

Board of Zoning and Building Appeals
REGULAR MEETING FEBRUARY 16, 2012
7:30 P.M. TOWN HALL 2ND 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 2nd Floor Meeting Room of Town Hall, 27 E. Main Street, Hudson, Ohio.

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

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

The December 15, 2011 Minutes were approved as written by a motion from Mr. Dohner. Mr. Lewis seconded the motion and all members present were in favor.

PUBLIC HEARING

APPEALS DOCKET NO. 2012-01

Mr. Lehman stated that the applicant and owner Laura P. DiNovi; 5880 Laurawood Lane; 72 N. Main Street, Suite 300; Hudson, had postponed the hearing for parcel 3200794 on Thirty Acres Lane. Mr. Lehman stated that if anyone was in attendance for this case, it would not be heard.

The request is a variance to permit a water well and septic system to be available at the time of occupancy for a new residential structure pursuant to Section 1207.11(b)(1)(B), "Adequate Public Facilities-Water/Wastewater".

Staff stated there was a possibility that some adjacent neighbors did not receive

the legal notice, and the decision was made to not hear the case.

Mr. Lewis made a motion to continue the case. Mr. Dohner seconded the motion and all members present were in favor.

APPEALS DOCKET NO. 2012-02

This hearing has been called to consider Appeals Docket No. 2012-02, in the Woodland Estates Subdivision.

The request is a variance from the requirement that a dwelling be set back two-hundred (200) feet from an oil and gas tank battery in the Woodland Estates Subdivision resulting in the distance of one-hundred and seventy-five (175) feet specifically to the dwelling owned by Kent D. and Barbara S. Edmonds; 2425 Woodacre Drive, Hudson, Ohio, therefore, current and future property owners would have the ability to build an addition without requesting a variance, pursuant to Section 1207.19(c)(11), "Oil/Gas Exploration and Drilling Uses".

Barry Tancer, Brownstone Construction; 200 Victoria Road, Building 4; Austintown, Ohio 44515 representing Ohio Valley Energy, is the applicant, for the owner Kent D. Edmonds; 2425 Woodacre Drive; Hudson, Ohio. Mr. Lehman stated that the **solicitor's office** advised that res judicata did not apply to this case.

Mr. Jahn stated that the case should be heard as res judicata did not apply.

Mr. Lewis stated that the Board has been advised based on the facts, that res judicata does not apply. Mr. Lewis said that it would seem it does not, but the Board has not heard the case as yet.

Mr. King gave an overview of the case stating the property is 2425 Woodacre Drive. The home was built in 1961 and purchased by the current property owners in 1999. Mr. King said the oil and gas tank battery is located in the Woodland Estates Subdivision which is an Open Space Conservation Subdivision consisting of 19 lots fronting streets of Woodland Avenue and Westwood Circle. Mr. King said the 19 lots are encompassed by private open space of the subdivision and all dwellings must be at least 100 feet from the perimeter property line of the subdivision. Mr. King said the developer, Karen Edwards-Smith, Trustee installed the existing well and tank battery in 2005 as approved by the ODNR on May 16, 2005. The Preliminary Plan for Woodland Estates was approved in 2004 and both staff and Planning Commission were aware of a proposed gas well and tank battery at the time of consideration of the Final Plat, and the creation of Block A was set aside for that purpose. Mr. King stated that the new owner, Ohio Valley Energy, is proposing to relocate the tank battery. They applied to Planning Commission and the amended plat was approved on January 9, 2012.

Mr. King quoted condition #6 in the Planning Commission Decision for the replat of Woodland Estates Subdivision dated January 9, 2012, noting sublots with the subdivision would be buildable if, "**the** tank battery setback is relocated and/or reduced so that it is outside the buildable areas for structures suitable for occupancy on all lots in this and the adjacent subdivision, notwithstanding any nonparticipating affected property owners, with buildable areas identified as areas on lots outside all minimum

required yards and **setbacks**". Mr. King said in other words, Planning Commission approved the replat as long as the applicant sought a variance to avoid any harm to adjacent neighbors from the setback distance of the relocated tank battery. Mr. King said that of the four property owners notified by Ohio Valley Energy that they would pay the variance application fee and represent each homeowner in the BZBA hearing, only one property owner responded. Mr. King said if BZBA decided to grant the setback variance, staff recommends BZBA waive the procedural requirement from the code: "**Section 1203.07(e)**, Lapse-Failure of an applicant to commence substantial construction or action with regard to the variance approval within one (1) year of receiving approval of the variance and to complete such construction or action within (2) years of receiving approval of the variance shall automatically render the decision of the BZBA null and **void**". This will protect property owners who, in the future, may wish to build an addition closer to a tank battery than permitted.

Mr. King said the intent was to prevent someone from being impeded if they wanted to add on to their dwelling and to offer this opportunity to protect current and future interests of property owners. Mr. King said that the City of Hudson has no control over the location of the tank battery as that control is held by the State of Ohio.

Mr. Lewis asked for further edification. Mr. King said there is only a proposed relocation of the tank battery and that is why the distances of the circles on the map are not exact because the final engineered plat has not been drawn. Mr. Lewis asked if a residence was damaged by fire could it be reconstructed within the proposed setback. Mr. King stated that no variance would be required if the house was damaged or destroyed if they began reconstruction in (6) months and completed it in (24) months. Mr. Lewis confirmed with Mr. King that the variance was only for the Edmond's property as they were the only owners who signed the application.

Mr. Jahn said he thought the request applied to all of the properties within the setback. Ms. Lane said that this was an involuntary burden to the property owners and Ohio Valley Energy was willing to pay the variance cost. Ms. Lane said she did not think any of the property owners would not be able to request a variance in the future. Ms. Lane confirmed that the Board could not grant variances on the other properties because the property owner has to file an application and come before the Board to request the variance.

Mr. Dohner said the argument that will unfold is the viability of building on these lots and replatting. A variance has to be granted in order to build new construction. Mr. Dohner said lot 9 is a real problem and if the relocation was **20'** or **30'** north, lot 9 would be buildable. Mr. Dohner felt this would be an integral part of the **Board's** discussions. Mr. Lehman said that Mr. Dohner brought up an excellent point and that the applicant is representing two sides of a coin.

Mr. Lewis asked if the Board rendered a decision to this particular lot would the Board be bound by the decision for another applicant. Ms. Lane said, "**no** because another applicant would likely have a different situation, such as a proposed addition to their **house**".

Mr. Lehman quoted Section 1204.03(b), "**No** variance shall be granted if the submitted conditions or circumstances affecting the **applicant's** property are of so

general or recurrent nature as to make reasonably practicable the formulation of a general regulation for such conditions or **situations**". Ms. Lane said a legislation change would not be appropriate because it is specific to that one property. Ms. Lane stated that the goal of the Planning Commission was to impact the fewest amount of properties as possible.

Mr. Lehman confirmed with Ms. Lane that the practical effect of a denial would be that the owner would have to come back to Planning Commission with a replat. Mr. King said he may have a different view, but the situation is very complicated. There is a trustee and a court appointed Receiver involved and Mr. King said he finds it best to deal with the decision and the parties involved at that future time.

Mr. Lewis agreed with Mr. **Lehman's** comment that precedent may be set. Mr. Lewis said Board wants to make the right decision. However, the case has many variables and it is a difficult issue to grasp.

Robert Evans, 70 Clayton Court, Hudson said he owns lot 8, 7543 Woodland Avenue. He **didn't** sign an application because he did not want the City to think he was happy with what was transpiring. He said he came to the meeting tonight to hear the facts of the case.

Joe Hensel, 2433 Woodacre Drive, said the relocation of the tank battery would reduce the value of his property and adjacent properties, and he feels the variance is not justifiable. He stated he felt there was not a good reason to reduce the setback amount or move the tank battery other than being able to build a home on lot 9. He said the owner should not have purchased unbuildable lots. Mr. Hensel said there is a change in ownership, but it is the same situation when Smith owned the property. He said the variance should be denied.

Mr. Tancer said they were under court order and forced to purchase the five unbuildable lots. He stated that any development that has unbuildable lots reduces the property values and he wants the development to be prosperous and enhanced by building on every lot.

Scott Lindner, 7548 Valerie Lane, Hudson stated he was speaking in opposition of the variance request. He said Planning Commission and staff helped the developer to relocate the tank battery. Variances are sought that do not need to happen including waiving the time limit of two years from variance approval so the BZBA decision would not become null and void. Mr. Lindner said he was against moving the **200'** tank battery setback radius from Woodland Estates to near his home and the City is pushing the liability outside of Woodland Estates. Mr. Lindner had problems with the completeness of the application and the map that shows an oval instead of a circle radius. Mr. Lindner said the map with the application does not even look the same as the map in Community Development. Mr. Lindner said he felt this issue was backwards and he was not sure if variances can be granted for something that does not exist. Mr. Lindner said subplot 9 is unbuildable and stated he wanted the tank battery to stay in the neighborhood it is in and not be pushed into his neighborhood. Mr. Lindner asked the Board to deny the variance.

Board is a request for a setback variance of a dwelling to a tank battery and not the relocation of the tank battery.

Mr. Dohner requested to hear from the **solicitor's** office and also from the Edmonds as to whether they still would be in favor of the variance if Code Section 1207.03(e) was not waived. Mr. King agreed to write a letter to the Edmonds on behalf of the Board and Ms. Lane agreed to respond to questions about waiving the lapse provision and whether the request is ripe for review.

Mr. Lewis made a motion to continue the consideration of this case and to receive additional information from the homeowners, Kent and Barbara Edmonds, and **the solicitor's office.**

Mr. Jahn seconded the motion.

Roll Call:

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

Nay: None

Motion to continue carried.

OTHER BUSINESS

Ms. McMaster gave an overview of the cases to be on the March docket.

ADJOURNMENT

As there was no further business, Mr. Lehman adjourned the meeting at 9:45 p.m.

David W. Lehman, Chairman

David J. Lewis, Vice Chairman

Carol G. Muesel, Clerk