

Board of Zoning Appeals

Munson Township

Minutes of June 26, 2018

Chair Dennis Pilawa called the meeting to order at 6:36pm with Don Alexander, Gabe Kezdi, Joe Tomaric, Alternate Jim O'Neill, Secretary Paula Friebertshauser and Court Reporter Kelli Page present. Alternate Tim Kearns was also present. Danielle Pitcock 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. Usually the meeting is recorded by a court reporter on the chance there is an appeal. The appeal would go to the Court of Common Pleas. The court would determine if the Board exceeded their authority. He explained it was irregular for there not to be a court reporter present, but would move forward if the right to have a court reporter present was waived. No one present opposed.

Don Alexander moved and Joe Tomaric seconded to approve the May 17, 2018 minutes as written. Motion carried, 4-0.

CASE 18-11: Brian Danison 10216 Mayfield Rd, Chesterland OH - request to construct a 36' x 30' attached garage 2' from the east side property line. Violates SEC. 411 Minimum Dimensional Requirement-minimum side yard is 25 ft.

Mr. Pilawa read the variance request and violation. Zoning Inspector Jim Herringshaw was sworn in. He showed photos of the proposed location and added that with the septic in the back and property drop off there were not a lot of options. He pointed out that the existing driveway is about two feet off the property line.

Brian Danison was sworn in. He explained that the west side of his property drops off as well as the backyard, and they are already at the 25 foot side setback. The proposed attached garage would be back from the home and would line up with the parking pad. The existing garage, having been built in 1955, is not large enough to fit his vehicle. When asked, he said the property does drop off in the front as well. It was mentioned that the natural barrier of bushes would remain.

Mr. Pilawa noted for the record there were 26 affected property owners notified in Case 18-11. Raymond Comer of 10228 Mayfield Road, and next door neighbor, had no problem with the request and said he could not see the neighboring house because 40 years ago his wife planted forsythia.

Don Alexander moved and Gabe Kezdi seconded that the request in Case 18-11 be approved as requested. Discussion following the motion included that of the factors the Board is required to apply (Duncan) would seem to have been met. Upon the roll call all members voted yes, 5-0. Motion carried.

CASE 18-12: Aaron Fogle 12195 Country Oaks Tr., Chardon OH - request to construct a 16' x 12' shed 8' from the east side property line. Violates SEC. 411 Minimum Dimensional Requirement-minimum side yard is 25 ft.

Mr. Pilawa read the variance request and violation. Zoning Inspector Jim Herringshaw explained this was similar to the first case. He pointed out photos of the location, the drop off, septic, and the wooded area.

Aaron Fogle was sworn in He explained they moved in two years ago and have four vehicles, a motorcycle, snow blower and various lawn equipment to store. If it were put at the end of the driveway it would obstruct access to the septic system. When asked, Mr. Fogle explained it would be a typical shed with a double door facing the driveway and a man door on the side.

Mr. Pilawa stated for the record there were 36 affected property owners notified in Case 18-12. There was no public comment.

Joe Tomaric moved and Don Alexander seconded that the variance in Case 18-12 we accept at 12195 Country Oaks Trail as written. Discussion included that the Duncan factors have been met. Upon the roll call, all members voted yes, 5-0. Motion carried.

Mr. Pilawa asked Mr. Payne if he would like Cases 18-13 and 18-14 to be heard together. Mr. Payne responded yes.

CASE 18-13: Brown Barn LLC 10690 Mayfield Rd, Chardon OH - request to split lot into a .6842 acre parcel with a minimum side yard setback of 5.5'; minimum rear yard setback of 0.3'; minimum frontage of 83.77'; maximum lot coverage of 51.3%; driveway 0' from east property line; 18' x 9' parking spaces within front and side yard minimum setbacks; and requesting 0 loading/unloading spaces. Violates SEC. 411 Minimum Dimensional Requirements-minimum lot size is 2.5 acres; minimum side yard setback is 20'; minimum rear yard setback is 50'; minimum frontage at road right-of-way is 200'; maximum lot coverage 50%; SEC. 511 Driveways-(in part) driveways shall be a minimum of 15' from any lot line; SEC. 521(k) (in part) Parking spaces shall not be located in the minimum setback for front, side or rear yard of any lot; SEC 521.2 Size of Parking Spaces (in part) The width of a parking space shall be a minimum of 10' and the length shall be a minimum of 20'; and SEC. 521.3 Number of Loading/Unloading spaces required-(in part) commercial and industrial uses permitted shall have at least one Loading/Unloading Space for each use.

CASE 18-14: Brown Barn LLC 10700 Mayfield Rd, Chardon OH - request to split lot into a 1.9936 acre parcel with a minimum rear yard setback of 2'; requesting a driveway clearance of 0' from west lot line; requesting 18' x 9' parking spaces in front and side minimum setback; and 0 loading/unloading spaces. Violates SEC. 411 Minimum Dimensional Requirements-minimum lot size is 2.5 acres; minimum rear yard setback is 50'; SEC. 511 Driveways-(in part) driveways shall be a minimum of 15' from any lot line; SEC. 521(k) (in part) Parking spaces shall not be located in the minimum setback for front, side or rear yard of any lot; SEC 521.2 Size of Parking Spaces (in part) The width of a parking space shall be a minimum of 10' and the length shall be a minimum of 20'; and SEC. 521.3 Number of

Loading/Unloading spaces required-(in part) commercial and industrial uses permitted shall have at least one Loading/Unloading Space for each use.

Mr. Pilawa read the variance requests and violations. Zoning Inspector Jim Herringshaw explained the Board had previously heard variance requests from Brown Barn LLC, but now they have become two new lots with the property split. He presented photos of the white building and the driveway taken from Mayfield Road. Mr. Kezdi asked if the law office was separate. Mr. Herringshaw responded yes. Mr. Pilawa asked if the sanitation parcel is its own parcel. Mr. Herringshaw replied it would stay as is.

Eric Payne of 12450 Willshire Lane was sworn in. He explained the request is just for a lot split; nothing else would be changed; they just subdivided the property. The only difference is this would facilitate the rehabilitation of the white building. Mr. Payne distributed the proposed rendering. Two companies would inhabit the building – Payne & Payne Renovations and Company 119.

Mr. Tomaric asked if there were any easements to be obtained. Mr. Payne responded they will be written within the deed. The treatment plant will service the new use.

Mr. Pilawa stated for the record there were 30 affected property owners notified in Cases 18-13 and 18-14. There was no public comment.

Gabe Kezdi moved and Jim O'Neill seconded that the variance in Case 18-13 be approved as written. Discussion included that for all the reasons of record regarding the last variance request and everything that was stated this evening met the required factors. Upon the roll call, all members voted yes, 5-0. Motion carried.

Don Alexander moved and Jim O'Neill seconded that the variance requested in Case 18-14 be approved as written. Upon the roll call, all members voted yes, 5-0. Motion carried.

Mr. Pilawa asked that because the next three cases all related to Best Sand; one a Conditional Use and the other two being variance requests, would the appellant like to hear them together. Dale Markowitz, representing Best Sand, said it would be easier to do so.

CASE 18-15: Best Sand Corp 11833 Ravenna Rd. Chardon OH - request to install a box culvert structure under Ravenna Road 0' from the right-of-way and located within the front yard. Violates SEC. 804.10 All solid mineral extraction operations shall be located at least 100' from the right-of-way line of any existing or platted road, highway or railway. SEC. 509.2 (in part) No garage or other accessory structure shall be erected within the front yard of any district.

CASE 18-16: Best Sand Corp 11830 Ravenna Rd. Parcel #21-21-077130 Chardon OH - request to install a box culvert structure under Ravenna Road 0' from the right-of-way, 21' from the north property line and 25' from the south property line. Violates SEC. 804.10 All solid mineral extraction operations shall be located at least 100' from the right-of-way line of any existing or platted road, highway or railway. SEC. 411 Minimum Dimensional Requirements - minimum side yard is 50'.

CASE 18-17: Conditional Use for Best Sand Corp Parcel #21-077130 Chardon OH - owner will be modifying the existing use by extending mining operations to the east side of Ravenna Rd. Violates SEC. 801.2-o. (in part) A conditional use certificate shall be void upon change of use unless a new application is made for such a certificate within 30 days after change of use.

Mr. Pilawa read the variance requests in Cases 18-16 and 18-17 and explained the Conditional Use request in Case 18-17. Zoning Inspector Jim Herringshaw explained photos that showed where the proposed tunnel would come out and that it was a mostly a setback issue because it would not be 100 feet back.

Dale Markowitz of 100 Seventh Ave. Suite 150 Chardon, and legal counsel for Best Sand was sworn in. He introduced Abigail Pfaff from Engineering and Josh Pennock, who is working closely with ODOT on the project. He pointed out on a diagram that the box culvert would go under Route 44 where they had acquired two parcels on the west side. There parcel with a residence has a lease until February. On the 54-acre parcel on the east side, there is an office and an accessory building. The culvert would convey crushed rock under the road rather than having it trucked. In regards to the Conditional Use permit, some is grandfathered, but now with moving onto the east side they are asking to continue all conditions. He explained that the code refers to Section 804.10 for the 100 foot setback and 509.2 in regards to the office building. Mr. Markowitz reviewed the Duncan Factors as they related to the above cases as follows: 1) Does the property have a beneficial use? Without the variance, they could truck the rock but it would be more beneficial to the community to keep it under the road because there would be less noise and dust. 2) Is the variance substantial? No, the building already exists for mining operations and they own all the surrounding properties. 3) Would adjoining properties suffer a detriment? No, there would be fewer trucks on the road. 4) Will the essential character of the neighborhood be altered? It would not be changed; the box is just for under the road – the mining operations would not change. 5) Will the delivery of government services be affected? They feel it would be a positive effect and there would be less wear and tear on the roads. 6) Did the property owner know of the zoning regulations? The property was acquired before they knew the zoning. 7) Can the predicament be feasibly relieved through some other method? They would have to tear down the building and truck the rock across the street. 8) Spirit and intent? The box culvert will promote a safer environment with less noise and pollution. Mr. Markowitz felt that all the codes would be met. When asked, Mr. Markowitz said it would take a number of years to mine out most of the west side. The timetable was extended a bit with the previous variance upon purchasing the old airport. The benefit to this variance is that they do not have to build a plant on the east side of 44.

Mr. Pilawa asked what the timeline for the project is. Mr. Markowitz responded sometime next year and referred to Ms. Pfaff to provide more information as to the timeline. Abigail Pfaff of 11830 Ravenna Road was sworn in. She passed out copies of plans. Mr. Pilawa welcomed anyone present to look. Ms. Pfaff explained they started last May with the plan to start a new quarry on the east side – she pointed out the site plan. The second page showed the conveyor system. Typically they would operate five days a week, but may run on the weekend if busy. She explained the conveyor does not produce noise. If there should be dust issues they could cover the material. The conveyor would eliminate the need for trucks and would be safe and efficient. They shut down around Thanksgiving and start up in April. They purchased two parcels to extend the setbacks and would tear the house down in February when the lease is terminated. In regards to the timetable, they started the pre-work; environmental studies were

fine and next month they will send the plans to ODOT. They plan on starting next spring and within four months everything would be completed. Their option without a variance would be to have a new plant on the east side.

Grace Butcher of 11746 Aquilla Road was sworn in. She questioned the fact that Ms. Pfaff said they are shut down between November and April. Ms. Pfaff said they are closed down and just run the dry side because they cannot run water. Ms. Butcher asked about the environmental study. Ms. Pfaff replied that Mr. Pennock would go into that more. When asked about the red square on the map and how far it was from Aquilla, Nathaniel Grundy, Environmentalist, responded it was about $\frac{3}{4}$ of a mile. Kenneth Ostrowsky of 11716 Aquilla Road asked if they would be crossing into Claridon. Ms. Pfaff responded not with this project. She explained that the 54-acre parcel is in Munson, but they have leased land in Claridon. Mr. Ostrowsky mentioned Claridon has no zoning for mining and wondered if they could get a variance from them. Mr. Pilawa explained that the Board's authority starts and ends with what is requested. There is nothing the Board can do relative to Claridon. He advised that if they were to find Best Sand in violation of what is granted that evening they could go to the zoning inspector because it would be an enforcement issue. They cannot speak to what is in the Claridon ordinance.

Mr. Ostrowsky asked if the project were okay with the EPA because there is a lake, and if there would be blasting on the property. Ms. Butcher said her main concern is with the blasting because they can feel it and currently have a good well. Ms. Pfaff replied that she could get with her in regards to the hydro-geologic study. Ms. Butcher asked if there was a noise ordinance. Mr. Pilawa said there was not. She said there is constant noise. Dan Gillette of Best Sand offered that they are in the process of phasing out the beeping. Mr. Ostrowsky asked if Munson had any qualms about the noise. Mr. Pilawa explained that the Zoning Commission would be a good place to start with about that or the Munson Township Trustees. He explained that the Board of Zoning Appeals legislates and are limited; they just address the request to confer a property right. Mr. Pilawa continued by saying that he has a fair idea of zoning in Munson Township and people come because not everything can be written in the resolution. Best Sand is either permitted through a Conditional Use or variances granted.

Mr. Ostrowsky asked how large the culverts would be. Ms. Pfaff explained the culvert is 14 feet on the outside and 12 feet wide inside by 8 feet tall. It would be 3 to 4 feet below the surface of the road. Mr. Pilawa offered that Best Sand could do what they want in a different manner, but appear to be looking for the path of least resistance as opposed to what they could do.

Mr. Alexander questioned if ODOT has jurisdiction on the box culvert and if they foresee any dewatering. Ms. Pfaff said it will actually be sloped and any runoff would go into the west pit. Mr. Tomaric asked if there would be a maintenance road. Ms. Pfaff responded there would be up by the building and along the culvert.

Kirk Walker of 11773 Ravenna Road identified himself as the northbound neighbor by the office. He commented that Best Sand has been a decent neighbor. They have had their farm since 1924. His biggest concern is the wells and the natural spring-fed lake that is a habitat to the native Brook trout. He was glad it would be pitched away from their property as they have enough runoff. He thought box culverts make a lot of noise and there would be dust from the west side. At times they have an inch of sand on their window sills. He would appreciate dust control. He pointed out his property on a map.

Josh Pennock of 100 West Erie St. Painesville and a registered PE for Burgess & Niple was sworn in. He works with ODOT on roads and bridges. He explained ODOT has been involved in discussions, and what is being presented is a favorable culvert design. It would be made of precast concrete. They would start in the middle of the road and work their way out. There would be a temporary road shift and traffic would be maintained with temporary signals. They would be digging a total of 10 to 11 feet. The culvert will extend out at least 50 feet and would not be seen. The culverts will not be put in flat to account for drainage. When Mr. Walker questioned the flow of the ditches, Mr. Pennock explained they will stay the same.

Ms. Butcher asked what would happen after the culvert is completed; do they have information on the wells. She wondered what would happen if she lost her well. Mr. Markowitz explained that when they were before the Board several years ago there was testimony that any time they investigated the wells they were not drilled deep enough or had motor problems. He said they actually fixed a person's well even though it was not their fault. Should the issue arise, they would fix it. It is part of their conditional use. Their operations are monitored and show the impact. People on Aquilla are significantly farther away than nearby businesses and they have not gotten complaints. Furthermore, they could just truck across the road, but he felt that what was being presented would be better for them and the community. He explained the rock is damp because there are spray bars which aid in cutting the dust. They can also put a cover on.

Mr. Pilawa explained to Ms. Butcher that what is being requested is just an expansion of Best Sand's existing Conditional Use and all imposed conditions are still in place. Ms. Butcher felt their wells aren't deep enough. Mr. Markowitz explained that with older wells there are times that the aquifer drops and dependent on the surface water, snow fall, etc. and the well depth, it probably has nothing to do with Best Sand and everything to do with precipitation, equipment, and old motors.

Mr. Walker commented that their 1924 farm has a 44 foot well in the front and has good water. His well is 200 feet deep which was dug deeper because of the blasting. When questioned about the Conditional Use application, Mr. Pilawa explained to Mr. Walker that it is for the extension of Best Sand's mining operations on the 54-acres on the east side.

Ms. Pfaff explained the initial pit is not in the 54-acres, but the conveyor is. Mr. Markowitz added that they have approval from Claridon due to the Spencer/Lotusville agreement. They had settled an issue with the township on the basis it was a constitutional argument. Mr. Markowitz also pointed out the private drive from a 1920 allotment was never a dedicated road.

Ms. Butcher asked if they plan on restoring the area. Mr. Markowitz said he would leave that to the company reps, but did say they are required by ODNR to reclaim and eventually they would see a beautiful lake. Mr. Ostrowsky questioned the red pit area. Ms. Pfaff responded it is within Claridon Township. They will start mining in Claridon and the conveyor would be in Munson Township.

Tom Cole of 11820 Aquilla Road explained that 11850 is part of his family's farm. In regards to the Spencer-Lotusville agreement, they have a lease with Best Sand for mining. They felt it was a fair compromise and it allowed them continue farming. His family has been there since 1811. Mr.

Markowitz commented they are in compliance with wetlands. Mr. Cole was asked if he is affected by the operations. Mr. Cole explained he hears the bearing if it goes out and Aquilla Road is more of a problem than trucks. He said there is a lot of pressure with farming and this gave them peace of mind, but there is good and bad. They did a lot of research on Best Sand and felt they had a good track record. He cited Walter C. Best Park as an example.

Mr. Pilawa stated for the record that 16 affected property owners were notified in regards to all the cases for Best Sand.

Mr. Ostrowsky asked how far the operations would be from the property lines. Mr. Markowitz said he would give him his card and he could call him tomorrow. Ms. Butcher asked if they had received permission from Claridon Township. Mr. Markowitz responded they did.

Mr. Walker asked about access to the Zoning Resolution. Zoning Inspector Jim Herringshaw responded that the resolution is online and referred him to Articles 4 and 8. Mr. Markowitz also mentioned that ODNR has regulations. He said that a requirement of the Spencer-Lotusville agreement was to build a lake.

Jody Wozniak of 11873 Ravenna Road, first neighbor to the south, was sworn in. She wondered where they would be starting. Mr. Markowitz responded north and east. She wondered how long before they would cease operations. Ms. Pfaff thought 15 to 20 years. Ms. Butcher asked if the crusher would be on the east side. Mr. Markowitz said yes, it is not silent, but he has stood next to it and could carry on a conversation. She then asked about the access road. Ms. Pfaff explained they will use the existing road behind the house and would maintain the setback. It would not be to haul but just for maintenance trucks. When asked, Best Sand still maintains a will call list for blasting. Ms. Wozniak asked if when they start in Claridon would they be clearing the land. Ms. Pfaff said they would as they progress.

Ms. Butcher asked the size of the pit. Ms. Pfaff responded it would probably be eight to ten acres. Mr. Markowitz remind those present that this is an Industrial district and they have a Conditional Use. They have had no problems working with zoning and have immediately addressed concerns. Ms. Butcher asked if they would be having another open house. There were no plans, but Ms. Pfaff said they do conduct tours.

Mr. Pilawa reiterated there are two variances and a Conditional Use request and they should have motions to address them one at a time.

Joe Tomaric moved and Don Alexander seconded that in Case 18-15 the request for 11833 Ravenna Road be granted as requested. Discussion following the motion included: in regards to the Duncan factors, the Board seldom receives detailed information, and with the input from the community the Duncan Factors have been met and they are required to consider them all and to not give one more consideration than another. Upon the roll call, all members voted yes, 5-0. Motion carried.

Don Alexander moved and Gabe Kezdi seconded that Case 18-16 be approved as requested. The same discussion as above was applied to Case 18-16. Upon the roll call, all members voted yes, 5-0. Motion carried.

Mr. Pilawa asked if there were a motion for Case 18-17 for the extension of the in-place Conditional Use to the east side of Ravenna Road with current conditions and the same obligations. Gabe Kezdi moved and Jim O'Neill seconded that in Case 18-17 for the extension of the Conditional Use permit be approved. Upon the roll call, all members voted yes, 5-0. Motion carried.

Mr. Pilawa commented that a lot of the concerns voiced are enforcement issues and that communication goes a long way.

CASE 18-18: William Roediger for Sisters of Notre Dame 13000 Auburn Rd. Chardon OH - request to replace existing football scoreboard with a 32' x 30' wide electronic sign face on a 42' high structure. Violates SEC. 1003.7 Electronic Changeable Signs - a. The maximum area per sign face shall be ten (10) square feet; b. Each message shall remain fixed for no less than seven seconds. Messages shall not flash, including moving video displays or animation, or emit intermittent light. SEC. 1003.2 Measurement of Ground Sign Height (in part) sign height shall not exceed six feet.

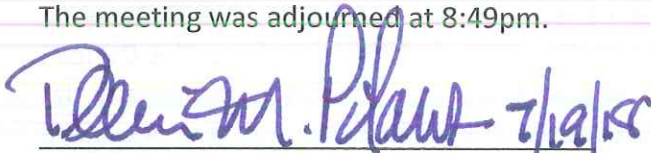
Mr. Pilawa read the legal notice and subsequent violations. He questioned that the variance was for the sign face not the structure. Zoning Inspector Jim Herringshaw explained that Notre Dame had a permitted sign but it needed repair. With changing technology, a bigger sign, and the fact that the Zoning Resolution did not previously deal with electronics, they needed a variance.


Bill Roediger of 7475 Brigham Road, Gates Mills was sworn in. He explained that a year ago a wind storm damaged the existing sign. They obtained a quote from the sign company for a screen two square feet larger to accommodate the video portion. With new technology, there is a specific formula that they could not get with the existing sign. The new one would have LED lighting and be two feet narrower but taller. It would require a different structural component. He felt it would probably be less visible because of the white light versus color. Mr. Pilawa asked about the timeline. Mr. Roediger replied it would be before this year's football season.

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

Don Alexander moved and Jim O'Neill seconded that the variance requested Case 18-18 be approved for a scoreboard. There was no discussion. Upon the roll call, all members voted yes, 5-0. Motion carried.

The meeting was adjourned at 8:49pm.


Dennis Pilawa, Chair Date


Paula Friebertshauer, Secretary Date