



Board of Zoning and Building Appeals
REGULAR MEETING November 21, 2013
7:30 P.M. • Town Hall • 2nd Floor
27 East Main Street • Hudson, Ohio

MINUTES

Chairman Lehman called to order the Regular Meeting of the Board of Zoning and Building Appeals of the City of Hudson, at 7:30 pm. in the 2nd Floor meeting Room of Town Hall, 27 East Main Street, Hudson, Ohio.

Present: Mr. Dohner, Mr. Jahn, Mr. Lehman, Mr. Lewis (arrived at 7:38 p.m.) and Mr. Wise

Absent: None

Officials Present: Mark Richardson, Director Department of Community Development and Aimee W. Lane, Assistant City Solicitor

Meeting minutes were taken by Denise Soloman, Board Clerk.

Except where otherwise noted, the following applied to the cases heard at this meeting, the applications were routinely referred to the City of Hudson Board of Zoning and Building Appeals, assigned their respective docket numbers and placed in a newspaper of general circulation in the area.

Mr. Lehman introduced Mark Richardson, Director Department of Community Development and Aimee W. Lane, Assistant City Solicitor.

Mrs. Lane placed staff and all those persons in the audience wishing to speak under oath.

APPROVAL OF 2014 MEETING SCHEDULE

Mr. Dohner made a motion to approve the 2014 Meeting Schedule. Mr. Jahn seconded the motion and all members present were in favor.

Mr. Lewis entered the room at 7:38 p.m.

PUBLIC HEARING

APPEALS DOCKET NO. 2013-16

Mr. Lehman said that this hearing was called to consider Appeals Docket No. 2013-16. The applicant is Matthew L. Weber, P.E., 2555 Hartville Road, Suite B, Rootstown, OH 44272 for the property owners, Vladimir and Sophia Moxson, 2525 Deer Hollow, Hudson, Ohio 44236 in District 3 [Outer Village Residential Neighborhood].

The requests are for 1] A variance of seventy-five (75) feet from the required stream corridor setback of seventy-five (75) feet resulting in a zero setback pursuant to Section 1207.03(e), "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.

Mr. Richardson gave an overview of the application and stated that additional correspondence received after the staff reports were distributed have been presented to the Board tonight.

Mr. Matthew Weber of Weber Engineering presented the variance request. He stated that at the time the property owner initiated the work within the stream corridor setback, he was not aware that the work required a zoning certificate. He described the previous conditions and the work that had been completed. He stated that he has been working with the City Engineer so that there would be no disturbance upstream or downstream from this property and further erosion would be prevented. He said that the variances were requested since the work was done within the setback.

Mr. Wise asked how long the property owner has owned this property and if any other work had been done in that time. Mr. Weber stated that the property was purchased in approximately 1994 and he was not aware of any other work.

Mr. Dohner asked how long ago the work was completed. Mr. Weber said it was approximately a month and a half ago. Mr. Richardson stated that technically the work was not completed since the City Engineer's comments still need to be addressed. Mr. Dohner asked if the problem with silt flowing into the neighbor's pond had been remediated. Mr. Weber said that the work has stopped and the sediment is no longer going into the stream.

Mr. Lewis asked what other work would be required to address the City Engineer's comments. Mr. Weber described the additional culvert and indicated that this would take one day and cause minimal disturbance.

Mr. Jahn asked how the contractor knew what needed to be done to resolve the issue. Mr. Weber said that the contractor had done previous work and knew how to clear out the sediment and prevent erosion. Mr. Lehman asked if the work would have been done the same way if the contractor had gotten approval prior to commencing work. Mr. Weber replied yes, the work would have been done the same way.

There were no comments from the public.

Mr. Lewis made a motion to grant the requests for 1] A variance of seventy-five (75) feet from the required stream corridor setback of seventy-five (75) feet resulting in a zero setback pursuant to Section 1207.03(e), "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.

- a) the property in question will yield a reasonable return and there can be a continued beneficial use of the property without the variances; however, in this instance there is a question of the degree of use of the property. The project described will help preserve this property and the neighboring properties through managing the output of water;
- b) the variances are insubstantial because there needs to be some invasion in the required stream corridor setback to complete the necessary corrective work;
- c) the essential character of the neighborhood would not be substantially altered and adjoining properties would not suffer a substantial long term detriment as a result of the variances other than what was previously described;
- d) the variances would not adversely affect the delivery of governmental services if granted;
- e) the owner purchased the property with knowledge of the zoning restrictions;
- f) the applicant's predicament feasibly cannot be resolved through some method other than the variances given the site improvements have already occurred;
- g) the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variances as it would allow for the continued use of the property and current flow of water.

Mr. Dohner seconded the motion.

Roll Call: Aye: Mr. Jahn, Mr. Wise, Mr. Dohner, Mr. Lewis, Mr. Lehman
Nay: None

Motion unanimously carried.

APPEALS DOCKET NO. 2013-17

Mr. Lehman said that this hearing was called to consider Appeals Docket No. 2013-17. The applicant is Thomas L. Rood, 501 Nettles Boulevard, Jensen Beach, Florida 34957 for the property owner Jack A. Rood Trustee, 501 Nettles Boulevard, Jensen Beach, Florida 34957.

The requests are 1] a variance of seventy-five (75) feet from the required stream corridor setback of seventy-five (75) feet to construct a three family home, resulting in a zero setback pursuant to Section 1207.03(e), "Wetland/Stream Corridor Protection-Stream Corridor Setbacks" and 2] a variance from the prohibited activity of disturbance, including a clearance of vegetation, within a stream corridor setback pursuant to Section 1207.03 (c), "Prohibited Activities" of the City of Hudson Land Development Code.

Mr. Richardson referred to the staff report and explained the details of the variance request. He said that the project will be on the December 9, 2013 Planning Commission meeting pending the outcome of tonight's meeting. He added that additional correspondence received after the staff reports were distributed, and a site plan marked up to show the intrusion into the stream setback, were provided to the Board tonight. He gave a copy of the site plan to the applicant.

Mr. Rood stated that the site plan provided tonight was a surprise having worked with a surveyor to obtain the setback. He said that based on his plan only 150 square feet of driveway would encroach in the stream setback, and there was a difference between this plan and the plan Mr. Richardson has presented. He explained that he was requesting to locate part of the concrete area within the stream setback which was consistent with the two adjacent lots. He said that he intended to use the property for housing with first floor living quarters for the elderly or disabled, which was needed in this area. He stated that the proposed plan would have a minimal impact.

Mr. Jahn asked what the applicant used as a basis for the need for this type of housing. Mr. Rood stated that this was based on phone calls regarding his other rental units and conversations with other rental owners.

Mr. Lewis asked when the survey was completed. Mr. Rood stated that it was done three to five weeks ago. Mr. Lewis asked the applicant to describe the changes to the property since he owned it previously. Mr. Rood said that the City had installed large metal culverts on the east part of the property with substantial fill and a retaining wall opening to the ditch line. He added that from what he could recall there had been deepening and widening of the stream. Mr. Lewis asked if it was possible to move the structure closer to the front property line. Mr. Rood stated that as proposed at 36 feet it would be consistent with other buildings on the street. Mr. Lewis asked if the size of the concrete pad could be reduced. Mr. Rood replied no, the proposed 24 feet would be tight. There was further discussion on revising the garages to side or front facing. Mr. Lewis commented that it seems that a single family house could be built on this lot without a variance. Mr. Rood said that was correct; however, it would be unusual in this area.

Mr. Lehman asked for the square footage of the building. Mr. Rood said approximately 2550 without the garages.

Mr. Lehman opened the meeting to public comment.

Mr. Robert Schleper, 234 Ravenna Street, said that he was concerned that it could not be guaranteed that the run off from this property would not impact other properties. He questioned the impact on the amount of water runoff with the loss of mature trees. He said that he was also

concerned with safety for the children around a construction site. Mr. Richardson said that if the application proceeds, there would be site plan review and approval including storm water management. He added that this department was not involved with safety issues; however, this project would be monitored by police and engineering departments as with any construction site. Mr. Rood said that he anticipated no impact on drainage and he intended to have the building constructed by the start of the school year

George Gorborchik, 262 Ravenna Street, said that allowing a zero setback would be risky for the City of Hudson and a three family structure may exceed the permitted lot coverage. Mr. Richardson commented that code requires a maximum 40% impervious surface and that this would be addressed by the Planning Commission. Mr. Gorborchik said that he was also concerned that the lack of parking for six vehicles would lead to on street parking creating a hazard. He added that this area was flooded previously resulting in property damage.

Dan Marinchick, 166 Ravenna Street, said that the Army Corps of Engineers did extensive work on the water runoff in this area and any development of this land would have a negative effect on storm water. He requested that the Board deny this request for a multi-family dwelling since some other structure could be built that would not encroach in the setback.

Randy Baun, 248 Ravenna Street, said that any construction would have an effect on this land. He added that because erosion would already occur along the stream was not a reason to encroach into the setback. He said that even with the required setback there would be erosion. Mr. Rood indicated that he did not mention erosion and he did not request a zero setback, this was the interpretation of City staff. Mr. Richardson referred to the site plan and said that the encroachment would be thirty (30) feet into the setback resulting in a forty-five (45) foot setback to the stream.

Rick Artino, 200 Ravenna Street, said that the rules for the wetland corridor setback were put on place for a reason; to filter water going into the stream. He stated that he agreed with the comment about setting a precedent and added that approving the variance would degrade that quality of water. He requested that the Board decline the request.

Patrick Randall, 248 Ravenna Street, said that he was against the variance for all the reasons stated by the previous speakers.

Robert Price, 108 Fox Trace Lane, read a letter to the Board and presented photographs of standing water on his property. The letter is attached to the record copy of the minutes. He said that he did not want to stop a building project; however, he did not want to further an existing problem. Mr. Rood said that it should be noted that the City has known about the flooding issues since the 1980's.

Mr. Lehman closed the public portion of the meeting.

Mr. Wise said that there was no a substantial case made for a hardship. Mr. Dohner agreed and added that it seems there would be other options for viable use of the land. Mr. Lewis said that it was the burden of the applicant to persuade the Board as to why the variance

should be granted, and there was testimony that a different structure could be could be built without a variance.

There was discussion on withdrawing the second request so that the applicant could return with a revised plan in the future and avoid any *res judicata* concerns. Mr. Rood agreed to withdraw the second variance request.

Mr. Dohner made a motion to deny the request for a variance of thirty (30) feet from the required stream corridor setback of seventy-five (75) feet to construct a three family home, resulting in a forty-five (45) feet setback pursuant to Section 1207.03(e), "Wetland/Stream Corridor Protection-Stream Corridor Setbacks".

a) the applicant did not demonstrate that the property in question will not yield a reasonable return and there cannot be a beneficial use of the property without the variance because there seems to be other options available;

b) the variance is substantial because it is more than 30% and the disturbance of vegetation is an issue raised by more than one neighboring property owner and which was one of the purposes for the regulation;

c) the essential character of the neighborhood may be substantially altered and adjoining properties may suffer a substantial detriment as a result if the variance was granted, but not if the variance was denied;

d) the variance would not adversely affect the delivery of governmental services if granted;

e) the owner purchased the property with knowledge of the zoning restrictions the second time it was purchased;

f) the applicant's predicament feasibly can be resolved through some method other than the variance;

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

Mr. Wise seconded the motion.

Roll Call: Aye: Mr. Lewis, Mr. Dohner, Mr. Jahn, Mr. Wise, Mr. Lehman
Nay: None

The motion was unanimously approved.

APPEALS DOCKET NO. 2013-18

Mr. Lehman said that this hearing was called to consider Appeals Docket No. 2013-18. The applicant is Nestor Papageorge, President for Alexandra Fine Homes, Inc., 1184 Bell Road, Chagrin Falls, Ohio 44022 for the future property owners, Mr. and Mrs. Jonathon Vinocur, 4910A Independence Circle, Stow, OH 44224 and the current property owner Richard Donaldson for parcels 30-09483 and 30-09360 in District 2 [Rural Residential Conservation.

The requests are 1] A variance from the requirement to utilize public water and sewer in order to have a water well and septic system on the property pursuant to Section 1207.11(b)(1)(B), "Adequate Public Facilities-General Standards-Water/Wastewater"; 2] A variance to the emergency access requirement that adequate access be provided for emergency vehicles and for those persons rendering fire protection and emergency services pursuant to Section 1207.13(c)(9)(J)(ix) "Transportation/Circulation-Streets, Easements, and Alleyways – Emergency Access-Dead-End Length"; 3] A variance to the requirement all buildings, accessory structures, and parking areas or lots shall be setback at least fifty (50) feet horizontally (map distance), from the delineated edge of a wetland to allow a driveway crossing pursuant to Section 1207.03(e)(2), "Wetland/Stream Corridor Protection-Setback"; and 4] A variance to the requirement 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" pursuant to the City of Hudson Land Development Code.

Mr. Richardson referred to the staff report and explained the requested variances.

Mr. Jonathon Vinocur stated that Nestor Papageorge of Alexander Homes could not be present tonight. He described the location and size of the lot and the areas of wetlands that the proposed driveway would need to cross. He said that the nine hundred (900) foot driveway would be compliant in terms of emergency access requirements. He added that it was not feasible to tie in to public utilities given the location of the lot and the distance from existing lines.

Mr. Jahn asked for the distance and cost to tie into the existing lines in Canterbury on the Lakes. Mr. Vinocur stated that he was told that the closet lines were on Stone Road. He said that he did not know the cost; however, it would require going through multiple properties.

Mr. Jahn asked if there would be a driveway easement for the property currently using the driveway. Mr. Richardson said that the driveway would also serve the other property. Mr. Jahn asked if the existing driveway encroached on the wetlands. Mr. Richardson said not according to the site plan. Mr. Jahn said that the information provided indicated that .019 acres of wetlands would be impacted and questioned if this number included the required setback. Mr. Vinocur said that this was the total impacted area. He added that there was no way to get from Ravenna Street to the back of this property without crossing the wetland.

Mr. Dohner stated that the cost and distance to tie in to utility lines was important information, and asked why this lot was not buildable without a variance. Mr. Vinocur stated that none of the other houses near this property on Ravenna Street tie in to public sewer, so it is clearly too far away. He said that in order to tie in at Burr Oak Way, multiple parcels would be disrupted. He added that building a house on the front end of this property would disturb more wetlands.

The Board considered continuing this case to the next meeting, so the applicant could obtain further information. They proceeded with the application due to the current status of the ability to tie in to Akron Water and the actual distance may not be a factor.

Mr. Lewis asked for the length of the proposed driveway and how close it would be to the wetlands. Mr. Vinocur stated that the driveway would be eight hundred (800) feet long with turnoffs for emergency vehicles and it needed to overlap the wetlands because there was no other access to the buildable portion of the lot. Mr. Lewis asked what material would be used for the driveway. Mr. Vinocur said that concrete was preferred, but gravel was an option. Mr. Lewis questioned the width of the driveway. Mr. Vinocur said that the basic width of the driveway was twelve (12) feet and the areas with turnoffs were thirty (30) feet wide.

Mr. Lehman opened the meeting to public comment.

Heather McClinsey, 2937 Ravenna Street, said that her property would share the driveway. She said that her main concern was with the loss of the wetlands and wooded area due to the construction. She said there are animals including Bald Eagles in these woods and asked the Board to consider what would happen to them with the loss of vegetation.

Dr. Robert Ault, 2899 Ravenna Street, said that he was concerned with the wetlands in general and the quality of the water. He said that they have a water well and use it for drinking water. He added that the driveway will create more runoff in an area that is already damp. He said that they purchased their property thinking that this land would not be developed on due to the existing wetlands. Mr. Lehman said that water wells and septic systems would fall under the authority of Summit County.

Wally Lutkus, 2883 Ravenna Street, questioned how the two lots were put together and what it looked like before. He said that he could see problems with this project since there was a lot of water in this area. He questioned the location of the proposed septic system and the proximity to his property. He added that he agreed with the concern for wildlife in the area.

The public portion of the meeting was closed.

The Board discussed the variance request and the information presented. Mr. Lehman asked staff if it would be preferable to develop this land as an open space subdivision. Mr. Richardson said that would be challenging due to the requirement for a secondary means of access and the amount of wetlands that would be disturbed.

Mr. Jahn made a motion to grant 1] A variance from the requirement to utilize public water and sewer in order to have a water well and septic system on the property pursuant to Section 1207.11(b)(1)(B), “Adequate Public Facilities-General Standards-Water/Wastewater”; 2] A variance to the emergency access requirement that adequate access be provided for emergency vehicles and for those persons rendering fire protection and emergency services pursuant to Section 1207.13(c)(9)(J)(ix) “Transportation/Circulation-Streets, Easements, and Alleyways – Emergency Access-Dead-End Length”; 3] A variance to the requirement all buildings, accessory structures, and parking areas or lots shall be setback at least fifty (50) feet horizontally (map distance), from the delineated edge of a wetland to allow a driveway crossing pursuant to Section 1207.03(e)(2), “Wetland/Stream Corridor Protection-Setback”; and 4] A variance to the requirement 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” pursuant to the City of Hudson Land Development Code with the following conditions:

- The placement and width of the proposed driveway is to be as shown on the submitted site plan and, thus, shall encroach into the wetland and wetland setback no more than as shown on the plans.
- When City water and sewer become available to the property, the then property owner is required to connect to these services or at that time return to the Board to demonstrate an economic hardship.
- This variance is granted with the condition that it does not alleviate the current or future property owners from assessments, for public water lines and sanitary sewer that may in the future be available to the property.

a) the property in question will not yield a reasonable return and there cannot be a of the property without the variances;

b) the variances are substantial because of the nature of the construction and the amount of disturbance that would occur;

c) the essential character of the neighborhood would not be substantially altered and adjoining properties would not suffer a substantial detriment as a result of the variances;

d) the variances would not adversely affect the delivery of governmental services if granted;

e) the owner purchased the property with knowledge of the zoning restrictions;

f) the applicant’s predicament feasibly cannot be resolved through some method other than the variances;

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

Mr. Lewis seconded the motion.

Roll Call: Aye: Mr. Dohner, Mr. Lewis, Mr. Wise, Mr. Jahn, Mr. Lehman
Nay: None

The motion was unanimously approved.

APPEALS DOCKET NO. 2013-19

Mr. Lehman opened Appeals Docket No. 2013-19. The applicant was Roberto Sorgi, 333 Aurora Street, Hudson, Ohio 44236 for property owner Nancy J. Sorgi, Trustee, 7041 Darrow Road, Hudson, Ohio 44236. The property in question is located in District 1 [Suburban Residential Neighborhood].

The request was for an enlargement of American Fireworks, a nonconforming use consisting of the addition of several accessory structures pursuant to the standards set forth in Section 1206.05(e)(1) of the City of Hudson Land Development Code (LDC).

Mr. Richardson gave an overview of the request and reviewed the staff report. He emphasized that the request was neither a variance nor an appeal; that any request to expand a nonconforming use requires the approval of BZBA. He noted correspondence received from Mr. Dyer and Mr. Danforth since the staff report was issued.

At the request of Mr. Lehman, Mrs. Lane stated this use is subject to federal regulations concerning the design of the storage facilities, setbacks, and fencing. She said that as a nonconforming use, it is subject to local standards and procedures.

Mr. Roberto Sorgi, the applicant, reported that the property in question was purchased by his great-great-grandfather in 1902 for a fireworks company that has been growing slowly and methodically ever since. At the time the property was in the midst of farmland and before the development of the turnpike and nearby residential neighborhoods. Now that residences are nearby, meeting the needs of both the business and neighbors is difficult. The expansion was done to meet the storage needs for 1.3G fireworks in accordance with US Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATFE) requirements. The use is also regulated by state and local regulations. Only a limited amount of product may be stored in a storage unit. Shipping containers are used to store the products because they may be moved as may be required. Storage units may not be located any closer than 300 feet from a house; the storage units are further than that from nearby homes. Fencing is required that is stronger than chain link fence and it must be six feet tall. Mr. Sorgi said he was not aware that this approval was required. Before the storage units were installed federal, state, and local officials found that they met their applicable regulations. Mr. Sorgi said he was unaware that the use had become nonconforming.

Mr. Lewis asked what materials were being stored. Mr. Sorgi replied that 1.3G materials are being stored, the type of fireworks that are used for commercial displays. Mr. Lewis asked what would cause an explosion. Mr. Sorgi replied that any spark could cause an explosion. The distances between storage units were established after testing to insure that a chain reaction

explosion does not occur. Typically less than 10,000 pounds of product is spread between a pair of storage units. Mr. Lewis asked why so much product must be on site rather than ordering it when it is needed. Mr. Sorgi said it was necessary because of the long lead time required for these products imported from China. Virtually all fireworks sold in the United States, including at American Fireworks, are manufactured in China. Mr. Lewis asked if fireworks were stored elsewhere. Mr. Sorgi said that he had other facilities in Virginia, West Virginia, and Michigan. Those facilities are at capacity. Mr. Lewis asked about peak times for the business. Mr. Sorgi said 90% of their business occurs between Memorial Day and Labor Day. Stock peaks about two months before the Fourth of July. In response to a question from Mr. Lewis, Mr. Sorgi said American Fireworks' safety record was excellent. Mr. Lewis asked what security measures were in place. Mr. Sorgi cited the fencing, securing cameras, and security guards at peak times.

Mr. Jahn asked what the market area was. Mr. Sorgi said the service areas of their storage facilities serve areas as far west as Indiana and as far east as Ocean City, Maryland. Mr. Jahn asked if the four criteria of approval have been met including that which related to the expansion not exceeding 25%. Mr. Richardson said that they were. Mrs. Lane said that the last criterion related to expansions of non-conforming uses contained in buildings not exceeding 150% did not apply to this situation.

Mr. Lehman then opened the public hearing.

Mr. Rick Schultz, 2073 East Highgate, asked if this matter was for forgiveness or for permission. He was concerned that 40,000 pounds of product was being stored within 325 feet of homes. He questioned the use of chain link fence and the quality of its installation. He asked if an independent expert could comment on the blast zone in view of the oil well that is on the property. He said that landscaping requirements should be imposed. Mr. Sorgi clarified that up to 40,000 pounds of product is delivered in a container, but is then spread to 10,000 pounds in each pod. To meet the special hazard of the well, Mr. Sorgi said the setbacks are more than doubled from the well as required. As for the fence, Mr. Sorgi said it is frequently inspected for security. Mr. Lehman agreed that this was a case of forgiveness. Mr. Sorgi said that he thought he had abided by all regulations. If he knew he had to apply he would have.

Mr. Jim Fulton, 1998 West Highgate Court, said that American Fireworks has been a good neighbor except in the last year when the expansion occurred. He was concerned about the safety of people in his back yard. He said the appearance of the storage units, which are essentially shipping containers, the chain link fencing, and lack of landscaping, is devaluing his property. Although federal and state regulations have been met, the applicant must also meet local standards. Mr. Sorgi responded by saying landscaping would provide fuel in the event of a fire and would restrict visibility. He noted mature existing trees along the north and east sides of the property. He noted that the homes were not visible from American Fireworks when the trees were leafed out.

Mrs. Sara Dyer, 2080 Samson Circle, said the storage units appear close regardless of what the setbacks are. She said deer can easily cross the fence between her lot and American Fireworks. She said she investigated the requirements when she purchased her home. Mr. Sorgi

said that when the Dyers moved into their home American Fireworks was not nonconforming. He said the property became nonconforming in 1999.

Mr. Ralph Zuponic, 2028 East Highgate Court, asked if landscaping could be added that would screen the storage units and meet the requirements of the business. He said other residents and businesses must meet local regulations.

Mrs. Judy Nagy, 2000 West Highgate Court, said that when she and her husband purchased their property twenty years ago, Mr. Sorgi (Roberto Sorgi's grandfather), said that no manufacturing occurred on the property and that American Fireworks would have to relocate if they needed to expand. She was concerned about safety relative to trucks accessing the oil well. She asked if the access road was counted in the setback distances. Mrs. Nagy also commented on the unsightliness of the storage units. Mr. Sorgi said the setbacks between the storage units and the homes exceeded federal requirements.

Mr. Craig Resnick, 1976 West Highgate Court, also commented on the unsightliness of the storage units. He said that although there is a tree line between American Fireworks and the homes, the vegetation was recently trimmed along the access road which opened up views to the American Fireworks property. He said safety is paramount. He said he moved into his home with the knowledge that American Fireworks would not expand. The storage units are a detriment to his property. Mr. Sorgi replied that storage units have long existed in the vicinity of the units recently installed. He said during his grandfather's tenure, the company was constantly expanding.

An unidentified property owner from 2106 Jonathan Court asked the members of the Board how safe they would feel if the storage units were 300 feet from their homes.

Mr. Rick Schultz appeared again to ask if the storage units could be painted. Mr. Sorgi replied that they could be painted, but to do so would be a hardship given the large number of them. He noted that members of his family do live within 300 feet. He said he would never jeopardize anyone's family.

Mr. Bill Nagy, 2000 West Highgate Court, noted that American Fireworks operates in many other areas and asked why it had to expand in Hudson. He said their location is now a residential area and asked why the fireworks needed to be stored there. Mr. Lehman said these questions were not pertinent to the application.

An unidentified woman said the business has changed since it became nonconforming and asked when it will stop.

Mrs. Margaret Fernando, 1999 West Highgate Court, asked if the Board was reviewing the existing storage units or if additional units were proposed. Mrs. Lane said that the site could only accommodate so many storage units. Mr. Sorgi said that not much more can be done on the property. Mr. Richardson said that the applicant submitted a site plan and suggested that the applicant verify that it showed the extent of the changes or if more storage units would be forthcoming. Mr. Sorgi said the site plan represented the extent of the changes at this time. Mr.

Richardson said that if additional storage units are desired in the future, the applicant would have to return to BZBA for approval of the expansion.

Mrs. Jeanette Fulton, 1994 West Highgate Court, invited members of the Board to look out her window. She had met with the Sorgis and felt comfortable with American Fireworks; now that has changed. She has spent a significant amount on improvements to her home and yard.

Mr. Lehman closed the public hearing.

In Board discussion, Mr. Dohner asked how fireworks were stored before the current regulations. Mr. Sorgi said it was outsourced until the company was financially able to put more units on the property. Storage units similar to what exist now have been on the property since the 1980s.

Mr. Wise asked what the storage capacity was in 1999. Mr. Sorgi said it was the same as it is now.

Mr. Lewis noted there is no evidence that American Fireworks has not exceeded 25% of the area in use at the time the LDC was adopted nor the degree of expansion since then. Mr. Richardson said staff compared 2000 and 2012 aerial photography and the site plan provided by the applicant. Although area was not calculated in square feet, staff was confident that the use had not expanded more than 25%. Mr. Lewis asked how many storage units existed. Mr. Richardson said he did not have that information available. Mr. Lehman said it comes down to knowing the increase in the number of storage units.

Mr. Wise said safety is the most important factor and should not be sacrificed by granting the applicant the ability to expand. He said the City should calculate the percentage increase in area to insure the applicant is within the standards of approval. He said that businesses sometimes must move when they must expand but there is not enough room to do so.

Mr. Dohner reviewed the standards of approval. As for the first standard, he said nothing was presented that would show interference with conforming uses or circulation. As for the second, the same conclusion could be reached in that nothing was presented that would show a greater adverse impact. As for the third, the Board needed a comparison between the numbers of storage units. As for the fourth, it was agreed it did not apply. He proposed that the case should return in December.

Mr. Lewis argued that as for the second standard that evidence was presented that the residents have seen greater adverse impact.

Mr. Richardson said that notes in the case file showed that four storage units were added bringing the total to 24. Mr. Lehman noted that the applicant testified that there were 50.

Mr. Lewis said that it would be helpful to have an expert opinion on the impact zone. Further discussion on screening and the meaning of greater adverse impact might be warranted.

Therefore, it might be best to bring the case back. Mrs. Lane cautioned that discussions about the impact zone would get into the rationale for federal regulations.

Mr. Dohner moved to table the request to expand American Fireworks, a nonconforming use at 7041 Darrow Road until the December meeting. Mr. Lewis seconded the motion.

Mr. Sorgi said he would be out of town for the December meeting, but would be available in January.

Roll Call: Aye: Mr. Jahn, Mr. Wise, Mr. Dohner, Mr. Lewis, and Mr. Lehman
 Nay: None
 Motion carried.

Mr. Sorgi asked for clarification of the standards that apply to this case. Mr. Richardson said staff would provide the clarification he requested.

ADJOURNMENT

Hearing no further business, Chairman Lehman adjourned the meeting at 11:55 p.m.

David W. Lehman, Chairman

David J. Lewis, Vice Chairman

Denise M. Soloman, Board Clerk