



City of Hudson, Ohio

Meeting Minutes - Final Board of Zoning & Building Appeals

Kerri Keller, Chair
Lou Wagner, Vice Chair
Lydia Bronstein
Jane Davis
Robert Kahrl

Nick Sugar, City Planner
Amanda Davey, Associate Planner

Thursday, February 16, 2023

7:30 PM

Town Hall
27 East Main Street

I. Call to Order

Chair Keller called to order the regularly scheduled meeting of the Board of Zoning & Building Appeals at 7:30 p.m., in accordance with the Sunshine Laws of the State of Ohio, O.R.C. Section 121.22.

II. Roll Call

Present: 4 - Ms. Keller, Mr. Kahrl, Ms. Bronstein and Ms. Davis

Absent: 1 - Mr. Wagner

III. Identification, by Chairwoman, of Nick Sugar, City Planner & Amanda Davey, Associate Planner

IV. Swearing in of Staff and Audience Addressing the Board.

Chair Keller swore-in staff and all the persons wishing to speak under oath.

V. Approval of Minutes

[BZBA 1-19-2023](#) Minutes of Previous Board of Zoning & Building Appeals Meeting: January 19, 2023.

Attachments: [1-19-2023 Meeting Minutes - Draft](#)

A motion was made by Ms. Bronstein, seconded by Mr. Kahrl, that the January 19, 2023, Minutes be approved as amended. The motion carried by the following vote:

Aye: 4 - Ms. Keller, Mr. Kahrl, Ms. Bronstein and Ms. Davis

VI. Public Hearings - New Business

[BZBA 2022-1194](#) The subject of this hearing is a request for two (2) variances in order to fill approximately .2 acres of wetlands to permit construction of Hudson Community Living, a proposed Institutional Residential Use. The

variance requests are-

- 1. A variance of fifty (50) feet from the required fifty (50) foot wetlands setback resulting in a setback of zero (0) feet from the delineated edge of the wetlands pursuant to section 1207.03(e)(2), “setbacks - Wetlands”, and**
- 2. A variance from the prohibited activity of disturbance, including clearing of vegetation within stream corridors, wetlands and their setbacks pursuant to section 1207.03(c), “Prohibited Activities” of the City of Hudson Land Development Code.**

The applicant is Nate Bailey, Peninsula Architects, 1775 Main Street, Peninsula OH 44236. The property owners are Hudson Community Living Company inc, 75 Milford Drive #320, Hudson, OH 44236 and the City of Hudson, 1140 Terex Road, Hudson, OH 44236.

Attachments: [BZBA Staff Report - 35 S. Oviatt \(HCL\)](#)
[Wetland Jurisdictional Determination Request/Delineation](#)
[ACOE Jurisdictional Determination Verification Report](#)
[HCL - Public Comment](#)

Ms. Davey introduced the application by: Describing the project, displaying and describing the site plan and variance requests, reviewing the City regulations regarding wetlands, the consultant’s report, the Army Corps of Engineer’s reports, the City of Hudson Engineering report, staff comments and recommended conditions if the variance is granted.

Mr. Nick D’Eramo, Civil and Environmental Consultants, Inc., noted wetlands A, B and C have been examined by his company and the Army Corps of Engineers. Mr. D’Eramo confirmed the wetland boundaries, the jurisdictional status and described the quality and nature of each wetland. Mr. D’Eramo also explained the two different wetlands types, criterion for the Army Corps determinations, how mitigations are offset and information regarding endangered species research. The Board and Mr. D’Eramo discussed the Army Corp, EPA and State of Ohio approval process in relation to other agencies recommendations.

The Board, applicant and staff discussed the current state of the approval process, the disposition of the categories of the wetlands which will be completed during the approval process but based on Mr. D'Eramo's experience and the category types - should be a straightforward process.

Mr. Nate Bailey, Peninsula Architects, noted City of Hudson Engineering is actively involved in the storm water implications of the variance requests and the tree clearing request which will not involve the wetlands. Mr. Bailey also noted that work will not begin in areas until federal, state and local permits are issued.

Mr. Majeed Makhoulf, Berns, Ockner & Greenberger, LLC, noted the Duncan Factors are factors to be considered and are not to be determinative according to the Supreme Court Decision 533 US 606. The Board and Mr. Makhoulf also noted the nature of the and size of the variance as being minimal. Mr. D’Eramo noted that size is determinative of what must be done toward the permitting process with some wetlands being so small that no permitting is required and in his professional experience, the type of wetlands will not be changed by the Army Corps and that professionals’ opinions should be most highly considered.

Mr. George Roth, engineer and builder, noted the wetlands will not be filled or disturbed without appropriate permits and this application is only to fence off the requested areas in anticipation of the approvals.

The Board, applicant and staff discussed the purpose of requesting the variance at this date and what an approval of the variance means. Mr. D'Eramo noted the process began with the Army Corps five months ago and the letter from the Corps arrived this week stating the work must be completed by April 1. Mr. Bailey described the wetlands survey and process, the hardships created if a design is created with the wetlands left in place and how the design of the project fits the needs of the anticipated population.

The Board, applicant and staff discussed the Code requirement that all permits must be granted prior to a variance being issued, that conditional approvals have been granted in the past - prior to all permits being obtained, that any Hudson variance will not be factored as a consideration by the Army Corps or the State of Ohio, that granting the variance will improve storm water management and has been engineered and approved by the City of Hudson Engineer and Summit County, described elements on the map which are part of the storm water engineering system, noted the City of Hudson Engineering does not see any negative affects with the proposed storm water plan and described the voting process of the Board with only four Commissioners present .

Chair Keller opened the meeting for public comment. There were no Public Comments.

The Board discussed a level of comfort with this Conditional Approval not being a Final Approval, that this is a small variance, the experts opinion that a variance approval will not create stormwater issues and the effect of granting the variance being insubstantial because of the mitigation of requiring other wetlands .

Mr. Chris Gurreri noted the past water flow was not managed as compared to the proposed water management plan which is a system. Mr. Roth noted the City easement along the East property line with stormwater management which Hudson Community Living has been given permission to tie into and the rate and volume of water being discharged from the water management system.

Mr. D'Eramo noted historically the Army Corps has given approval for cutting trees in wetlands so long as the wetlands are not impacted and are all laws are followed regarding non disturbance of the wetlands .

Ms. Bronstein made a motion, seconded by Ms. Davis, based on the evidence presented to the Board at a public hearing at 7:30 p.m., on Thursday, February 16, 2023, that the Board of Zoning and Building Appeals grant the following:

- 1. A variance of fifty (50) feet from the required fifty (50) foot wetlands setback resulting in a setback of zero (0) feet from the delineated edge of the wetlands pursuant to section 1207.03(e) (2), "setbacks – Wetlands", and**
- 2. A variance from the prohibited activity of disturbance, including clearing of vegetation within stream corridors, wetlands and their setbacks pursuant to section 1207.03(c), "Prohibited Activities" of the City of Hudson Land Development Code.**

After reviewing the application, the hearing of evidence under oath, reviewing all documentary submissions of interested parties and by taking into consideration the personal knowledge of the property in question, the Board of Zoning and Building Appeals grants the variance with the following condition:

- 1. The requirement that the owner's approval of these variances be contingent on the proper approvals of the Army Corps of Engineers and the Ohio EPA where applicable.**
- 2. No soil disturbance will occur prior to proper approvals of applicable agencies.**
- 3. There shall be no violation of state of federal laws related to the variances.**

The Board finds and concludes;

1. **The property in question would yield a reasonable return and there could be a beneficial use of the property without the variance; however, looking at the development use and the maximization of the land, the entire development would have to be reconfigured and would lose its essential character if the variances were not granted.**
2. **The requested variance is substantial as it is a 100% deviation from the Land Development Code; however, the impacts of granting the variances are insubstantial based on the water mitigation plans and the requirement that the applicant submit to the wetland mitigation bank.**
3. **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 variances. The project would require a stormwater mitigation plan which would benefit the neighboring properties. Additionally, the 0.2 acres of wetlands are likely the lowest category of wetlands which causes a less of an impact.**
4. **The variances would not adversely affect the delivery of governmental services.**
5. **The existing regulations were in affect when the owners purchased the property in 2022.**
6. **The applicant's predicament feasibly cannot be resolved through some other method other than granting the variance. The applicant's development design is the best design for this property and the intended use.**
7. **The spirit and intent behind the zoning requirement would be observed and substantial justice would be done by granting the variances. Although the size of the variance is substantial, the impact to the property and neighboring properties would be insubstantial in terms of stormwater and how the stormwater mitigation plan would improve the flow of water.**

Aye: 4 - Ms. Keller, Mr. Kahrl, Ms. Bronstein and Ms. Davis

[BZBA 2023-45](#) **The subject of this hearing is a variance request from the requirements that accessory structures are not permitted in the side yard pursuant to section 1206.03(d)(3), "Accessory Use Development and Operational Standards - Side Yard Setbacks" to permit a pavilion structure within the side yard.**

The applicant is Richard Siegfried - RSA Architects, 10 North Main Street, Chagrin Falls, Ohio 44022. The property owners are, James and Neille Vitale, 180 Aurora Street, Hudson, Ohio 44236 for the property at 180 Aurora Street in District 4 [Historic Residential Neighborhood] within the City of Hudson's Historic District.

Attachments: [BZBA Staff Report - 180 Aurora Street](#)
[Public Comment](#)

Ms. Davey introduced the application by describing and displaying the site plan, the proposed project, the difficulties of the project on this property and the staff comments and considerations.

Mr. Daniel Dunn, representing Mr. Richard Siegfried, RSA Architects, noted if the structure is placed in the area

that does not require a variance, it will be closer to the neighboring property line.

Mr. James Vitale, homeowner, noted the design of the house and property tends to cause activity on the side of the house and not the backyard.

The Board, applicants and staff discussed the placement of the structure on the property, that prior to the 2008 garage addition the proposed location would have been in the back yard, that if the structure is moved to the backyard it would result in a lack of privacy from the traffic on Franklin Street and not be as functional for the family. The Board and applicant noted that if the structure is attached, no variance would be needed, however, with the proposed location there is less impact on existing trees and the house rooflines.

Mr. Sugar explained the staff interpretation of the LDC regarding side yards and the spirit and intent of the code regarding attached structures.

Mr. Tony Majc, RSA Architects, noted this placement is more advantageous to the neighbors.

The Board noted the large number of cars that travel Franklin Street every school day and the advantages of the proposed placement for the benefit of the neighbors.

Chair Keller opened the meeting for Public Comment.

Mr. Sid Nelson, 52 Aurora Street, noted the staff report calling this corner property unique is incorrect and the attached garage, does not necessitate a 100 percent variance. Mr. Nelson also noted the stated benefit of placing the garage in the proposed location only saves the applicant walking 15-feet. Mr. Nelson also stated that the proposed location does not factor in the effect on 172 Aurora Street and that no compelling reason for the variance has been given.

Seeing no one else coming forward to speak, Chair Keller closed Public Comment.

The Board discussed the standard BZBA is to follow for allowing or denying a variance, that each case is to be judged on its merit, that if the proposed structure were attached a variance would not be needed, that traffic has always been heavy on Franklin Street and this should have been noted prior to purchase, that substantial justice may be done by granting the variance, that granting variances is part of the LDC to recognize the special situations, the desire to follow the intent of the LDC and the substantial side yard setback of 28-feet.

Mr. Kahrl made a motion, seconded by Ms. Bronstein, based on the evidence presented to the Board at public hearing at 7:30 p.m., on Thursday, February 16, 2023, that the Board of Zoning and Building Appeals grant the following:

A variance request from the requirements that accessory structures are not permitted in the side yard pursuant to section 1206.03(d)(3), “Accessory Use Development and Operational Standards – Side Yard Setbacks” to permit a pavilion structure within the side yard.

After reviewing the application, the hearing of evidence under oath, reviewing all documentary submissions of interested parties and by taking into consideration the personal knowledge of the property in question, the Board of Zoning and Building Appeals grants the variance as requested.

The Board finds and concludes;

- 1. The property in question will yield a reasonable return and there can be a beneficial use of the property without the variance.**

2. The requested variance is substantial as it is a 100% deviation from the Land Development Code.
3. 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 even though the structure would be in the side yard, the structure would be far enough from the neighbor's property line that it would not impact their sight line.
4. The variance would not adversely affect the delivery of governmental services.
5. The existing regulations were in affect when the applicant purchased the property in 2020.
6. The applicant's predicament feasibly cannot be resolved through some other method other than granting the variance. Attaching the structure to the house would impact the existing roofline. Additionally, moving the structure to the applicable rear yard would make the structure visible from Franklin Street, whereas the structure in the side yard would be obstructed from Aurora Street.
7. The spirit and intent behind the zoning requirement would be observed and substantial justice would be done by granting the variance. The intent of the LDC is to not have accessory structures impairing the neighboring properties or street visuals. Granting the variance would observe the intent.

Aye: 3 - Ms. Keller, Mr. Kahrl and Ms. Bronstein

Nay: 1 - Ms. Davis

VII. Other Business

Ms. Davey stated she will inform the Board if there will be a March BZBA meeting.

VIII. Adjournment

A motion was made by Ms. Bronstein, seconded by Mr. Kahrl, that the meeting be adjourned. The motion carried by an unanimous vote.

Kerri Keller, Chair

Joe Campbell, Executive Assistant

Upon approval by the Board of Zoning & Building Appeals, this official written summary of the meeting minutes shall become a permanent record, and the official minutes shall also consist of a permanent audio and video recording, excluding executive sessions, in accordance with Codified Ordinances, Section 252.04, Minutes of Architectural and Historic Board of Review, Board of Zoning and Building Appeals, and Planning Commission.

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