



Board of Zoning and Building Appeals
REGULAR MEETING JANUARY 19, 2012
7:30 P.M. • TOWN HALL • 2ND FLOOR
27 E. MAIN STREET • HUDSON, OHIO
M I N U T E S

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, Mr. Wise
Absent: No one

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.

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.

Mr. Lehman stated the December 15, 2011 Minutes would be addressed at the February meeting.

ELECTION OF OFFICERS FOR 2012

Mr. Lewis nominated David Lehman as Chairman and Mr. Jahn seconded the motion. Mr. Dohner nominated David Lewis as Vice-Chairman and Mr. Jahn seconded the motion. Both Board members accepted the nominations and a vote was taken and all members were in favor.

UNFINISHED BUSINESS

APPEALS DOCKET NO. 2010-18

This hearing has been continued from the December 15, 2011 meeting 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.

Mr. Lehman said he would like Mrs. Moffa to explain her submitted information page by page to the Board.

Ms. McMaster gave a brief overview listing the documents submitted by the property owner and read the documents submitted for the Board's consideration by staff. All items were listed in the staff report.

Mrs. Moffa explained they have three children that are involved in many activities and she is involved in many volunteer activities, hosting Board meetings in the kitchen and dining room of their home which has the view of the neighbor's property. They are asking for the variance due to lack of privacy, and protection and safety from 196 Brandywine Drive. Mrs. Moffa complained of the dilapidated exterior condition of 196 Brandywine Drive, (included pictures) and the pitted and cracked driveway. She said there is always a parking lot outside her kitchen window due to the cars in the driveway of 196 Brandywine Drive. Mrs. Moffa said the home has been up for Summit County Sheriff Sale three times. Mrs. Moffa said they need privacy in their living space. They also have car lights shining in their kitchen and dining room. She noted an incident where a snow plow went off the edge of the driveway and had to be towed out, stating that the fence between the properties is a matter of safety. She said the side yard setback is 13'8" and from the neighbor's driveway to their property line is one foot. Mrs. Moffa said this causes problems because they cannot build a retaining wall, the drainage is impossible to control, and many plantings had to be replaced. Due to allergies of Dr. Moffa and his son the shrubs suggested by Mr. Vittum cannot be used. The owner also said on the other side of 196 Brandywine Drive, the hedge row is eaten by deer and even if wrapped in burlap the deer pull it off. Dr. Moffa said he does not have the time or the desire to replace plants or burlap shrubs.

Mr. Lewis stated he would like to discuss alternatives as the focus has been on soil conditions, type of plants and concerns regarding maintenance, and consumption by the deer population. Mr. Lewis referred to the paper regarding allergies, Exhibit A-1, and noted that the paper was written in 1974. Exhibits A-2, B-1, B-2, B-3 and C-1, C-2 described arborvitae being a moderate allergen, yew shrubs as foundation plantings have the possibility of pollen and have red fruits which are toxic to people and animals. Dr. Moffa stated that both he and his son have severe allergies to pollen. Dr. Moffa said two children have moved in next door and the fence would be better than the yews so they would not be tempted to eat the red berries. Dr. Moffa said his family has a dog and although well trained, the dog could eat the berries and again said the fence was a safety issue. Mr. Lewis said now that new people have moved in the conditions may be very different and possibly better. Mr. Lewis said that plants would still give the owner privacy.

Mr. Lewis brought up the drainage and Dr. Moffa said the driveway would be more unstable if the ground had to be dug up and the soil replaced. Mr. Lewis confirmed with the owner that the owner of Falls Landscaping did not have concerns about proceeding with the project without a permit.

Mr. Jahn said he had no questions at this point in the proceedings.

Mr. Wise confirmed with Mr. Vittum that based on his professional opinion, landscaping can be done to correct the Moffas' situation.

Mr. Wise confirmed with the Moffa's that they did in fact put up a six foot fence when they were only approved for a four foot fence.

Mr. Dohner confirmed with the owners that the quote from Wheelers Landscaping was ten years old and they no longer plan to use this company. The owners said they plan to use Falls Landscaping, but have not yet received a quote and plant recommendations.

Mrs. Moffa discussed the variance granted at Fox Trace for a 7'4" fence in their side yard and that it also had a grade difference in the side yard. Mr. Dohner said the owners had 10-12 years of not being able to grow anything.

John Vittum, Consulting Landscape Architect for the City of Hudson, said he was asked to answer four questions regarding this case. He said the drainage and clay soil problem can be easily resolved by a raised bed and replacing the soil. Trees could be planted on the side property where they would not grow under the driveway. Mr. Vittum said the property owners asked for solid screening and he stated that he has an arborvitae hedge at his home which he shears the sides and tops each year. Mr. Vittum said the plantings he had suggested are very low maintenance. Mr. Vittum also felt that the drainage problem would be easy to correct using the existing gravel for a French drain.

Mr. Lehman said the construction cost to redo the yard would be ongoing with maintenance and outsourcing the pruning and covering plants with netting to protect them from deer. Mr. Vittum said that black mesh landscape netting works very well to deter deer from eating the shrubs.

Mr. Jahn confirmed with Mr. Vittum that his credentials were a degree in Economics and a Masters in Landscape Architecture along with being licensed in the state of Ohio.

Dr. Moffa called his landscaper on the telephone during the hearing. Ms. Lane said that technically a witness needs to be present. Both Mr. Dohner and Mr. Lewis did not feel it was appropriate to have the landscaper on the telephone. Mr. Moffa ended the telephone call.

Mr. Lewis asked Mr. Vittum if the recommended plants would become large and overtake the area. Mr. Vittum said they would have to be pruned and topped each year. Mr. Lewis confirmed with Mr. Vittum that in his professional opinion the shrubs would not pose an allergy threat to the owner and his son. Mr. Vittum confirmed that he has recommended these type of plants to clients in the past as they are tolerant to damp soil. Mr. Vittum said he did not have a cost estimate for an outside drain. Dr. Moffa stated that he was looking for a solution that did not require upkeep and maintenance and once installed it would be done.

Mr. Lehman closed the public portion of the meeting.

Mr. Dohner complimented the property owners for all the work they had done explaining their case and he expressed appreciation to John Vittum for the work he had

done. He said the Board has to determine if the applicants have shown the need for a variance. Mr. Dohner said the applicants could do nothing or they can screen their property with plantings. Mr. Dohner said that two of the three shrubs Mr. Vittum's suggested would be viable alternatives. Mr. Dohner said from the testimony, the applicants want privacy screening especially when they entertain and this goal could be met by putting in selective screening. Mr. Dohner said their complaint about car lights shining in their windows is just a part of living in the city; and the issue of trucks and cars in the neighbors' driveway is due to construction in the home and will only be temporary. Mr. Dohner said he felt there were other alternatives instead of a six foot fence.

Mr. Lehman asked for opinions on the email to staff from Winston Manor stating they would prefer that the City maintain and adhere to current zoning fencing requirements. Mr. Lehman said he wanted the applicant to show other alternatives.

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

Mr. Dohner said the applicant talked about the fact that they wanted the fence, but no alternatives and Mr. Vittum's testimony suggested specific plants and some soil change could work. Mr. Dohner said the applicant's situation with the soil was unique, but did not feel it made their case.

Mr. Lewis said the Board is limited as there are certain standards that they have to look for and apply to each case.

Mr. Wise commented that it was unfortunate that they had the next door neighbors that they did. Mr. Wise said they could have a four foot fence and augment it where their windows are located for privacy. Mr. Wise said he was hopeful that a compromise would be reached, but it had not.

Mr. Jahn said he believed it came down to the simple fact, "Are there alternatives?" Mr. Jahn stated that Mr. Vittum's proposal gave those alternatives.

Mr. Lewis made the comment that the Board is dealing with the current Code and not what the Code was in the past.

Mr. Dohner made a motion to deny the request for 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 to not remain in the side yard pursuant to Section 1206.03(a)(5), "Accessory Uses/Structures - Residential Accessory Uses - Fences and Walls". 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 have lived there since 1997. This issue of privacy and doing something about it is an issue the applicant contemplated in 2002 and again in 2011;

b) the variance is substantial both in the percentage and appearance. The additional fence height of two feet in the side yard, the high visibility of the fence and the lack of uniqueness all make it substantial;

c) the essential character of the neighborhood would be substantially altered and adjoining properties would suffer a substantial detriment as a result of the variance to the extent that it alters the neighborhood by putting a six foot fence in the side yard, there are no exceptional circumstances, and other alternatives are available such as the plantings and drainage repairs discussed by John Vittum, Consulting Landscape Architect to the City of Hudson to ameliorate the applicants' concerns of privacy without changing the character of the community;

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

e) the owner purchased the property without knowledge of the zoning restrictions;

f) the applicant's predicament feasibly can be resolved through some method other than the variance; in particular by adding plantings, drainage remedies, regarding moving boulders for a raised bed;

g) the spirit and intent behind the zoning requirement would not be observed and substantial justice not done by granting the variance, therefore the variance is denied.

Mr. Lewis seconded the motion.

Roll Call:

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

Nay: None

Motion to Deny Unanimously Carried.

Mr. King stated that the case is an enforcement issue and we will work with the applicant for a reasonable completion time.

OTHER BUSINESS

Ms. McMaster briefly talked about the two cases for the February 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