

**Board of Zoning and Building Appeals**  
**REGULAR MEETING DECEMBER 15, 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. Jahn, Mr. Lehman, Mr. Lewis, Mr. Wise  
Absent: No one

Officials Present: Thomas E. King, Community Development Director; Kris McMaster, Associate Planner and Aimee W. Lane, Assistant City Solicitor.

Verbatim transcript was taken by Sue Petro, Merritt and Lowe Court Reporting Services, and 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 Thomas E. King, Community Development Director; Kris McMaster, Associate Planner, and Aimee W. Lane, Assistant City Solicitor. Ms. Lane placed staff and all those persons in the audience wishing to speak under oath.

A motion was made to approve the July 21, 2011 transcript as written and to also approve the November 17, 2011 minutes as amended. Mr. Dohner seconded the motions and all members were in favor.

Mr. Lehman stated that it was the duty of the applicant to convince the Board why the request for variance is necessary.

**APPEALS DOCKET NO. 2010-18**

This hearing has been called to consider Appeals Docket No. 2011-18 for 202 Brandywine Drive; Hudson, Ohio. The applicants and owners are Donald A. Moffa Jr., and Valerie A. Moffa.

The request is a variance of two (2) ft from the maximum fence height in a side yard of four (4) ft above the elevation of the surface of the ground resulting in a six (6) ft fence in the side yard pursuant to Section 1206.03(a)(5) "Accessory Uses/Structures - Residential Accessory Uses - Fences and Walls".

Ms. McMaster gave an overview of the case stating the house was built in 1992

and the owners purchased the property in December 1997. The owner received a zoning permit on October 5, 2011 for a (4) foot high by (72) foot long fence to be located in the north side yard along the property line. Ms. McMaster said the property owner was issued a notice of violation by the City Code Enforcement on October 17, 2011 for the installation of a (6) foot fence when the approved Zoning Certificate was for a (4) foot high fence. The **owner's** original application submittal was for a (6) foot fence on September 28, 2011. Staff notified the owner that a (6) foot fence was not permitted in a side yard and the owner agreed to reduce the fence height to (4) feet with that modification revised on the original application.

Mr. Moffa stated at the time of purchase of the home they did not realize how close the house was to the property line. Mr. Moffa stated the reasons a (6) foot fence was installed was: (1) Lack of privacy; (2) Natural disaster; (3) Haste. Mr. Moffa said the house next door was in foreclosure and has been unoccupied for a year. The property has a heaved driveway which has never been repaired. He stated there have been a number of unsightly incidents on the next door property; and both his dining room and kitchen face the **neighbor's** garage and driveway. Mr. Moffa said that after a hail storm in May their siding was in need of repair and it took all summer to fix their home. The owner said arborvitaes had been considered for the side property line, however, due to a problem with deer eating them they decided against this type of shrub. During that time the owners decided to invest in a fence as landscaping did not offer them enough privacy. Mr. Moffa said they submitted a plan for a (6) foot fence and found that Code did not permit that height in a side yard. Mr. Moffa said they had planned to put up a (4) foot fence, but realized they still would not have privacy from the next door neighbor so Mr. Moffa authorized the contractor to install a (6) foot fence.

Mr. Lehman stated that it would have been better if they had requested a variance before installing the (6) foot fence.

Mr. Jahn confirmed with the owner that the (6) foot fence was put up for privacy.

Mr. Wise confirmed with the owner that there was no dispute that they did initial the zoning application agreeing to a (4) foot fence.

Mr. Lewis stated it was the burden of the applicant to persuade the Board why the Code should not apply to this case and the Board needed to be able to consider alternatives. Mr. Lewis said it would seem that some other type of evergreen would have offered what the owners were seeking.

Mrs. Moffa stated that it was the third time the house at 196 Brandywine had gone up for sheriff sale. She pointed out that one of the pictures in the Board packet showed the grade between the **neighbor's** garage and **Moffa's** house. She stated that she had complained to City Code Enforcement about high grass and weeds and was told that they had to be 10 inches high before the City would only mow the lawn. Mrs. Moffa said she had a survey done and found that their property was one foot from the edge of the **neighbors'** driveway and, in fact, they owned the bed with the weeds. She said she had asked City Code Enforcement for suggestions on plantings so there would be total privacy when looking out the dining room or kitchen window. Mrs. Moffa said she was told that the root system of anything other than arborvitae would go under the **neighbors'** driveway and heave the pavement. Mrs. Moffa said that a fence was not

their first choice, but was the best choice for their privacy.

Mr. Lewis asked if they had prior experience using other plantings in that area and Mrs. Moffa responded they did not know it was their property until May 11, and the City Code Enforcement said the root systems would damage the **neighbors'** driveway and **Moffa's** basement.

Mr. Moffa said the bed between the two properties is very wet and difficult for things to grow. Mr. Moffa said their contractor had removed the grass and replaced it with rocks so it would require no upkeep.

Mr. Dohner said the Board had a similar case on Fox Trace with almost identical problems. Mr. Dohner said he could appreciate a problem with an unkept house, junk cars, and weeds and asked if the owner agreed that those issues could be handled by a (4) foot fence. Mr. Moffa said that due to the elevation between the homes, when standing in the **neighbor's** driveway you were still able to see into the **Moffa's** kitchen and dining room windows. Mr. Moffa said that area has a northern exposure and does not get much sun. Mr. Moffa said the soil was not good and he did not have another 15 years to wait for landscaping to grow.

Mr. Lehman said that the fence would not help the view of the windows on the second floor. Mrs. Moffa said that was not a problem as they had addressed it on the interior. Mr. Lehman asked staff if they had any opinions on what was said to the **Moffa's** by the City. Mr. Lehman asked who gave the landscaping opinions. Mrs. Moffa said it was Jeff and Fred as the house next door was on their route of the 35 Hudson homes in foreclosure. Mr. Lehman said the Fox Run case did not have a driveway between the homes and **Moffa's** fence is much more visible than the other case. Mr. Moffa said they tried to mitigate that by the scallops (tapers) at the beginning and end of the fence.

Mr. Lewis confirmed with the owner that the fence length is (72) feet and the **width of the owner's home is (60) feet.**

Mrs. Lane swore in Michael Seleznick, 197 Brandywine Drive, before he spoke to the Board. He stated that over the past few years the property has been deteriorating and turning into an eyesore. Mr. Seleznick said his view of the fence looks very nice. He also stated that one of the immediate neighbors has arborvitae and the deer have picked them clean from the ground up to (4) feet.

Mr. Lehman closed the public portion of the meeting so the Board could discuss the case among themselves.

Mr. Lewis said the homeowner acted hastily, but with knowledge that they violated the Code. Mr. Lewis said the Board should consider the issue as though the fence was not there.

Mr. Dohner said it was the **Board's** obligation to treat this case as though the fence was not there. He said the testimony did not show enough other alternatives that had been tried or exhausted. Mr. Dohner said there is no evidence from a landscape designer or arborist that plants cannot grow in that area. Mr. Dohner said he can

appreciate the need for privacy, but said it could be achieved with vegetation. Mr. Dohner suggested that if deer are the problem, a (4) foot fence behind the arborvitae could be a remedy. Mr. Dohner said, in his opinion, the owners have not made their case.

Mr. Lewis said the Board needed to find unusual circumstances, but has not. He questioned why it would not be appropriate for the next applicant seeking this variance to have it granted unless we find exceptional or unusual conditions.

Mr. Jahn said he had sympathy for the homeowners being next door to a foreclosed property that is not being maintained. The owners look at a foreclosed property as an exceptional condition. The family prior was not maintaining the property which is another exceptional condition.

Mr. Wise pointed out that the owners put up a (6) foot fence even though they knew it was not permitted. Mr. Wise said he was disturbed, but he sees the owners are very frustrated. Mr. Wise also stated that due to the economic situation it is out of the **owner's** control. Mr. Wise said to allow the fence to be higher than permitted is one way for the Board to give a remedy.

Mr. Lehman said that was a long term fix to a short term problem. Mr. Lehman said a professional opinion was needed to see what can be done and input given to help with the **Board's** decision. Mr. Lehman confirmed with the Assistant City Solicitor that she was in agreement with the potential strategy of getting a professional opinion.

Mr. Lewis asked staff what would be a suitable buffer for wet conditions and Mr. King said he could not provide that answer this evening.

Mr. Lehman suggested the case be continued to the January 19, 2012 meeting and suggested the owners seek out a landscape professional to get a remedy for the situation which they could present at the next meeting. Mr. Lehman said this will also give the City an opportunity to come up with an opinion.

Mr. Moffa said he appreciated the suggestions, but wanted to bring up one more concern about two incidents of homosexual activity at 196 Brandywine. He said he does not have fifteen years to watch plants grow and did not want to see "air" between trees. The **owner's** main concern is his two children, ages 10 and 7. Mr. Moffa said the situation is beyond privacy as it is a matter of protection.

Mr. Dohner made an observation of another case when the Park Board was seeking a wetland variance for the walkway along the turnpike. Many residents were against because of a privacy issue. Mr. Dohner said that is part of the risk of where you buy. Mr. Dohner said he thought there were other ways than a (6) fence to rectify the problem.

Mr. Dohner made a motion to deny the request for variance.

Mr. Lehman said he did not think the applicant wanted his request denied and asked Mr. Moffa what he wanted to do.

Mr. Moffa said he would like to be considered for a continuance and to follow your instructions.

Mr. Dohner withdrew his motion to deny.

Mr. Dohner made a motion to continue the case to the January 19, 2012 meeting, asking the applicant to: (1) Consult a landscape professional to determine the suitability of the soil and to suggest various types of plants for that area; (2) Be prepared to provide alternatives; (3) Have this case reviewed by the City's consulting landscape architect.

Mr. Dohner made a motion to continue the case to the January 19, 2012 meeting. Mr. Wise seconded the motion and all members were in favor.

### **APPEALS DOCKET NO. 2011-19**

This hearing has been called to consider Appeals Docket No. 2011-19 for the applicant, KGK Gardening, 219 North Main Street, Hudson, Ohio representing the property owners Michael Sean Buynak and Natalie Jean Buynak, Co-Trustees, 79 Brandywine Drive; Hudson, Ohio.

The requests are: (1) A variance of forty (40) feet from the required stream corridor setback of seventy five (75) feet resulting in an addition and related disturbance that would be 35 feet from the stream pursuant to 1207.03(e), "**Wetland/Stream Corridor Protection - Stream Corridor Setbacks**" and from the prohibited activity of disturbance including clearance of vegetation with stream corridor setbacks pursuant to Section 1207.03(c), "**Prohibited Activities**".

Mr. Lehman read a letter dated December 15, 2011 from George and Linda Sangrik, 6956 Post Lane, asking the variance be denied.

Ms. McMaster gave an overview of the case stating the house was built in 1999 and the owners purchased the property in 2009. Ms. McMaster said Brandywine Creek runs along the eastern property line and based on the size of the stream the stream riparian setback required a seventy-five (75) foot setback. The house was constructed prior to the Code's setback requirement. The owners are requesting to construct an addition to be located no closer than the house's current side yard setback from the stream. Attached to the staff report was a brochure on the technical and policy benefits of providing stream setbacks and riparian corridors.

Nathan Graham representing KGK Landscaping stated there was no space for an addition as the entire property is in a floodplain. Mr. Graham said the addition would be built on the existing patio.

Mr. Wise had no questions.

Mr. Lewis asked if other alternatives had been explored such as a second floor over the garage, and also reminded the applicant that it is their burden to persuade the Board why their request for variance should be granted. Mr. Graham said a second floor could be used for more space if a bedroom was needed instead of additional kitchen area.

Mr. Lewis asked about the impact of the project and Mr. Graham said there would be no additional impact. Mr. Buynak said he did not think water run-off would be affected as they have a sump pump and the downspouts are tied into the storm sewers. Mr. Lewis asked if the applicant had a specific proposal for plantings along the stream bank and he said some shrubs and keep grasses in the bed. Mr. Lewis stated the addition of 4 trees and 7 shrubs would be a Bufferyard "C" and confirmed that the applicant would have no objection to additional plantings.

Mr. Dohner confirmed with the applicant that the patio will be on the south side of house and project approximately 5 feet. Mr. Dohner asked staff about material that would be less impervious and Mr. King confirmed that paver stones would be more permeable than concrete.

Mr. Wise asked staff if extra plantings were added would a variance still be required. Mr. King stated the Riparian Corridors brochure points out the benefits of plantings. He said one type of mitigation for adding building area would be adding trees and shrubs which would be a positive addition to protect the riparian corridor that it is today. Mr. King said this was a unique situation as presently it is mostly lawn.

Mr. Lehman confirmed with the applicant that silt fence would be installed. In response to George and Linda Sangrik's letter, Mr. Buynak explained the landscaping beds and lawn between the stream and their home. Mr. King said the comment is not that there is no vegetation, but to help repair the riparian stream corridor.

Mr. Dohner confirmed with staff that the owners could not put an addition anywhere without a variance as the house and property are all within the stream setback.

Mr. Lehman closed the public comment portion of the meeting.

Mr. Jahn commented that the addition will be no closer to the stream as it will be built on the patio footprint, but the negative is the extension of the patio even though it is not restricted by setbacks.

Mr. Dohner said this property is certainly a unique issue as an addition could not be built anywhere on the property without a variance. He stated he was in favor of the variance.

**Mr. Lewis said he agreed with Mr. Dohner's comments.**

Mr. King suggested the applicant agree on the number of trees and shrubs as put in the staff report. **In staff's opinion, that would recognize recreational use of the yard.**

Mr. Lewis said the lot seems deep and it does not seem to be enough trees and shrubs and stated that possibly a Bufferyard "D" would be better than Bufferyard "C". Ms. McMaster stated the lot depth is 122 feet and the width is 186 feet.

Mr. King said Bufferyard "C" is a distance of 100 feet and so is Bufferyard "D" with 12 trees and 18 shrubs. There is a steep slope in the back yard and some landscaping and woods. Mr. King suggested that Bufferyard "C" may be more appropriate as there is also play equipment in the back yard.

Mr. Lehman stated that the applicant is a professional landscaper.

The applicant said a winterberry tree would be a good choice with additional 4 trees and 7 shrubs on top of the stream bank. He said there would be native grasses and other appropriate plantings in the area next to the house. Mr. Graham said the soil is stable and secure and it might be risky to add plantings and take out what is already growing there.

Mr. Dohner made a motion to grant a variance of forty (40) feet from the required stream corridor setback of seventy five (75) feet resulting in an addition and related disturbance that would be 35 feet from the stream pursuant to Section 1207.03(e), “**Wetland/Stream Corridor Protection - Stream Corridor Setbacks**” and from the prohibited activity of disturbance including clearance of vegetation with stream corridor setbacks pursuant to Section 1207.03(c), “**Prohibited Activities**”, with the following conditions:

- Applicant and homeowner shall use silt fencing during all phases of construction to protect stream.
- Applicant and homeowner shall add four trees and seven shrubs along the top of the stream bank maintain them and replace as necessary.
- Applicant and homeowner shall add winterberry trees or other appropriate landscaping along the stream bed and the length of the house.

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 but the request shows there are exceptional and unusual conditions. The house was built within the stream setback before the Code was adopted and the owner is requesting that an addition be constructed on the existing patio footprint and, therefore, the addition would not encroach any further into the stream setback than the existing patio;

b) the variance is insubstantial because the addition will be constructed on the existing patio footprint and, therefore, will not encroach any further into the stream setback than the existing patio;

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 restrictions;

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. Wise seconded the motion.

Roll Call:

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

Nay: None

Motion unanimously carried.

Mr. Lehman called a five minute recess at 9:35 p.m. and the Board reconvened at 9:40 p.m.

### **APPEALS DOCKET NO. 2011-20**

This hearing has been called to consider Appeals Docket No. 2011-20 for Trails of Hudson Apartments, Parcel Number 3009252 on Norton Road and Hudson Drive. The applicant is Mann Architects, 3660 Embassy Parkway; Fairlawn, Ohio 44333 for property owners Louis Murie, and COER Properties; 4380 Ellsworth Road; P.O. Box 1333, Stow, Ohio.

The requests are: (1) A variance to the required rear yard setback of thirty (30) feet for five of the proposed 172 residential dwellings that would result in a rear yard of twenty-six (26) feet for one dwelling and rear yards of twenty (20) feet for four dwellings, pursuant to Section 1205.11(f)(4)(l)(iii), "Hike Bike Senior Housing Overlay - Property Development/Design Standards " - "Setbacks-Minimum Rear Yard Depths";

(2) A variance to the requirement that front facing garage doors must be single car widths with each individual opening not to exceed nine (9) feet clear height and twelve (12) feet clear width, to permit double garage doors instead of a pair of single garage doors per garage pursuant to Section 1205.11(f)(4)(M)(iv), "Hike Bike Senior Housing Overlay - Property Development/Design Standards - Architecture and Design Standards";

(3) A variance from the Bufferyard "D" requirement of the amount of plantings along the northern property lines reducing the required number of trees and shrubs, pursuant to Section 1207.04(g)(2)(D), "Landscaping/Buffering - "Bufferyard Type Requirements".

Mr. Lehman said that correspondence was received from James Hojnacki, 7631 Hempfield Lane in support of the variance and Warren Brown, Brown Farms, 34 Wellgate Drive against decreasing the size or density of Bufferyard D at the forest line.

Mr. King gave an overview of the case stating the case concerned a residential community called the Trails of Hudson on 33.63 acres north of Norton Road and east of Hudson Drive. The applicant is proposing 43 buildings for a total of 172 apartment units for rent. Mr. King stated the development is within the Hike and Bike Senior Housing Overlay district requiring an age restricted community of (55) years of age or older or 80% of the units occupied have at least one resident who is age 55 or older. Planning Commission has approved a Conditional Use/Concept Plan for the project on November 14, 2011.

Mr. King said the owners are requesting a variance to the required rear yard setback of (30) feet for (5) of the units.

Mr. King stated the second variance request is to allow double garage doors that have the appearance of two single doors instead of the required two separate single garage doors. The owners believe this is a safety issue for ingress and egress in this type of community.

Mr. King said the third request is to reduce Bufferyard "D" (4 canopy trees, 8 understory trees, 18 shrubs and 8 evergreen per 100 linear feet of bufferyard area to a Bufferyard "B" (1 canopy tree, 3 shrubs, and 1 evergreen tree per 100 linear feet with (6) foot fence sections.

David Mann addressed the first variance and stated that (4) of the units will be on abutting land that is being donated to Metro Parks with a causeway connecting to the hike and bike trail. In laying out streets and trying to keep structure within the development, the units will be next to non-private land and will not have an impact on anyone.

The second variance is for front facing garage doors stating that it is a safety issue. Mr. Mann said that double door are 16 feet wide and if the owners have only one car they can pull in the middle of the garage. The doors being proposed will look like single garage doors with windows and garage door hardware.

Mr. Mann said they need relief from the landscape barrier and feel the bufferyard to the north is exorbitant. Patricia Kakou representing the owners said there is a lot involved to maintain the landscaping, i.e. mulching, pruning. She said fencing and evergreens are proposed at inception and the bufferyard would be augmented later. She stated that the cost for installation is over \$700,000. Ms. Kakou said in John Vittum's December 1, 2011 letter, he stated that fence sections may work if additional landscaping was added along with the evergreens. Ms. Kakou said Hudson's Land Development Code points out that requirements for bufferyards shall be flexible. As there is no one on the north property line, the owners felt the required landscaping was excessive and asked the Board to consider the diagram in their packet showing their fence/landscape proposal.

Mr. Jahn asked Mr. Mann if a small adjustment could be made to the project so rear setback variances would not be necessary. Mr. Mann said because of the documented land width, side facing garages on 50% of the units, and the road would have to be pitched differently. Mr. Jahn asked for an explanation of the donated triangle piece of land. Mr. King said a public dedication was required for residential unit development and the developer was proposing land and improvements. Mr. Jahn asked about differences for a double garage door or two single garage doors and Mr. Mann said a structure was required in the middle of the garage that would change all dimensions of the garages. Mr. Jahn confirmed with the applicant that the cost and maintenance of the bufferyard would be less as the fence sections proposed would be a vinyl material and there would not be grass under the fence and fence posts to maintain.

Mr. Lewis inquired further about the land donation and Mr. Mann said their

created their own situation because of the ratio. He said it is a balance of donating land and improving the land with the cash and land value equivalent to a sum. The hard costs could be increased and the value of the land decreased if it were to be moved. Mr. Mann stated that only parked cars are adjacent and would be over 100 feet away. Mr. Lewis asked if there was an alternative and Mr. Mann said the four units could be moved, however, the buildings would be off and the road would have to be pitched. Mr. Mann said they felt it was better to propose what we wanted to do since we were not affecting anyone. Mr. Lewis confirmed with the applicant that there was no other use for the triangle piece of land and that it would be maintained by Metro Parks.

Mr. Lewis stated that what he gathered from previous testimony about the garage doors request was that it was more economical. Mr. Mann responded that he never mentioned economics. He said a study had been done and it was found that when putting in a (9) foot hole with a wall in the middle, it becomes an issue. The developer will not do that again as the occupants are hitting the garage with their cars. Mr. Mann said with a (16) foot door the opening is (3) foot wider and there is flexibility to put the car in the middle of the garage. Mr. Mann said all units are single story and handicap accessible.

Mr. Lewis stated the proposal was to use Bufferyard "B" instead of Bufferyard "D" and confirmed with the applicant that they felt it was appropriate because of the property to the north being open land. Mr. Lewis stated that the use of the property to the north could change in several years and then Bufferyard "B" would not be appropriate. Mr. Lewis confirmed with the applicant that they would be open to adding to the bufferyard if that happened. Mr. Mann stated they would bring it up to Bufferyard "C" which would be a nice compromise. Mr. Lewis asked how that would be enforced and Mr. Mann said they would be willing to put deed restrictions on the property. Mr. Lewis confirmed with the applicant that the owner of the property would be responsible for payment.

Mr. King said he wanted to answer the question that only Bufferyard "B" is required on the business side of the line because the area was carved out of office/industrial. If additional plantings would be required possibly the future developer would also seek a variance to the bufferyard.

Mr. Dohner said the problem for him is the bufferyard because it is so sparse in relation to what is suggested; the five units are not an issue. Mr. Dohner stated that \$100,000 does not seem to be that great of an issue when divided by 172 units. **John Vittum's letter proposed screening with natural species and very little maintenance.**

Ms. Kakou said the growth has to be taken into consideration and gave some alternatives. She said perhaps (15) foot evergreens would help with the **Board's** concerns or maybe the fence could be constructed differently. She also proposed heavier landscaping in the areas seen when driving down the street. Mr. King clarified stating he wanted to make it clear to the Board that you are now offering Bufferyard "C" **instead of Bufferyard "B"**.

Mr. Wise confirmed with the applicant that the landscaping cost was \$100,000 to \$150,000. Mr. Wise said the City is pro-buffer and also mentioned that Mr. King pointed out the landscaping Code is very extensive. Mr. Wise said he could understand why they did not want to change the street for three feet. Mr. King stated that the setback is

to protect adjacent uses and in this case it is abutting public park land. Mr. Mann said they would be open to moving the property line and not requesting a variance for the four units.

Mr. Lehman confirmed with the applicant that the units are built with a patio in the rear yard. Mr. Mann said they cannot have decks as the Fair Housing Act comes into play. The selling points of these units are level access, wide doorways, and one floor. Mr. Lehman commented that the **façade** of the garage doors is a good way to handle that issue. Mr. Mann said that idea came from prior tenants stating what works.

Mr. Lewis referred to the information sent in by Brown Farms dated December 8, 2011 and asked the applicant to respond to the second paragraph. There will be tree removal and trees replaced with the landscape buffer. Mr. Mann said as far as the trees **marked with an "X"**, they did not know who marked these trees.

Curt Perchaska, 1285, 1303, and 1307 Norton Road was sworn in by Ms. Lane. He stated he would like a buffer along his property like the Canterbury hill buffer on Stow Road. Mr. King said the maximum fence height is six feet and dirt mounds would be a Planning Commission issue and all properties within 300 feet would be notified of the meeting.

Mr. Lehman asked how do you restrict an adult community use and Mr. King stated that one member of the household needs to be 55+ and that applies to 80% of the residents. Mr. Lehman asked how the City enforces Section 8 housing and Mr. King said there are no restrictions on rental situation and the City has no control.

Mr. Mann said upwards of 3000 units have been developed and all achieve the highest rents in the communities. He stated that their track record is stellar and encouraged everyone to see their upscale communities.

The public portion of the meeting was closed and the Board discussed the issues of the case among themselves.

Mr. Dohner felt the solutions arrived at during testimony were good. He said as far as the garage doors and although all the reasons are compelling, but not that compelling to him. The City was in favor of this Senior Housing Overlay District.

Mr. Lehman said testimony was given that there is not a market for two single garage doors.

Mr. Dohner said this rule was developed for this type of development and single bay garage door was specific to this type of unit. Mr. Dohner said it makes practical sense, but it is now the law and he was struggling with that issue.

Mr. Lewis said he agreed with Mr. Dohner.

Mr. Wise said access is a valid point. The doors look like two doors and these units are marketed to the 55+ age group and they know what they want. Mr. Wise felt the applicant did not need a variance on the landscaping.

Mr. Lewis said he understood that the benefit of a single car garage is pulling in and parking the car in the middle, assuming there is not a second car.

Mr. Wise stated that he does not make the assumption that there are only two people in the house.

Mr. Jahn agrees that the setbacks and bufferyards are a Code requirement and should be met. The applicant had a good argument, but he agreed with Mr. Dohner.

Mr. Lehman said we cannot read into the City Council language.

Mr. King said the developer at the time did not discuss single or double garage doors in depth. Mr. King said he is mentioning this because it came as a proponent and there was not much deliberation regarding this issue.

Mr. Lewis made a motion to grant a variance of four (4) feet to the required thirty (30) foot rear yard setback for Unit D-2 only, of the proposed 172 residential dwellings resulting in a rear yard setback of twenty-six (26) feet pursuant to Section 1205.11(f)(4)(l)(iii), "**Hike Bike Senior Housing Overlay - Property Development/Design Standards**" - "**Setbacks-Minimum Rear Yard Depths**". The Board finds and concludes:

The variance is granted with the following condition:

- This variance applies to only one unit, specifically Unit D2.
- a) the property in question will yield a reasonable return and there can be a beneficial use of the property without the variance but this particular variance could be addressed by reconfiguring the street which would not be as suitable;
- b) the variance is insubstantial because it allows this unit to fit in the plotted land;
- 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 restrictions;
- f) the **applicant's** predicament feasibly can be resolved through some method other than the variance, but as noted this is a more suitable choice; and
- g) the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance as it conforms with the overall beneficial use of the property.

Mr. Dohner seconded the motion.

Roll Call:

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

Nay: None

Motion unanimously carried.

Mr. Jahn made a motion to grant a variance to the requirement that front facing garage doors must be single car widths with each individual opening not to exceed nine (9) feet clear height and twelve (12) feet clear width, to permit double garage doors instead of a pair of single garage doors per garage pursuant to Section 1205.11(f)(4)(M)(iv), "**Hike Bike Senior Housing Overlay - Property Development/Design Standards - Architecture and Design Standards**". The variance is granted with the following condition:

- Double garage doors are to be a maximum of sixteen (16) feet in width and the elevation design is to be similar to the renderings submitted.
- a) the property in question will yield a reasonable return and there can be a beneficial use of the property without the variance because of the minimal impact of changing from double doors to a single door, safety factors of garage ingress and egress, easily and safely entering and exiting the vehicle, are enhanced, as well as the marketability of the units **to the developer's clients and prospective clients;**
  - b) the variance is insubstantial because the use of the garages will be maintained;
  - 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 difference between a double garage door and a single garage door provide the same effect for single vehicle storage;
  - 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 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. Wise seconded the motion.

Roll Call:

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

Nay: Mr. Lewis

Motion carried.

The applicant voluntarily withdrew its third variance request from the applicable landscaping requirements.

### **OTHER BUSINESS**

Cases on the February Docket.

### **ADJOURNMENT**

As there was no further business, Mr. Lehman adjourned the meeting at 11:45 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