

Board of Zoning Appeals

Munson Township

Minutes of November 15, 2018

Chair Dennis Pilawa called the meeting to order at 6:31pm with Don Alexander, Danielle Pitcock, Joe Tomaric, Alternate Jim O'Neill, Secretary Paula Friebertshauer and Court Reporter Laura Ware present. Gabe Kezdi and Alternate Tim Kearns were 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. Mr. Pilawa further explained the differences between a use and an area variance and commented that area variances are typically easier to get.

Danielle Pitcock moved and Jim O'Neill seconded to approve the October 18, 2018 minutes as written. Motion carried, 4-0.

CASE 18-24: Christopher Musgrave 11780 Blue Heron Tr., Chardon OH - request to keep an 8' x 14' accessory building 13' from the west side property line. Violates SEC. 411 Minimum Dimensional Requirements-minimum side yard is 25'.

Mr. Pilawa read the variance request and violation. Zoning Inspector Jim Herringshaw was sworn in. He explained that the Musgrave's have an existing building two feet from the property line that was previously granted a variance. When they purchased the property, the existing driveway was over the line. The building in question has been there for years. They would like to keep it because it has access off of the driveway. The property owner confirmed it was there for four years.

Chris Musgrave was sworn in. He thought because they had obtained a variance for the previous building that was closer to the property line, that this one was in far enough. When asked why the building was needed, Mr. Musgrave explained it is his wife's "she" shed.

Mr. Pilawa stated for the record that 22 affected property owners were notified in Case 18-24. There was no public comment.

Don Alexander moved and Joe Tomaric seconded that the variance requested in Case 18-24 be granted as requested. Discussion included that it would appear that of the Duncan factors that must be considered, and no one is more significant than the other, the variance is not substantial; the essential character of the neighborhood would not be altered; and as no one is present, the adjoining properties would not suffer a detriment; it would not adversely affect the delivery of government services; and

being that a variance was granted already, the spirit and intent behind the zoning would be observed and substantial justice done by granting the variance. Upon the roll call, members voted yes, 5-0. Motion carried.

CASE 18-25: Walter Miraglia for 2015 Berkshire Hills 9760 Mayfield Rd., Chesterland OH - request to erect a temporary illuminated LED ground sign 16.5' in height. Violates SEC. 1003.2 Measurement of a Ground Sign Height-(in part) sign height shall not exceed 6'. SEC. 1003.6 Temporary Signs (in part) Temporary signs shall not be illuminated by any means including reflected light.

Mr. Pilawa read the variance request and violations. Mr. Herringshaw referenced two photos and explained the sign was an arch with smaller LED lights that would go behind the existing brick entrance.

Walter Miraglia was sworn in. He explained the sign is for the Bethlehem Hills light park. Mr. Pilawa interjected that the Board's determination is only with respect to the variance request. With many adjoining property owners present, Mr. Miraglia provided some detail of the light park. It will have 20 million low voltage lights coordinated with music that will be streamed through the cars. Opening night will be November 23rd. There will be some music by the manor house for the opening night only. They have a lot of media coverage and local news celebrities will be there. The vast majority of the decorations are internal on a mile loop. Cars will enter on Mayfield Road and exit at Heath Road. He does not know how many cars to expect but is hoping for a couple hundred per night. He is paying for three police cars that will be stationed at Heath, Mayfield and the Heath and Mayfield Road intersection. A portion of the proceeds will benefit three charities: American Cancer Society, Ronald McDonald House and Valor Retreat. Mr. Miraglia explained he is taking every step possible to not make this inconvenient for the neighbors. He said all the neighbors would receive passes and he would make his phone number available.

In relation to the sign, Mr. Miraglia explained it would have low voltage x-lights. The sign would be lit from 5pm to 10pm with the exception of Fridays and Saturdays when they are open until 11pm.

Mr. Pilawa asked Mr. Herringshaw if this is the only variance request required. Mr. Herringshaw responded it was because there are no structures and is temporary. He conferred with Dave Dietrich of the Planning Commission and legal counsel to be sure. Mr. Tomaric ask Mr. Herringshaw what the distance from the road right-of-way was. Mr. Herringshaw responded it has to be five feet from the right-of-way and it would be past that. When asked to define the road right-of-way, Mr. Herringshaw explained it depends because it typically is 30 feet from the centerline but on a state route it is 40 feet according to the road superintendent. Mr. Pilawa asked if there was a variance for the original signage; he remembered the add on. Mr. Bushman said yes and there was a second variance. Mr. Tomaric asked if the sign were placed 100 feet back would it still require a variance? Mr. Pilawa explained it would because of the height and it being a temporary sign. Mr. Herringshaw confirmed. Mr. Alexander confirmed the height was because of the letters themselves. Mr. O'Neill asked how long the sign would be up. Mr. Miraglia responded it would probably go up that Saturday and be up through the first week in January at the latest; approximately 45 days. Mr. Pilawa asked Mr. Herringshaw if the Board is granting a permanent sign. Mr. Herringshaw said yes, it would be for a 16' temporary sign.

Mr. Pilawa stated for the record there were 95 affected property owners notified in Case 18-25.

Mary Lou Strathern of 12504 Heath Road was sworn in. She lives two doors down from the pool entrance. She commended Mr. Miraglia and was not concerned about the sign, but about the traffic. Mr. Pilawa commented that he looked through the resolution and Mr. Miraglia can do whatever he wants. He suggested if she sees an unsafe situation she can point it out. Mr. Miraglia commented he has an elderly mother-in-law he takes to church on Sunday night so he would have to deal with traffic as well. He is doing everything he can to handle it in advance. If needed, he would add more police presence. He explained if a car cannot fit in the entrance they will be waving them on; he likened it to attending the fair.

Robert Cunningham of 12611 Heath Road was sworn in. He mentioned he had been in contact with all the Trustees and was aware our zoning resolution is not enforceable in violating the Conditional Use permit because of the phrase "temporary" so there's nothing that can be done except for the sign. He felt the sign was huge and that Mr. Miraglia should have to reapply every year. Mr. Pilawa asked if the Board was granting a temporary variance and if it expires or if they are granting a permanent, temporary sign that can go up every year. Mr. Herringshaw agreed to check with legal counsel. He explained that typically a variance goes with the land, and if it is the same sign, it's possible it could. Mr. Pilawa spoke to Mr. Cunningham and said he wasn't sure who he spoke to, but the Board of Zoning Appeals does not make the legislation, they just enforce it. He further explained that whoever wrote the resolution and amends it cannot possibly account for every scenario; that is why the variance process is built into it.

Joe Bastulli of 12505 Heath Road was sworn in. He commented he has a reciprocal easement which gives him the right to Pebblebrook Road for ingress and egress. He questioned that there were no other violations. He wondered if the involvement of this venture includes the use of personal property for a business venture. Mr. Pilawa responded he did not know, but it could be brought to the zoning inspector if he wanted but it had nothing to do with the request in front of the Board of Zoning Appeals. Mr. Miraglia responded it is his private residence on a different route, and he always decorates his house for Christmas.

Greg Lockhart of 9790 Pebblebrook Drive was sworn in. He wanted to know what exactly was going on with the route and exhibits. Mr. Miraglia explained they would have small signs where people pay: one says people are not allowed out of their cars. People will come in off of Mayfield Road and follow the main route around the manor house, the dam, the maintenance garage, then the banquet hall and out. At the Pro Shop which has a parking lot, people can purchase hot chocolate, trees, and see Santa Claus.

Mr. Bastulli asked who owns the Manor House. Mr. Miraglia responded 2015 Berkshire Hills owns the manor house and property and is a corporation. Mr. Cunningham asked if ownership changed. Mr. Pilawa informed them that the Board regularly has people representing the owner be they architects, contractors, etc.

Joni Stusek of 9754 Mayfield Road was sworn in. She thought it was a lovely idea, it's Christmas and this is temporary and much to do about nothing.

Jim Strathern was concerned with people trying to walk through the property. Mr. Miraglia reiterated there will be a police presence and people will be instructed not to get out of their vehicles. Mr. Pilawa candidly offered that if this event serves to slow people down it would be a good thing.

Dawn Bastulli was sworn in. She commented that she hears the word "temporary" and is concerned this will be setting a precedence and the Board cannot even tell her if the sign is permanent or temporary. It's in her backyard. She can see some of the displays and has heard talk if this venture goes well they would have Halloween lighting. She is concerned about the loop and having car lights shining in her kitchen. She said she heard nothing previously about the lighting venture until receiving the township's notification and felt completely blind-sighted. Mr. Pilawa explained that the Board's decision rises and falls on its own facts. In his 17 years experience never has a case set a precedence. Mr. Miraglia commented that the cars are to have only their parking lights on when they drive through. He added that the Christmas display lights are facing the other way from her property.

Rich Ferlin of 11482 Fowlers Mill Road was sworn in. He thought the idea was terrific; he grew up in East Cleveland and enjoyed the lights at Nela View. However, as a trustee of the Fire Department, he was concerned if there were an emergency situation and a squad is needed. Mr. Miraglia responded that someone from the Fire Department had been through.

Frank Santoiemmo of 12535 Heath Road was sworn in. He asked why Mr. Miraglia did not come and talk to them. Mr. Miraglia said he talked to some but did not get to everyone. He did not realize the impact and in hindsight, yes, wish he would have talked to more people. He explained he is very involved in this project and has been working 20 hour days.

Mr. Lockhart also wondered in the case of an emergency and with a line of cars, how the Fire Department would get a vehicle in. Mr. Ferlin said that is what he wanted to make sure of. Mr. Cunningham added that the entrance on Health Road is not wide enough for two cars. Mr. Lockhart was not concerned about the sign, but asked what the Board's criteria was for making a decision.

Mr. Pilawa explained it is an area variance and there are several factors the Board needs to consider based on the Duncan vs. Middlefield case. He reiterated that no single factor is more important than the other. Mr. Pilawa read the following factors: can there be a 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 the delivery of government services; can the predicament be feasibly relieved through some method other 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? Mr. Pilawa felt some of the factors did not apply such as: is the variance substantial, will adjoining properties suffer a detriment - the property value would not decrease over a period of 45 days; will government services be adversely affected - Mr. Miraglia said under oath that he has talked to officials; and yet, none of these facts have anything to do with the sign. In fact, having a sign will show the services where to go.

