



**Board of Zoning and Building Appeals**  
**REGULAR MEETING February 20, 2014**  
**7:30 P.M. • Town Hall • 2<sup>nd</sup> 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 2<sup>nd</sup> Floor meeting Room of Town Hall, 27 East Main Street, Hudson, Ohio.

Present: Mr. Drew, Mr. Dohner, Mr. Jahn, Mr. Lehman and Mr. Wagner  
Absent: None

Officials Present: Kris McMaster, Associate Planner, Mark Richardson, Director 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 Kris McMaster, Associate Planner, Mark Richardson, Director Community Development and Aimee W. Lane, Assistant City Solicitor

Mr. Lehman placed staff and all those persons in the audience wishing to speak under oath.

APPROVAL OF MINUTES

Mr. Dohner made a motion to approve the minutes of the June 20, 2013 meeting as written. Mr. Jahn seconded the motion. Mr. Drew and Mr. Wagner were not members for this meeting and did not vote. All other members were in favor.

Mr. Dohner made a motion to approve the minutes of the December 19, 2013 meeting as written. Mr. Jahn seconded the motion. Mr. Drew and Mr. Wagner were not members for this meeting and did not vote. All other members were in favor.

## PUBLIC HEARING

### CONTINUED - APPEALS DOCKET NO. 2013-19

Mr. Lehman said this hearing was called to consider the continuation of Appeals Docket No. 2013-19. The applicant is Roberto Sorgi, 333 Aurora Street, Hudson, OH 44236 the property owner Nancy J. Sorgi, Trustee 7041 Darrow Road, Hudson, Ohio 44236 in District 1 [Suburban Residential Neighborhood].

The request is for an enlargement of 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 Land Development Code.

Mr. Lehman stated that this case was a request for the enlargement of a non-conforming use, so the usual Duncan factor test would not be applied. He said that staff has provided the Board with the criteria from the Land Development Code that would be the basis for a motion. He said that this case was originally heard at the November 2013 meeting, and since that time, two board members' terms expired and two new members were appointed. He said that the new members have received all information pertaining to the case. He added that the Board has already heard testimony from the public; however, they would reopen the public portion of the meeting and requested that any comments be directed to the new information presented tonight.

Mr. Richardson referred to the staff report and gave an overview of the case. He said that staff provided the Board with a report detailing the amount of expansion; however, there was an arithmetic error on the original chart. A revised report was distributed to the Board at the meeting. Mr. Richardson said the applicant indicated that Building C on the aerial map no longer existed, and he was also seeking expansion for four (4) new magazines. He said that these changes to the total area resulted in an additional 1280 square feet which would still be under the 25% maximum expansion. There was discussion on the revised report and calculations.

Mr. Robert Phillips, 46 Ravenna Street, stated he was the attorney for American Fireworks. He said the applicant agreed with the calculations in the report presented tonight and provided a revised map showing all updates and new structures for the Board. He said that the application was submitted for the six (6) magazines already installed and four (4) new magazines to be installed in the future. He said that in Land Development Code Section 1206.05 (e) (1) the language referred to the area of non-conforming use; however, the code did not specifically state this referred to the area of structures. He asked the Board to consider the area of non-conforming use to be not only the area of the structures, but the fenced in area dictated by regulations. He said that by comparing the fenced in area in 1999 and the fenced in area in 2014, the amount of expansion is still less than 25%.

Mr. Roberto Sorgi explained that the fenced in area was necessary to operate the business and this was the last time the fence could be expanded. He said that it was important that they have the ability to work within the fenced area to comply with state regulations.

Mr. Wagner asked why some magazines were positioned close together and others were far apart. Mr. Sorgi stated that the required separation was determined by the type and weight of the explosives to be stored. Mr. Wagner asked if the applicant would incorporate additional landscaping or fencing to screen the view from the residential properties. Mr. Sorgi stated it would be a financial hardship to screen nine hundred (900) feet; however, he would consider some screening for the new magazines. He said that it was not clear to him whether the neighbors were concerned with the sight line or with safety.

Mr. Jahn had no questions.

Mr. Drew asked Mrs. Lane to comment on whether the Board should consider the area of the fenced property or the area of the structures for the amount of expansion of a non-conforming use. Mrs. Lane said that the Land Development Code allows the City reasonable regulations to control the expansion non-conforming use. She said non-conforming uses can be considered on an individual basis, and in this situation, staff determined that the use was taking place in the buildings and based their calculations on the square footage of those structures. The Board discussed how the amount of expansion should be measured since the ground area was necessary to comply with other regulations.

Mr. Dohner asked if the business could expand at any of the other locations. Mr. Sorgi stated that all locations have expanded. He said that the Hudson location was the root of the company and he wanted the money to remain here.

Mr. Lehman opened the meeting to public comment.

Bob Dyer, 2080 Samson Circle, said that he was concerned that whatever the City decides is done properly. He stated that a legal opinion should be requested on how to measure the required setbacks and he hoped that the City would have the Engineering Department review the plans to verify the percentages.

Craig Resnick, 1976 W. Highgate Court, said that he wanted to address the criteria for no greater adverse impact on adjoining properties. He said he was told by realtors that visible structures containing explosives would limit the number of interested buyers making it more difficult to sell his house. He said that his concerns were with both the sight line and safety. He commented that the City's requirement for the setback from a gas well was double the requirement of the State of Ohio, so it was important to Hudson to err on the side of safety.

Brian See, 1983 W. Highgate Court, said that he agreed that corrective measures such as fencing or additional trees should be required. He added that if these corrective measures become a hardship for American Fireworks, he suggested that maybe they should not expand. He said that it was conceivable that they did not need to expand right now.

Mr. John Boyer, 2156 Hudson Aurora Road, said that when he purchased his property he agreed to a twenty (20) foot landscape easement which cannot be altered without permission. He said that he read the City determined that land in an industrial area would be better suited as

residential creating a negative tax base. He said that he did not think it should be said that a business should move rather than expand and take the tax base to another community.

Mr. Lehman closed the public portion of the meeting.

The Board discussed the calculation and the how to determine the amount of expansion.

Mr. Drew made a motion that land surface area and not structure area will be used to measure the 25% nonconforming use expansion. The Board states the expansion of this nonconforming use is better defined by land area due to ATF requirements for the separation of structures. Mr. Dohner seconded the motion.

Roll Call: Aye: Mr. Wagner, Mr. Drew, Mr. Dohner, Mr. Jahn, Mr. Lehman

Nay: None

Motion unanimously carried.

The Board discussed a condition for requiring additional landscaping to screen the view of the magazines and the criteria for enlargement of a non-conforming use. Mrs. Lane said that the BZBA could impose a condition to require landscaping to minimize the impact of the new magazines; however, the use existed prior to the current code and landscape requirements could not be applied retroactively. Mr. Richardson clarified that the case tonight was a zoning issue and the applicant would still need to apply for the fencing and proposed containers.

Mr. Dohner made a motion to approve the request for an enlargement of 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 Land Development Code with the following conditions:

- The applicant will submit in a timely fashion a scalable, full-size site plan from R.M. Kole & Associates Corp. or other surveying company for review by the City Engineer to verify that the enlargement of the area of the nonconforming use does not exceed twenty-five (25) percent of the area occupied as of the effective date of the code.
- The applicant will work with the Community Development Department and the City Arborist to establish acceptable screening on the north and east portions of the property so that the sightlines from the adjacent properties are adequately buffered from the new magazines. All adjacent property owners within 300 feet of the subject property will be mailed a copy of the approved landscape plan.
  - a) The enlargement will not interfere with the operation of conforming uses in the District or with circulation on adjacent public streets;
  - b) The increase and enlargement does not exceed twenty-five (25) percent of the area that the nonconforming use occupied as of the effective date of the code;
  - c) The enlargement may cause greater adverse impacts on surrounding properties than the original nonconforming use, specifically to the sightlines from adjacent properties,

because of the close proximity of the existing and future storage containers to some of the adjacent properties; however, this can be remediated by the addition of buffer screening.

Mr. Wagner seconded the motion.

Roll Call: Aye: Mr. Jahn, Mr. Drew, Mr. Dohner, Mr. Wagner, Mr. Lehman  
Nay: None

Motion unanimously carried.

Mr. Lehman closed the meeting for a break at 9:20 p.m. and resumed at 9:25 p.m.

### APPEALS DOCKET NO. 2014-03

Mr. Lehman said this hearing was called to consider Appeals Docket No. 2014-03. The applicant and property owners are Brian and Shannon Battaglia, 6338 Stone Road. The property is in District 2 [Rural Residential Neighborhood].

The request is for a variance of 1,160 square feet to the requirement that the maximum size of a residential accessory structure shall not be larger than 1,000 square feet of gross floor area resulting in an accessory structure with a total gross floor area of 2,160 feet pursuant to Section 1206.03(d)(5), "Accessory Use Development and Operational Standards"- "Maximum Building or Structure Size".

Mrs. McMaster referred to the staff report and described the property and variance request.

Mr. Brian Battaglia said that he considered options other than the proposed structure and a spread sheet of the cost analysis was provided to the Board.

Mr. Jahn asked how the existing septic system would prohibit an addition to the existing attached garage. Mr. Battaglia described the unique construction of the garage with a concrete ceiling and the proximity of the septic system. He said that these factors limit their ability expand the garage.

Mr. Jahn said that the applicant indicated this was the first phase of a five year plan and asked the applicant to describe the remainder of the project. Mr. Battaglia described a possible future addition and inground swimming pool. Mr. Jahn said based on the scaled drawing of the items to be stored in the garage, it appears that the size could be reduced. Mr. Battaglia stated that the plans did not account for shelving and space for tools.

Mr. Drew said that code allows up to three (3) one thousand (1000) square foot accessory structures and asked if the same storage area could be accomplished in two structures without a variance. Mr. Battaglia stated that the additional cost of multiple buildings was a financial burden. Mr. Drew stated that the cost of two structures was still substantially less than off-site storage. Mr. Battaglia agreed; however, he was also concerned with his property value. He said he did not want the property to have the cluttered appearance of multiple buildings. He added

that his neighbors supported one large structure, but not multiple structures. He said that a property at the corner of Stone Road and Ravenna Street had multiple accessory structures and it looked like a compound, which he did not want for his property.

Mr. Dohner stated that Board looked at practical difficulty in following the rules. He said one building may look better, but that was not what code allowed. He said that based on the figures presented he did not see a practical difficulty with two structures and a smaller variance request. He added that he thought a massive structure was less desirable aesthetically. Mr. Battaglia stated more trees would be removed with multiple structures and he described the additional construction costs.

Mr. Lehman asked how far the garage would be set back from the street. Mr. Battaglia stated that the front yard setback would be 349.3 feet. Mr. Lehman said that the code did not provide any direction for the size of structures in relation to the acreage of a property. Mr. Battaglia stated that if there was an agricultural use on this property a 10,000 square foot barn would be permitted.

Mr. Paul Palumbo, the contractor, stated that he also lived on Stone Road and was granted a variance three years ago to build a 1600 square foot structure on his four and a half acre lot.

Mr. Lehman opened the meeting to public comment.

Mr. Hugh Brown, 6322 Stone Road, stated that he would rather see one structure built than two. He said that multiple structures would require additional drive way area and additional water would run off on to his property. He said that he had no issue with the large garage as proposed.

Denise Mamula, 6556 Stone Road, said that the structures at the corner of Stone Road and Ravenna Street are an atrocity. She said that she would rather see one large structure than two smaller structures.

Mr. Lehman closed the public portion of the meeting.

Mr. Jahn stated that the size of this lot supported a structure of this size. Mr. Dohner said that the same amount of storage space could be accomplished with two smaller structures without practical difficulty. He said that there seemed to be options other than a variance. The Board discussed and considered the size of the lot, the proposed setbacks to the property lines, the visibility from the street and adjacent property and the possibility of reducing the total square footage. Mr. Battaglia said that they could reduce the square footage to two thousand (2000) square feet, if necessary.

Mr. Jahn made a motion to approve a variance of 1,160 square feet to the requirement that the maximum size of a residential accessory structure shall not be larger than 1,000 square feet of gross floor area resulting in an accessory structure with a total gross floor area of 2,160

square feet pursuant to Section 1206.03(d)(5), “Accessory Use Development and Operational Standards”-“Maximum Building or Structure Size”.

- 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 property currently supports a viable residence; however, the proposed structure would allow space to store certain items and equipment resulting in better storage and organization of the equipment;
- b) the variance is substantial because the request is over one hundred (100) percent of the allowable size of an accessory structure; however, the alternative is two - one thousand (1000) square foot structures. This size structure would be reasonable on a ten acre parcel, considering the testimony of the neighbors that two structures would not be as attractive as one structure;
- 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 variance due to the ten acre size of the property and the proposed setbacks from the structure to the adjacent residences;
- 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 because of the minimal impact on the adjoining properties.

Mr. Wagner seconded the motion.

The Board discussed the motion. Mr. Lehman stated that the applicant was willing to concede to two thousand (2000) square feet. Mr. Dohner stated that all items to be stored in the garage as shown on the floor plan would fit in a one thousand five hundred (1500) square foot structure.

Roll Call:     Aye:  Mr. Jahn, Mr. Wagner, Mr. Lehman  
                  Nay:  Mr. Drew, Mr. Dohner

Motion carried.

APPEALS DOCKET NO. 2014-04

Mr. Lehman said this hearing was called to consider Appeals Docket No. 2014-04. The applicant and property owner are Robert and Rae Brooks, 5462 Coolidge Blvd. The property is in District 1 [Suburban Residential Neighborhood].

The requests are for: [1 and 2] a variance of 24 feet from the required wetland setback of 50 feet and the related variance from the prohibited activity of disturbance, including clearance of vegetation, within a wetland setback resulting in a garage with a 26 foot setback; [3 and 4] a variance of 28 feet from the required wetland setback of 50 feet and the related variance from the prohibited activity of disturbance, including clearance of vegetation, within a wetland setback resulting in a screened porch and deck with a 22 foot setback, pursuant to Section 1207.03(e)(2), "Wetland/Stream Corridor Protection-Setbacks-Wetlands" a requirement that 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 and Section 1207.03(c), "Prohibited Activities"; and [5] a variance of 9 feet to the minimum side yard setback requirement of 25 feet for a side facing attached garage resulting in an attached side-facing garage setback of 16 feet from the property line pursuant to Section 1205.04(d)(5)(C)(iii), "Property Development/Design Standards – Minimum Side Yard Setback-Side Facing Attached Garage" of the City of Hudson Land Development Code.

Mrs. McMaster referred to the staff report and gave an overview of the case. She described the location of the property and said that a wetland delineation confirming the locations of the wetlands on their property was provided. She added that the owners were currently working with the adjacent property owner to purchase part of the property or establish an easement for the driveway.

Mrs. Rae Brooks, 5462 Coolidge Boulevard, described the plans for the proposed screened porch and the need for the additional garage space. She explained the work that had been done to the house since it was purchased. She said that the proposed deck and garage would have minimal impact on the wetlands since the house was on a hill approximately eight (8) feet above the level of the wetland. She described the orientation of the house and indicated that no trees would need to be removed for construction. She added that due to the location of the wetlands and the septic system, there was no other location for an addition. She stated that the neighbor had no concerns with the driveway, but he did not want to sign a legal document. She said they could still maintain the driveway on their property with the garage as proposed.

Mr. Robert Brooks stated that the existing deck was in poor condition and unsafe; however, they will need some type of structure to access the rear of the house.

Mr. Dohner questioned if there was an issue with front facing garage doors. Mrs. McMaster explained the determination of the front and side property lines and stated that there were no issues with orientation of the garage doors. Mr. Dohner asked if the proposed deck would have the same footprint as the existing deck. Mrs. Brooks said that the new porch would extend two (2) feet closer to the wetlands; however, the footprint could be reduced.

Mr. Wagner stated that the additional garage space would infringe on another parcel and asked if the applicant would consider splitting the variance requests. Mrs. Brooks said splitting the requests was not a problem; however, the adjacent lot would probably never be built on due to current code requirements.

Mr. Drew asked staff why there were two different lines shown on the site plan. Mr. Richardson clarified the wetland line and the floodplain line. Mr. Drew stated that he was less troubled by the request for the deck since this was a less substantial structure. He commented that a recent application for a variance to the required wetland setback for an inground pool was denied. Mr. Lehman stated that he was comfortable distinguishing the two cases.

Mr. Lehman asked if there were any options for revising the plans to reduce the amount of variance. The applicants indicated that their options were limited due to the location of the septic system and the wetlands and floodplain on the property.

There were no comments from the public.

The Board discussed separate motions for the variance requests and reducing the size of the deck and porch addition to the size of the existing deck. Mrs. Brooks agreed to reduce the size of the deck to the original footprint.

Mr. Drew made a motion to approve a variance from the required wetland setback of 50 feet and the related variance from the prohibited activity of disturbance, including clearance of vegetation, within a wetland setback resulting in a screened porch and deck to be built on the original footprint with a 20 foot wetland setback, pursuant to Section 1207.03(e)(2), "Wetland/Stream Corridor Protection-Setbacks-Wetlands" a requirement that 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 and Section 1207.03(c), "Prohibited Activities".

- a) the property in question will yield a reasonable return and there can be a beneficial use of the property without the variance, but the existing deck does need to be replaced and the new deck and screened porch would be constructed no closer to the wetland than the existing deck;
- b) the variance is substantial; however, the deck and screened porch would be built on posts, allowing water to flow through the posts, having less impact on the wetland than other types of structures;
- 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 variance;
- 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 because of the need to replace the deck to provide safe access to the rear of the house, and because the new deck and screened porch would have no more encroachment than the existing structure.

Mr. Dohner seconded the motion.

Roll Call:     Aye:   Mr. Dohner, Mr. Wagner, Mr. Drew, Mr. Jahn, Mr. Lehman  
                  Nay:   None

Motion was unanimously carried.

There was further discussion on reducing the size of the garage and other options for reducing the amount of the variance. Mr. Lehman suggested reducing the size from twenty-four (24) feet to twelve (12) feet. Mrs. Brooks stated that they wanted to maintain four garage bays and asked if one sixteen (16) foot door instead of the double doors would be acceptable. She added that the configuration of the garage was limited due to the required ten (10) foot setback from the well. The Board determined that the encroachment on the wetland setback should be reduced as much as possible, and the side yard setback to the adjacent property was not an issue since the driveway issue would be resolved in some manner. Mrs. McMaster confirmed that the Board was requesting the garage width be reduced from twenty-four (24) to twenty (20) feet resulting in a wetland setback of thirty-one (31) feet instead of twenty-seven (27) feet. Mr. Lehman said that the measurements may result in different dimensions. Mrs. Lane stated that the applicant should submit revised plans indicating accurate dimensions. Mr. Richardson stated that revising the size of the garage would also change the amount of the side yard setback variance. There was further discussion on the dimensions of the garage and the manner of directing the downspouts.

The applicant requested that the application be withdrawn and continued to the April 2014 meeting so they could consider their options and revise the plans for the garage.

Mr. Drew made a motion to continue the Appeals Docket 2014-04 to the April 2014 meeting. Mr. Jahn seconded the motion.

Roll Call:     Aye:   Mr. Wagner, Mr. Dohner, Mr. Jahn, Mr. Drew, Mr. Lehman  
                  Nay:   None

Motion unanimously carried.

OTHER BUSINESS

Mrs. McMaster gave an overview of a variance request to be on the March 2014 agenda.

ADJOURNMENT

Mr. Drew made a motion to adjourn the meeting. Mr. Dohner seconded the motion and all members present were in favor.

Chairman Lehman adjourned the meeting at 11:30 p.m.

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David W. Lehman, Chairman

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John M. Dohner, Vice Chairman

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Denise M. Soloman, Board Clerk