



# Board of Zoning and Building Appeals

REGULAR MEETING MARCH 15, 2012  
7:30 P.M. • TOWN HALL • 2<sup>ND</sup> FLOOR  
27 E. MAIN STREET • HUDSON, OHIO  
M I N U T E S

Chairman Lehman called to order the Special 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: Mark Richardson, City Planner; Kris McMaster, Associate Planner; R. Todd Hunt, City Solicitor; and Aimee W. Lane, Assistant City Solicitor.

Chairman Lehman called to order the public meeting of the Board of Zoning and Building Appeals of the City of Hudson.

## PUBLIC HEARING

Meeting minutes were taken by Carol Muesel, Board Clerk and verbatim minutes taken by Merritt and Lowe Court Reporting.

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 Mark Richardson, City Planner; Kris McMaster, Associate Planner; R. Todd Hunt, City Solicitor; and Aimee W. Lane, Assistant City Solicitor. Mrs. Lane placed staff and all those persons in the audience wishing to speak under oath.

The January 19 Minutes will be approved at the April 19 meeting. Mr. Lewis made a motion to approve the February 16 minutes as written. Mr. Dohner seconded the motion and all members were in favor.

## UNFINISHED BUSINESS

### 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.

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".

Mr. Dohner made a motion to continue the case to the April meeting at the applicant's request.

Mr. Lewis seconded the motion.

Roll Call:

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

Nay: None

Motion to continue unanimously carried.

## **NEW BUSINESS**

### **APPEALS DOCKET NO. 2012-02**

This hearing has been called to consider Appeals Docket No. 2012-02, for Woodland Estates Subdivision, continued from the February meeting.

The requests are: (1) 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"; and (2) A variance from the requirement that an applicant must commence construction within one year and complete construction within two years or the variance will lapse, pursuant to Section 1203.07 (e), "Variances - Lapse.

Barry Tancer, Brownstone Construction; 200 Victoria Road, Building 4; Austintown, Ohio 44515 representing Ohio Valley Energy, as applicant, for the owner Kent D. Edmonds; 2425 Woodacre Drive; Hudson, Ohio.

Mr. Lehman stated that although Mr. Wise was unable to attend the February meeting, he had been provided with all documents and minutes and will participate in the meeting this evening. Mr. Lehman said the variances were the same for case 2012-05 as 2012-02 and the applicant was the same for both cases.

Mr. Lewis made a motion to consolidate Appeals Dockets 2012-02 and 2012-05 for purposes of hearing evidence. Docket 2012-05 is requesting the same variances for property owned by Tonia M. Deal, 7481 Valerie Lane; Hudson, Ohio.

Mr. Jahn seconded the motion and all members were in favor.

Ms. McMaster gave an overview of the cases stating that there was very little new information. She said there was a second applicant that applied and both requests are in the same subdivision and district.

Mr. Tancer said he was requesting variances on behalf of the two applicants as directed in the Planning Commission decision and at the expense of Ohio Valley Energy.

Mr. Jahn asked the basic reason to move the tank battery and Mr. Tancer said to make Lots 9, 11, 12, and 13 buildable.

Mr. Wise confirmed with Mr. Tancer that if the tank battery were not moved five lots, namely, 9, 10, 11, 12, and 13 would not be buildable. Mr. Wise confirmed with the applicant that this would be the only well in the subdivision.

Mr. Dohner had no questions.

Mr. Lewis asked Mr. Tancer for an explanation as to why the variances should be granted and Mr. Tancer stated that it would lessen the burden to the owners and future owners if they wanted to put on an addition. Mr. Tancer said Hudson standards are a 200 foot tank battery setback. Until 2005, the state setback requirement was 100 feet and then Ohio Bill 5 increased it to 150 feet. The request is for a 175 foot setback which is more than required by Ohio. Mr. Lewis asked for the applicant's answers to the seven factors in which the Board uses in arriving at their decision. Mr. Tancer said there would be no impact on public services, and Mr. Lewis said in the Board's packet there was information on the dangers of a tank battery and asked the type of maintenance inspection done by Ohio Valley Energy. Mr. Tancer said that was beyond his expertise, but would try to answer stating a tank battery is inspected monthly and a chart is filled out and sent to ODNR. Mr. Lewis confirmed with Mr. Tancer that in the last four years there have been no safety issues.

Mr. Wise asked why Ohio Valley purchased the lots and the applicant stated they were issued a court order to buy the five lots. Mr. Wise confirmed with Mr. Tancer that the well on the property is an average producer.

Mr. Lewis confirmed with the applicant that no other wells would be drilled on the property and the tank battery would not be moved a third time.

Mr. Lehman had no questions.

Scott Lindner, 7548 Valerie Lane said the Board was questioning the waiver of the one year lapse rule. He would like the Board's comments. Mr. Lindner said he is totally

against the variances and felt the arguing was backwards. Mr. Lindner said Mr. Tancer “pretty much” said regardless of what BZBA does the tank battery will be moved. Mr. Lindner said Planning Commission did not do a very good job and put BZBA in a corner. Mr. Lindner said the variance should not be granted as this situation could be solved by other means, and the City is shifting the liability and not upholding the spirit of the Land Development Code to protect property owners.

Mr. Lehman asked Mrs. Lane to comment on the request to lapse , Section 1203.07(e), and she stated that BZBA can vary any requirement of the Land Development Code and the best one-year means to vary the lapse requirement is by a variance. Mr. Lehman said as a forward thinking gesture Planning Commission asked that a variance request come before BZBA.

Mr. Wise confirmed with Mr. Lindner that the tank battery placement was not presented at Planning Commission.

Mr. Lehman closed the public portion of the meeting.

Mr. Hunt said that Community Development staff did look at various locations for relocation of the tank battery. Mr. Hunt said there should be a condition that the tank battery is located where the 175’ setback is shown. There is no specific location specified by Planning Commission, just a replat and an easement.

Mr. Jahn confirmed with Mrs. Lane that the applicant is limited to relocate the tank battery within the easement area approved by Planning Commission.

Mr. Hunt said the setback is not something that is being imposed on these properties. Any property owner that wants to put on an addition or tear down and rebuild a structure will still have to come before the BZBA

Mr. Wise said all the Board can do is try to improve a bad decision. The Land Development Code has already been compromised and we need to be very specific in our decision and put in conditions.

Mr. Lewis said we have two property owners saying they are okay with this variance request, we have not heard if the other property owners are opposed or consent to this variance. Mr. Lewis said this is unlike other variances that have been before this Board.

Mr. Dohner said he agreed with both Mr. Wise and Mr. Lewis and BZBA has been put in a difficult position. Mr. Dohner said putting proper restrictions in the decision may be our only option. Mr. Dohner said this is a particularly unique situation because all sides are not in a position to compromise. He said that this is a problem that can rear its head elsewhere and he hopes City Council takes a look at this.

Mr. Lewis said in rural Ohio the wells are often accessed by trucks and four-wheelers and OVE does not have an access drive to the tank battery.

Mr. Richardson said there has to be an access drive and the Hudson Fire Department has already reviewed and approved the access drive.

Mr. Lehman questioned if children were able to play in the area and Mr. Hunt said it was approved for walking and hiking.

Mr. Lewis confirmed with Mr. Hunt and Mr. Tancer that the restrictions could be listed on the easement

Mr. Jahn confirmed with Mr. Hunt that the tank battery has to be removed when it no longer produces.

Mr. Lewis made a motion to grant the requests and the Board hereby approves: (1) 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, and Tonia M. Deal; 7481 Valerie Lane; 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"; and, (2) A variance from the requirement that an applicant must commence construction within one year and complete construction within two years or the variance will lapse, pursuant to Section 1203.07 (e), "Variances - Lapse". The Board finds and concludes that the variance be granted with the following conditions:

- **An easement be placed on the Ohio Valley Energy property and Woodland Estates conservation area that would include the following requirements:**
  - [a] prohibit the drilling of additional wells;**
  - [b] prohibit future movement of the tank battery after it is relocated as proposed and approved by the Planning Commission in its decision dated January 9, 2012; and ,**
  - [c] The buffer area around the relocated tank battery consisting of 20 new evergreen trees.**

a) the properties in question will not as beneficial a use as they could because of the relocation of the tank battery;

b) the variances are insubstantial in view of them being an accommodation to the property owners;

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 tank battery could be located closer to adjacent properties under Ohio law which requires a one hundred and fifty (150) foot setback;

d) the variances would have no adverse affect on 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 variances as there is a benefit with the new location of the tank battery, two property owners have consented to the new location and no other property owners have come forward to challenge the relocation of the tank battery.

Mr. Dohner 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 and the Board reconvened at 9:05 p.m.

### **APPEALS DOCKET 2012-03**

This meeting was called to consider Appeals Docket No. 2012-03, 80 West Streetsboro Street.

The request is a variance from the required fifteen (15) ft. minimum setback from the street right-of-way when the front setback of the building exceeds thirty (30) feet for a tenant ground sign resulting in a ground sign to be located at a one (1) foot setback from the City right-of-way pursuant to Section 1207.17(d)(4), and Table 1207.17(d)(4)(1)(a), "Permanent Ground Signs" - Maximum Number, Area and Height, and Minimum Setback of Permanent Ground Signs".

The applicant is Dennis Symes; P.O. Box 926; Twinsburg, Ohio 44087 for the property owner Second Generation Investments LLC; 3311 Richmond Road; Suite 200; Beachwood, Ohio.

Ms. McMaster gave an overview of the case stating the building was built in 1965 and purchased by Second Generation Investments LLC in August 2007, and currently there are two businesses in the building, Dairy Queen, Bruegger's Bagels and one tenant space is vacant. Ms. McMaster said in July 2003 BZBA granted a 15' variance from the right-of-way to permit the original nonconforming sign to remain at the original location resulting in a zero setback. The new sign to be located 1' from the right of way and 63' west of the

current sign location and the size will be 5.6' wide x 8' high. Ms. McMaster stated the applicant had indicated the businesses located in the building have a lack of sign identity to encourage patrons to visit their businesses. Ms. McMaster said the applicant stated that by moving the sign location (63) feet to the west at the corner of Milford Road and W. Streetsboro Street would allow more sign visibility of the businesses located in the building and give vehicles enough time to turn onto Milford Road to visit the businesses. The City Engineer reviewed the location to determine if there are any vehicular site visibility issues and if the sign location meets the Code requirement of "clear sight lines" which is a clear sight triangle at all street and access drive intersections and said they would recommend a surveyor to determine the right-of-way lines for setbacks. Ms. McMaster said Jeff Prochnow, Code Enforcement Officer, has indicated the sign location meets the "Clear Sight Triangle" Code requirement. The applicant has been asked by Staff to get a survey to determine the right-of-way lines for setbacks.

Mr. Dohner questioned whether there was a res judicata issue since the BZBA had issued a variance for the existing sign in 2008. Mrs. Lane said it would be helpful to ask the applicant whether there has been a change in the use of the building. Mr. Dohner asked the applicant to describe any changes in use. The applicant explained the prior use was a bank, a use less dependent upon signage. The current use as a Dairy Queen/Orange Julius is dependent upon visible signage. Mr. Dohner noted there has been a substantial change in the use and the use requires better sign visibility.

The applicant asked David Smith of A Sign Above, 8062 Ravenna Road; Hudson, Ohio to address the Board. Mr. Smith said that the existing sign causes a hardship to the businesses located in the building whereas the new sign would be 25 feet from the curb west of Streetsboro Street and both Dairy Queen and Bruegger's would benefit.

Mr. Lewis confirmed with the applicant that the current sign location is at a zero setback from the right-of-way and the new sign will be further back from the right-of-way, not closer. The applicant said the condition of having to submit a survey is very costly. Ms. McMaster said it is part of the application submittal requirements and the Staff needs confirmation that the new sign is not located within the right-of-way and the only way to determine the setbacks is to have the property surveyed.

Mr. Lehman said he agreed with the applicant regarding more visibility for the businesses.

Mr. Jahn made a motion to approve a variance of fourteen (14) feet from the required fifteen (15) ft. minimum setback from the street right-of-way when the front setback of the building exceeds thirty (30) feet for a tenant ground sign resulting in a ground sign to be located at a one (1) foot setback from the City right-of-way pursuant to Section 1207.17(d)(4), and Table 1207.17(d)(4)(1)(a), "Permanent Ground Signs"- Maximum Number, Area and Height, and Minimum Setback of Permanent Ground Signs". The Board finds and concludes that the variance be granted with the following condition:

- **The variance is granted with the condition that a survey be done to assure the exact location of the street right-of-way from Milford Drive and West Streetsboro Street at the point of the ground sign location to assure that the sign is not located in the right-of-way. No Zoning Certificate will be issued until this survey is provided to the City.**

a) the property in question will yield a reasonable return and there can be a beneficial use of the property without the variance, however, the variance has potential to improve business at this location with better visibility particularly when travelling west on West Streetsboro Road;

b) the variance is insubstantial because although it is one (1) foot from the street right-of-way, the setback is greater than the existing sign setback and the sign will be 20% larger than the existing sign;

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 neighborhood is essentially commercial with commercial signs and the new replacement sign will be located (63) feet to the west which is a minimal impact on the neighborhood;

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 because of the potential to improve business for the tenants affected which outweighs the nature of the variance.

The Board recognizes that there has been a significant change in the use of the property since its 2003 decision regarding the existing sign as the applicant testified that the nature of the business has changed and his business is more dependent upon visibility and sign location.

The motion was seconded by Mr. Wise.

Roll Call:

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

Nay: None

Motion unanimously carried.

**APPEALS DOCKET No. 2012-04**

This hearing has been called to consider Appeals Docket No. 2012-04, 7639 Valley View Road.

The request is a variance to permit a water well to be available at the time of occupancy to construct a new house pursuant to Section 1207.11(b)(1), "Adequate Public Facilities- Water/Wastewater

The applicant is Spiro Mavroidis; 765 Bridgeport Avenue, #206; Streetsboro, Ohio 44241 being represented by Jason Baylor of Payne & Payne Builders Inc.; 10750 Mayfield Road; Chardon, Ohio 44024 for the property at 7639 Valley View Road; Hudson, Ohio owned by Lynda L. Cox; 7735 Valley View Road; Hudson, Ohio.

Ms. McMaster gave an overview of the case stating that the applicant has a contract with the property owner to purchase the property. In 2008, 7.38 acres was subdivided into three parcels, one on Middleton Road and two on Valley View Road, one of which is the subject of this hearing. On June 9, 2011 the Board approved variances to permit a water well and septic system for 1414 Middleton Road. Ms. McMaster said the applicant has stated that to connect to the nearest water line would be in excess of \$45,000 as indicated in letters from the City of Akron for the 1414 Middleton Road case. The applicant is proposing to connect the sanitary sewer line for 7639 Valley View Road to the adjacent subdivision sewer line located on Groton Drive. Approval is needed from City Council to have an easement through the City owned reservation strip at the end of Groton Road.

Mr. Spiro summarized by saying he was requesting to drill a well as it is not economically feasible to tap into the water line. He stated there are two options to get water to the property: one is to cross over private property and come down Middleton Road, and the second option is to have the reservation strip removed by City Council and connect into the sanitary sewer line at Groton Drive.

Mr. Lewis asked about the \$45,000 figure which was from last year and given by another applicant. Mr. Spiro said the cost is to extend the main water line to the property that requires tie-in which was 1414 Middleton and is closer than his location on Valley View. Mr. Lewis confirmed with the applicant that there would not be a change in the neighborhood as the neighbors also have wells. Mr. Lewis also confirmed with the applicant that there would be no impact on public services and this issue cannot be resolved by any other means other than a variance. Mr. Lewis confirmed with Mr. Spiro that if water or sewer became available he would tie into these assessments.

Mr. Jahn questioned the applicant's comment that all others in the neighborhood have wells and Anthony Cox, 7735 Valley View responded stating all homes in Connecticut Colony are serviced by wells. He said Chadd's Ford has water, but all homes on the west and north sides of Middleton Road have wells.

Mr. Wise had no questions.

Andrea Tikkanen, 1480 Groton Drive, stated she was also representing homeowners

at 1481, 1466, and 1467 Groton Drive who were all concerned with drilling a well and removing the reservation strip and feel the beauty (flora and fauna) will be gone and it will not be a safe place for their children to play

Mrs. Lane said an easement through the City owned reservation strip will be required, but the document has not been drafted as yet and will have specific language regarding restoration of any trees.

Mr. Lewis made a motion to grant a variance to permit a water well to be available at the time of occupancy to construct a new house pursuant to Section 1207.11(b)(1), "Adequate Public Facilities- Water/Wastewater. The Board finds and concludes that the variance is granted with the following conditions:

- **This variance does not alleviate current or future property owners from assessments, for public water lines that may, in the future, be available to the property.**
- **When City water becomes available to the property, either on Groton Drive or Valley View Road, the then property owner is required to connect to these services.**

a) the property in question will not yield a reasonable return and there cannot be a beneficial use of the property without the variance because testimony was given that the cost of the alternative of installing a water line would be excessive and cost more than \$45,000;

b) the variance is insubstantial given the purpose of using the property as a residential use and the need to have water;

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 other homes in Connecticut Colony Subdivision are also served by water wells;

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

e) the applicant intends to purchase the property with knowledge of the zoning restrictions given the cost of alternatives;

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 because it would enable the property to be developed consistent with its intended use as a residence.

Mr. Jahn seconded the motion.

Roll Call:

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

Nay: None

Motion unanimously carried.

### **OTHER BUSINESS**

Ms. McMaster stated the application deadline for the April meeting was not until March 21, 2012 and no applications had been received to date.

### **ADJOURNMENT**

As there was no further business, Mr. Lehman adjourned the meeting at 10:05 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