30 years; has a good reputation; and is a 52-year Munson resident. He cares about the community and wants nothing more than to operate as a commercial use like what was there before.

Mr. Klukan asked if there would be anything but a restaurant. Mr. Miraglia said no. Mr. Pilawa confirmed they are not changing the zoning, but just granting a property right. Mr. Miraglia had spoken with his attorney and believes the property taxes are more than residential rate. It was a campground. Zoning Inspector Jim Herringshaw concurred that in speaking with the tax auditor it states the use as a commercial campground.

Mrs. Joss said her home is going on the market in the spring and wanted to know what she should tell prospective buyers. Mr. Miraglia responded "a campground or a winery."

Mr. Simicevic commented that from a financial perspective, the venture would employ 40 young kids and/or adults. Mr. Miraglia clarified that it would probably be 20 full-time and some part-time.

Alex Link of 13006 Dorothy Lane commented that his family lives at 11404 Twin Mills. They are in support of this request. He has driven that S curve for years and with the traffic volume between Chardon and Chesterland he felt nobody would notice additional traffic.

The Board recessed for executive session at 8:20pm. The hearing resumed at 8:24pm.

Mr. Pilawa asked Mr. Miraglia if he had any thoughts to changing his request. Mr. Miraglia asked if it would make sense to change the request to a conditional use. Mr. Pilawa explained that a conditional use is specific, i.e. golf courses or skiing facilities. It has to be an area or use variance; it would not be a conditional use for the Township. Mr. Miraglia wanted to keep his request the same.

Tim Kearns moved and Joe Tomaric seconded that the variance requested in Case 18-02 for a use variance at 10036 Wilson Mills Road to open a restaurant/catering business with a variance from 401.2 be granted. Mr. Pilawa provided the following discussion: in all my time on the Board, and it has been a long time, the meetings do not generally fill the room with people in favor; it is typically people against the request; and while they are cognizant of Mr. Wright's comments that provides the Board with important evidence with respect to some of our factors, the delivery of government services would not be affected; affected property owners, and I think that with all the testimony and evidence it is

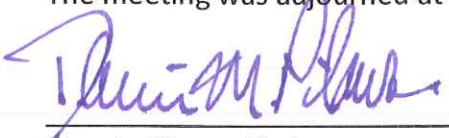
compelling in granting the variance. Upon the roll call, all members voted unanimously in favor, 5-0. Motion carried.

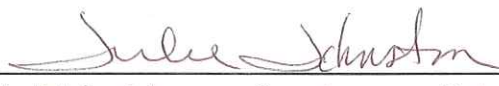
Mr. Pilawa cautioned Mr. Miraglia that anyone can appeal the decision 30 days from the approval of the minutes.

Don Alexander left at 8:45pm.

Danielle Pitcock moved and Joe Tomaric seconded to nominate Dennis Pilawa as Chair. Motion carried 3-0 (Mr. Pilawa abstained). Joe Tomaric moved and Dennis Pilawa seconded to nominate Danielle Pitcock as Vice-Chair. Motion carried, 4-0.

The meeting was adjourned at 8:47pm.

 2/15/18
Dennis Pilawa, Chair Date

 2/15/18
Paula Friebertshauser, Secretary Date
