

Board of Zoning Appeals

Munson Township

Minutes of December 17, 2015

Vice-Chair Richard Wright called the meeting to order at 6:30pm with Gabe Kezdi, Danielle Pitcock, Alternates Jim Herringshaw and Michael Waclawski, Secretary Paula Friebertshauser and Court Reporter Kim Giel present. Don Alexander and Bobbie Nolan were absent. The Pledge of Allegiance was said.

Gabe Kezdi moved and Danielle Pitcock seconded to approve the November 19, 2015 minutes as written. Motion carried.

Mr. Wright 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.

CASE 15-21: Charles Pitcock Jr., 11749 Legend Creek Dr., Chesterland OH - request to sell 2.36 acres to Natural History Museum thus increasing the non-conforming lot. Violates SEC. 703.1 Non-conforming uses of land - no such nonconforming uses shall be enlarged or increased or extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this resolution.

Zoning Inspector Tim Kearns read the variance request and violation. He presented photographs that showed the backyard where it drops down. Mrs. Pitcock excused herself from voting on the case.

Mr. Wright asked about the size of the grade. Charlie Pitcock was sworn in. He did not know the grade. He said they have lived there 10 years and were required to keep two and one-half acres. Mr. Wright stated that with four members hearing the case Mr. Pitcock had the option to proceed or reschedule because a tie vote would be a no vote. Mr. Pitcock wanted to proceed. He added that personnel from the museum were supposed to be at the meeting. Mr. Pitcock explained the museum owns 26 acres known as the Koelliker fen and his property touches the corner. Discussion began years ago when they were looking to sell some trees; the tree company suggested they speak with the Natural History Museum. The idea was to save the land for conservation. Mr. Wright asked if there were any other use for the land. Mr. Pitcock explained it is in the flood plain and there is a branch of the Chagrin River.

Mr. Waclawski asked what the average size of the other lots on Legend Creek were. Mr. Pitcock and Mr. Kearns replied "two and one-half acres". They own 4.86 acres.

Mr. Wright noted for the record that 26 affected property owners were notified of Case 15-21. Rachel Vanek was sworn in. She lives with her mother, Betty Koelliker. She explained that her parents sold the initial property to the Natural History Museum. This past year they sold another 16 acres. She explained the land feeds the fen and would be protected. They feel the sale of the Pitcock property would further enhance the area and add to property values.

Gabe Kezdi moved and Michael Waclawski seconded that the variance request be approved in Case 15-21 for Charlie Pitcock Jr. Discussion following the motion included: the property as it exists with a house where they have resided for 10 years is a beneficial use; the variance is substantial with approximately one-half of the property going to conservation; the essential character of the neighborhood would not be changed; adjoining properties would not suffer a detriment but would benefit; the predicament could not be feasibly relieved through some other method; the delivery of government services would not be adversely affected; we feel by approving the request the spirit and intent would be observed and justified; and the property owner did not know of the zoning restriction. Upon the roll call, all members with the exception of Mrs. Pitcock voted yes, 4-0. Motion carried.

CASE 15-23: Paul Wengerd, 11990 Bean Rd., Chardon OH - request to construct a 24' x 32' detached garage 15' from west side property line and in the front yard. Violates SEC. 411 Minimum side yard requirement is 25 feet; SEC 509.2 No garage or other accessory structure shall be erected within the front yard of any district.

Mr. Kearns read the variance request and violations. He presented photographs taken from the street of the proposed location. Paul Wengerd, the general contractor, was sworn in. He explained it would be difficult to build in the backyard because the grade is six foot; and it is tight between the house and the property line on the left side. He confirmed that it was the only feasible location. When asked about the construction, Mr. Wengerd said it would be post construction with no electric or water. The purpose of the garage would be to store trucks and equipment. Mr. Kezdi asked if it would have a concrete pad. Mr. Wengerd confirmed it would. The property owner, Bob Jaite, was sworn in. When asked, he said there is 155 feet from the house to the back property line.

Mr. Wright stated for the record that 39 affected property owners were notified of Case 15-23.

Phil Webster of 12020 Bean Road was sworn in. He said they live two houses to the east. He explained they had a similar request denied. He also added that Mr. Johnson, who lives adjacent to the Jaite's on the east side, had a death in the family and could not come to the meeting but was opposed to the request. Mr. Wright explained that Mr. Johnson would have to be present to object because he could not be cross-examined. He added that each case stands on its own merit.

Paul Worley was sworn in. His property abuts the rear of the Jaite property. He explained the Jaite property is very unusual and is hidden off the road. He has no problem with the variance request and mentioned his neighbors, the Bales, who are most affected, have no problem either because it would hide some debris.

Mr. Waclawski asked the Jaite's if the trees would be left to the west of the building. Mr. Jaite said where the building is going they are not taking anything down. It would sit forward of the existing

garage. Mr. Wacławski commented it is pretty wooded. Mr. Jaite concurred and added there is a swale in back.

Michael Wacławski moved and Jim Herringshaw seconded that the variance requested in Case 15-23 for an accessory building in front of the house be approved as written. Discussion following the motion included: there can be a beneficial use without a variance, but the variance is not substantial due to testimony; it would not affect the neighbors because it is back from the street; adjoining properties would not suffer a detriment; the delivery of government services would not be adversely affected; and it was discussed that the predicament cannot be relieved through some other method due to the nature of the property; the spirit and intent would be observed and the property owner did know of the zoning restriction. Mr. Wright added that the Board takes it seriously when structures are in front of the home considering if it fits in with the character of the neighborhood, the location, construction, as well as shrubbery, and if the setback is substantial. Upon the roll call, all members voted yes, 5-0. Motion carried.

CASE 15-24: Danielle Graham, 11509 Woodiebrook Rd., Chardon OH - request to keep an existing 16' x 12' building 14.7 feet from the east side property line; 48 feet from road right-of-way, and located in the front yard. Violates SEC. 411 Minimum Dimensional Requirements - minimum side yard is 25 feet; minimum frontage at road right-of-way is 80 feet; and SEC. 509.2 No garage or other accessory structure shall be erected within the front yard of any district.

Mr. Kearns read the variance request and violations and presented photos of the building from the side yard and backyard. Danielle Graham was sworn in. She explained they moved in at the end of October and had the structure put up. She wanted it close to the garage leaving room for the septic to be emptied. She explained it was the best location because it is level. The ground is soggy and slopes down in the back. She was unaware of the zoning. When asked what it was built on, Mr. Kearns answered 6 x 6's. Ms. Graham reiterated that the location is the only area that is not mushy and uneven.

Mr. Wright commented it is a free structure and the land could be leveled and water moved. When asked the purpose of the structure, Ms. Graham responded it would hold bicycles, pressure washers, and a lawn mower so they can use the garage for their cars. Mr. Kezdi commented it is very close to the road and there is a camper top between the structure and the roadway. He found it unsightly. Ms. Graham explained the camper top would not be staying there. Mr. Kezdi asked if they were selling lumber. Ms. Graham responded that her partner's work had some trees taken down and they were offered the lumber. They will be putting in a wood stove and would use it as fire wood. Mr. Kezdi asked if they were selling it. She said no, if anything they were looking to buy wood.

Mr. Kearns explained they own two lots. The lot to the east would have to have a primary structure first in order for them to put the structure there. Mr. Wright asked about the other side of the driveway. Ms. Graham explained it would be a tight fit between the neighbors, and when it rains, the water goes between the houses and runs into the back. Ms. Graham approached the table and pointed out a hill that the pictures did not clearly show. When Mr. Wright asked about putting it in the back, she said there is a hill as well. Mr. Wright commented that posts could be put in. She said the grade is

very high in the back. Mr. Kearns approached the table to explain the pictures further. Ms. Graham added that the structure is behind the tree line.

Mr. Wright stated for the record that 28 affected property owners were notified. Russ Miller of 11534 Wilson Mills was sworn in. He commented that he goes down that road every day. He thought if they put it in the back there would be a problem. He said it is on a bank and when he first saw it he thought why have them move it - it is not level with the road and would not be seen much in the summer.

Danielle Pitcock moved and Jim Herringshaw seconded that the variance requested in Case 15-24 be approved. Discussion following the motion was provided by Mr. Wright. Realizing they just bought it there is a beneficial use without the variance; the variance is substantial due to the location close to the road; the essential character of the neighborhood is slightly altered; adjoining properties would suffer a detriment; the variance would not affect government services; and by not voting for this, Board members feel justice is served; and the property owner did not know of the zoning request. Upon the roll call, members voted as follows: Mr. Kezdi, no; Mrs. Pitcock, yes; Mr. Herringshaw, yes; Mr. Waclawski, no; and Mr. Wright, no. The variance was denied, 3-2.

CASE 15-22: Best Sand Corporation, 11830 Ravenna Rd., Chardon OH - request to expand the existing sandstone quarry by acquiring two parcels totaling 26.8 acres. Violates SEC. 801 Conditional Zoning Certificates - Conditional uses shall be permitted only upon issuance of a Conditional Zoning Certificate by the Board of Zoning Appeals to at least one owner of the property. SEC. 804 - 804.1 -804.2a-m Solid Mineral Extraction Operations (in part) The purpose of this section is to insure that the solid mineral resources of Munson Township are properly managed, and that all land used for solid mineral extraction be properly located, screened, and reclaimed so as not to create a hazard of nuisance which may adversely affect the health, safety, or general welfare of the community, either immediately or in the future.

Mr. Kearns read the conditional use request and violation. Mr. Wright asked if Best Sand currently owns the two properties in question. Mr. Kearns replied yes.

Dale Markowitz, attorney for Thrasher, Dinsmore & Dolan; Dr. Calvin Conya; Ken Przybyla, Plant Manager; Dan Gelet, Developer; and Nathaniel Grundy, Environmentalist were all sworn in.

Maps of the area were displayed. Mr. Markowitz explained he has been involved with Best Sand and their mining operations off and on since 1975. He indicated the yellow parts on the maps are part of the application. The small area was formerly ACO Polymer. Mr. Kezdi commented they used to make tanks there. The second area was the former Mayfield Gardens development which consisted of Princeton, Yale and Harvard streets. The two parcels total 26.8 acres. There are 501 acres in the bigger project.

When asked about the building on the smaller lot, Mr. Markowitz explained the building will be taken down and they will mine there with the same setback. He pointed out that the green area is 345 acres and was originally grandfathered (Walter Best). The pink area is 156 acres and was approved in 1996.

Mr. Markowitz stressed this is not a variance request it is a conditional use permit. They comply with the code. He pointed out the white area is Bob Best's property. They maintain the setback from his house. Mr. Best is in the non-residential area. They are 228 feet from the residence across the street. He pointed out that the plan shows the mining limits. Mr. Markowitz also explained they are regulated by ODNR, the Township, and Mine Health & Safety, OEPA, etc. They have to obtain the zoning permit before ODNR will let them move forward. Structures will be removed as they mine. He pointed out that in regards to Section 804 there is a three-page response in the member's packets.

Mr. Wright commented that to his knowledge Best Sand has been a good neighbor. He wondered if there have been any legal issues with the mining. Mr. Markowitz replied there has been no litigation at all. They have been there since 1938.

Andy Bushman was sworn in. He commented there was one family whose water well collapsed during blasting. Best Sand replaced it even though it was not their fault.

Mr. Markowitz pointed out that in the 1996 permit, if they caused a problem to a well they would be prepared. They are bound. They have no relationship with Bob Best's Trust. Deeds were provided for all the parcels. It was noted that the airport closed in the early 80's.

Ken Przybyla, Plant Manager since 2011, explained safety is number one. Fairmount Santrol is a public company and is focused on safety and environmental. There are no waste products, all are recycled. He explained they use a blasting agent which goes into the ground providing a perfect burn with mostly water left. They detonate only on weekdays in the daylight hours. They have lists to give notice of blasting and there are audible alarms on the equipment. He provided some history - Walter C. Best began mining in 1938 with 210 acres. It was sold in 1951 under industrial use. Bill Conway bought it in 1978 and it became Fairmont Minerals. They adopted the name Fairmount Santrol in 2014 and went public. He pointed out that ODNR's permitting process is extensively reviewed. Mr. Przybyla explained the reclamation plan map and that the primary use when mining is done will have a lake and recreation property.

Mr. Przybyla explained that once granted the permit, they anticipate using three of the five acres the first year. When they blast within 300 feet of the road, they block the highway for 30 seconds to one minute. Mr. Przybyla provided an explanation of the blasting process and noted the quarry is the same depth as now; no deeper because of Berea shale. ACO Polymer was there until March 2015 and they had no water well issues. He said they work well with their neighbors and work to maintain legal levels. They are industrially zoned even though some of the property in the area is used as residential. Mr. Wacławski asked how long it would take to finish the 26 acres. Mr. Przybyla said the area behind ACO is deeper and would probably take closer to two years. The former residential property would take about three years.

Nathan Grundy, Environmentalist, commented that he met with a person that was 15 feet away from the mine and they did not even realize where the mine was. Mr. Wacławski asked how long they have been blasting there. The response was since 1938. The industrial process began in 1976; it is one of the oldest permitted mines. Mr. Gelet explained they are not asking to do anything different, just expand the life of the mine in Geauga County. There will be no new entrances.

Mr. Wright stated for the record there were seven affected property owners notified in Case 15-22.

Joe Perfetto of 12021 Ravenna Road was sworn in. He explained they are located right across from Best Sand but did not receive notification. Secretary Friebertshauser noted that Mr. Markowitz had provided the affected property owner list. Mr. Perfetto said they have had conversations with them regarding damages to their building. A representative from Best Sand has said they would fix the damage, but they have not heard anything. In response to notification, Mr. Markowitz explained the code requires adjacent properties where new applications exists. Their building is already in the area. However, Mr. Markowitz said he did tell Mr. Perfetto's brother Enzo. The additional blasting will not be further intensified at their location. Mr. Waclawski questioned Dr. Conya regarding the situation. Dr. Conya replied it depends on how far they are from the blasting; it is measured by seismographs which tell the vibration levels. If the mining operation stays within the limits, it would do no damage. He added that complaints can be filed with ODNR and they will come out and measure.

Mr. Wright asked if blasting was comparable to an earthquake. Dr. Conya explained he cannot compare because the area is totally different. Mr. Perfetto disagreed. He said they had pictures fall off the wall. Mr. Perfetto recently received a call and there were seismographs conducted in front. It had been mentioned that the same material was used as that in the Oklahoma bombing; Mr. Perfetto was surprised at that. Mr. Waclawski commented that he understood Mr. Perfetto's feelings, but the new property is farther away from their location. Dr. Conya explained that our bodies feel small levels of vibration. Mr. Perfetto asked him if in terms of examples, isn't every location different; and he understands that the conditional permit does read "causing harm". He wanted to be on the record that he is frustrated. Mr. Waclawski asked if Mr. Perfetto felt Best Sand is a good neighbor. Mr. Perfetto replied he could not say they are bad neighbors; but they have an investment and are the little guys. When they were meeting with customers there were sizable vibrations. Dr. Conya explained that temperatures on structures cause more damage or strain to the walls than blasting. Mr. Przybyla informed them that they blast from mid March through November or December depending on the weather.

Gabe Kezdi moved and Michael Waclawski seconded that in Case 15-22 for a Conditional Zoning Certificate application be approved. Discussion included: the use is not an area variance. Mr. Markowitz pointed out it is not a use variance either so Mr. Wright did not have to go through the hardship factors. Mr. Wright went on to say it is not a hardship to turn the property into the same use; it doesn't deprive the property owner of substantial property right; the proposed use does not compare to adjacent and nearby uses; it is not a hardship; the zoning regulation does protect the public health, safety and morals, and with the associated personnel they do try to mitigate any damage; and the property owner did not know of the zoning restriction. Upon a roll call, all members voted yes, 5-0. Motion carried.

Danielle Pitcock moved and Gabe Kezdi seconded to approve the findings of fact for Cases 15-17, 18, 19 & 20. Motion carried. The meeting was adjourned at 8:23pm


Richard Wright, Vice-Chair 1/21/16
Date


Paula Friebertshauser, Secretary 1/21/16
Date