

Minutes: Russell Township Board of Zoning Appeals  
Russell Fire-Rescue Station  
April 12, 2010

Present: Steve Gokorsch, Chairman  
William Downing  
Edith Lerner, Ph.D.  
Justin Madden  
Diana Steffen, Secretary

Fred Cuffari was absent with apologies. The Zoning Inspector, Ric Machnics, was absent on vacation.

The Chairman called the meeting to order at 7:00 p.m.

**VARIANCE REQUEST #448 John Domo**

Request for a variance to reconfigure the common property line between 7540 and 7560 Twin Lakes Trail. Specifically the lot size of 7540 is requested to be reduced to 4.351 acres, resulting in an undersized lot in violation of Section 5.2.B, minimum lot area 5 acres in an R-5 zone.

The appellants, John and Adele Domo, 7560 Twin Lakes Trail, were in attendance. The Secretary confirmed that she had published the Notice of Public Hearing in the News Herald and the Chagrin Valley Times on 4/1/10, and had sent it by certified mail to the neighbors on 3/30/10. The Chairman explained the procedure and swore in the appellants and all those in the audience who planned to give testimony or make comment. He also explained that one member of the board was absent, and that if there would be a tie vote amongst the four members present it would mean the variance was denied. A majority vote of the entire board is required to grant a variance. He gave the appellant the opportunity to defer to another meeting when the full board would be available. Mr. Domo chose to proceed with the hearing.

John Domo stated he and his wife live at 7560 Twin Lakes Trail (S/L 4), which he purchased at the end of 1999. They discussed with architects and designers whether to renovate the home that had been built by Thomas & Thomas, and the conclusion was that it was not worth putting significant dollars into it. They brought in an architect from out of state and considered a master plan of what would work with the property. In the meantime the original owner/builder of the property next door at 7540 (S/L 5) passed away. The property line goes through a sub-driveway to individual driveways to each residence. Mr. Domo said there is a lake in the front of his lot that he has maintained since living there. He bought 7540 from the family, and then he made significant improvements for the pond on both sides of the driveway. On 7540 he improved the headwall for the pond, and it needs continuous maintenance. It is at the bottom of a steep slope that also needs regular attention. He took care of repaving the driveway and of the irrigation.

Now Mr. Domo said he would like to ensure the continued value of his home by incorporating these improvements onto his lot at 7560, which means relocating the common property line farther west. This reduces the acreage of 7540 from 5.962 acres to 4.31 acres, a reduction of 1.611 acres. He said

this does not affect the frontage. The rear line will not be affected, and the sideyard setbacks will comply with zoning. All changes are internal to his two lots, where some land will be replatted to 7560.

Mr. Domo showed the board a large site plan and some aerial photos of the lots. He pointed out a tennis court he had installed at the rear of 7540, not lighted, for his own use. He created a buffer zone of trees around the tennis court to hide it from the house at 7540, from the McDonald property directly to the north, and from the front of his lot where 40 pines were planted. Mr. Domo said that he does not want to affect the neighbors in any way, and the proposed relocation of the property line will not do so. Because some of his improvements are on 7540, and because the property line splits the driveway, he is concerned that if he sells it he will not have control of the improvements or the driveway. The only solution he found was to replat the two lots so that 7560 will own the driveway, headwall and tennis court.

Mr. Gokorsch asked Mr. Domo if he owns both properties, and Mr. Domo said he does. He confirmed the driveway is shared and there is no easement on the deed. Mr. Madden asked if the residence on 7540 was vacant, and Mr. Domo said it is the original house and a friend lives there to take care of it. Mr. Gokorsch asked, when making the improvements to the 7540 lot, had he planned to incorporate both properties into a single lot. Mr. Domo replied no, he did not need the other house in order to complete the big picture for 7560, and when the market for real estate improves he would like to sell 7540.

Mr. Madden asked Mr. Domo if he had installed the tennis court, which was one of the improvements made on 7540, and Mr. Domo said yes. Asked if the driveway that was paved on the 7540 lot was also an improvement made by him, Mr. Domo said yes. He said the original driveway wound around the front of the previous residence on 7560, and he owned both lots when he reconfigured the driveway.

Mr. Downing asked Mr. Domo if he was in the process of drafting an access easement for the future owner of 7540 to be able to use the driveway. Mr. Domo said he was, and that it will be unencumbered with all maintenance paid by the owner of 7560. He is also proposing to include in the easement that the owner of 7560 will maintain all the landscape buffers around the tennis court. When asked by Mr. Gokorsch, he confirmed he will maintain the drive, the headwall, irrigation and landscaping. Mr. Gokorsch asked if he had considered having easements on both lots, with 7560 being given the maintenance of the driveway and headwall, and use of the tennis court, and 7540 given use and access of the driveway, so that a variance would not be necessary. Since he owns both properties, the easements would be granted to him and would stay with the land forever. Mr. Domo said his concern was that a shared easement would be a detriment to the value of his property at 7560 which has a bigger residence.

Mr. Gokorsch asked if a new driveway could be installed on 7540, and Mr. Domo replied that there is a very steep slope that drops away from the road that makes it impossible to do so, or that would be an easy solution. Mr. Gokorsch suggested the easement could give all responsibilities that he wished for 7540 to 7560, and 7540 would then remain a five-acre conforming parcel. Mr. Domo replied that

to maintain someone else's property if he did not own it would be a problem, and he thought a buyer would not be interested. Dr. Lerner asked if he was aware of the issues when he rebuilt his home; Mr. Domo said the owner of 7540 died after he purchased 7560, and he took over doing improvements since he felt it was the right thing to do. Now economically times are different, and there are many houses for sale and buyers are more choosy. If he were to sell 7560 a buyer would probably not want to maintain the other property as well.

Mr. Downing asked what the frontage is on 7540, and Mr. Domo said it is 300 feet and he intends to maintain that. Mrs. Steffen showed the board the lots as shown on the original plat that shows 7540 has 300 feet frontage.

Mr. Domo urged the board to understand his problem. He said he has been advised by people in the industry that this is not a good situation and he is trying to correct it for the future when each lot might be sold. His home has significant value, and his mistake was not to have seen the problems in 2004 when he made the improvements. He said the variance would have no effect on any homeowners on either Twin Lakes Trail or Waterfall Trail.

Looking at an aerial photo from Access Geauga Mr. Domo said the property line is not shown in the correct location, because the line splits the sub-driveway. Mr. Madden asked if the variance was granted then 7540 would be less than five acres, but the 50-foot sideyard setback from the house would remain? Mr. Domo said yes, and showed a shaded area on the site plan that is a wooded buffer between the house and the proposed location of the side line that he planned to offer to maintain.

Mr. Downing commented that Mr. Domo is not asking for a frontage variance, although he planned to move the property line to the west. Mr. Domo said he does not wish to ask for a variance for frontage as well, so he will keep the 300 feet as well as the 50-foot setback. He preferred to move the driveway in the front rather than have the property line through the middle of it. Mr. Gokorsch explained that the 300 feet width must also be maintained at the 125-foot building line. Rather than putting in a second driveway he said he would prefer to move the driveway to the east where there is a tree lawn.

The Chairman opened the hearing to the audience.

John Corrigan, 7525 Waterfall Trail, confirmed he was sworn in, and asked Mr. Domo, when he bought the property and was interested in making the many improvements, whether he had checked in advance with the Township regarding zoning requirements. Mr. Domo replied that he had not because at that time he was looking at the big picture of the layout and was not focused on the requirement for five-acre lots. Economics were not a concern then either, but now they are. Mr. Corrigan commented that Mr. Domo installed the tennis court and improvements on 7540, but now he is asking the Township to solve his zoning and economic problems because he would like to sell it with less than the required five acres. Mr. Domo responded that he felt that everything he has done has preserved the value and was the right thing to do in a unique situation.

Jack Garoul, 7475 Twin Lakes Trail, confirmed he was sworn in, and stated he had no objection to what Mr. Domo wished to do, but he was concerned at the variance setting a precedent in breaking the five-acre zoning and becoming a fact of law. He moved from Shaker Heights to Russell for the five-acre zoning and did not want to see it broken.

Laurie McDonald, 7575 Waterfall Trail, confirmed she was sworn in, and asked if Russell has previously granted similar variances. The board did not recall a similar variance, but explained that Russell allows planned residential developments with smaller lots and common land that retain the large-lot density.

Steve Spaeth, 7515 Twin Lakes Trail, confirmed he was sworn in, and stated he had no problem with Mr. Domo's plans, and the property has been enhanced. He said there is a similar shared driveway to properties to the east. He said he had no problem as long as the five-acre zoning could be preserved.

Mr. Domo asked the board for a continuance so he could consult with his attorney regarding the comment that the variance would set a precedent; he wanted to see if there is factual law on that point. The Chairman advised the applicant that the board considers each case on its merits, and its decision is not influenced by previous variances. The granting of a variance does not create a precedent. The board suggested to Mr. Domo that he also look into the possibility of moving the driveway over so that it is totally owned by 7560, reconfiguring the line so that 7540 will retain 5 acres, and writing an easement for 7540 regarding use of the driveway and control of the headwall. Mr. Domo agreed to explore that option with a surveyor, and said he would call the Secretary to say which future meeting he could attend.

*Mr. Downing made the motion to continue Appeal #448 John Domo to a future regular meeting at the applicant's request, Mr. Madden seconded and the motion passed unanimously.*

**MINUTES OF MARCH 1, 2010** – *Dr. Lerner made the motion to approve the minutes as submitted, Mr. Madden seconded, and the motion passed unanimously by 3-0. Mr. Downing abstained due to his absence from that meeting.*

There being no other business, Mr. Madden moved to adjourn, Dr. Lerner seconded and the meeting adjourned at 8:07 p.m.

Respectfully submitted,

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Diana Steffen  
Secretary

Date

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Steve Gokorsch  
Chairman

Date