



**Board of Zoning and Building Appeals**  
**REGULAR MEETING APRIL 21, 2011**  
**7:30 P.M. • TOWN HALL • 2<sup>ND</sup> FLOOR**  
**27 E. 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 p.m. in the 2<sup>nd</sup> Floor Meeting Room of Town Hall, 27 E. Main Street, Hudson, Ohio.

Present: Mr. Dohner, Mr. Lewis, Mr. Lehman, Mr. Wise  
Absent: Mr. Jahn

Officials Present: Thomas E. King, Community Development Director; Kris McMaster, Associate Planner and R. Todd Hunt, City Solicitor.

Meeting minutes were taken by Carol Muesel, Board Clerk, and hearing testimony was recorded by Sue Petro, of Merritt & Loew Court Reporting Service.

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 Thomas E. King, Community Development Director; Kris McMaster, Associate Planner, and R. Todd Hunt, City Solicitor. Mr. Hunt placed staff and all those persons in the audience wishing to speak under oath.

Mr. Dohner made a motion to approve March 17, 2011 Minutes as amended. Mr. Lewis seconded the motion and all members present were in favor.

**APPEALS DOCKET NO. 2011-04**

This hearing has been called to consider Appeals Docket No. 2011-04 for 5480 Hudson Drive.

The request is: 1) A variance from the requirement that any structure devoted in whole or in part to a nonconforming use is damaged or destroyed, by any means, to the extent of more than 50% of its fair market value prior to the destruction, such use shall not be restored except in conformance with the Code pursuant to Section 1206.05(e)(4) "Nonconforming Uses - Damage or Destruction".

The applicant is Leigh S. Prugh, Attorney at Law, P.O. Box 20155; Garfield Hts., Ohio 44125-0155 representing the owners William and Janet Marshall, 5480 Hudson Drive; Hudson, Ohio, for the property located at the same address in District 8

[Industrial/Business Park].

Mr. King stated that the property is located in District 8 and single family uses are nonconforming. There are single family residential homes to the north and south and vacant land to the east and west. Mr. King said the home was built in 1976 and was purchased by the owners in 1987. In 1996 the property was rezoned by the Compatibility Overlay and the Land Development Code was adopted in 1999 to "Encourage a balance of residential and non-residential uses and development in the community so that future growth occurs in a fiscally prudent manner". One of the objectives was to advance the goals of the Comprehensive Plan to "Balance land use decisions with planned economic development, in order to maintain the quality of life and fiscal responsibility that is representative of the community."

Mr. Lehman asked Mr. Hunt to make some comments before proceeding any further. Mr. Hunt said, "This is the type of request that is very difficult." Obviously the decision the Board will make will set precedent for the 50+ nonconforming dwellings that currently exist in Districts 6 and 8 and will have a far reaching effect. Mr. Hunt said that the 50% regulation with respect to reconstruction of a damaged structure is very common in Ohio and across the United States. In a recent case in Cuyahoga County this regulation had been upheld. Mr. Hunt said the best thing would be to put legislation through Council and Planning Commission, stating that he was not sure if such a recommendation could be tailored to meet the applicant's needs, but it may be possible.

Leigh Prugh, Attorney, stated the Marshall's were the only people asking for a variance of this type. The Marshall's have a variable rate mortgage that will be rising in 2011 and if it goes up 2% or 3% it will cause a financial hardship as their mortgage payment will be increased. Ms. Prugh stated that she did not think a Code change would happen quickly. Mr. Lehman asked Ms. Prugh to interpret Section 1204.03. She stated that the Marshalls were the only two people that have come before the Board to ask for a variance.

Mr. Lewis said the Board has an understanding of the Marshall's position. He stated he was looking at 1204.03(b) a little differently and quoted the language, "No variance shall be granted if the submitted conditions or circumstances affecting the applicant's property are of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such conditions or situations." Mr. Lewis said that it is not a unique situation as there are 50+ dwellings with the same situation. Mr. Lewis asked if more than one bank had been contacted and Ms. Prugh affirmed that both Bank of America and First Place Bank were also contacted and both sell their paper to Fannie Mae. Mr. Lewis said that the Board knows it is a predicament, but they have limited jurisdiction. Mr. Lewis asked if Ms. Prugh interpreted (b) differently or if there were other Code sections that might suggest other ways. She responded that she had not gone through the Code.

Mr. Lehman asked how long the process would take if sent to Council for a Code amendment and if there could be a positive resolution. Mr. King said there could be a positive outcome and the objective achieved by a Code amendment. Mr. King said there

are three ways to request an amendment to the Code. The quickest way is for Council or Planning Commission to initiate an amendment, the draft is submitted to City Council, and legislation is initiated and referred back to Planning Commission for public hearing. It becomes effective 30 days after it is passed. Mr. King said if everything went quickly, the amendment could become effective by August 19, 2011.

Mr. Lewis stated that variances run with the land, but not with the landowner. Mr. Hunt said the variance could be passed down with the property title.

Mr. Wise asked the applicant if they talked with a bank regarding funding sources being available without Fannie Mae. Ms. Prugh said the banker she spoke with stated they hold the loans, but want to obey Fannie Mae criteria so if the need arises to sell the paper, they can.

Mr. Lehman stated that homeowner's insurance covers the home only, and not the land in a loss situation. Mr. King said the lender will have a claim on the funds. The property owner may be left with the deed and no funds.

Mr. Hunt swore in Mr. Marshall to give testimony. Mr. Marshall stated they moved to Hudson over 20 years ago and their three children attended the Hudson schools. During the time they have lived in Hudson Mr. Marshall has been layed off twice. Using several realtors they have tried to sell their home in 2007 and 2008. Mr. Marshall said they did have a party interested who was starting his own accounting business. The potential buyer presented his plan to Planning Commission and was told it was necessary to have handicap bathroom facilities and to tie in to the sewer and water. The buyer said it was cost prohibitive and decided not to pursue the purchase. Mr. Marshall said he had a ten month layoff between 2008 and 2009 and used up much of their savings. Bank of America told him his home did not have suitable living conditions and he questioned what that meant. The bank told him he was not a business, but his house was located in a business industrial park. Mr. Marshall stated there are 15 other homes on his street. He said he has a 4.75% variable rate mortgage that will be going up in June. He said they have coexisted for over 20 years and stated they are not trying to change the Code. Mr. Marshall said he was not looking for sympathy, but all he and his wife were trying to do is maintain a quality of life and they are looking for some understanding.

Mr. Lehman stated that obviously everyone would like to resolve this issue. Mr. Hunt said that granting a variance is, in essence, confirming the uniqueness of the property.

Mr. Dohner said his heart goes out to the applicants, but he did not know if the Board is or is not the remedy. He said that possibly Section 1206.06 goes hand in hand with this. Mr. Dohner stated that the Board may be overstepping their bounds and possibly the applicant should ask for a continuance and in the meantime approach City Council.

Mr. Lewis agreed with this suggestion. He said he was not in favor of issuing a decision making the applicant ineligible to come back to the Board. Mr. Lewis said it may be appropriate to give more than 30 days.

Mr. Hunt said it could be on the Council Workshop Agenda May 10, and then to the May 18 Council meeting. All members were in favor of continuing the case to the June 16, 2011 meeting. Ms. Prugh agreed to the continuance to the June 16 meeting to pursue a code amendment.

#### **APPEALS DOCKET NO. 2011-05**

This hearing has been called to consider Appeals Docket 2011-05 for Parcel 3006298, Last Valley Lane.

The requests are: 1) A variance from the requirement that development be served by connection to a public water line pursuant to Section 1207.11(b)(1)(B), "Adequate Public Facilities - Water/Wastewater"; 2) A variance to the requirement that the front wall of a principal structure shall be parallel to the street pursuant to Section 1205.06(d)(9)(A)(ii), "Property Development/Design Standards - Building Siting and Orientation"; 3) A variance to emergency access requirements that adequate access for emergency vehicles and for those persons rendering fire protection and emergency services pursuant to Section 1207.13(C)(9)(J), "Transportation/Circulation - Streets, Easements, Alleyways", "Emergency Access", (ix) "Dead End Length and (9v) Fire Access Road Width".

The applicant is Christopher Brown of Prestige Homes, 17 W. Streetsboro Street, Hudson, Ohio representing the property owners, Rene and Ana L. Silva, 2729 Last Valley Lane, Hudson, Ohio.

Mr. Lehman designated the following correspondence as Exhibits making them part of the record: Exhibit A - Letter from Donald Gallimore, Summit County; Exhibit B - Memo from Thomas Sheridan, City Engineer; Exhibit C - April 20, 2011 Site Plan showing proposed house location; Exhibit D - April 21, 2011 memo from Jerry Varnes, Assistant Fire Chief; Exhibit E - Email in support of variance from Nicholas Browning.

Ms. McMaster gave an overview of the case stating the property is on a private street with the access drive located off of East Streetsboro Street. Three parcels were created by a lot split in 1989 with two homes built and the proposed home is to be constructed. Ms. McMaster said to the west of the property is vacant land recently acquired by Metro Parks serving Summit County. The owners purchased the property March 2, 2011 and currently own property north of the subject property at 2729 Last Valley Lane. The owners have stated that without the requested variances the parcel would be deeded unbuildable. The applicant has stated that the nearest water line available is approximately 750 feet from the proposed house location and would be cost prohibitive to extend the water line to meet Code. The applicant stated they will connect to the sanitary sewer by extending the sewer line from the south and using a grinder pump. As to the second variance requested, Code requires the house to be parallel to the street. The applicant proposes the house to face the private street, Last Valley Lane and not the public

street, East Streetsboro Street to be consistent with the house south of 2733 Last Valley Lane. Ms. McMaster said the applicant has agreed to provide vehicle turnouts as shown on the site plan and meet the 50,000 pound driveway surface support requirement and that Jerry Varnes, Assistant Fire Chief, has no issues with the requests.

Mr. Wise asked why the City requires public water instead of a well and Mr. King said that if wells were permitted the public water line would not be extended and be available beyond existing lines so others would not be able to utilize public water. The City Engineer has said since this home is the last house on the street there would be no benefit for the owners to tie into public water lines.

Mr. Brown, of Prestige Homes, addressed the three variances requested first stating that the homes on Last Valley Lane have well water. Prestige will tie into the Summit County sewer system for the proposed home. Mr. Brown said he talked with Assistant Fire Chief Varnes regarding emergency vehicles and the driveway will be widened to allow two vehicles to pass. The 16 ft wide concrete driveway will be 70 ft long to the house with a hammerhead turnaround. Mr. Brown said the Code requirement is that the front wall of the home is to be parallel to the street. The owners want to turn the home at an angle to get the best view of the lake. The revised site plan is in the Board packet showing the proposed location of the house. The back yard of the home will face the back yards of the homes on St. Ives Boulevard.

Mr. Lewis confirmed with Mr. Brown that the cost to bring water to the house would be \$30 to \$40 per foot for 600 feet.

Mr. Brown said he will work with the assistant fire chief if there is any problem with the location.

Mr. Dohner had no questions.

Mr. Wise had no questions.

Mr. Dohner said for similar cases in the past, if the water line is brought on the street then tie-in would be required stating that the cost would have to be a cooperative agreement of the three property owners. This could not easily be done by an assessment. Mr. Brown said there is no frontage on a public street and Akron Water would not run the lines.

In reaching this motion, the Board considered variance factors.

Mr. Lewis made a motion to grant a variance from the requirement that development be served by connection to a public water line pursuant to Section 1207.11(b)(1)(B), "Adequate Public Facilities - Water/Wastewater"; a variance to the requirement that the front wall of a principal structure shall be parallel to the street pursuant to Section 1205.06(d)(9)(A)(ii), "Property Development/Design Standards - Building Siting and Orientation"; and, a variance to emergency access requirements that adequate access for emergency vehicles and for those persons rendering fire protection and

emergency services pursuant to Section 1207.13(C)(9)(J), "Transportation/Circulation - Streets, Easements, Alleyways", "Emergency Access", (ix) "Dead End Length and (9v) Fire Access Road Width". The Board hereby concludes:

a) the property in question will not yield a reasonable return and there cannot be a beneficial use of the property as a residence without the variances given the need to have water and ingress/egress for emergency vehicles as discussed with Assistant Fire Chief Varnes;

b) the variances are substantial but necessary to make reasonable usage of the property;

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 as the current two residences are served by wells and not City water, and the improvement of emergency access would enhance the properties;

d) the variances would not adversely affect the delivery of governmental services as substantiated by the April 21, 2011 memo from Jerry Varnes, Assistant Fire Chief, Hudson Fire Department;

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

f) the owner's predicament feasibly cannot be resolved through some method other than the variances; and

g) the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variances as per the plot plan revised April 20, 2011 moving the orientation of the house and installing the access road improvements. Chris Brown of Prestige Homes will work with Assistant Fire Chief Varnes if there is a problem with the location of the drive. Placement of the rear of the residence does line up with the rear yards of the homes on St. Ives and the front of the house faces the two residences on the private street.

The variances are granted with the following condition:

- The variance will not alleviate the homeowner's responsibility for future property assessments and to tie into city water should it become available.

Mr. Dohner seconded the motion.

Mr. Dohner seconded the motion.

Roll Call:

Aye: Mr. Dohner, Mr. Lewis, Mr. Wise, Mr. Lehman

Nay: None

Motion unanimously carried.

**OTHER BUSINESS**

Ms. McMaster briefly described the cases for the May docket.

**ADJOURNMENT**

As there was no further business, Mr. Lehman adjourned the meeting at 9:30 p.m.

  
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David W. Lehman, Chairman

  
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David J. Lewis, Vice Chairman

  
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Carol G. Muesel, Clerk