



City of Hudson, Ohio

Meeting Minutes - Final Board of Zoning & Building Appeals

David Lehman, Chair
John Dohner, Vice Chair
Robert Drew
Frederick Jahn
Louis Wagner

Kris McMaster, Associate Planner
Aimee Lane, Assistant City Solicitor

Thursday, April 21, 2016

7:30 PM

Town Hall

I. Call to Order

Chairman Lehman called to order the regular meeting of the Board of Zoning and Building Appeals at 7:30 p.m.

II. Roll Call

Present: 5 - Mr. Dohner, Mr. Drew, Mr. Jahn, David Lehman and Mr. Wagner

III. Identification, by Chairman, of Mark Richardson, Community Development Department Director, Kris McMaster, Associate Planner, and Aimee W. Lane, Assistant City Solicitor.

Meeting minutes were taken by Judy Westfall, Clerk. A verbatim transcript of the hearing in Case No. 2016-10 was prepared by Sue Petro, Merritt and Loew, LLC, Court Reporter and is attached hereto and incorporated herein. A video recording of this meeting is available on the City of Hudson website.

IV. Swearing in of Staff and Audience Addressing the Board.

Mrs. Lane swore in staff and all the persons wishing to speak under oath.

V. Approval of Minutes

A. [BZBA 3-17-16](#) MINUTES OF PREVIOUS BOARD OF ZONING AND BUILDING APPEALS MEETING 3-17-16.

Attachments: [BZBA Minutes March 17, 2016](#)

Mr. Drew made a motion to approve the minutes of the March 17, 2016 meeting as submitted.
Mr. Wagner seconded the motion.

The motion carried by the following vote:

Aye: 5 - Mr. Dohner, Mr. Drew, Mr. Jahn, Mr. Lehman and Mr. Wagner

VI. PUBLIC HEARINGS - OLD BUSINESS

[BZBA 2016-04](#) Continued from BZBA meeting 3-17-16 - A variance of eight (8) feet from the required front yard setback of fifty (50) feet to allow a house resulting in a forty-two (42) foot front yard setback pursuant to Section 1205.07(d)(6)(D), "Setbacks-Arterial Setbacks" and Section 1207.04(k)(1)(A), "Landscaping Requirements for "Front Yard/Front Setbacks", of the City of Hudson Land Development Code.

The applicant is Justin Kapela for J. Kapela Designs, 44 Clinton Street, Hudson, OH 44236 and the owner is Samer T. Yousef and Doaa Abou Sharbin, 38 Elmcreek Way, Aurora, OH 44202 for the property located at 434 N. Main Street in District 4 [Historic Residential Neighborhood-Historic District].

Attachments: [BZBA 2016-04 Staff Report](#)

[BZBA 2016-04 Variance of 8' front yard setback revised design 3.23.16](#)

A public hearing was held regarding the continuation of BZBA Case No. 2016-04.

Mrs. McMaster reviewed BZBA Case No. 2016-04, which was continued from the BZBA meeting held on March 21, 2016. She noted that the applicant is still seeking an eight foot variance to locate the house at a forty-two foot front yard setback matching the front setback of the historic home to the south.

The applicant, Justin Kapela, J. Kapela Designs, 44 Clinton Street, Hudson, Ohio 44236, stated that the house plan has been revised to a smaller footprint and will replicate a 1860 Greek Revival design. He said that he is not requesting that the variance belong solely to him.

Board members and the applicant discussed the variance request.

Mr. Lehman opened the meeting to public comment. There being no public comments, Mr. Lehman closed the public hearing.

A motion was made by Mr. Dohner, seconded by Mr. Wagner, that after reviewing the application, the hearing of evidence under oath, reviewing all documentary submissions of interested parties, and by taking into consideration the personal knowledge of the property in question, the Board of Zoning and Building Appeals hereby approves this variance. The board finds and concludes:

- 1. The property in question will yield a reasonable return and there can be a beneficial use of the property without the variance; however, due to the size and the topography of the lot, the variance is warranted.**
- 2. The variance is insubstantial because only the porch will encroach into the variance area and no further forward than the historic home immediately to the south.**
- 3. The essential character of the neighborhood would not be substantially altered or adjoining properties would not suffer a substantial detriment as a result of the variance because the proposed historic looking home will align with the existing 1850's house to the south, and the main mass of the new house will align with the mass of the house to the north.**

4. The variance would not adversely affect the delivery of governmental services, (e.g. water, sewer, garbage).
5. The applicant is investigating ownership of the property with knowledge of the zoning restriction.
6. The applicant's predicament feasibly cannot be resolved through some method other than a variance.
7. The spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance because due to the lot size, to build any reasonably sized home, a variance will be needed.

The motion carried by the following vote:

Aye: 5 - Mr. Dohner, Mr. Drew, Mr. Jahn, Mr. Lehman and Mr. Wagner

VII. PUBLIC HEARINGS - NEW BUSINESS

- B. [BZBA 2016-10](#) (1) An appeal of the Community Development Director's determination that cremation services were voluntarily discontinued pursuant to Section 1206.05(e)(3) of the Land Development Code and, therefore, a request to resume cremation services at the property requires BZBA approval for an enlargement of a nonconforming use; and (2) in the alternative, an application for an enlargement of a nonconforming use to resume cremation services at the property pursuant to the standards set forth in Section 1206.05(e)(1) of the Land Development Code. The applicant is Christopher J. Meager, Esq., 75 E. Market Street, Akron, Ohio 44308 and the property owner is Friends of Pet Cemetery Association, Dan Kalk, President, located on Walters Road, Parcel No. 3003773, Hudson, Ohio 44236 in District 2 [Rural Residential Conservation].

Attachments: [BZBA 2016-10 Staff report](#)
 [BZBA 2016-10 Transcript](#)

A public hearing was held regarding BZBA Case No. 2016-10.

Prior to the beginning of the hearing, Mr. Lehman presented a summary outlining the procedure that would be followed during the hearing.

Mrs. McMaster reviewed the facts of the appeal.

Mr. C.J. Meager, Esq., 75 E. Market Street, Akron, Ohio 44308, applicant and Counsel for the Friends of Pet Cemetery Association, introduced Mr. Dan Kalk, president of the Friends of Pet Cemetery Association, 34690 Cannon Road, Solon, Ohio 44139 and Mr. Ron Salvatore, Matthews International, 2045 Sprint Blvd., Apopka, FL 32703, a provider of cremation services and devices. Mr. Meager offered a brief background of the cemetery and said that cremation stopped mid-2012 for economic reasons. Mr. Meager stated that resuming cremation services on the property would provide a budget for the maintenance of the cemetery. There was an extensive discussion concerning whether the non-conforming use had been abandoned.

Mr. Richardson, Director of the City of Hudson Community Development Department, expanded on the reasoning behind his determination cremation services were voluntarily discontinued..

Mr. Frank Comeriato, Assistant City Manager, concurred with statements made by Mr. Richardson.

Mr. Dan Kalk, President, Friends of Pet Cemetery Association, explained that the best resource of supplemental income to maintain the cemetery is the resumption of the cremation of pets on the property.

Mrs. Lane, Assistant City Solicitor, provided some background of the legal aspects related to the concept of voluntarily discontinuing a non-conforming use.

The Board discussed the staff report and the applicant's testimony.

Mr. Lehman opened the meeting to public comment.

Mr. Carl Patrick, 34 Merz Blvd., Fairlawn, Ohio 44333, Legal Counsel for Mr. Roman, owner of the property adjacent to the Pet Cemetery, cited Section 1206.02 (20) (B) which states that "there shall be no crematorium on the property".

Mr. John Roman, owner of the property adjacent to the north of the cemetery, stated his opposition to the resumption of crematory services at the Pet Cemetery. He noted ongoing litigation requesting that the court declare that he is the sole owner of the barn.

Mr. Lehman closed the public portion of the hearing.

The Board discussed the comments raised in the public testimony at length including whether or not the discontinuation of cremation services was voluntary and whether a temporary situation beyond the control of the property owner determines a voluntary abandonment.

A motion was made by Mr. Drew, seconded by Mr. Wagner, that after reviewing the application, the hearing of evidence under oath, reviewing all documentary submissions of interested parties, and by taking into consideration the personal knowledge of the property in question, to deny the appeal of the City of Hudson ruling that the cremation service at the Boston Hills Pet Cemetery was voluntarily discontinued as the equipment was removed prior to 2012. Burials have continued at the facility, and the burial function and the cremation function are separable, and, therefore, the cremation services were voluntarily discontinued.

The motion to deny the appeal was not upheld per the following vote:

Aye: 2 - Mr. Drew and Mr. Wagner

Nay: 3 - Mr. Dohner, Mr. Jahn and Mr. Lehman

Mr. Dohner made a motion, seconded by Mr. Jahn, that after reviewing the application, the hearing of evidence under oath, reviewing all documentary submissions of interested parties, and by taking into consideration the personal knowledge of the property in question, to grant the Appeal of the Community Development Director's determination that cremation services were voluntarily discontinued pursuant to Section 1206..05 (e)(3) of the Land Development Code and, therefore, a request to resume cremation services at the property for the reason that if there was a voluntary abandonment, it was not for the twenty-four month period and the testimony was that the applicant has acted on this when they were able to try and reinstate and reverse the actions of the prior owner and reinstate the cremation services.

The motion to grant the appeal was approved by the following vote:

Aye: 3 - Mr. Dohner, Mr. Jahn and Mr. Lehman

Nay: 2 - Mr. Drew and Mr. Wagner

VIII. OTHER BUSINESS

Mrs. McMaster indicated that there may be three cases on the agenda for the May BZBA meeting. Two of the cases are requesting rear yard setback variances.

IX. ADJOURNMENT

Mr. Lehman adjourned the meeting at 9:37 p.m.

David W. Lehman, Chair

John M. Dohner, Vice Chair

Judy Westfall, Account Clerk II

Upon approval by the Board of Zoning & Building Appeals, this official written summary of the meeting minutes shall become a permanent record, and the official minutes shall also consist of a permanent audio and video recording, excluding executive sessions, in accordance with Codified Ordinances, Section 252.04, Minutes of Architectural and Historic Board of Review, Board of Zoning and Building Appeals, and Planning Commission.

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