



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, July 16, 2015

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 Kris McMaster, Associate Planner, and Aimee W. Lane, Assistant City Solicitor.

Mrs. Lane entered the meeting at 7:54 p.m.

Mr. Keith Smith, BZBA Council Liason, was also present.

Meeting minutes were taken by Judy Westfall, Clerk. A video recording of this meeting is available on the City of Hudson website.

Except where otherwise noted, public notice as required in the Land Development Code was provided for all matters that come before this meeting of the City of Hudson Board of Zoning and Building Appeals.

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

The Chair, Mr. Lehman, swore in staff and all the persons wishing to speak under oath.

V. PUBLIC HEARING**OLD BUSINESS**

- A. [BZBA 2015-03](#) A variance of two (2) feet from the maximum fence height in the side yard of (4) feet above the elevation of the surface of the ground resulting in a six (6) foot fence in the side yard pursuant to the City of Hudson Land Development Code, Section 1206.03(a)(5)(A), “Accessory uses/Structures-Fences and Walls, Residential” for 2 High Street, Hudson, OH 44236.

The applicant and owner are Richard and Kimberly Nickerson, 2 High Street, Hudson, OH 44236 in District 4 [Historic Residential Neighborhood-Historic District].

Attachments:

[Staff report 5-21-15](#)

[2015-03 - 2 High Street staff report 7-10-15](#)

Mrs. McMaster reviewed the variance request which was continued from the public hearing held on May 21, 2015.

The applicant, Mr. Nickerson, presented his case in support of his request for a six (6) foot fence in the side yard.

The Board members and applicant discussed the case.

Mr. Lehman opened the meeting to public comment.

There being no public comment, Mr. Lehman closed the public portion of the meeting.

The Board discussed the testimony and the staff report. They considered whether the reasons to grant the variance outweighed the reasons not to grant the variance, among which was concern about the precedence that would be set if the variance was approved.

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, Mr. Wagner made a motion seconded by Mr. Drew for the Board of Zoning and Building Appeals to deny the subject request:

A variance of two (2) feet from the maximum fence height in the side yard of (4) feet above the elevation of the surface of the ground resulting in a six (6) foot fence in the side yard pursuant to the City of Hudson Land Development Code, Section 1206.03(a)(5)(A), “Accessory uses/Structures-Fences and Walls, Residential” for 2 High Street, Hudson, OH 44236.

- a) the property in question will yield a reasonable return and there can be a beneficial use of the property without the variance because with the exception of the adjoining property and house, very few residences have a six foot side yard fence along Route 91, potentially setting a precedent which may be difficult to overcome for other homeowners. In addition to the scientific fact that the additional height of a barrier will increase the reflection of sound, which as the applicant has pointed out, does go for the most part in a straight line, but it does also go out in a fantail motion, so there is some spreading of it.
- b) the variance is substantial because it is a 50% increase in the permitted height of the side yard fence, and while the applicant has submitted data that proves there is a decrease in the amount of sound which would approach his house, there would be potentially a corresponding increase in sound which would approach the homes on the opposite side of the street.
- c) the essential character of the neighborhood probably would not be substantially altered for adjoining properties nor suffer a substantial detriment with the distinction being the homeowners that are on the opposite side of the street.
- d) the variance would not adversely affect the delivery of governmental services, (e.g. water, sewer, garbage).
- e) the applicant purchased the property with knowledge of the zoning restriction.
- f) the applicant's predicament feasibly can be resolved through some method other than a variance.
- g) the spirit and intent behind the zoning requirement would not be observed and substantial justice not done by granting the variance.

The motion to deny the variance was upheld by the following vote:

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

NEW BUSINESS

- A. [BZBA 2015-05](#) 1) A variance to permit a front entry garage when the doors of attached garages are not permitted to face the street; and 2) A variance from the "Architectural and Design Standards", requiring attached garages to be entered from the side or rear pursuant to the City of Hudson Land Development Code Section 1205.04(d)(7)(C)(i), " Building Siting and Orientation-Private Garages", and Appendix D, IV-4(b)(3), "Architectural and Design Standards-Two Story Wing Type".

The applicant is Ron Mirman, 1384 Vane Ave., Akron, Ohio 44310 and the owner is Eric and Paige Mintz, 5674 Humelsine Drive, Hudson, OH 44236 in District 1 [Suburban Residential Neighborhood].

Attachments: [2015-05 5674 Humelsine Drive staff report 7-10-15](#)

Mrs. Mc Master introduced the case. She stated that the structure was built when front facing garages were permitted by the Township Resolution and that most of the homes in the neighborhood have front facing garages.

The applicant, Mr. Ron Mirman, 1384 Vane Avenue, Akron, Ohio 44310, Precision Siding, said that the proposed design is appropriate and complimentary to the house. The property owner, Mr. Eric Mintz, disclosed that there had been an accessory structure located at the rear of the property at the time he purchased the property. Due to its condition, it was demolished. Because the structure was located too close to the property line, it could not be rebuilt at its original location.

The Board and applicant discussed possible options to the proposed location and orientation.

Mr. Lehman opened the meeting to public comment. There being no public comment, Mr. Lehman closed the public portion of the meeting.

The Board engaged in a discussion regarding the testimony presented by the applicant and property owner as well as the staff report.

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, Mr. Jahn made a motion seconded by Mr. Drew for the Board of Zoning and Building Appeals to approve the subject request:

1) A variance to permit a front entry garage when the doors of attached garages are not permitted to face the street; and 2) A variance from the "Architectural and Design Standards", requiring attached garages to be entered from the side or rear pursuant to the City of Hudson Land Development Code Section 1205.04(d)(7)(C)(i), " Building Siting and Orientation-Private Garages", and Appendix D, IV-4(b)(3), "Architectural and Design Standards-Two Story Wing Type".

a) the property in question will yield a reasonable return and there can be a beneficial use of the property without the variance. Allowing the variance to add a front facing garage will enhance the structure and benefit the homeowner.

b) the variance is insubstantial because the majority of the homes in the neighborhood have front facing garages including the two adjacent properties.

c) 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 variances because the majority of the homes in the neighborhood have front facing garages.

d) the variance would not adversely affect the delivery of governmental services, (e.g. water, sewer, garbage).

e) the applicant purchased the property with knowledge of the zoning restriction.

f) the applicant's predicament feasibly cannot be resolved through some method other than a variance; there was, however, a Plan B, an alternative to the variance, which was not feasible because it required the removal of a large stand of trees and to pursue Plan B would require substantial extra cost.

g) the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

The motion was approved unanimously as follows:

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

- B.** [BZBA 2015-07](#) 1] A variance of fifty (50) feet from the required stream corridor setback of fifty (50) feet resulting in a zero setback for an enclosed porch and deck addition pursuant to Section 1207.03(e)(i), "Wetland/Stream Corridor Protection-Stream Corridor Setbacks" for disturbances related to controlling erosion along the stream bank; and 2] A variance from the prohibited activity of disturbance, including clearance of vegetation, within a stream corridor setback pursuant to Section 1207.03(c), "Prohibited Activities" of the City of Hudson Land Development Code.

The applicant is Brandon Hayes, 2862 State Route 303, Mantua, OH 44255 the owners are Jeffery and Lindsay Sirak, 5890 Nicholson Drive, Hudson, OH 44236 in District 3 [Outer Village Residential Neighborhood].

Attachments: [2015-07 5890 Nicholson staff report 7-10-15](#)

Mrs. McMaster introduced the requested variances. She said that it is the desire of the property owner to construct a screened porch and deck on posts within the riparian setback area.

The applicant, Brandon Hayes, 2862 State Rt. 303, Mantua, Ohio 44255 and property owner, Jeffrey Sirak, 5890 Nicholson Drive, Hudson, Ohio 44236, stated that they had not initially realized there was a riparian setback. Mr. Hayes said that aesthetically the porch and deck would appreciate the value of the home. He pointed out that there is landscaping currently in place to screen the new addition from the neighbor to the north that would be most affected by the project.

Mr. Sirak indicated that the plans for the skirting of the decking under the enclosed porch and deck will comply with the recommendations of the City Engineer, Mr. Thomas Sheridan.

Mr. Hayes stated that there is no other location on the property that would accommodate the porch and deck.

Mr. Lehman opened the meeting to public comment.

There being no public comment, Mr. Lehman closed the public portion of the meeting.

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

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, Mr. Drew made a motion seconded by Mr. Jahn for the Board of Zoning and Building Appeals to approve the subject request with the **conditions** that:

1) A variance of fifty (50) feet from the required stream corridor setback of fifty (50) feet resulting in a zero setback for an enclosed porch and deck addition pursuant to Section 1207.03(e)(i), "Wetland/Stream Corridor Protection-Stream Corridor Setbacks" for disturbances related to controlling erosion along the stream bank; and 2) A variance from the prohibited activity of disturbance, including clearance of vegetation, within a stream corridor setback pursuant to Section 1207.03(c), "Prohibited Activities" of the City of Hudson Land Development Code.

- the structure will be built according to plans as submitted including the structure being raised on posts; and

- the issue of the skirting will be resolved administratively between staff, the City Engineer and the Architectural and Historic Board of Review.

a) the property in question will yield a reasonable return and there can be a beneficial use of the property without the variance because the house was built prior to the rules and was actually located in the stream corridor, but the stream corridor itself is actually located in the underground culvert between the applicant's property and the neighbor's property.

b) the variance is substantial because it is a 100 % variance since the house itself is located in the setback.

c) 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 variances because there will not be any change to the stream corridor being located in the underground culvert.

d) the variance would not adversely affect the delivery of governmental services, (e.g. water, sewer, garbage).

e) the applicant purchased the property in 2011 with knowledge of the zoning, but the house was built prior to the stream corridor rules coming into effect.

f) the applicant's predicament feasibly cannot be resolved through some method other than a variance because his testimony was that this was the only feasible location for a screened-in structure.

g) the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance due to the circumstances of the house being built prior to the stream corridor ordinance, the stream corridor itself being located in a culvert, the

applicant's need for the structure and this being the only feasible location.

The motion was approved with the following vote:

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

C. [BZBA 2015-09](#)

[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 applicant is L.D.A. Land Group, LLC, 6683 Olde Eight Road, Peninsula, Ohio 44264 for the property owner Christine Driver located at 7738 Darrow Road in District 1 [Suburban Residential neighborhood].

Attachments: [2015-09 7738 Darrow Road staff report 7-10-15](#)

Mrs. McMaster introduced this request for variances to permit construction of proposed Lake Christine Subdivision. Previous approval was granted on 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. Since then the extent of wetlands on the property has been recognized.

Mr. John Carse, 7339 Darrow Road, Hudson, Ohio 44236, on behalf of Christine Driver, property owner, 7738 Darrow Road, Hudson, Ohio 44236, stated that the criteria for wetlands has expanded since the time of application for the subdivision.

Discussion between the Board and applicant included affirmation by Mr. Carse that upon approval recommendations of the Department of Army Corps of Engineer would be followed. The jurisdiction of the Department of the Army Corps of Engineers and the City of Hudson LDC zoning ordinance

regarding wetlands was clarified. Mr. Carse also confirmed that there is no other way that the subdivision can be reconfigured. Mrs. McMaster confirmed for Mr. Keith Smith, City Councilman and Liason to the Board of Zoning and Building Appeals, that the referenced wetlands are Category 2 wetlands.

Mr. Lehman opened the meeting to public comment.

Mr. Robert Zimmerman, Bensch, Friedlander, Coplan & Aronoff LLP, 200 Public Square, Cleveland, Ohio, expressed the concern of neighboring property owners regarding water issues.

Mr. Nick Yanoff, 7621 Berks Way, stated that he opposes this variance request, stating that his property nearly always floods when it rains.

Mr. Craig McLean, 1919 E. Haymarket Way, questioned what effects might occur as a result of filling in the wetlands.

Mr. Damon Lewis, 7579 Berks Way, spoke about a river of water that appears between the three houses in Chadds Ford behind lots 4, 5, 6 and 7 after a rain storm accumulation of more than 1" of water.

Mr. Randall Ruggaard, 1877 E. Haymarket Way, stated that the storm sewers are inadequate and that a nearby retention pond is ineffective.

Mrs. Elizabeth DeCamara, 1903 Haymarket Way, introduced into the record a letter from Tom and Sue Swidarski, 7574 Elderkin Ct., asking the Board to deny the requested variances. Mrs. DeCamara also stated that her property is always wet and shared a video of her property with the Board members.

Mrs. Deborah Riley, 7632 Berks Way, said that water drainage has always been a problem since her house was built 18 years ago.

Mrs. Dawn Joseph, 7591 Berks Way, indicated that she does not support the request for variances.

Mr. Lehman closed the public portion of the meeting.

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

Mr. Jahn made a motion seconded by Mr. Wagner to continue the case until the August 20, 2015 meeting and to request that a copy of the Brandywine Creek Watershed Study be submitted for review.

The motion failed by the following vote:

Aye: Mr. Jahn and Mr. Wagner

Nay: Mr. Drew, Mr. Dohner and Mr. Lehman

A motion was made by Mr. Dohner, seconded by Mr. Lehman, 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 finds and concludes that the variances are granted with the **condition** that:

- the United States Army Corps of Engineers recommendations be followed.

[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.

a) the property in question will not yield a reasonable return and there cannot be a beneficial use of the property without the variance. The property is going to be developed. It is impractical to further reduce the number of lots as the applicant has pointed out to take into account the avoidance of any of the requested variances.

b) the variances are substantial. They range from 40% to 100% of the requested wetland, but it is a unique property.

c) 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 variances. The City Engineer must review and approve the engineering plan. There is a prohibition about redirecting water from this property onto adjoining properties.

d) the variance would not adversely affect the delivery of governmental services, (e.g. water, sewer, garbage).

e) the applicant purchased the property without knowledge of the zoning restriction.

f) the applicant's predicament feasibly cannot be resolved through some method other than a variance.

g) the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variances.

The motion was approved with the following vote:

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

Nay: 2 - Mr. Drew and Mr. Wagner

- D.** [BZBA 2015-08](#) A variance of thirteen (13) feet to the minimum rear yard setback of fifty (50) feet for a garage addition resulting in a structure being thirty-seven (37) feet from the rear property line pursuant to Sections 1205.04(d)(5)(D)(i), “Setbacks: Rear Yard Setbacks-Principal Structure: 50 feet” of the City of Hudson Land Development Code.

The applicant is John and Patricia Caputo and the owner is Patricia Caputo, 7400 Valerie Lane, Hudson, Ohio 44236 in District 1 [Suburban Residential Neighborhood].

Attachments: [2015-08 7400 Valerie Lane staff report 7-10-15](#)

Mrs. McMaster reviewed this request for a variance to the minimum rear yard setback for a garage addition.

Mr. John Caputo and Mrs. Patricia Caputo, property owners, 7400 Valerie Lane, Hudson, Ohio 44236, said that neighbors are aware of their request and submitted letters of support from neighbors.

The Board discussed the case with the applicant.

Mr. Lehman opened the meeting to public comment.

There being no public comment, Mr. Lehman closed the public portion of the meeting.

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

Mr. Drew made a motion seconded by Mr. Dohner 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 finds and concludes that the variances are granted with the **condition** that:

- the applicant add screening between the area of the variance and the lot line and consult with the City Arborist to recommend appropriate screening under the circumstances.

A variance of thirteen (13) feet to the minimum rear yard setback of fifty (50) feet for a garage addition resulting in a structure being thirty-seven (37) feet from the rear property line pursuant to Sections 1205.04(d)(5)(D)(i), “Setbacks: Rear Yard Setbacks-Principal Structure: 50 feet” of the City of Hudson Land Development Code.

- a) the property in question will yield a reasonable return and there can be a beneficial use of the property without the variance; however, the proposal will improve the property by

removing the front facing garage.

b) the variance is substantial. The variance is approximately 26% of the 50 ft. minimum rear yard setback requirement, and it is caused by the unusual alignment of the existing house that was built in 1964.

c) 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 variances because the property will be improved with the new addition.

d) the variance would not adversely affect the delivery of governmental services, (e.g. water, sewer, garbage).

e) the applicant purchased the property with knowledge of the zoning restriction.

f) the applicant's predicament feasibly cannot be resolved through some method other than a variance.

g) the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance because it would improve the property and remove the front facing garage.

The motion was approved with the following vote:

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

VI. OTHER BUSINESS

Mrs. McMaster reported that there may be three cases on the agenda for the next meeting on August 20, 2015.

Mrs. Lane said that there is no news regarding the Akron water matter.

Mr. Drew said that the Comprehensive Plan has been referred to Planning Commission and Council for review.

Mr. Lehman noted upcoming social events.

VII. ADJOURNMENT

The Chair, Mr. Lehman, adjourned the meeting at 11:05 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 Board of Zoning and Building Appeals.

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