

## MINUTES

### CITY OF WOOSTER BOARD OF BUILDING & ZONING APPEALS

November 2, 2023

#### I. MEETING CALLED TO ORDER AND ROLL CALL

Stewart Fitz Gibbon, Chairman of the Board of Building and Zoning Appeals, called the meeting to order. Board members Jason Anderson, Jeff Battig, Martha Bollinger, Stewart Fitz Gibbon, Ben Gunn, Mark Reynolds, and Jennifer Shatzer were present at the meeting. Vincent Marion, Planning and Zoning Manager represented the City of Wooster.

#### II. APPROVAL OF MINUTES

Martha Bollinger made a motion to approve the minutes of the October 5, 2023, meeting of the Board of Building and Zoning Appeals. Jason Anderson seconded the motion. The motion carried unanimously 7-0.

#### III. APPLICATIONS

##### ***BZA-23-19.***

Justin Starlin requested Area Variances from Planning and Zoning Code Section 1117.02 to allow reductions to the previously established wetland buffer area, riparian setbacks, and relief from the required signage identifying the riparian setback within the Spring Run development primarily on a property with parcel number 67-02914.060 and several contiguous parcels located on the south side of Kadas Lane, west side of Stella Court and north side of Jesse Owens Drive in an R-2 (Single-Family Residential) zoning district.

Justin Starlin, 182 Enterprise Parkway, stated that the development of 91 homes off of Oak Hill with several homes started construction. Mr. Starlin explained that selling some of these lots is a riparian setback and how it is affecting some of the back lots in the development. Mr. Starlin continued that four identified wetlands are on the site and three in the development area, with one on the far west end. Mr. Starlin stated that the two lots requesting setback reduction are two wetland pond areas previously maintained by the owner mowing up to those within 5 to 10 feet of the boundary. Mr. Starlin explained that when they talked to the City mowing close to these, there was overall support for us mowing close to those up to the five feet, and the confirmation was that it needed to be a request for the variance. Mr. Starlin continued that the Army Corp of Engineers identified these as wetlands, which required a component of the variance request for approval. Mr. Starlin stated that regarding the two ponds we request that we mow and maintain up to 5 feet have been previously mowed and maintained up to five feet around the boundaries. Mr. Starlin noted that these wetlands have reduced in size and have not been refilled as if they had been natural because we now contain the runoff. Mr. Starlin stated that the mowing of the two wetlands would be taken care of by the homeowners association, and the area would be a common area for the development. Mr. Starlin explained that when a wetland is identified where the water line edge is, there is a 25-foot setback, which cannot be mowed or maintained naturally. Mr. Starlin continued that the City Engineer said the water edge fluctuates based on the season. Mr. Starlin noted that the development will adhere to the -

requirements of the Army Corp of Engineers. Mr. Starlin stated that the City of Wooster Engineering Department said they did not have an issue with us being within 5 feet and that the request needed to come before the board to be granted so that we could maintain the area. Mr. Starlin explained that this may not be an issue or concern to the Army Corp of Engineers. Mr. Starlin continued that the landscaper cut several trees in the wetland area and is working with the Army Corp of Engineers to remediate that area. Mr. Starlin stated that they want to mow within 5 feet of the site because it will not look good if they don't. Mr. Starlin explained that the Army Corp of Engineers has not had any issue with them mowing within 5 feet of the wetland in fifty years.

Lance Cole, City of Wooster Program Manager, 6800 Canan Center Road, said he handles the stormwater management. Mr. Cole explained that the Army Corp of Engineers has regulations that specify 25 feet, and the City adopted that program in 2014 to maintain 25 feet within a Class 1 wetland. Mr. Cole noted that he had not received confirmation if that was a Class 1 or a Class 2 wetland. We assume it is a Class 1; however, an exception says that if it was previously maintained, you could keep that existing area, provided it was maintained regularly. Mr. Cole noted that we ask for the Army Corp of Engineers' concurrence to ensure we are not against their regulated areas. Mr. Cole explained that the one issue I have is that 5 feet from the water's edge, the wetlands extend out further than that. Mr. Cole noted that Wetland 1 was 10 feet from the water's edge, and Wetland 2 was 18 feet from the water's edge. Mr. Cole said that in our discussions, we did agree that if they wanted to maintain 5 feet from the lineated edges per the original aerial photograph that we have before the property was constructed, the City would be amenable so that it has been maintained and would be grandfathered, but Army Corp must concur to that. We submitted a copy of this to them to review, but they have not had a chance to respond. Mr. Cole stated that in 2021 aerial imagery, the buffer was 5 feet from the lineated edge and was previously maintained. Mr. Cole explained that Wetland 3 was not necessarily regularly maintained and did not request any variance.

Mr. Starlin stated that tributary one is coming off of the two ponds, and since we have started development, the tributary has gotten smaller and not as much runoff. Mr. Starlin explained that the riparian setback is 25 feet off the tributary. Mr. Starlin continued that there is an Engineering calculation that says you are going to have this much runoff. A Civil Engineer concluded that we should be 36.1 feet off the tributary unless it has been previously maintained, mowed, or a production crop. Mr. Starlin stated that if it has, then in support of preserving the way it has been in the past. Mr. Starlin explained that the wood line along tributary one along Jesse Owens has a natural wood line that comes as close to 15 feet from that tributary up to 60 or 25 feet. Mr. Starlin stated that we don't want to remove any trees, but we want to setback the previously established and maintained line for mowing and wood line.

Doug Drushal, 225 North Market Street, stated that an easy compromise that would be acceptable is deed restrictions that would prohibit anything from happening there. Mr. Drushal explained that we are not talking about building anything there because of the setback requirement from the lot, and once you get to the trees, there is a drop in elevation. Mr. Drushal continued that the area was already mowed or used for crops

and is grandfathered. Mr. Drushal stated that the request is to maintain the exact boundaries that have always been there. Mr. Drushal said that a deed restriction saying that it won't be extended into that area is a reasonable compromise. Mr. Drushal explained that the signage would be in the middle of a homeowner's yard. Mr. Drushal continued that the ponds are not really wetlands and are manufactured, and their purpose will now be stormwater retention/detention. Mr. Drushal stated that he believed the Civil Engineers are in contact with the Army Corp of Engineers about the setback. Mr. Drushal explained that the property was unique because every wetland, stream, and tributary has its unique features, and it is a property that has these unique characteristics. Mr. Drushal stated that the variance was minimal and asked to preserve the border. Mr. Drushal explained the hardship to the property owner of the lot with a sign in the middle of their backyard and the ability to mow where it has always been mowed.

Mr. Fitz Gibbon asked if anyone from the public would like to address the Board regarding the application.

Madeleine Noble, 1478 West Milltown Road, stated that she borders within 200 feet of the property. Ms. Noble noted that she lived near this property for thirty years and knows it well. Ms. Noble explained what this property was before the development, but compared to when it was farmed, orchard, and one of the best-wooded lots left standing inside the City of Wooster, many/most of the trees were cut down for the allotment. Ms. Noble continued that this was a very different thing than what would be when there are 91 residential units with people coming and going all the time. Ms. Noble stated that you cannot project what this will be once the 91 units are built and the density. (Please see the attachment at the end of the minutes.)

Mr. Drushal stated that the detention ponds that have been put in with the City of Wooster requirements must be inspected regularly, which is one of the duties of the HOA. Mr. Drushal explained that you have to hire someone to go out and check them because they are not allowed to fill up with debris, leak, and inspect.

Jack Baxstrom, 660 Beechwood Avenue, stated that the City of Wooster should be more informed on the runoff from these areas, and they could get information regarding that from the Wayne County Soil and Conservation District, which had no representation and legally didn't have to when the development was approved. Mr. Baxstrom explained that the development was supported, and the Spring Run subdivision with all of the engineering grade contours, riparian setbacks, wetlands, wetland setbacks, and no disturbance wetland setbacks, all of which contribute to buffering and bolstering the environmental stability which this development abuts. Mr. Baxstrom continued that it continues to have an even larger Clear Creek ecosystem, one of the cleanest creeks in Wayne County. Mr. Baxstrom stated that the creek goes to the Killbuck Wildlife Refuge, which is part of the Muskingum Watershed area. Mr. Baxstrom explained that by maintaining buffer zones to their intended extensions, stream banks and their tributaries are stabilized, erosion is also reduced, and fertilizers and other chemical runoffs are reduced. Mr. Baxstrom noted that stream water maintains cooler temperatures for healthy plants and animals, less algae growth,

and more attracted wildlife. Mr. Baxstrom continued that the closer grass clippings and other yard waste encroach on streams and their tributaries and enter the stream cycle that begins decomposing. Mr. Baxstrom stated that once they become unsightly, they emit odors, and there are reasons the buffer zones were created.

Mr. Fitz Gibbon closed the public hearing.

Mark Reynolds made a motion to process the application BZA-23-19 as three separate applications. Application A the minimum setback requirements for the ponds. Application B the minimum setback for the creek. Application C is the signage the City of Wooster requires for the riparian setback. Martha Bollinger seconded the motion. The motion passed unanimously, 7-0.

Mark Reynolds made a motion to approve applications BZA-23-19 Application A for the ponds as presented subject to the concurrence of the Army Corp of Engineers. Martha Bollinger seconded the motion.

Mark Reynolds voted yes and stated that there is an allowance for the previously regularly maintained areas with the concurrent approval of the Army Corp of Engineers.

Martha Bollinger voted yes for reasons cited by the Board.

Jason Anderson voted yes for reasons cited by the Board.

Jeff Battig voted no until word from the Army Corp of Engineers.

Ben Gunn voted yes for reasons cited by the Board and noted that he hoped the developer followed through with reestablishing the trees they cut down and the proper foliage returned.

Jennifer Shatzer voted yes for reasons cited by the Board.

Stewart Fitz Gibbon voted yes for reasons cited by the Board.

The motion passed 6-1.

Martha Bollinger made a motion to approve applications BZA-23-19 Application B for the stream and tributary as presented subject to the concurrence of the Army Corp of Engineers. Ben Gunn seconded the motion.

Martha Bollinger voted yes based on the concurrence of the Army Corp of Engineers since it is at a level for their approval.

Ben Gunn voted no and stated that he didn't think the hardship had been met to say that the tree line, where the land drops off, would be aesthetically pleasing. I don't feel the reasons are not a hardship.

Mark Reynolds voted yes and stated that, presuming that the Army Corp of Engineers sign off on the setback. I feel the spirit and intent of the wood line not moving and not being touched.

Jennifer Shatzer voted yes with the concurrence of the Army Corp of Engineers.

Jason Anderson voted no and stated that he felt the environmental impact on the adjustable setback was a bit too great and would yield to the decision of the Army Corp of Engineers.

Jeff Battig voted no until word from the Army Corp of Engineers.

Stewart Fitz Gibbon voted yes and stated that we have to assume that the Army Corp of Engineers has greater knowledge in this area, so we are approving a variance subject to their approval.

The motion passed 4-3.

Mark Reynolds made a motion to approve applications BZA-23-19 Application C for the signage as presented. Jeff Battig seconded the motion.

Mark Reynolds voted no and said I was agreeable with letting the mowing go further back. The existence of the signage is essential, and after a week or month after they buy the homes and read the HOA documents, they will forget.

Jeff Battig voted no and stated that the signs were important.

Jason Anderson voted no for reasons cited by the Board.

Martha Bollinger voted no for reasons cited by the Board.

Ben Gunn voted no and stated that because they are not aesthetically pleasing, it is not a hardship but a preference.

Jennifer Shatzer voted no for reasons cited by the Board.

Stewart Fitz Gibbon voted no for reasons cited by the Board.

The motion was denied, 0-7.

#### **IV. MEETING SCHEDULE FOR 2024**

The setting of meeting dates per the proposed schedule for 2024.

Martha Bollinger made a motion to approve the meeting schedule for 2024 as submitted. The motion carried unanimously, 7-0.

V. **ADJOURNMENT**

Ben Gunn made a motion to adjourn. Jeff Battig seconded the motion. The motion passed unanimously, 7-0.

---

**Stewart Fitz Gibbon, Board of Building and Zoning Appeals Chairman**

---

**Carla Jessie, Administrative Assistant**

Madeleine Noble, Property Owner within 200 ft. of the Spring Run development.

Comments regarding the Planning and Zoning Board consideration of Variances requested by the Wooster Development Company, November 2, 2023.

I would like to look at the big picture of this variance request before the Planning and Zoning Board. The Wooster Development Company purchased 42 acres of wooded land sloping downward with wetlands and tributaries flowing into Clear Creek and the Killbuck on its way to the Ohio River. The Company is claiming that this is a unique piece of land and therefore they should not be saddled with restrictions that no other R2 zoned parcels are subject to. The part about a unique property is true, but developers would have been very aware from the beginning, of building and land use restrictions in the City's 2018 updated site development Manual, specifically the City of Wooster Engineering Department's Site and Development Improvement Manual.

Justin Starlin brought the final design plan for 91 single unit homes before the Planning and Zoning Commission in March of 2022. Mike Steiner made the motion to approve Mr. Starlin's application under the conditions that all aspects of development must comply with the Provisions in the 2018 Manual. Not long after, Wooster Development Company asked for and later received 2 variances from the Planning Commission in the summer of 2022 for smaller plots than R1 and R2 zoning allowed and a reduction in the minimum lot width from 70 feet to 60 feet.

A year later they are back before the Board asking for more variances in regard to wetlands and riparian corridors, this time for a reduction in the width of the buffer areas that protect them. The Ohio EPA and Wooster's 2018 Manual require a minimum 20 foot buffer from the edge of the wetland to remain in a natural state. Wooster Development Company wants to reduce that to 5 feet. Reason? So that people with lots whose back yards border these protected areas can mow their yards or maintain a garden. Residents in those bordering yards likely could be using pesticides or fertilizer if the requested variance is approved. In the riparian corridors the Company is asking for a greatly reduced Riparian buffer from the requirements in the Manual.

A third variance request asks to eliminate any "Notice" signage in the wetland riparian area, as the signage are not "aesthetically pleasing." In other words let's pretend these wetland/riparian zones are not here and not draw any attention to them. The company maintains that no change has occurred in these areas since construction began. Only 16 homes out of 91 have either been started or completed. They want a variance before the true impact of increased density is known.

I acknowledge and accept that the balance between development and environmental protection requires compromise on both sides. Already this development plan has led to the loss of one of the largest remaining woodlots within the City of Wooster and now the wetlands and tributaries on the land are threatened. Wetlands are described as earth's kidneys because of their capacity to filter pollutants from the water that flows through them. Spring Run's wetlands and tributaries will filter water that flows downstream from here.

I am asking that the Planning and Zoning Board postpone a decision on these variance requests until there is an opportunity for more community feedback.

We need to keep in mind Section 1117.02 of the City of Wooster Code: *“The natural environment within the City of Wooster contributes to the health, safety, and general welfare of the residents of Wooster, and therefore, should be protected.”*

If the Planning and Zoning Commission grants these requested variances it is sending a message to developers that the City will not enforce its own regulations on site development and that a variance is a way around its stated purpose to protect and preserve designated wetlands and riparian corridors. Thank you.