

DKWRIGHT LAW LLC

HUDSON KNOLL WEST
56 MILFORD DRIVE, SUITE 405
HUDSON, OHIO 44236
330-283-6381

December 29, 2022

Via email: TSheridan@hudson.oh.us

Board of Zoning and Building Appeals
Attn: Thomas J. Sheridan, City Manager
Hudson City Hall
1140 Terex Road
Hudson, Ohio 44236

Re: Notice of Appeal - Hudson Community Living LLC's request for Conditional Use and Major Development Site Plan approval – 33 South Oviatt Street, Hudson, Ohio 44236 - Hudson Planning Commission Case No. 2022-822

Ladies and Gentlemen:

My firm represents Wellborn Jack, III (individually and as trustee), resident at 28 Fox Trace Lane, Hudson, Ohio, with regard to the above matter.

Pursuant to Hudson Land Development Code Section 1202.03(b)(4), Mr. Jack appeals the Hudson Planning Commission's approval of the conditional use permit on December 12, 2022 in the above matter to the Hudson Board of Zoning And Building Appeals. The reasons for the appeal are more fully set forth on the attached Appeal to Hudson BZBA, which is incorporated herein by reference.

Our client reserves, and does not waive, all rights, remedies and claims whatsoever against all parties whomsoever relative to the within subject matter and all related matters.

Please make this letter a part of the official record of proceedings in the above-captioned matter, and acknowledge your receipt of this letter via return email.

Very truly yours,

DKWright Law LLC

By: 

Daniel K. Wright, II

Enclosure

cc: Marshal Pitchford, Esq., City Solicitor
Mr. Gregory Hannan, Community Development Director
Ms. Amanda Davey, Associate Planner

Appeal to Hudson BZBA

From Hudson Planning Commission Case No. 22-822

Summary

The use proposed by Hudson Community Living should not be considered an institutional residential use because it does not meet the definition of an institutional residential use. In the alternative, if the use proposed by Hudson Community Living (“HCL”) (33 bed assisted living facility for severely disabled young adults with commercial kitchen serving chef-prepared meals), however characterized, is considered an institutional residential use, it is only permitted as a *conditional use* in District 3; it is not permitted as of right. Consequently, to be approved as a conditional use, the Code states that (among other things) it must be “**physically and operationally compatible with the surrounding neighborhood and surrounding existing uses...**” (Section 1206.02 (b)(2)). The fact is that there is nothing like the proposed use in the City nor the nearby neighborhood. No matter how you shade things, a density of over 4.0 units per acre is NOT COMPATIBLE with the existing density of 2 units per acre in D-3 zoning district, *as stated in Code Section 1205.06 (a)*. HCL’s proposal must be brought into compliance with the Hudson Land Development Code in all respects, including all requirements applicable to residential development in the D-3 zoning district, or it cannot be approved.

1. The proposed use is not an “institutional residential use”

The Hudson Planning Commission has agreed to classify this property as a use into which the proposed development does not fit. The proposed use classification, “institutional residential”, is defined in Section 1213.02(160) of the Land Development Code as “residences for nine or more unrelated persons who are elderly or developmentally disabled”. None of the dwelling units in the proposed development will be used for nine or more unrelated persons who are developmentally disabled. Instead, as proposed, each dwelling unit will be used for at most 2 developmentally disabled individuals and in some cases their caregivers. The Land Development Code does not contemplate aggregating separate buildings or separate dwelling units in order to meet the threshold requirement of at least nine total residents.

Furthermore, the Land Development Code specifically exempts from the definition of “institutional residential uses” “group homes of 8 or fewer clients”. Even if each dwelling unit in the development is considered an individual group homes for 8 or fewer clients, because the dwelling units will not be licensed or regulated per the applicable sections of the Ohio Revised Code, including but not limited to R.C. 5123.19(A)(5)(b), the use can not be considered a residential care facility, i.e., a group home. This means the use, however classified, including as a group homes of 8 or fewer individuals, is not a permitted use in the D-3 zoning district.

This granting of a conditional use permit by the Planning Commission was beyond the Planning Commission’s power and authority and is therefore improper, unreasonable, arbitrary, and capricious.

Requested Relief: Grant this appeal and find that the use is not permitted nor conditionally permitted in a D-3 zoning district because it is not an institutional residential use under the Land Development Code, but rather residential rental apartment development consisting of 5 duplex dwelling units and one single family detached dwelling unit (after the reduction in the number of units permitted to be constructed on the property from 19 to 16 as ordered by the Planning Commission on December 12, 2022.)

2. Compatibility

The proposed use is either an unlicensed and unregulated 33 bed assisted living facility for young adults with developmental disabilities or a residential rental apartment development as described above. Either way, the use is not physically or operationally compatible with, and is out of character with, the surrounding historic and high-end outer village single family residential neighborhoods and surrounding existing uses in a variety of respects, and therefore does not comply with Land Development Code 1206.02.

This granting of a conditional use permit by the Planning Commission was beyond the Planning Commission's power and authority and is therefore improper, unreasonable, arbitrary, and capricious..

Requested Relief: Grant this appeal and deny the applicant's request for a conditional use permit.

3. Density

Pursuant to Section 1205.06 of the Land Development Code, the D-3 zoning district, where this property is located, is typified by "single-family detached residential housing developed at moderate densities averaging about **two dwelling units per acre**"(emphasis added).

The proposed development, as approved by the Planning Commission, consists of 16 dwelling units on 3.9533 acres of land, for a density of **over 4 dwelling units per acre**. This is neither permitted under the Land Development Code nor consistent or compatible with the surrounding neighborhood and surrounding existing uses.

This granting of a conditional use permit by the Planning Commission was beyond the Planning Commission's power and authority and is therefore improper, unreasonable, arbitrary, and capricious.

Requested Relief: Grant the appeal and deny the applicant's request for a conditional use permit.

4. Compliance with Residential Requirements

The Land Development Code does not exempt "institutional residential uses" from any of the requirements of the Code that apply to residential uses. The Planning Commission did not require the applicant to comply with all of the requirements of the Code that apply to residential uses in the D-3 zoning district.

This granting of a conditional use permit by the Planning Commission was beyond the Planning Commission's power and authority and is therefore improper, unreasonable, arbitrary, and capricious.

Requested Relief: Grant this appeal and deny the applicant's request for a conditional use permit.

5. Restaurant

The development, as approved by the Planning Commission, contains a 4,255 square foot "clubhouse" structure containing a "commercial kitchen". The applicant plans to sell "meal plans" to residents for "chef-prepared meals", and will likely sell food to others including staff, family members of residents, guardians, and perhaps the general public (such sales are unrestricted under the Planning Commission's approval).

Under Section 1206.01 (c) and the accompanying table in the Land Development Code, restaurants are not permitted in the D-3 zoning district. This use cannot be approved under any circumstances.

This granting of a conditional use permit by the Planning Commission was beyond the Planning Commission's power and authority and is therefore improper, unreasonable, arbitrary, and capricious.

Requested Relief: Grant this appeal and deny the applicant's request for a conditional use permit.

6. Failure to Require Compliance With All Special Conditions Under Section 1206.02(c)(22).

The Hudson Planning Commission failed to require the applicant to comply with all special conditions in Land Development Code Section 1206.02(c)(22), which are mandatory.

Given the nature of the proposed use and the incompatibility of this use with the surrounding neighborhoods and surrounding existing uses, it was improper, unreasonable, arbitrary, and capricious for the Planning Commission to fail to require that the applicant comply with all special conditions imposed by Section 1206.02(c)(22), which are mandatory.

Requested Relief: Grant this appeal and deny the applicant's request for a conditional use permit.

-END-