

## Board of Zoning and Building Appeals

REGULAR MEETING MAY 20, 2010  
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. Hojnacki, Mr. Jahn, Mr. Lewis, Mr. Lehman, Mr. Wise  
Absent: None

Officials Present: Kris McMaster, Associate Planner; R. Todd Hunt, Assistant City Solicitor.

Meeting minutes were taken by Carol Muesel, 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, and R. Todd Hunt, Asst. City Solicitor. Mr. Hunt placed staff and all those persons in the audience wishing to speak under oath.

The April 15, 2010 Minutes were approved as written and all members except Mr. Lewis who abstained, were in favor. Mr. Jahn signed the Minutes as Mr. Lewis had recused himself from the meeting for the case at 391 Barlow Road.

Mr. Lehman confirmed with staff that all legal notices were mailed and posted in the newspaper for all cases.

#### APPEALS DOCKET NO2010-58710

This case has been called to consider Appeals Docket No. 2010-58774, for 1518 Callander Drive.

The request is a variance of eleven (11) feet to the required rear yard setback of fifty (50) feet resulting in a deck addition thirty-nine (39) feet from the rear property line, pursuant to Section 1205.06(d)(5)(E)(i), "Property Development/Design Standards" - "Minimum Rear Yard Setbacks".

The applicant is Phil Klonawski, Custom Decks Inc., 380 East Highland Road; Macedonia, Ohio 44056 for the property owners David R. and Nancy F. Burr, Trustees, 1518 Callander Drive; Hudson, Ohio.

Ms. McMaster stated the house was built in 1980 and the owners purchased the property in December 2005. The owners are requesting to demolish an existing 12' by 16' deck, and replace the structure with a 20' by 14' deck in the same location. The current rear yard setback is 41' to the rear property line. Ms. McMaster stated that staff determined that at the time of issuance of the original certificate for the deck, the zoning inspector must have considered the deck an accessory structure requiring a 15' setback from the rear property line instead of 50'.

Mr. Klonawski submitted additional pictures to the Board with all the landscaping removed from around the deck. He stated that the deck was sinking and that is why the owners are replacing the deck. The new pictures submitted clearly show this. (Exhibit A)

Mr. Lewis asked if alternatives to the proposed placement of the deck had been considered to the variance being sought and Mr. Burr said the deck is not adequate and the most suitable location for the new deck would be in the same place as where the old deck stands. Mr. Burr also made a correction to the staff report stating they have owned the house since 1992 not 2005. They put the house into a trust and that was why the county records show ownership as of 2005. Mr. Lewis confirmed with the owner that their lot is heavily wooded and also confirmed that the owner plans to do landscape buffering around the perimeter of the deck to screen from the neighbors view.

Mr. Wise asked if there were structural limits to making the deck larger by going to the end of the house and the applicant responded that the well head was at the end of the house. The applicant said the owners did not want to cover the window or alter the landscaping on the side of the house.

Mr. Jahn confirmed with staff that the current deck currently encroaches the rear setback. He also confirmed that there were no Code restrictions to build a patio and asked the applicant if a patio had been considered. The applicant said there would be a three foot drop from the house to the patio. Mr. Jahn asked why the current deck was sinking and the applicant said it possibly could be improper footers, but said he was unable to answer the question. Mr. Jahn confirmed with the applicant that a low maintenance deck material was being used for the new structure.

Mr. Hojnacki had no questions.

Mr. Lehman confirmed with staff that if the steps were changed towards the back they would be considered necessary steps and landing and would be permitted.

Mr. Hojnacki made a motion to grant a variance of eleven (11) feet to the required rear yard setback of fifty (50) feet resulting in a deck addition thirty-nine (39) feet from the

rear property line, pursuant to Section 1205.06(d)(5)(E)(i), "Property Development/Design Standards" - "Minimum Rear Yard Setbacks".

The Board finds and concludes:

- a) the property in question will yield a reasonable return and there can be a beneficial use of the property without the variance, as the owners have been living there, however the property will be enhanced by granting this variance;
- b) the variance is insubstantial because currently the deck setback is 41 feet and the 11 foot variance would result in the deck addition being 39 feet from the rear property line;
- 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 because the new deck will be well screened from the neighbors;
- d) the variance would not adversely affect the delivery of governmental services;
- e) the owner purchased the property with knowledge of the zoning restriction;
- f) the applicant's predicament feasibly cannot be resolved through some method other than the variance; and
- g) the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

Mr. Jahn seconded the motion.

Roll Call:

Aye: Mr. Lewis, Mr. Hojnacki, Mr. Jahn, Mr. Wise, Mr. Lehman

Nay: None

Motion unanimously carried.

#### **APPEALS DOCKET NO. 2010-58788**

This case has been called to consider Appeals Docket No. 2010-58788, for 7801 Ravenna Road.

The request is a variance of three hundred and sixty (360) 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 1,360 square feet pursuant to Section 1206.03(d)(5), "Accessory Use Development and Operational Standards" - "Maximum Building or Structure Size".

The applicant is Doug Boyle for the owner Dawn M. Boyle, 7801 Ravenna Road, Hudson, Ohio 44236, for the property located at the same address.

Ms. McMaster gave an overview of the case stating that the property is 13.41 acres and was purchased by the owner in 2006. City of Hudson Code Enforcement issued a violation notice in March 2010 because construction of an addition to an accessory structure was done without a Zoning Certificate. Ms. McMaster said the owner did not respond within 30 days and Code Enforcement sent a warning notice that if the owner did not respond by April 21, a civil infraction would be issued with a fine. On April 21 the applicant filed a BZBA application. Ms. McMaster said the applicant added 560 sq ft to an 800 sq ft structure for a total of 1,360 sq ft total gross floor area, 360 sq ft over the 1000 sq ft permitted.

Mr. Lewis confirmed with staff that the original structure did not have a permit and Mr. Boyle stated the building was there when they purchased the property. Ms. McMaster said that Code Enforcement indicated the City's GIS mapping system did not show a structure.

Mr. Lehman confirmed with the applicant that the building was not intact when he purchased the property and there were only roof trusses and no shingles.

Mr. Hojnacki confirmed with the applicant that the structure is used for pool supplies, tractors, gardening equipment, four-wheelers, and trailers for utility vehicles.

Mr. Jahn asked Mr. Boyle if he received the March 16 violation notice and he responded "no". Mr. Jahn confirmed with staff that no certified receipts were presently available at the meeting for the March 16 or April 21 notices. Ms. McMaster said she would have to check with Code Enforcement. Mr. Jahn asked why the applicant waited until the 7<sup>th</sup> day to file his BZBA application and Mr. Boyle stated he needed that time to get the required paperwork together. Mr. Jahn confirmed with staff that there were no other violations on record. Mr. Boyle stated the addition was existing, but they dismantled all deteriorated materials and stated all that was left of the existing addition was where it connected to the barn.

Mr. Lewis stated that as a Board member, it is troublesome to think people go forward with projects and do not follow the rules of the City. Mr. Lewis confirmed that the applicant felt no permit was necessary because in his mind, it was a replacement of a previously existing structure. Mr. Lewis said it is the owners' burden to convince the Board why the addition should stay. Mr. Boyle stated: "the property is heavily wooded, the barn is over 400 feet from the road, the barn cannot be seen from surrounding

properties as topography drops 50-60 feet to the barn location, distances from surrounding properties range from 200 feet to 1,150 feet." Mr. Lewis confirmed with Mr. Boyle that the addition has no electric or plumbing, the floor is made up of ground (pulverized) asphalt and dirt, there are no drains in the floor, no bathroom, no living quarters and there are no other like structures on the property.

Mr. Wise confirmed with staff that when this area of Hudson was a township, permits were also required.

Mr. Lewis confirmed with Mr. Boyle that his occupation was installing lawn sprinklers, landscaping, and mulch production. Mr. Lewis confirmed with Mr. Boyle that he has applied for permits for sprinkler systems, however, not in Hudson as Hudson does not require a permit.

Mr. Hunt stated for the record that the property is 13.4 acres, has a frontage of 351 feet, 316 feet across the back, and the property depth is 1593 feet and 1770 feet. The barn is located in the middle of the property and the side setbacks from the barn to the property lines are 190 feet and 200 feet. Mr. Boyle said the rear of the property backs up to 100 acres of Tinkers Creek State Park. He said his property drops down 10 to 15 feet from Ravenna Road.

Staff confirmed that no objections were received by the neighbors.

Mr. Lewis said a reference was made to penalties and asked Mr. Hunt the appropriateness of the Board requiring the applicant to submit to a civil penalty. Mr. Hunt said it would not be appropriate.

Mr. Boyle submitted for the record, a black and white photograph of when he purchased the property showing that the barn addition was there. (Exhibit A.)

Mr. Lehman stated that it is a very deep property and visibility of the barn is limited. He said there is evidence that the owner has applied for other construction permits.

Mr. Lewis stated this case is a result of an enforcement action, and it appears the structure is larger than the original structure. We have evidence that a notice was sent with no response, and a second notice was received. Mr. Lewis said due to this process it has brought the Board to a position of being asked to grant a variance after the fact.

Mr. Wise said he agrees. Mr. Wise asked staff if Mr. Boyle will have to bring the barn addition up to Code. Ms. McMaster said that Summit County would probably require that the structure meet the current Building Codes of Summit County, however the City would not have any involvement.

Mr. Hojnacki said, "Setting aside the circumstances that brought us here, it is a property with 13+ acres and does not affect others in any way. The barn probably was or

close to 1000 square feet. He certainly could build another and it may be better to have one building instead of several. It is a large property and it is not uncommon for large properties to have large buildings." Mr. Hojnacki said the Board should be mindful of the size of the property as a half acre lot could have the same number of buildings as a large property.

Mr. Jahn said it was troublesome to him that a person familiar with building and building codes would not bother to get a permit.

Mr. Lewis made a motion to grant a variance of three hundred and sixty (360) 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 1,360 square feet pursuant to Section 1206.03(d)(5), "Accessory Use Development and Operational Standards" - "Maximum Building or Structure Size".

The Board finds and concludes:

- a) the property in question will yield a reasonable return and there can be a beneficial use of the property without the variance, as the owners have been using the original, existing barn thus far;
- b) the variance is substantial because it is 133%, but the size is mitigated by the size of the property which is 13.41 acres;
- 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 because it is a large property and the accessory structure is placed in a position on the site, that is not intrusive;
- d) the variance would not adversely affect the delivery of governmental services;
- e) the owner purchased the property with knowledge of the zoning restriction;
- f) the applicant's predicament feasibly cannot be resolved through some method other than the variance; and
- g) the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance due to the size of the property and that the accessory structure is the only one on the lot.

The variance is granted with the following conditions:

- ◆ No living quarters for human habitation in the subject structure, now or in the future.
- ◆ Future accessory structures will be limited to the maximum square feet of gross floor area permitted by Code at that time.

Mr. Hojnacki seconded the motion.

Roll Call:

Aye: Mr. Hojnacki, Mr. Lewis, Mr. Lehman

Nay: Mr. Jahn, Mr. Wise

Motion carried.

### APPEALS DOCKET NO. 2010-58790

This case has been called to consider Appeals Docket No. 2010-58790, for 5976 Ogilby Drive.

The requests are: 1) A variance of eight (8) feet to the minimum side yard setback of fifteen (15) feet resulting in an accessory structure seven (7) feet from the side property line; and 2) A variance of five (5) feet to the minimum rear yard setback of fifteen (15) feet resulting in an accessory structure ten (10) feet from the rear yard property line pursuant to Sections 1205.06(d)(5)(D)(iv) and 1205.06(d)(5)(E)(iii), "Property Development/Design Standards" - "Minimum Side and Rear Yard Setbacks".

The applicant and owner is Vincent P. Bukovsky, 5976 Ogilby Drive, Hudson, Ohio.

Ms. McMaster gave an overview of the case stating the site is on 0.4636 acres. The house was built in 1972 and the owner purchased the property in 2001. The owner is requesting setback variances to locate a shed in the southwest corner of his property as there are mature trees that would have to be cut down to locate the shed in the northwest corner. Ms. McMaster said the applicant indicated that if the trees were cut down the adjacent properties would have more of an impact than they would if the variance request is granted.

Mr. Bukovsky stated that he had contacted two neighbors on the sides of his property and three neighbors in the rear and they all agreed to the proposed structure. He submitted signatures of his neighbors and it was entered into the record as Exhibit A. He also stated that there is a 6' fence surrounding his property making it very difficult to see the shed. Mr. Hojnacki confirmed that there were no objections from his neighbors as to the building height.

Mr. Lewis asked the applicant about possible alternatives and why two trees would have to come down. The applicant said putting in footers would disturb the tree roots and he does not want to take any chances with the trees. He said 15' would place the shed more in the center of his lot. The applicant said he is making a \$4000-\$5000 investment in

materials. Mr. Lewis confirmed that the applicant wanted to keep more contiguous space on the lot. Mr. Lewis also confirmed that the applicant would build the shed regardless if his variances are granted.

Mr. Hunt said the purpose of a setback ordinance is to increase the light and air between properties. Therefore, the burden is on the property owner who is trying to construct something to establish a practical difficulty. Mr. Hunt said he heard the applicant give testimony that he preferred not to move the shed over because it takes up more of his own yard.

Mr. Wise confirmed with Mr. Hunt that it does not necessarily matter if the neighbors are in agreement because variances run with the land and that neighbor may not be there in the future.

The applicant stated that he has a 6' fence around his very wooded lot. He said the neighbors all have rustic lots and he is trying to maintain the integrity of the lot and make it as unobtrusive as possible.

Mr. Hojnacki said he was sympathetic and favored the rear yard setback.

The applicant said he did some research on the City website and submitted minutes from a BZBA case in which a variance was approved on July 21, 2005 at 15 Bradley Drive. The 2005 Minutes were entered into the record as Exhibit B.

The applicant said the back corner of his lot gets water run off and there is a trench. He said he would be open to a 10' side yard variance.

Mr. Lewis made a motion to approve a variance of 5 feet to the minimum rear yard setback and to deny a variance of 8 feet to the minimum side yard setback for an accessory structure: The Board finds and concludes:

a) the property in question will yield a reasonable return and there can be a beneficial use of the property without the side yard variance as there is no evidence to justify the side yard variance. As to the rear yard variance, the property will continue to yield a reasonable return and there can be a beneficial use of the property with the variance, and the rear yard variance will not adversely impact the neighbors as to the light and air rationale for the restriction in the Code;

b) the side yard variance setback is substantial because the request is for nearly 50% of the required side yard setback, but it is 33% of the rear yard setback. No evidence was presented regarding why a side yard variance was necessary, but evidence was presented for the rear yard variance;

c) the essential character of the neighborhood would be substantially altered and adjoining properties would suffer a substantial detriment as a



result of the side yard variance because of the reduced transfer of light and air which is the rationale for the Code requirement and there is no compelling reason to grant the variance to the maximum side yard setback requirement, however, there is no evidence that would suggest an adverse impact by granting the variance to the minimum rear yard setback requirement;

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

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

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

g) the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance of 5 feet to the rear yard and denying the variance request of 8 feet to the minimum side yard for a setback requirement for a proposed accessory structure.

Mr. Lehman suggested a compromise before voting for the motion, of 5' setback from both the side and rear yards.

Mr. Lewis said that the applicant is bringing the predicament on himself and he was not persuaded that a side yard variance is justified. Mr. Lewis said he would not modify his motion.

Mr. Jahn seconded the motion.

Roll Call:

Aye: Mr. Hojnacki, Mr. Lewis, Mr. Wise, Mr. Jahn, Mr. Lehman

Nay: None

Motion unanimously carried.

#### APPEALS DOCKET NO. 2010-58795

This case has been called to consider Appeals Docket No. 2010-58795, 108 Fox Trace Lane.

The request is a variance of ten (10) feet to the minimum rear yard setback of fifty (50) feet resulting in an all season room forty (40) feet from the rear property line, pursuant to Section 1205.06(d)(5)(E)(i), "Property Development/Design Standards" - "Minimum Rear Yard Setbacks".

The applicants and owners are Robert L. and Cynthia J. Price, Trustees, 108 Fox Trace Lane, Hudson, Ohio.

Ms. McMaster gave an overview of the case stating that the house was built in 1986 and the owners purchased the property in 2000. The owners would like to construct an enclosed porch over an existing deck using the same footprint. Ms. McMaster said that the City of Hudson and Summit County had no record of a Zoning Certificate for the existing deck which encroaches into the rear setback.

Mr. Price said he has the original prints which show the deck. They want to put a new floor on the deck and go over the existing footprint. The neighbors on both sides have no visibility to the back of the house, and Tinkers Creek is in the rear with the closest neighbor being approximately 300 feet away with densely wooded area separating them. Ms. McMaster said that the AHBR made a site visit and gave comments to the owners, however, this is not part of the Board's review.

Mr. Lewis confirmed with the owner that the deck would not be closer to the rear lot line than the existing deck.

Mr. Hojnacki confirmed that the deck would be 400 square feet and the total square footage of the house is 5000 square feet.

Mr. Jahn asked for a description of the room and Mr. Price said it will be a 3-season room and it was also confirmed that the house has a walk out basement.

Mr. Wise confirmed with staff that there is no record of a permit for the existing deck.

Mr. Lewis confirmed with staff that this case is due to non-compliance of the original deck because of no permit and now they want to add an enclosed porch on the non-compliant deck. It is still encroaching into the rear yard and now it will be a more massive structure.

Mr. Hojnacki made a motion to grant a variance of ten (10) feet to the minimum rear yard setback of fifty (50) feet resulting in an all season room forty (40) feet from the rear property line, pursuant to Section 1205.06(d)(5)(E)(i), "Property Development/Design Standards" - "Minimum Rear Yard Setbacks. The Board finds and concludes:

- 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 owners can still enjoy the property in its present state, however, their property will be enhanced;
- b) the variance is insubstantial because it is 10 feet, 20% encroachment, to the rear setback;

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 variance would not adversely affect the delivery of governmental services;

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

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

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

Mr. Wise seconded the motion.

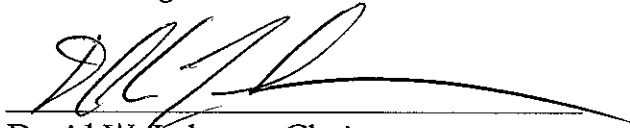
Aye: Mr. Jahn, Mr. Wise, Mr. Hojnacki, Mr. Lewis, Mr. Lehman

Nay: None

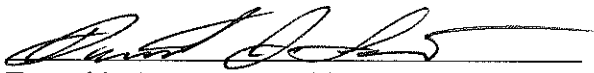
Motion unanimously carried.

#### ADJOURNMENT

There being no further business, Mr. Lehman adjourned the meeting at 10:20 p.m.



David W. Lehman, Chairman



David J. Lewis, Vice Chairman



Carol G. Muesel, Clerk