OHIO
HUDSON

COMMUNITY DEVELOPMENT ● 1140 Terex Road ● Hudson, Ohio 44236 ● (330) 342-1790

BOARD OF ZONING AND BUILDING APPEALS

APPEALS DOCKET NO 2024-1306
APPEAL OF PLANNING COMMISSION DECISION
CASE NO 2024-221
200 LAUREL LAKE DRIVE

VIA CERTIFIED U.S. MAIL
DECISION

Based on the evidence and sworn testimony presented to the Board by the Appellant Laurel Lake Retirement Community, Inc., 200 Laurel Lake Drive, Hudson, OH 44236, represented by Hamilton DeSaussure, Jr., Stark and Knoll Co. L.P.A., Attorney at Law, 3475 Ridgewood Rd, Akron, Ohio 44333, for the property at 200 Laurel Lake Drive (Permanent Parcel #3203045) in District 3 [Outer Village Residential Neighborhood], a public hearing was held in the 2nd Floor Meeting Room at Town Hall, 27 East Main Street, Hudson, Ohio, 44236 at 7:30 p.m., on Thursday, January 16, 2025. The Board of Zoning and Building Appeals considered an appeal of the Planning Commission Decision of November 6, 2024, regarding case 2024-221, for a Conditional Use application to construct additional villa duplex units without deference to the decision of the Planning Commission. The Board of Zoning Appeals in applying the evidence and law hereby reverses the final decision made by the Planning Commission to deny buildings #1, #2, and #5 on November 6, 2024, and affirms the Planning Commission's decision to approve buildings #3, #4, #6 and #7. The Board of Zoning and Building Appeals adopts the attached findings of fact which are incorporated herein.

Dated: February 5, 2025

CITY OF HUDSON
BOARD OF ZONING AND BUILDING APPEALS

By: Jane Davis
Jane Davis, (Chairwoman)

I certify that this is a true and accurate copy of the Decision reached by the Board of Zoning and Building Appeals at the January 16, 2025, meeting.

By: Lauren Coffman
Lauren Coffman, Associate Planner
(Acting Executive Assistant)

FINDINGS OF FACT

This is an appeal from the Final Decision of the Hudson Planning Commission of November 6, 2024, their Case No. 24-221, approving, in part, a plan to construct seven new residential units at the Laurel Lake Retirement Community owned by Appellant Laurel Lake Retirement Community, LLC. Specifically, the Final Decision approved the construction of four units, conditioned upon the Appellant removing the other three residential units from the proposal. This Appeal seeks reversal of the Commission's denial of the Appellant's "Conditional Use" application and that portion of the decision that requires removal of those three units from the project proposal. Although our review of the decision below is plenary, we consider it appropriate to review the reasons given by the Commission for excluding the three contested units, and we assume that if these reasons are supported by evidence, then affirmance is proper, but if these reasons are not supported by evidence, then in the absence of other reasons to exclude these units from the approval, the appeal should be allowed and the denial reversed. Furthermore, while the Commission's decision does not distinguish between the "Conditional Use" and "Site Plan" portions of its analysis, in our review of the "Conditional Use" application, we will assume the Commission applied the standards outlined in Land Development Code ["LDC"] Section 1207 to its determination on Appellant's Conditional Use application. See §1206.02(b)(3).

The purpose of the requested additional seven units, as the testimony showed, was twofold: to help alleviate the long waiting list of people seeking to become residents of Laurel Lake; and, to provide enough units to make the expansion effort profitable. The testimony was that reducing the number of units to four would render the project non-viable from a financial perspective.

The Commission's decision listed four violations of LDC standards, one violation of the Building and Housing Code, and one compromise of community amenities, for a total of six objections to the three contested units. Not all of the three units were subject to all six objections. Nevertheless, the Board has considered each of the six objections seriatim rather than separating the units for individual treatment. No objections were raised to the size or structural plans for the units. All of the objections went to the locations of the three disapproved units within the Laurel Lake complex.

The principal objection, on which all of the six enumerated objections were based, reads as follows: "Buildings #1, #2, and #5 located adjacent to the jurisdictional pond are in violation of the following code standards and should be removed from the proposal." It is apparent that the Commission viewed the location of these units near a "jurisdictional pond" as problematical although only Buildings #1 and #2 were specifically cited as being in violation of a setback rule, as will be discussed below.

The first-numbered objection applies to Buildings #2 and #5, and recites that these units violate §1206.02(b)(5) of the LDC, which relates to conditional use applications, and provides,

> (b) . . . . all applications for a conditional use shall demonstrate that:
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> * * * *
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> (5) on-site and off-site traffic circulation patterns related to the use shall not adversely impact adjacent uses or result in hazardous conditions for pedestrians or vehicles in or adjacent to the site.

Since this provision contains no objective standards for its application, determining whether this provision has been met is a matter of discretion. The traffic in question traverses the property along the semicircular private drive having two exits onto Boston Mills Road near opposite ends of the property. Appellant submitted a traffic pattern study report showing that the average number of cars entering the property using the private drive is about one per minute, and the average number of cars leaving the property is also about one per minute. The report states that "the number of trips that are generated are quite low, which is to be expected from a retirement community." Since the Commission has approved the addition of four buildings without objections to the additional traffic they might cause, there seems to be no standard being applied to decide that three more buildings will nevertheless create hazardous conditions. Thus, the finding of a violation here has no evidentiary support, and a contrary conclusion is supported by the evidence.

Nevertheless, the Commission asserts that two of the units, Buildings #2 and #5, interfere with traffic circulation patterns "based on the proposed building separation from the drive." The nature of this objection is unclear because the Commission's decision does not recite any particular danger based upon proximity of the unit to the drive. To the contrary, the site plan shows that each of these units will have a side-facing garage and a turn-around apron allowing the resident to enter the drive frontwards. Since this is a matter of discretion, and no evidence is recited as the basis for the Commission's finding of a violation, the Board concludes that the decision is arbitrary and without evidentiary support. There is no violation of § 1206.02(b)(5).

The second numbered objection applies to Buildings #1 and #2, reciting that these units violate § 1207.03(c) and (f), which provide:

> (c) No person shall engage in any activity that will disturb, remove, fill, drain, dredge, clear, destroy, or alter any area, including vegetation, within stream corridors, wetlands, and their setbacks, except as may be expressly allowed in this Code.
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> * * * * *
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> (f) All existing vegetation within the steam [sic] corridor or wetland setback area shall be preserved, and where necessary to provide adequate screening or to repair damaged riparian areas, supplemented with additional native planting and landscaping approved by the City Community Development Staff.

The Commission states that these buildings are in violation "relating to disturbance within a stream or wetland setback as disturbance would occur within the required fifty (50) foot setback of the jurisdictional pond." This conclusion is in error because there is no stream or wetland near these Buildings, and, therefore, no 50-foot setback is required. It appears that the Commission, and perhaps the staff also, has misconstrued the nearby south end of Lake Forest as being wetlands, but it is not. Wetlands are defined in 40 CFR § 230.41(a)(1) as follows:

> (1) Wetlands consist of areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

There is no nearby stream either. The curious phrase "jurisdictional pond" seems to have no legal effect on the placement of these two buildings either. The record shows that the staff and the Appellant struggled to deal with a non-existent 50-foot setback, including pushing the three units closer to the road to get away from Lake Forest, a non-requirement. There is no violation of § 1207.03(c) and (f).

The third numbered objection applies to Buildings #1 and #2, and claims a violation of § 1207.02(b)(2), "relating to tree preservation as significant mature trees would be removed." This section provides as follows:

> Whenever practicable, significant trees and existing vegetation within the limits of disturbance of disturbance should be preserved.

Notably, this provision does not prohibit the removal of trees. Further, the introductory phrase, "Wherever practicable," signals that this provision is a matter of discretion. Yet the Commission's ratio decidendi assumes that removing mature trees is prohibited. What if it is not practicable to preserve the trees? According to the plain meaning of this statutory language, in that case it is not necessary to preserve the trees. But there is another option that was not addressed by the Commission. A mature tree of at least nine inches diameter at breast height can be removed upon cash payment of $200 to a conservation escrow account, pursuant to § 1207.02(c)(2). Furthermore, the four units that were approved by the Commission's decision require the removal of 19 trees. The statute contains no bright line for how many trees are too many. Thus, without more, the approval of removing 19 trees but disapproving removal of 25 trees appears arbitrary. No reason is given for approving 19 trees but not 25 trees. There is no violation of § 1207.02(b)(2).

The fourth numbered objection applies to Buildings #1 and #2, and claims a violation of § 1207.02(b)(3), which provides as follows:

> Priority Areas for Retention. Priority areas for retention of existing trees and vegetation shall include, but not be limited to riparian areas, wetlands, wildlife habitat, aquifer or wellhead protection areas, areas falling withing the two (2) highest quality ecological integrity classifications for any of the individual metrics or composite as set forth in Appendix B to this code, and other sensitive natural areas. Streets, buildings, and lot layouts shall be designed to minimize disturbance to all trees nine (9) inches DBH or larger.

The only portion of this provision that the Commission recites for its finding of a violation is that the Buildings would occur "within a sensitive natural area." The term "sensitive natural area" is not defined in the LDC. Again, this provision is not a prohibition on tree removal, but is a directive to minimize disturbance of large trees at least nine inches in diameter at breast height. The Commission made no findings as to the size of any trees designated for removal. The option to pay cash for removing large trees was not addressed either. The term "sensitive natural area" is a very general, imprecise term, subject to discretionary interpretation. There is no bright-line standard for determining the presence of a sensitive natural area. While this provision could be argued as impermissibly vague, it is more fitting at this juncture to determine that there is no evidence to support a conclusion that the area around Buildings #1 and #2 is a "sensitive natural area." The Appellant is not required to prove affirmatively that this area is not a sensitive natural area; it was up to the Commission to show that it is, in order to support its finding. The Appellant need not prove a negative. There is no violation of § 1207.02(b)(3),

The fifth numbered objection applies to Building #2 only. The Commission finds a violation of § 1419(6.6) of the Building and Housing Code, which provides:

> A detention/retention pond easement conveys the right to construct and maintain a pond and its appurtenances (i.e., outlet structure, etc) which is used for the detention/retention of storm water runoff and includes the right of ingress and egress. The detention/retention pond easement shall be a minimum width of 30 feet outside the entire perimeter of the pond or as approved by the City.

The City stated in its January 16 response to the Appellant's statement in this Appeal that it would accept a 10-foot easement for this purpose, and it should be incorporated into the drawings. This will meet the statutory language "or as approved by the City." There is no violation of § 1419(6.6).

The sixth objection applies to all three buildings. The Commission asserts that these buildings "would compromise existing community amenities including the pavilion and East Loop Trail." First, testimony was presented that "East Loop Trail" was a path created by an individual resident for walking through the site, and he kept it clear of overgrowth for a while. Other residents used this trail for exercise on occasion. In at least the past year the creator has become insufficiently mobile to maintain the trail, and it has become clogged with overgrowth and unused. The evidence shows insufficient reason to block a project because of this moribund trail.

As to the pavilion, the Commission's recitation of this amenity is baffling. The pavilion along the edge of Lake Forest is not being moved, and these units will not be interposed between the pavilion and the remainder of the residential units. Building #5 will be closer to the pavilion than the rest, but there is no requirement that a large area around the pavilion be preserved. Indeed, there is nothing in the LDC that requires the owner of the property to preserve the pavilion at all. Owners of multi-family developments are not required to fashion or to preserve amenities that are not called out in the rental contracts. Property owners are entitled to develop their properties as they wish, subject only to the requirements of the LDC, and there is no provision protecting these amenities in the LDC. There is no violation here because there is no code provision to violate.

The Board finds no reason to distinguish the characteristics of these three units from the four approved units for the purpose of applying the same reasons given for approving those four units. Accordingly, Conditional Use for all seven units is hereby awarded to Laurel Lake Community, LLC. While the portion of the Commission's Final Decision approving the first four units is affirmed, the portion making the removal of other three units a condition to the Conditional Use approval is reversed.

For the Board,

Jane Davis

Jane Davis, Chairwoman

Concur:

Lydia Bronstein

Robert Kahrl

Louis Wagner