

REPORT

DATE: March 11, 2016

TO: Board of Zoning and Building Appeals for
Meeting Date March 17, 2016

FROM: Kris A. McMaster, Associate Planner
Mark Richardson, Community Development Director

SUBJECT: **Appeals Docket 2016-02**

Application

Variance to rear yard setback to allow construction of a pergola.

Site

Address: 5229 Towbridge Drive
District: 1- Suburban Residential Neighborhood
Applicant: Brian and Lisa Britton
Owner: Brian and Lisa Britton

Adjacent

<u>Location</u>	<u>District</u>	<u>Use</u>
North	1	Single Family Residential
South	1	Single Family Residential
East	1	Single Family Residential
West	1	Single Family Residential-Vacant

Comments

The subject of this hearing is a request for a variance of three (3) feet from the required fifteen (15) foot rear yard setback to allow an existing accessory structure-pergola to be located twelve (12) feet from the rear yard setback pursuant to Section 1205.04 (d)(5)(D)(iii), "Setbacks: Rear Yard Setbacks: Other Accessory Structure" of the City of Hudson Land Development Code.

The subject property is located in District 1. The property is surrounded by single family residential homes on the north, east and south side with vacant land to the west side. The house was built in 1996 and the owners purchased the property in March of 2011. City Code Enforcement upon normal property inspections cited the property owner for having an accessory structure in the rear yard of the property without a zoning permit. Upon review of the submitted application for the structure staff discovered the non-conformance with the required rear yard setback. The structure was also located in a floodplain. The property owner is before the Board of Zoning and Building Appeals for approval of the location of the built pergola. Engineering reviewed the structure located in a FEMA 100-year floodplain as shown on the most recent National Flood Insurance Program (NFIP) maps/data and has submitted a memorandum to staff approving the existing location of the structure. (See attached Memorandum). The property owner has indicated he was unaware of the required codes regarding permitting and required setbacks. The owner cites the shape of the lot, existing trees, and the topography of the property as to why the existing location of the structure is the best one and therefore is seeking a variance not to relocate the structure.

The following documents regarding the property are attached for your review:

1. **February 11, 2016**-Application for BZBA and supplemental information of applicant's request.
2. **Aerial of site.**
3. **Site plan.**
4. **Photographs.**
5. **February 25, 2016**-Letter from City Engineer, Thomas Sheridan regarding approval of issuing a zoning certificate with a structure in floodplain.
6. **Support letters from adjacent neighbors.**

cc: BZBA 2016-02
Aimee W. Lane, Assistant City Solicitor
Brian and Lisa Britton
Keith Smith, Council Liaison

Attachments

BOARD OF ZONING AND BUILDING APPEALS (BZBA)

Application Supplemental Information

Application for property located at: 5229 Towbridge Dr., Hudson, OH. 44236

Variations from the terms of this Code shall not be granted by the BZBA unless the application for variance demonstrates the following: "Exceptional or unusual conditions exist that are not common to other areas similarly situated and practical difficulty may result from strict compliance with any of the zoning standards, provided that such relief will not have the effect of nullifying or impairing the intent and purpose of these standards".

In determining "practical difficulty", the BZBA will consider the following factors:

1) The property in question (will) will not) yield a reasonable return and there (can/cannot) be a beneficial use of the property without the variance because: the pergola enhances the property by providing an outdoor gathering place. It utilizes an area of the lot that has limited light, numerous tree roots, and limited lawn growth.

2) The variance is (substantial) (insubstantial) because: the pergola is a significant distance from the nearest residence on the posterior side of property. Additionally, the land between properties is highly unlikely to be developed due to being a designated FEMA flood plain.

a) Is the request the minimum amount necessary to make reasonable use of the property or structure(s)? YES

3) Would the essential character of the neighborhood be substantially altered? Explain: NO.

a) Would adjoining properties be negatively impacted: NO.

b) Describe how the adjacent properties will not be affected: It is highly unlikely the property (posterior) will be developed due to it being designated a FEMA flood plain.

4) Will this request adversely affect public services (mail, water, sewer, safety services, etc.)? NO

5) Did the owner of the property purchase the property with the knowledge of the zoning restrictions? NO Property owner was not aware of specific codes.

6) This situation cannot be feasibly solved by means other than a variance. Explain: NO.

7) The spirit and intent behind the zoning requirement (would/would not) be observed and substantial justice (done/not done) by granting the variance because: (see attached)

a) The circumstance leading to this request was not caused by current owner. It was caused by: current owner.

b) List any special circumstances peculiar to the property/lot (i.e. exceptional irregularity, narrowness, shallowness or steepness) these circumstances are: (see attached)

Signature: [Signature] Date: 2/11/16

BOARD OF ZONING AND BUILDING APPEALS (BZBA)

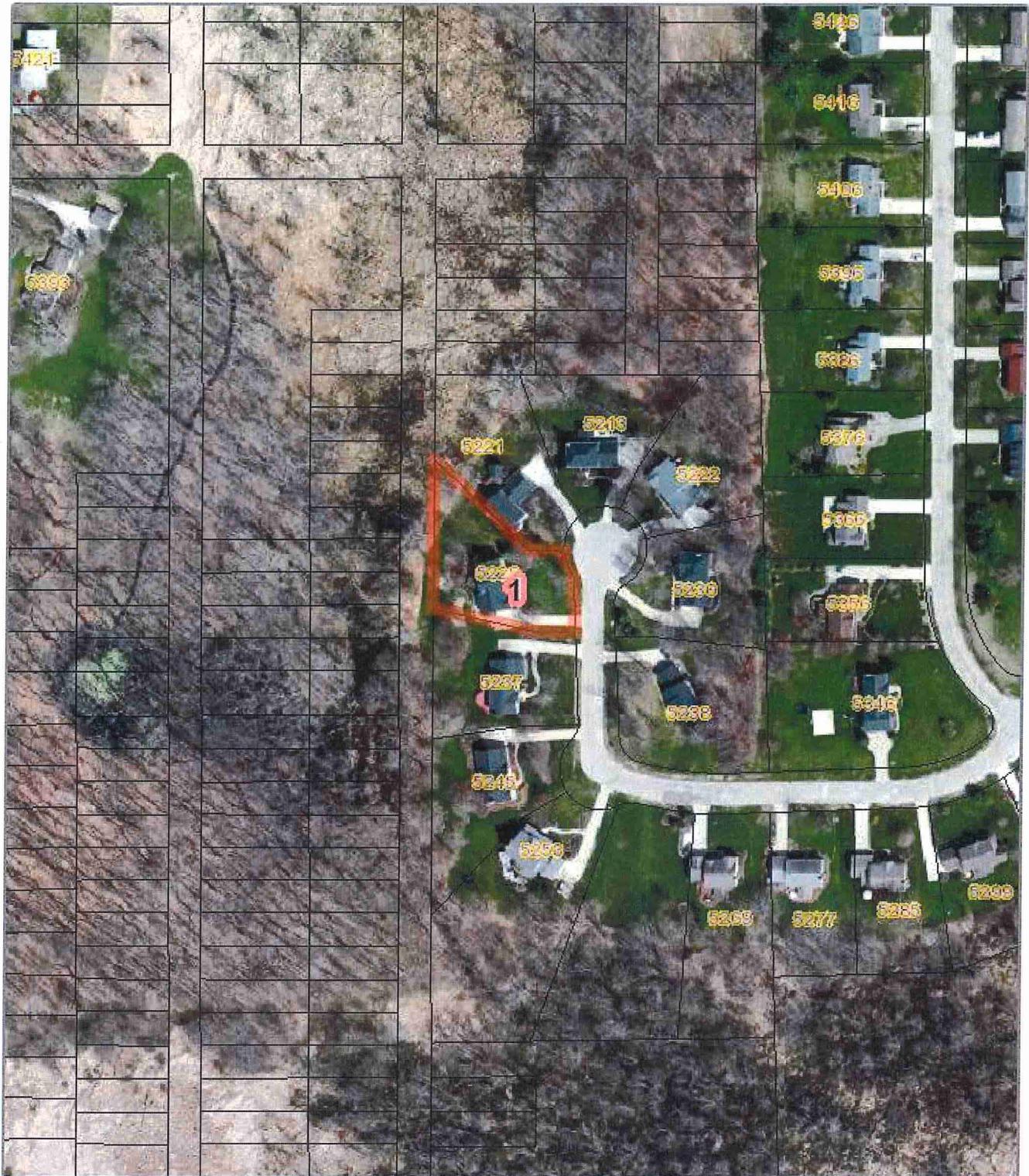
ATTACHMENT 1

7) The pergola's design and location is overall consistent with what the Hudson Land Development Plan is trying to enforce. The structure improves property value while preserving existing vegetation and trees. By moving this structure, an area of the property not favorable for planting or family use would be exposed. The pergola is enhancing the property and blends in with its surroundings where it is located presently. Adjacent properties can see the pergola, but it is located in a more discreet location.

7b)

- The lot is irregular in shape. It is shallow in the rear of residence on southwest side. While the lot gains depth on northwest side, the area sits in the FEMA floodplain.
- Immediately behind the deck, outside of floodplain and within proper setback, there are trees. Additionally, there are extensive root systems that limit ability to excavate proper footings with and increased risk to the trees relying on these root systems.
- The northern side of the property is not able to be used for pergola placement because of a slope, drainage from the residence and lack of sunlight. Additionally, routinely damp conditions make this area unfavorable for family use or lawn health with use.
- The southern side of the property cannot be used as a site for the pergola. Trees obstruct the southern side of the property. The pergola would be placed in a less natural location, more visible to neighbors and closer to the rear property line. It would be located in an area of the yard that actually can be used for family oriented activities, unlike the northern side.

City of Hudson, OH



Disclaimer: Map and parcel data are believed to be accurate, but accuracy is not guaranteed. This is not a legal document and should not be substituted for a title search, appraisal, survey, or for zoning verification.

Map Scale
1 inch = 178 feet
2/18/2016

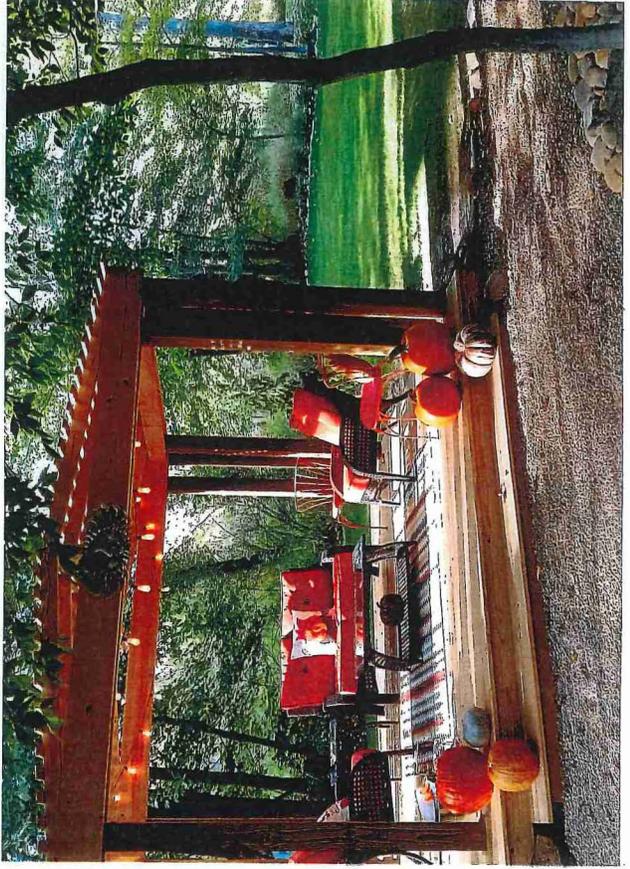
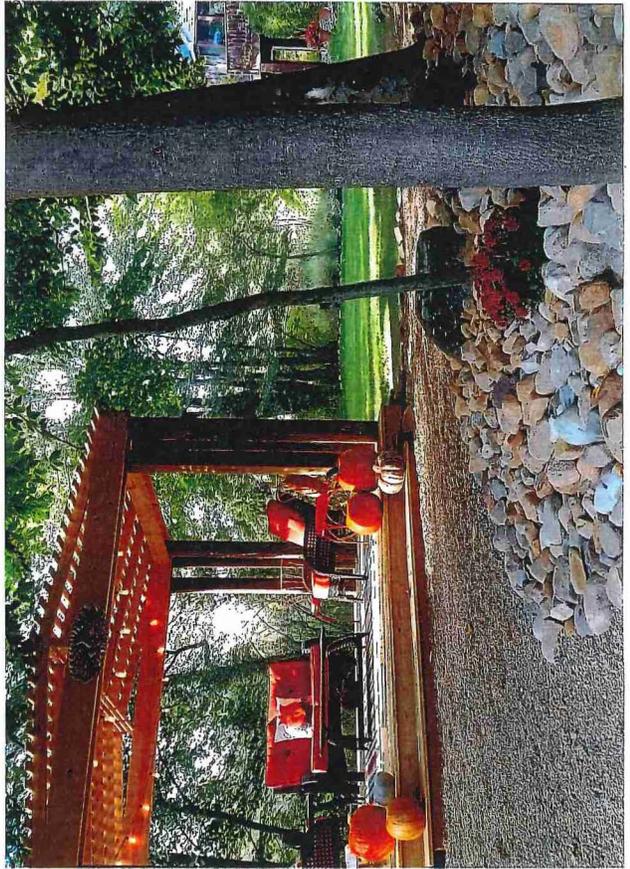
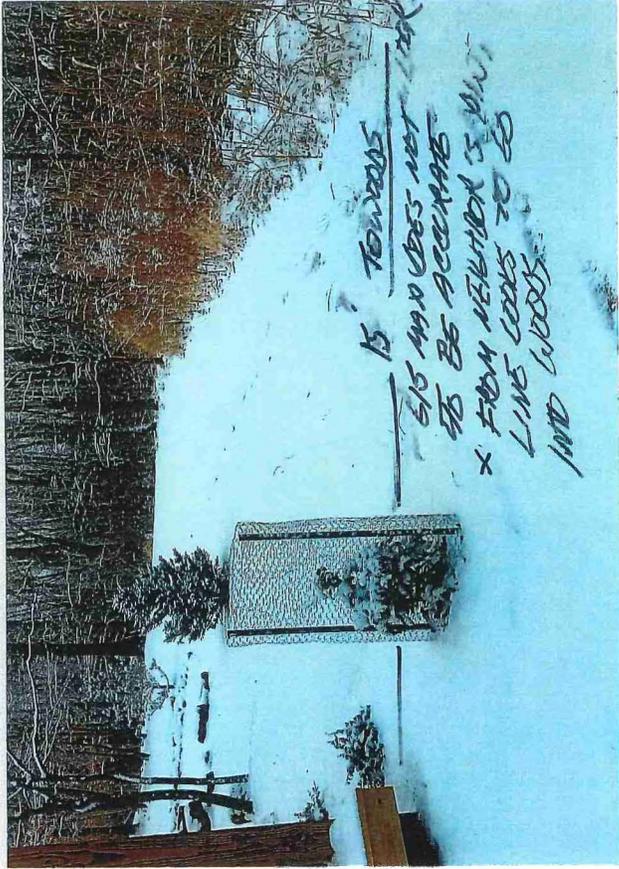
City of Hudson, OH



Owner Name	Britton Brian B	Legal Description	SV-TOWBRIDGE SUBDN PH III LOT 82 ALL
Site Address	5229 TOWBRIDGE DR	Area	0.49
Parcel ID	3007572	Council Ward	Ward 2
Owner Address	5229 TOWBRIDGE DR	Water Provider	Well Water
Owner City	HUDSON	Sewer Provider	DOES
Owner State	OH	Electric Provider	First Energy
Owner ZIP	44236	Water Rate	NA
Phone	(330) 342-7845	Water Tap	NA

Disclaimer: Map and parcel data are believed to be accurate, but accuracy is not guaranteed. This is not a legal document and should not be substituted for a title search, appraisal, survey, or for zoning verification.

Map Scale
1 inch = 45 feet
 2/8/2016



MEMORANDUM

2/25/16

RE: Zoning Cert. for Pergola Constructed in Floodplain at 5229 Towbridge Drive – Follow Up Field Inspection

Kris,

Please find the Engineering Departments field review comments of the new pergola constructed at 5229 Towbridge Drive below.

Summary

The City of Hudson Community Development (CD) department is coordinating a BZBA variance request to permit the completed construction of a pergola construction at 5229 Towbridge Drive. The pergola was constructed without a permit from the City in a FEMA 100-year flood plain based as shown on the most recent National Flood Insurance Program (NFIP) maps/data.

Follow-Up

FEMA's NFIP refers to gazebos (or pergolas) as accessory structures. Per the NFIP, the accessory structure must meet section 60.3(a)3 – Reasonably Safe From Flooding portion of part 44 of the Code of Federal Regulations which indicates:

If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall (i) be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, (ii) be constructed with materials resistant to flood damage, (iii) be constructed by methods and practices that minimize flood damages, and (iv) be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

The Engineering Department has reviewed the permit submitted by the owner and provided a separate memorandum to CD dated January 13, 2016. In the memorandum, it was recommended that the owner supply proof of the anchoring of the pergola and other construction details. The owner has submitted the design plans and construction photos of the posts for the pergola.

On February 10, 2016, the Engineering Department field inspected (see photos attached) the pergola behind the home at 5229 Towbridge Drive. The pergola appears to have been constructed per the submitted plans and construction photos submitted by the owner. In addition, the following was observed:

- The posts appear to be constructed as submitted, with at least 3 feet of each 6"x6" buried underground. This anchoring will prevent flotation or lateral movement of the pergola during a flood event.

- The materials and method used for construction are resistant to flood damage.

- The post-style structure with no walls or rails will minimize flood impacts/damage.
- No permanent electrical, heating, plumbing or ventilation exists at the site. Note that a temporary electrical connection for decorative lighting was observed. Per the City of Hudson Land Development Code (LDC), this connection shall be elevated to a minimum of 18” above the Base Flood Elevation (BFE) which is 993.0. The owner shall notify the City once the electrical connection has been elevated above the BFE so an inspection can take place.
- The City of Hudson LDC, Section - 1205.14 Floodplain/Floodway Overlay District notes:

Section a3G - Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions;

Section c3 - Floodplain Development Permits. It shall be unlawful for any person to begin construction or other development activity including but not limited to filling; grading; construction; alteration, remodeling, or expanding any structure; or alteration of any watercourse wholly within, partially within or in contact with any identified special flood hazard area, as established in Section (a)(6), until a floodplain development permit is obtained from the Floodplain Administrator. Such floodplain development permit shall show that the proposed development activity is in conformity with the provisions of these regulations. No such permit shall be issued by the Floodplain Administrator until the requirements of these regulations have been met.

Recommendations

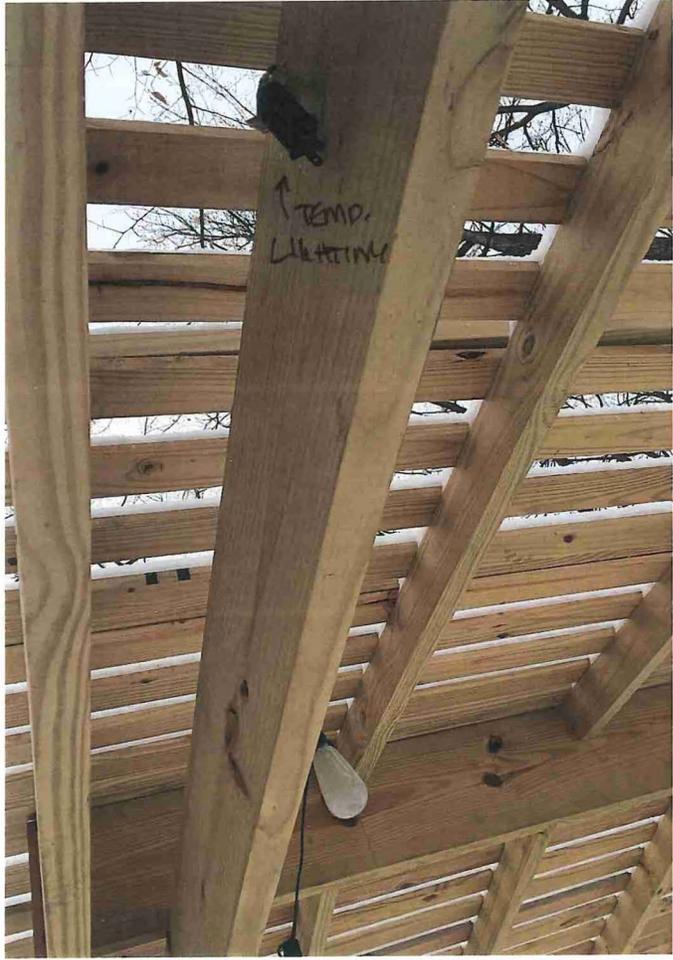
- (1) The new pergola complies with the NFIP, Section 60.3(a)3.
- (2) The owner shall be notified that they are responsible for the action of constructing the structure within the flood plain per the LDC.
- (3) Any future changes to the pergola shall be submitted to the City, prior to construction, for review by the City.
- (4) The existing electrical connection shall be elevated to 18” above the BFE.

Based on the above information, the City of Hudson Engineering Department approves this structure within the flood plain as noted above and approves issuing of the zoning permit in accordance with the LDC.

Respectfully,



Thomas J. Sheridan, P.E., P.S.
City Engineer



LOOKING SW

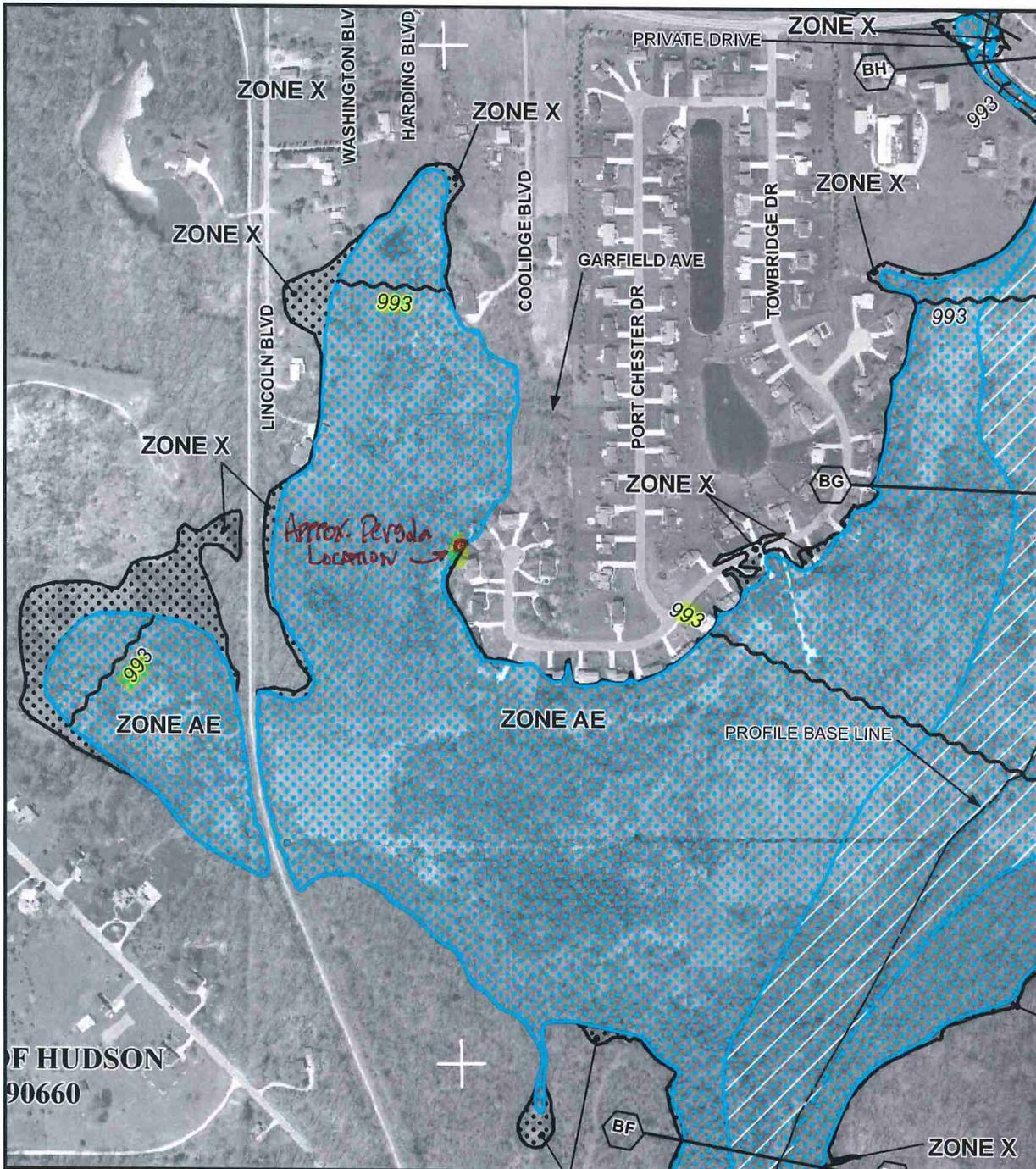
FEB. 10, 2016

5229 TOWNBRIDGE GLAZED

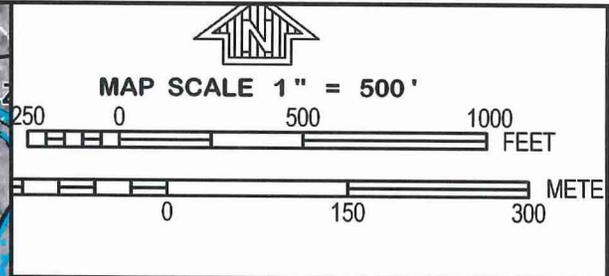


to House

APPROX.
12"



OF HUDSON
90660



NATIONAL FLOOD INSURANCE PROGRAM

PANEL 0128E

FIRM
FLOOD INSURANCE RATE MAP
SUMMIT COUNTY,
OHIO
AND INCORPORATED AREAS

PANEL 128 OF 295
(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
CUYAHOGA FALLS, CITY OF	390526	0128	E
HUDSON, CITY OF	390660	0128	E
STOW, CITY OF	390532	0128	E
SUMMIT COUNTY	390781	0128	E

Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.



MAP NUMBER
39153C0128E
EFFECTIVE DATE
JULY 20, 2009

Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov

**Stan and Laurie Friend
5221 Towbridge Drive
Hudson, OH 44236**

February 24, 2016

Hudson Board of Zoning and Appeals
27 East Main Street
Hudson, OH 44236

Dear Sir or Madam:

In support of our neighbors, Brian and Lisa Britton, we are sending you this letter. Our property sits adjacent and to the north of The Brittons. We are not opposed to the pergola on their property.

Before they built it, The Brittons asked if we had a problem with their plan and we assured them we approved of this addition to their yard. We appreciated the fact they were able to build the pergola in a location that was not being used. Additionally, we were glad to see they were able to build the structure in an appealing manner without compromising the beech trees on their property.

We are grateful to have The Brittons as neighbors. They are always working to maintain and improve their property. The pergola is yet another improvement to their lot. Thank you for allowing us to share our opinion on this matter.

Sincerely,

A handwritten signature in cursive script that reads "Stan and Laurie Friend". The ink is dark and the handwriting is fluid and legible.

Stan and Laurie Friend

Eugene Briers
5237 Towbridge Dr.
Hudson, OH 44236
2/20/16

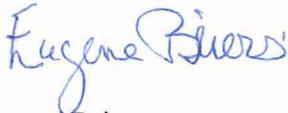
Hudson Board of Zoning and Building Appeals,
27 East Main Street
Hudson, OH 44236

Dear Hudson Board of Zoning and Building Appeals,

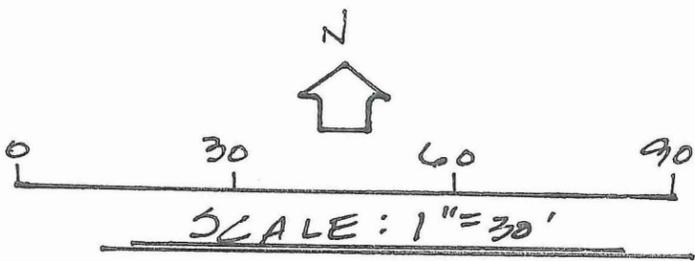
I am sending you this letter in support of my neighbor, Brian Britton, and his request for a variance at 5229 Towbridge Dr. It is my understanding that the Britton's are requesting a variance to keep their pergola where it currently sits on their property.

The pergola is a positive addition to their property and the neighborhood. This structure is part of their yard and not just a structure placed randomly on their property. The placement of the structure allows the family to utilize an area of their yard that is not useful otherwise.

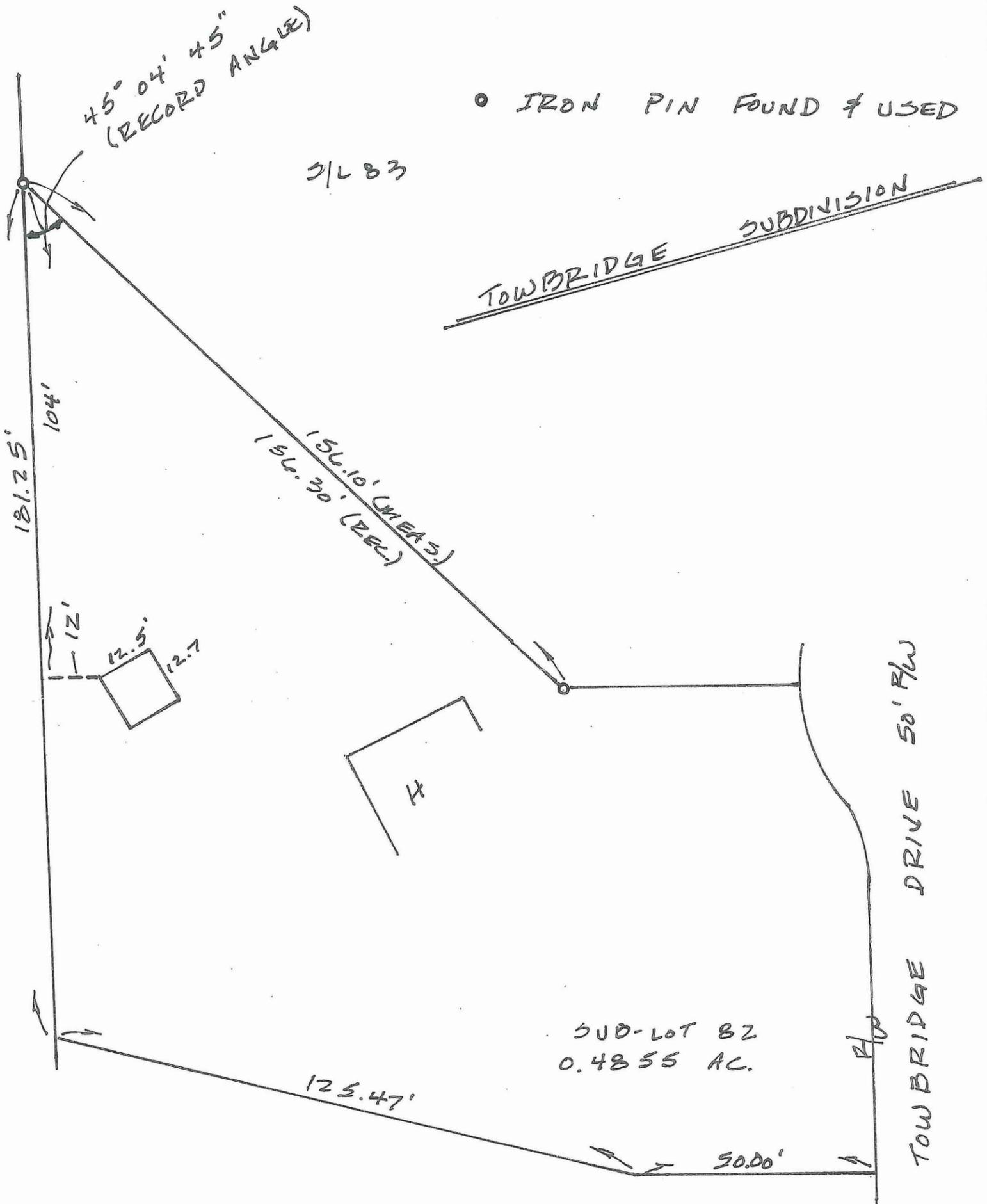
Sincerely,



Eugene Briers



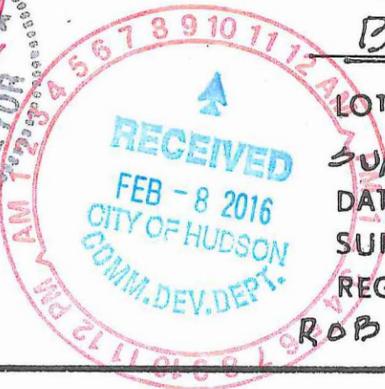
Rob Szuch & Associates
 5646 Horning Road
 Kent, Ohio 44240
 678-5867



S/L 83

• IRON PIN FOUND & USED

S/L 81



SURVEY FOR THE EXCLUSIVE USE OF
BRIAN BRITTON

LOT _____ HUDSON CITY TWP.

SUMMIT COUNTY, OHIO

DATE JAN 27 2016

SURVEYED BY ROB A. SZUCH

REGISTERED SURVEYOR NO. 7288, DBA

ROB SZUCH AND ASSOCIATES