



COMMUNITY DEVELOPMENT • 115 Executive Parkway, Suite 400 • Hudson, Ohio 44236 • (330) 342-1790

REPORT

DATE: July 10, 2015

TO: Board of Zoning and Building Appeals for
Meeting Date July 16, 2015

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

SUBJECT: **Appeals Docket 2015-09**

Application

Variances to permit the filling, clearing and grading of wetlands and wetland setback requirements.

Site

Address: 7738 Darrow Road
District: 1
Applicant: Anthony Lundardi, LDA Land Group, LLC
Owner: Christine Driver

Adjacent

<u>Location</u>	<u>District</u>	<u>Use</u>
North	1	The rear yard of a Single Family residence 150 wide with utility and natural gas pipeline easements along the north property line.
South	1	Single Family Residential
East	1	Single Family Residential
West	1	Single Family Residential

Comments

The subject of this hearing are requests for the following variances to permit construction of proposed Lake Christine Subdivision. Variances being sought are for proposed Open Space Area 2, Sublot 1 and the roadway into the subdivision.

The previously granted variances and the subdivision improvements to be reviewed by the Planning Commission are not part of this application.

The requests for each listed area concerning proposed Lake Christine Subdivision to be located at 7738 Darrow Road are:

[1] A variance to the requirement, for each listed "Area", which prohibits the disturbance, filling, draining, dredging or altering of any areas, including vegetation within stream corridors, wetlands and their setbacks pursuant to Section 1207.03(c), "Prohibited Activities"; and

[2] A variance to the requirement that all buildings, accessory structures, and parking areas or lots shall be set back at least fifty (50) feet horizontally (map distance), from the delineated edge of a wetland pursuant to Section 1207.03(e)(2), "Setback-Wetlands":

- [a] **Area "1"**- A variance of 30 ft from the required 50 ft wetland setback to install the required roadway, utilities and landscaping;
- [b] **Area "2"**- A variance of 25 ft from the required 50 ft wetland setback to install the road way and required utilities;
- [c] **Area "3"**- A variance of 30 ft from the required 50 ft wetland setback to install the required roadway, utilities and landscaping;
- [d] **Area "4"**- A variance of 30 ft from the required 50 ft wetland setback to install the required roadway, utilities and landscaping;
- [e] **Area "5"**- A variance of 50 ft from the required 50 ft wetland setback resulting in a zero setback for construction of a gazebo within the Open Space Area for the use of the Homeowners of the development; and
- [f] **Area "6"** – A variance of 20 ft from the required 50 ft wetland setback for construction of a home and grading on subplot #1.

The subject property is located in District 1. The parcel is 11.25 acres proposed to be subdivided into eleven (11) sublots located on a cul-de-sac street retaining a one acre residual lot for the existing single family residential home that the owner purchased in 1978. The property is surrounded to the east, south and west by single family residential. To the north is a residential lot fronting Berks Way with a 150 foot wide undeveloped corridor containing utility and natural gas pipeline easements along the north property line. The Planning Commission on May 12, 2014 determined the Lake Christine single family residential subdivision is compatible with existing adjacent development. The applicant indicated at the Planning Commission meeting the proposed development would have homes within the square footage range of 2,800 to 3,200 square feet. Approval was received July 17, 2014 from the Board of Zoning Building Appeals for variances

to the minimum lot width for the residual parcel, cul-de-sac length and distance between intersections. It was only since the 2014 meetings that the extent of wetlands on the property was discovered.

The applicant Anthony Lunardi, LDA Land Group, LLC. and John Carse, Carse Real Estate Corporation had a pre-application meeting on June 18, 2015 with staff to discuss the revised 11 lot subdivision plan and necessary variances that would be needed for the required setbacks from wetlands located within the property to develop. Approval from the Board of Zoning Building Appeals regarding the subject variance requests would allow the Planning Commission to move forward to review the Preliminary Subdivision Plan as presently designed tentatively set for their meeting on August 10, 2015.

The property consists of wetlands within the eastern portion of the proposed subdivision. The original plan for the subdivision was 14 lots. Due to the now known wetlands present the number of subdivision lots was reduced to 11 sublots. The wetland area to remain within the subdivision totals 1.37 acres. The wetland area of 0.48 to be filled has received approval from the Department of the Army on May 7, 2015. The applicant has stated that to develop the property the variances from the wetland setbacks are necessary for the required roadways, utilities, and landscaping, and for a gazebo and the construction of a home and grading. Disturbances of wetland, streams and their setback are not authorized by the Land Development Code and prerequisite to the Planning Commission approval, a variance is required if there are impacts to wetlands and their required 50 foot setback. The applicant is seeking relief for Area's "1" through Area "6" as shown on the enclosed map.

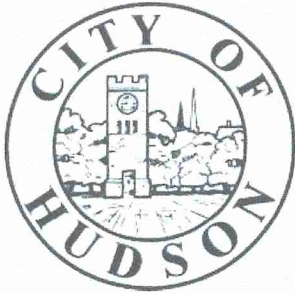
The following documents are attached for your review:

1. **June 17, 2015** - BZBA Application, request for a hearing letter, map location details.
2. **Aerial of site.**
3. **May 7, 2015** - Correspondence from the Department of the Army Permit No. 2014-01190.

Approval of the Final Subdivision Plan from Planning Commission, Growth Management Allotments and approval for the design of the residential homes from the Architectural and Historic Board of Review are still required.

Attachments

cc: BZBA 2015-09
Aimee Lane, Assistant City Solicitor
Tony Lunardi LDA Land Group, LLC
John Carse, Carse Real Estate Corporation
Christine Driver
Keith Smith, Council Liaison



Board of Zoning and Building Appeals Application

115 Executive Parkway, Suite 400 · Hudson, Ohio 44236-3004
(330) 342-1790 · (330) 656-1753 · Fax (330) 342-1722
www.hudson.oh.us

Please make check amount payable to "City of Hudson" for the amount of \$250.00

Pursuant to the City of Hudson Land Development Code, the undersigned hereby submits attached information and requests a hearing before the Board of Zoning and Building Appeals for the following purpose(s):

(Please Circle Request)

"VARIANCE"

"NONCONFORMING USE"

"APPEAL"

Property Address: 7738 Darrow Rd. Zoning District: R-1

Explanation of Request and Justification:

We are requesting a reduction of the setback requirements to the existing Wetlands located on the subject property in order to Construct the "Lake Christine" subdivision as previously proposed. See the attached letter dated 6-11-2015

For a variance: Code requires _____ setback/sq. ft./height. Request is for _____ setback/sq. ft./height.

Year Property Purchased: 1978

Section(s) of the Land Development Code applicable to this application:

1207.03(3) & 1207.03(5)(2)

The undersigned certify that the information provided to the Board in and with this application is true and accurate and consent to employees and/or agents of the City of Hudson entering upon the premises of this application for purposes of inspection and verification of information pertaining to the application, and if this application is approved, to verify conformance to requirements and conditions of such approval.

Applicant: LDA Land Group LLC Property Owner: Mrs. Christine Driver

Address: 6683 Olde Eight Rd. Address: 7738 Darrow Rd.

Peninsula, OH 44264

Telephone: (330) 528-3800 x-201

Telephone: (330) 656-3631

Fax: (330) 342-4240

Fax: N/A

E-Mail: Tony@LDAbuilders.com

E-Mail: N/A

Applicant: state relationship (agent, attorney, contractor, other): Contractor

Applicant Signature: [Signature] Date: 6-17-2015

Property Owner Signature: x Christine Driver Date: 6-17-2015

(Staff use only)

Application No./Docket No. 2015-09

Hearing Date 7-16-15

Date Received 6-17-15

Fee Paid 250.00

FEMA Floodplain Y N _____ (Initials)

BOARD OF ZONING AND BUILDING APPEALS (BZBA)

Application Supplemental Information

Application for property located at: 7738 Darrow Rd

Variances 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: Variance is needed in order to construct the street and properly construct one of the proposed homes, and without it property cannot be properly used.
- 2) The variance is (~~substantial~~/insubstantial) because: The project was reduced from the original 14 lots proposed, to only 11 lots, due to the wetlands later found on the property.
 - 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: The requested setback variances are within our proposed project and do not affect neighboring properties.
- 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
Purchased 36 years ago.
- 6) This situation cannot be feasibly solved by means other than a variance. Explain: No
Street cannot be constructed without this variance.
- 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: A protected "open space" area would be created within the development around the majority of the wetlands.
 - a) The circumstance leading to this request was not caused by current owner. It was caused by: The "Wetlands" were most likely not there 36 years ago when property was purchased and were created naturally on their own over time.
 - b) List any special circumstances peculiar to the property/lot (i.e. exceptional irregularity, narrowness, shallowness or steepness) these circumstances are: The proposed street location can not be relocated elsewhere due to the size and shape of the property.

Signature Amy Samy

Date 6-17-2015



3057 WEST MARKET STREET SUITE 201

FAIRLAWN, OHIO 44333

June 17, 2015

Kris A. McMaster
City of Hudson
115 Executive Parkway
Suite 400
Hudson, Ohio 44236

RE: LAKE CHRISTINE

Dear Ms. McMaster,

As we discussed in our meeting on June 9, 2015, we are requesting variances from various sections of the City of Hudson Codified Ordinances in regards to wetlands. Our specific variance requests are as follows:

Section 1207.03(c) "Prohibited Activities". We made every attempt to minimize the impacts of this development on the existing wetlands. In order to construct the roadway and obtain buildable areas on 3 lots, it was determined to be necessary to fill some of the wetlands. We eliminated 3 additional building lots from the original proposal in order to preserve the remainder of the wetlands. We have received a permit from The US Army Corp of Engineers to fill the wetlands as shown in blue on the attached map.

Section 1207.03(e)(2) "Setbacks". After the wetlands are filled, the resulting wetland boundary will be less than the required 50 feet from the road right of way in various locations.

The requested variances and corresponding letter on the map are as follows:

- [a] **Area "1"**- A variance of 30 ft. from the required 50 ft. wetland setback to have the ability to install the required roadway, utilities and landscaping.
- [b] **Area "1"**- To permit a wetland crossing on the proposed roadway.
- [c] **Area "2"**- A variance of 23.44 ft. from the required 50 ft. wetland setback to install the roadway and required utilities.
- [d] **Area "2"**- To permit a wetland crossing on the proposed roadway.
- [e] **Area "3"**- A variance of 30 ft. from the required 50 ft. wetland setback to have the ability to install the required roadway, utilities and landscaping.

June 17, 2015

Kris A. McMaster
City of Hudson
115 Executive Parkway
Suite 400
Hudson, Ohio 44236

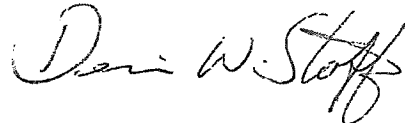
RE: LAKE CHRISTINE

Page 2

- [f] **Area "3"**- To permit a wetland crossing on the proposed roadway.
- [g] **Area "4"**- A variance of 30 ft. from the required 50 ft. wetland setback to have the ability to install the required roadway, utilities and landscaping.
- [h] **Area "4"**- To permit a wetland crossing on the proposed roadway.
- [i] **Area "5"**- A variance of 50 ft. from the required 50 ft. wetland setback to install a gazebo within the private open space area for the use of the residents in the subdivision.
- [j] **Area "6"** - A variance of 20 ft. from the required 50 ft. wetland setback for construction of a home and grading on Lot 1.

We thank the Board of Building and Zoning Appeals and the staff for their consideration of these variance requests.

Sincerely,

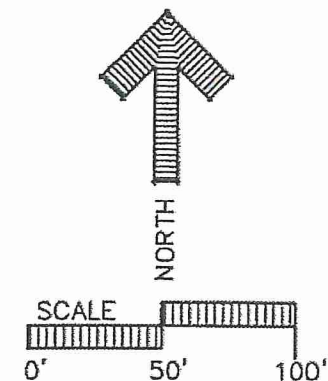
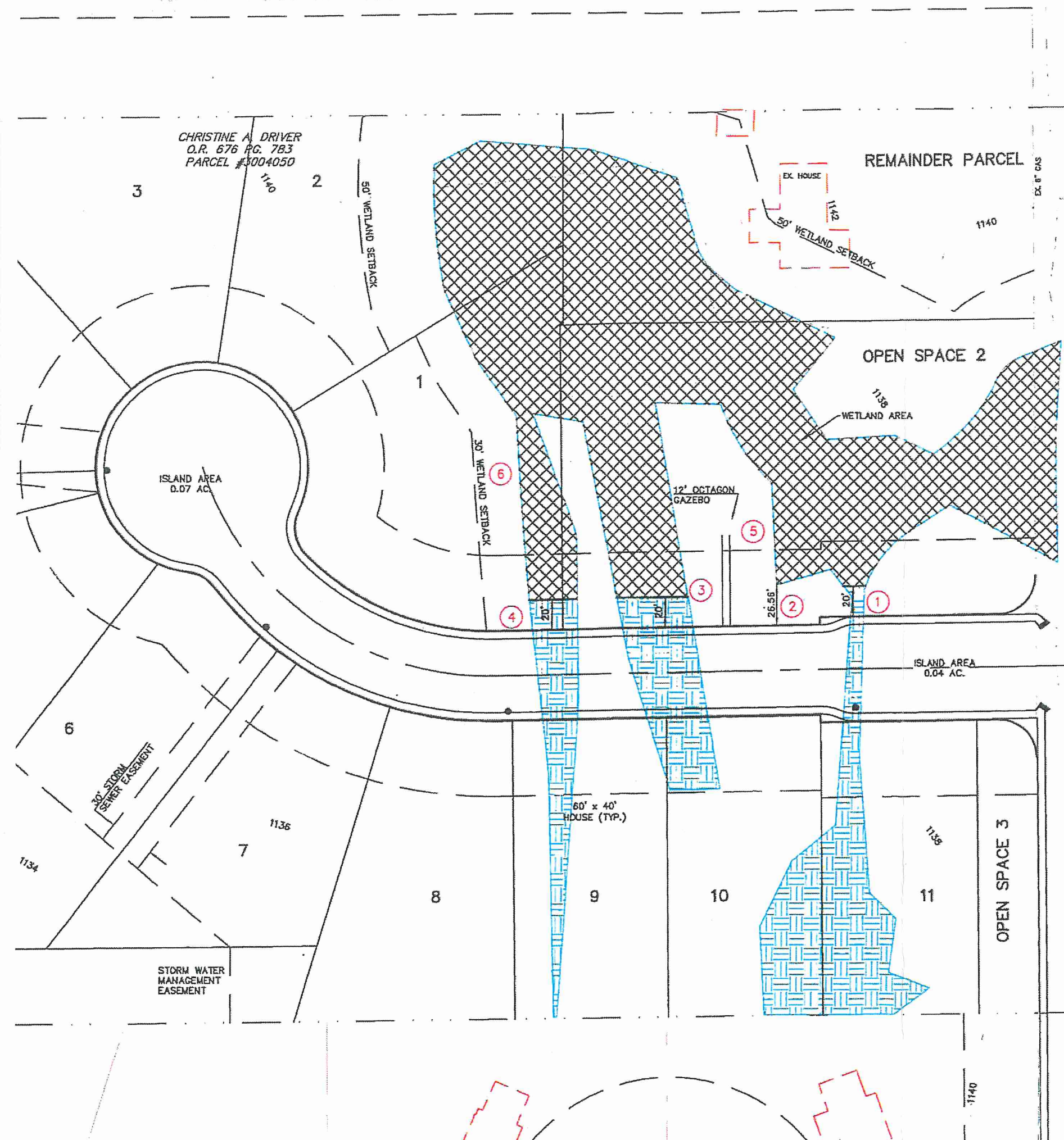
A handwritten signature in dark ink, appearing to read "Dennis W. Stoffer". The signature is fluid and cursive, with the first name "Dennis" and last name "Stoffer" clearly distinguishable.

Dennis W. Stoffer, P.E., P.S.

DWS

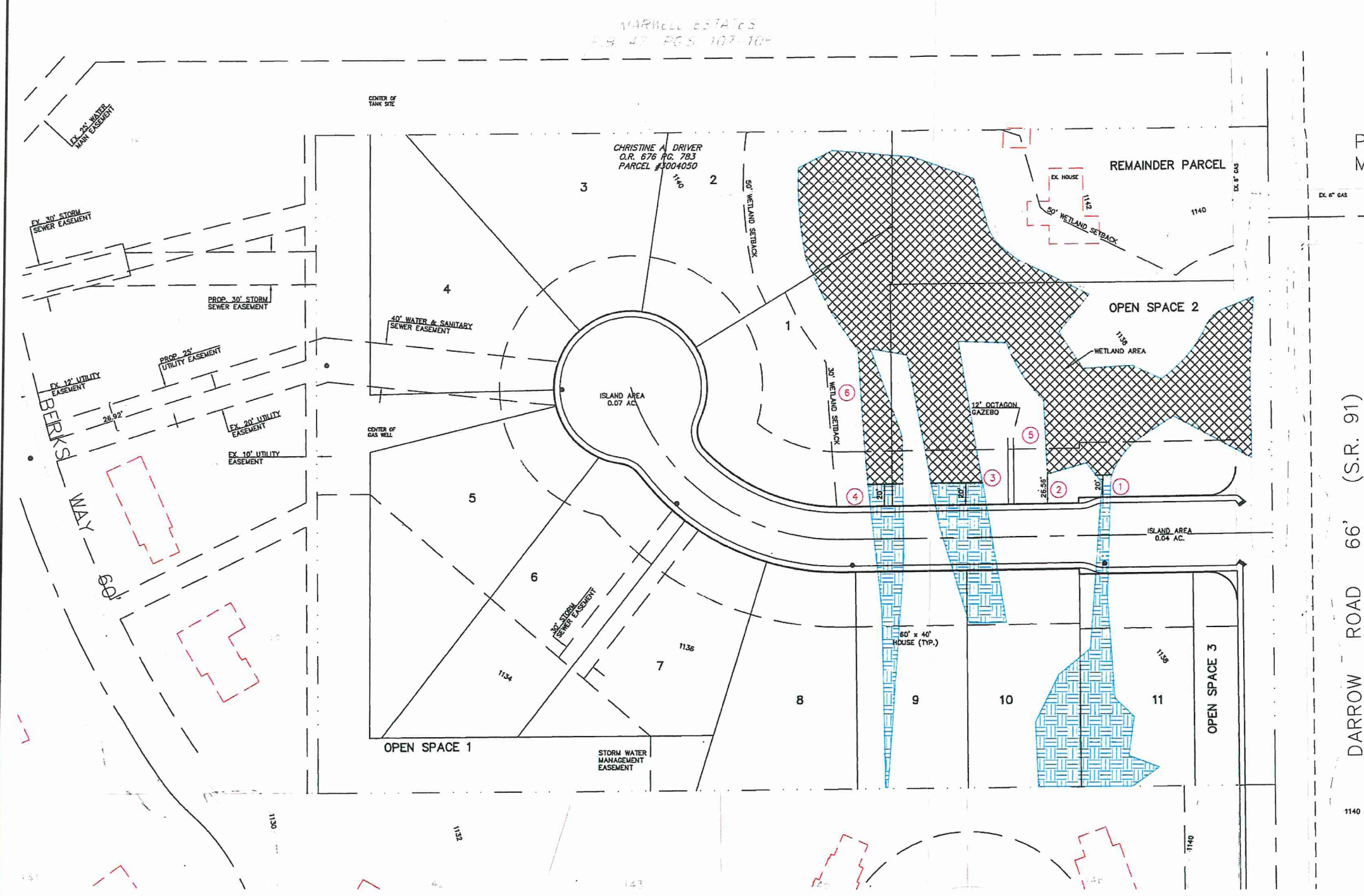
attachments

cc: Tony Lunardi
file



- ⑦ SAMPLE POINT
- WETLAND AREA TO REMAIN = 1.37 ACRI
- WETLAND AREA TO BE FILLED = 0.48 A

This wetland delineation will be supported by Flickinger Wetland Company, LLC. for five ye



- ⑦ SAMPLE POINT
- WETLAND AREA TO REMAIN = 1.37 ACRES
- WETLAND AREA TO BE FILLED = 0.48 ACRE

This wetland delineation will be supported by Flickinger Wetland Company, LLC. for five years from the date of this map or verification letter from USACE, whichever is later.

CLIENT LDA LAND GROUP (JOHN CARSE)	
PROJECT LAKE CHRISTINE	
TITLE WETLAND DELINEATION	
SCALE 1" = 50'	DATE 6-23-15
- PREPARED BY - FLICKINGER WETLAND COMPANY, LLC	
8530 NORTH BOYLE PARKWAY TWINSBURG, OHIO 44087 (440) 668-5177	
JOB no. -	
DWG. FILE DRIVER PROPERTY Base-Preliminary (LAKE CHRISTINE)	
SHT. no. 1 of 1	

City of Hudson, OH



Owner Name	Driver Christine A	Legal Description	LOT 95 W OF DARROW RD 600 FT FRT	
Site Address	7738 DARROW RD	Area	11.25	
Parcel ID	3004050	Council Ward	Ward 4	
Owner Address	7738 DARROW RD	Water Provider	Well Water	
Owner City	HUDSON	Sewer Provider	Septic System	
Owner State	OH	Electric Provider	City of Hudson	
Owner ZIP	44236	Water Rate	Akron Water District	
Phone	(330) 656-3631	Water Tap	Akron Water District	

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 = 249 feet
6/19/2015



DEPARTMENT OF THE ARMY
BUFFALO DISTRICT, CORPS OF ENGINEERS
1776 NIAGARA STREET
BUFFALO, NEW YORK 14207-3199

REPLY TO
ATTENTION OF:

May 7, 2015

Regulatory Branch

SUBJECT: Department of the Army Permit No. 2014-01190, Nationwide Permit No. 29, as Published in the Federal Register, Volume 77, No. 34, on Tuesday, February 21, 2012.

Mr. Anthony Lunardi
L.D.A. Land Group, LLC
6683 Oldé Eight Road
Peninsula, Ohio 44264

Dear Mr. Lunardi:

This pertains to L.D.A. Land Group, LLC's application for a Department of the Army permit to permanently place fill material into 0.48 acres of federally jurisdictional forested wetlands in order to construct a residential subdivision. The project is located west of Darrow Road (State Route 91) in Hudson, Summit County, Ohio (Sheets 1-2 of 2). All remaining on-site wetlands will be preserved by deed restriction.

I have evaluated the impacts associated with your proposal, and have concluded that they are authorized by the enclosed Nationwide Permit (NWP) provided that the attached conditions are satisfied.

Verification of the applicability of this NWP is valid until March 19, 2017 unless the NWP is modified, suspended, revoked, or the activity complies with any subsequent permit modification. Please note in accordance with 33 CFR part 330.6(b), that if you commence or are under contract to commence an activity in reliance of the permit prior to the date this Nationwide permit expires, is suspended or revoked, or is modified such that the activity no longer complies with the terms and conditions, you have twelve months from the date of permit modification, expiration, or revocation to complete the activity under the present terms and conditions of the permit, unless the permit has been subject to the provisions of discretionary authority.

It is your responsibility to remain informed of changes to the NWP program. A public notice announcing any changes will be issued when they occur and will be available for viewing at our website: <http://www.lrb.usace.army.mil/Missions/Regulatory.aspx>. Finally, note that if your activity is not undertaken within the defined period or the project specifications have changed, you must immediately notify this office to determine the need for further approval or reverification.

Regulatory Branch

SUBJECT: Department of the Army Permit No. 2014-01190, Nationwide Permit No. 29, as Published in the Federal Register, Volume 77, No. 34, on Tuesday, February 21, 2012.

In addition to the general conditions attached to the NWP, your attention is directed to the following Special Conditions which are also appended at the end of the NWP General Conditions:

1. You are responsible for ensuring that the contractor and/or workers executing the activities authorized by this permit have knowledge of the terms and conditions of the authorization and that a copy of the permit document is at the project site throughout the period the work is underway.
2. At the request of an authorized representative of the Buffalo District, U.S. Army Corps of Engineers, the permittee must allow access to the project site to determine compliance with the conditions of this permit.
3. To reduce any potential adverse effects on the federally endangered Indiana bat (*Myotis sodalis*), trees (woody stems greater than 5 inches Diameter at Breast Height and greater than 10 feet tall) must not be cut between March 15 and November 15, of any year.
4. To reduce any potential adverse effects on the federally threatened Northern long-eared myotis (*Myotis septentrionalis*), trees (woody stems greater than 3 inches Diameter at Breast Height) must not be cut between March 15 and November 15, of any year.
5. That as mitigation for the permanent and unavoidable loss of 0.48 acres of Federal jurisdictional wetlands, the permittee must purchase 1.2 credits from the Granger Wetland Mitigation Bank. Prior to commencing the work authorized by this permit, the permittee must supply this office with a copy of the Granger Wetland Mitigation Bank executed mitigation agreement and verification of the transfer of funds to the Granger Wetland Mitigation Bank. The executed agreement and verification of funds must be sent to the attention of Mr. Harold Keppner, Chief, Monitoring & Enforcement Section, U.S. Army Corps of Engineers, 1776 Niagara Street, Buffalo, New York 14207-3199.
6. Prior to conducting any work authorized by this permit, the permittee is required to place perpetual deed restrictions on all remaining wetlands and streams and their immediate upland buffers as identified on Sheet 2 of 2 to guarantee their preservation for wetland and wildlife resources. The deed restriction shall specifically state: (1) the Department of the Army Permit number; 2) the date the project was permitted; 3) the restricted uses as identified in Special Condition 7 of this permit, 4) the contact information for the Buffalo District U.S. Army Corps of Engineers Regulatory Branch, 5) that the remaining wetlands and streams and their immediate upland buffers are to be preserved and are not to be adversely impacted, 6) that the deed restriction runs with the land and burdens the property in perpetuity; and (7) that the deed restriction shall be transferred to subsequent property owners upon the sale, transfer, or reversion of the property. A map that is drafted by a professional surveyor and a legal description that defines the metes and bounds of the deed restricted area shall be attached to and referenced in the deed restriction. The permittee shall identify the location of federal jurisdictional boundaries

Regulatory Branch

SUBJECT: Department of the Army Permit No. 2014-01190, Nationwide Permit No. 29, as Published in the Federal Register, Volume 77, No. 34, on Tuesday, February 21, 2012.

on all documents recorded by the Summit County Recorder to include subdivision plats, deeds, and other legal real estate documents. The deed restrictions shall not be removed without written approval with the U.S. Army Corps of Engineers, Buffalo District. A draft copy of the deed restriction language must be submitted to Keith C. Sendziak of this office and approved, in writing, prior to recordation. An approved, certified copy of the recorded deed restriction is required to be provided to Mr. Harold T. Keppner, Chief, Monitoring & Enforcement Section, U.S. Army Corps of Engineers, 1776 Niagara Street, Buffalo, New York 14207-3199, prior to conducting work authorized by this permit, or by an extension authorized in writing from this office.

7. The permittee must ensure none of the following activities occur within the deed restricted areas (as described in Special Condition No. 6): filling, excavating, dredging, mining or drilling, use of ATVs or other recreational motorized vehicles, removal of topsoil, sand, gravel, rock, minerals, or other materials, nor any building of roads or change in topography of the land in any manner (with the exception of the maintenance of small foot trails), construction or placement of buildings, camping accommodations or mobile homes, fences, signs, billboards or other advertising material, or other structures. There shall be no removal, destruction, or cutting of vegetation, spraying with herbicides, grazing of domestic animals, or disturbance or manipulation of the mitigation area without first obtaining Department of the Army authorization. Control of nuisance vegetation, or any other manipulation within the mitigation areas, shall only occur after Corps of Engineers concurrence that such management practices are necessary to ensure the long-term success of the mitigation program.
8. Should human remains be encountered during any phase of the proposed project, such person or persons encountering the human remains shall immediately cease work and will make a reasonable effort to refrain from disturbing or removing the human remains, protect the exposed portions of the human remains from inclement weather and vandalism, and immediately notify the applicant. The applicant will immediately notify the U.S. Army Corps of Engineers and the Ohio State Historic Preservation Office. If the human remains are not subject to a criminal investigation by local, state, or Federal authorities, the Ohio SHPO's Policy Statement on Treatment of Human Remains (1977) will be used as guidance.
9. That the mechanical equipment used to execute the work authorized herein shall be operated in such a way as to minimize turbidity that could degrade water quality and adversely affect aquatic plant and animal life.
10. All erosion and sediment control practices shall be in place prior to any grading or filling operations and installation of proposed structures or utilities. They shall remain in place until construction is completed and the area is stabilized.
11. That the fill material shall be free of fines, oil and grease, debris, wood, general refuse, plaster, and other pollutants, and shall contain no broken asphalt.

Regulatory Branch

SUBJECT: Department of the Army Permit No. 2014-01190, Nationwide Permit No. 29, as Published in the Federal Register, Volume 77, No. 34, on Tuesday, February 21, 2012.

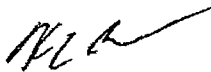
12. The permittee must install orange safety fencing around the perimeter of the development area to prevent any inadvertent disturbance to the adjacent wetlands or their wetland buffers by construction operations and equipment. The fencing must be placed in uplands, be maintained throughout the duration of the project, and must be removed immediately after construction has been completed.

This affirmation is limited to the attached NWP and associated Water Quality Certification, and does not obviate the need to obtain any other project specific Federal, state, or local authorization.

A copy of this letter has been sent to Mr. John Carse (Carse Real Estate Corp.), Mr. Erik Flickinger (Flickinger Wetland Company, LLC) and to the Ohio Environmental Protection Agency.

Questions pertaining to this matter should be directed to me at 716-879-4339, by writing to the following address: U.S. Army Corps of Engineers, 1776 Niagara Street, Buffalo, New York 14207, or by e-mail at: keith.c.sendziak@usace.army.mil

Sincerely,



Keith C. Sendziak
Biologist

Enclosures

Project Location

SECTION No. 12

