

Minutes: Russell Township Board of Zoning Appeals
Russell Town Hall
August 19, 2009

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

Fred Cuffari was absent with apologies.

Also in attendance: Ric Machnics, Zoning Inspector.

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

VARIANCE REQUEST #445 Lorelei Cudnik, 15501 Wenhaven Drive

Request for variance for a partially-built accessory building located 3 feet from the north side property line in lieu of 30 feet required per Section 5.2.B for a pre-existing lot under 3 acres in an R-5 zone.

The Secretary stated that a legal notice was published on 8/6/09 in the Chagrin Valley Times and the News Herald, and was sent by certified mail to the party and neighbors on 7/23/09.

Lorelei Cudnik was in attendance. She and Mr. Machnics were sworn in by the Chairman.

Mrs. Cudnik stated she needed a storage building and the only convenient location for her needs, and that would work on the property, was the current location. Because her residence does not have a basement there is a lack of storage area. The current location is close to her office, garage and driveway, so is easy to access. She is a representative of the Longaberger Basket Company and has boxes delivered with nowhere to put them.

The reason for the shed's location close to the side property line, according to Mrs. Cudnik, is because there is a large amount of water that comes from the back of the property and runs down the whole property, but in particular the grassy area in the middle of the back yard is muddy and spongy and unusable in the spring. To move the shed towards that middle area would compound the wetness problem, would make it too near their house and would locate it in front of another shed that is farther back. She and her husband have installed a drain that goes into a swale between their property and their neighbor's property.

Mrs. Cudnik explained that her immediate neighbor has no issue with the location of the shed. In fact, another reason for the requested location was that the neighbor has a shed just across the property line from her shed, and it is approximately 13 feet from the side

line. Neither shed blocks the view from each house. Mrs. Cudnik's son-in-law started building the shed, and as it became larger than she expected Mrs. Cudnik applied for a zoning certificate and found it was not in compliance with the zoning setback requirement. It can be partially seen from the road, but there are others on the street that are also visible.

Due to a medical condition, Mrs. Cudnik said she finds it harder to walk as she ages, and if she builds the shed in the far southeast corner, about 120 feet from the driveway, office and garage, she would not be able to access it, which would defeat the purpose of the shed for storage. She felt the current location is the only practical one.

Mrs. Cudnik explained that there has been confusion regarding the correct location of the north side property line. When they purchased the property 12 years ago they were told the telephone pole marked the boundary. About seven years ago the current neighbor to the north moved in and had a survey done that showed the boundary along the middle of the Cudniks' driveway. The Cudniks then had a separate survey done that confirmed this. To correct this they swapped a strip of land along the side line to the rear of the property with a strip towards the front, so that their driveway was now totally on their land. Even though the shed is into this strip it looks like a natural location. Mr. Machnics confirmed that the request is for the shed to be 3 feet from the new property line, and relative to the old line it would be over the line. He said the pond in the backyard is approximately 65 feet to that side line. Mrs. Cudnik said that if they moved the shed nearer to the pond it would be right behind the house and block the view. She could not put it near their other shed because it would be too far for her to walk.

Mr. Gokorsch asked about the deliveries she had mentioned, and Mrs. Cudnik said she has deliveries from UPS and FedEx and rather than take them in the house it would be easier to put them in the shed. She sells baskets and pottery, and all the merchandise is delivered and must be stored. She confirmed that she is running a business from her residence that involves regular deliveries to the house via the driveway. She cannot use the other shed because it houses their lawn equipment, as well as being too far back. Looking at an aerial view of the property Mr. Gokorsch said the topography appeared to be flat, and Mrs. Cudnik said it slopes slightly towards the street, but is fairly flat. Mr. Machnics said that one of the drawings shows a 2 ½-foot slope to the patio, and a slight slope on the property falls to the front on the north side. He visited the site and everything slopes to a drain at the end of the driveway. He stated that the Cudniks' other shed is in a lower area, and his opinion was that the accessory building can be moved to the 30-foot setback line. It would not be impacted by the slight slope, and the middle area is dry now. However, he said he has not inspected the site in the fall or spring for wetness. Mr. Gokorsch noted that due to the slope of the land from the southeast to the northwest it appeared that the current location of the shed is lower than the location that would comply with the zoning.

Mr. Downing asked, if Mrs. Cudnik's primary concern was health related, could she put an addition on to the garage at the front of the house? Mr. Machnics said he could not

comment on that suggestion. Mrs. Cudnik stated that the well is there as well as two old trees and a flowerbed.

The Chairman asked for comments from the audience, and there were none. Mr. Machnics commented that he believed there are several suitable areas the accessory building can be moved to that would be out of the setback area.

Mr. Downing made the motion that the Zoning Inspector's Exhibit #1, an Access Geauga aerial view of the property including topographical lines at the site of the proposed shed, be admitted as submitted, Mr. Madden seconded and the motion passed unanimously.

The Chairman closed the public portion of the hearing.

The board reviewed the factors used to establish a practical difficulty:

- a) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance: Yes, the applicant stated so in the Notice of Appeal, and no testimony was presented otherwise.
- b) Whether the variance is substantial: Yes, it is a 90% variance being 27 feet out of 30 feet. The applicant stated in the Notice of Appeal that, "...this is where shed needs to be for functionality. It abuts my neighbors' shed so as not to obstruct either's view." However, the Zoning Inspector testified that functionality could still be achieved if the shed complied with the side yard requirements.
- c) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance: Yes, being three feet from the property line; it could be an issue for subsequent neighbors although it appears there is a dense tree line that lessens the visibility. Being a substantial structure it would alter the character of the neighborhood.
- d) Whether the variance would adversely affect the delivery of governmental services: No.
- e) Whether the property owner purchased the property with the knowledge of the zoning restriction: No, according to the Notice of Appeal.
- f) Whether the property owner's predicament feasibly can be obviated through some method other than a variance: Yes, the Zoning Inspector testified that there is an alternate location for the shed that would be within the zoning requirements.
- g) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance: No.

h) Such other criteria which relate to determining whether the zoning regulation is equitable: None.

Mrs. Steffen confirmed that after Mr. Cuffari advised he would not be able to attend tonight she had explained to Mrs. Cudnik that four members of the board would be available for the hearing. Since a majority 'yes' vote of the entire board is required to pass a variance, she explained that if the vote were a tie of 2-2 the variance would not pass. Mrs. Cudnik had decided to proceed with the hearing tonight.

Mr. Downing made the motion to approve Variance Request #445 as submitted, Dr. Lerner seconded, and upon roll call the vote was Mr. Downing – No, Dr. Lerner – No, Mr. Madden – No, Mr. Gokorsch – No, and the motion failed unanimously by 4-0.

Variance request #445 was denied.

MINUTES OF JUNE 22, 2009 – *Dr. Lerner made the motion to approve the minutes as submitted, Mr. Madden seconded and the motion passed unanimously.*

OTHER BUSINESS – The Fire Chief has advised which days of the week and month the classroom at the Fire Station is available for meetings. At next month's meeting the board will discuss the possibility of changing its meeting dates in order to use the classroom.

There being no other business Dr. Lerner moved to adjourn, Mr. Downing seconded and the meeting adjourned at 7:55 p.m.

Respectfully submitted,

 Diana Steffen Date
 Secretary

 Steve Gokorsch Date
 Chairman