

Minutes: Russell Township Board of Zoning Appeals
Russell Town Hall
January 5, 2010

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

Also in attendance: Ric Machnics, Zoning Inspector.

The Chairman called the meeting to order at 7:02 p.m. and, with the agreement of the board, changed the sequence of the agenda in order to hold the hearing first.

CONTINUANCE OF VARIANCE REQUEST #446 Charles Watts, 8397 Top Rail Lane

Request for variances for an existing 48 sq. ft. accessory building located in the front yard in violation of Section 4.7.V, 13 feet from the east side property line in lieu of 30 feet required, and with a 51-foot front depth in lieu of 70 feet required per Section 5.2.B for a nonconforming lot in an R-5 district.

Mr. Cuffari made the motion to continue with the 2009 officers for the continuance of Variance Request #446 initiated last year, Dr. Lerner seconded and the motion passed unanimously.

The Chairman swore in all those in the audience who wished to testify.

Vice-Chair Mr. Cuffari, who had chaired the hearing at the previous meeting in the Chairman's absence, stated that the hearing was not closed but was continued to allow time for the applicant to submit additional information with respect to the sideyard impact of the shed, particularly if the shed were to be moved out of the front yard. Mr. Watts was also to meet with the Zoning Inspector on site to determine dimensions more accurately and to assess the site for alternative locations for the shed.

The applicant, Charles Watts, confirmed he was sworn in. He submitted an additional four photos to the Board that showed two possible locations for the shed, and said he and Mr. Machnics met on site and reviewed three locations suggested by the Board, which he numbered 1, 2 and 3.

Possible location 3: Mr. Watts stated that location 3, which he marked on photo #14 of the previously submitted photographs, was by the retaining wall on the patio behind his house. He indicated that location was not appropriate because it would be directly in front of a picture window with only six to seven feet clearance between the window and the shed. Mr. Machnics

explained that the southeast corner of the house is four feet from the retaining wall that encroaches eight feet to the rear, and agreed that if the shed was placed in that area it would be close to the window.

Possible location 1: Referring to photo #1 of the newly submitted four photos, Mr. Watts said that he had marked on it the edge of the driveway. Mr. Machnics confirmed this location would be out of the front yard, and would entail moving the shed 19 feet back from its existing location. Mr. Watts said he had marked on the photo the rise of three feet vertically if he moved the shed to that location. Photos #17 and #20 of the previous photos showed the slope clearly. He also said that photo #2 of the new photos showed Mr. Machnics standing where the upper side of the shed would be, and he had marked the five-foot vertical rise to that spot. Mr. Watts stated that to move it to location 1 would require a five-foot deep excavation, eight feet across, an excavation to turn the retaining wall and the addition of more drainage. Mr. Machnics concurred that the three and five-foot vertical rise dimensions were correct.

Mr. Cuffari asked Mr. Machnics if he had determined the distance to the side property line from location 1, and Mr. Machnics stated he believed the side of the house to be 36 feet from the side line, and the back of the shed would be approximately 15 feet from the side line if it was situated at the same angle to the driveway as now.

Possible location 2: Referring to photo #4 of the new photos, Mr. Watts stated this showed the area behind the retaining wall in the back yard that had been suggested for the shed. He said there is only four feet between the retaining wall and landscaping, which would not be enough room. There is also a three-foot rise from the level area on the patio. Mr. Gokorsch asked if the topography is flat in that area, and Mr. Machnics stated it is not, and the topographical map shows there is a 16-foot rise to the side property line. He also confirmed he had commented to Mr. Watts at the site that he was surprised to see the back yard was shaped like a bowl. Mr. Watts said he took photo #3 of the new photos to show that even though the ground was semi-frozen when Mr. Machnics was there, the photo shows the wetness coming through the snow in the footprints. Even with drain tiles and catch basins that area is still wet. Asked by Mr. Gokorsch if this wetness is not normal for turf in Geauga County, Mr. Machnics agreed and confirmed there is existing water there. He said that due to the topography the yard slopes down in that area. The house is in front of a swale that Mr. Watts created to get the water to run to the west part of the property and out, along with underground drainage and two catch basins. Mr. Watts stated that location 2 would block the only access to the hill behind the retaining wall that he has for his tractor. He can go down the driveway and around the shed now to mow the area on the east side of the property, but he cannot reach the hill area behind the retaining wall that way.

Reviewing photo #4 of the new photos, Mr. Downing asked Mr. Machnics if there was more than four feet between the retaining wall and the landscaped area. Mr. Machnics stated there was only four to five feet, and six feet to the rocks in the landscaped area.

Mr. Watts stated he had contacted the Hackamore Woods Architectural Control Committee and was told there was nothing to discuss.

Asked by Mr. Downing if all three possible locations were practical, Mr. Machnics stated he believed they are all possible. However, there would be expense involved, although the applicant has already incurred expense in the existing location. The cost depends on how Mr. Watts would want to construct the base of the structure, either permanent or removable in a few years, which was mentioned by Mr. Watts at some point. There would not be substantial expense if the base was temporary, but there would still be some cost. Mr. Watts then said that possible locations 1 and 2 would incur expense due to the excavation required. Possible location 3 would not require excavation but he would not want to put it there due to the window and the impact when moving anything through the patio. Mr. Machnics did not agree and said it would be within the setback limits in that location.

Mr. Madden asked Mr. Watts if possible locations 1 and 2 would be worth the expense for him, and Mr. Watts replied that they would not. He would take the shed down instead but ask to wait until the spring to do so. He said he has already put thousands of dollars into the property and the house, and it is now worth little more than when he purchased it, and he did not wish to go to further expense with the shed.

The Chairman asked for comments from the audience.

Resident Bill Mason, Chair of the Hackamore Woods Architectural Control Committee, confirmed he had been sworn in. He showed two photographs of the shed in relation to the front of the house, which he said is the most critical factor to the neighbors and the Committee. One photo showed the shed in a view from the east looking west, which Mr. Mason stated completely blocks the view in that direction. He said both photos show how far the shed is located into the front yard. Mr. Mason read aloud his letter dated 11/17/09, in which he stated that because the lots in the subdivision are only about one acre it is critical to have strict adherence to zoning rules pertaining to setbacks. The deed restrictions mirror the setback requirements of the Zoning Resolution. Both the Architectural Control Committee and the Homeowners Association believe the three variances should not be granted; no submission was ever made to them for this structure although there has always been such a requirement. The structure would have been disapproved due to its not meeting zoning requirements in addition to any aesthetic considerations that the Committee might have had. Since there is already one large storage building in the back yard, another shed could also be placed there. The water issues were dealt with for the large building and could be again by changing the grading and raising the building floor level. Although he sympathized with the applicant over the money spent to build the shed, both the Committee and Homeowners Association believe the variances requested are excessive and should not be granted. Mr. Mason also stated that temporary structures are not permitted, and he confirmed that the front and side setback deed restrictions are identical to Russell's zoning rules.

Resident Matt Galemmo confirmed he was sworn in, and stated that having been on the Board of Zoning Appeals for many years he knew it tries to work with the community and may come up with suggestions to make a structure comply with zoning, but it is not the Board's responsibility to do this. If the applicant does not wish to accept the suggestions that is his choice, and he will have to decide whether to move it elsewhere on his property or remove it entirely.

David Kruse, President of the Hackamore Woods Homeowners Association, confirmed he had been sworn in and stated that the Association would like to offer help to the applicant to move the shed into the back yard if Mr. Watts decided to do this. Mr. Kruse said he personally would be happy to assist, as would some other neighbors.

There being no further comments, Mr. Cuffari made the motion to close the public portion of the hearing for the variance request, Mr. Madden seconded and the motion passed unanimously.

The Board identified exhibits as follows: Applicant's exhibit #2 – four photos identifying alternate locations 1 and 2 for the shed; Applicant's exhibit #3 – GIS site plan showing the location of the lot, house, topographical lines, and which shows the current and some proposed locations of the shed, where proposals 1, 2 and 3 are identified; Applicant's exhibit #4 – previously submitted photos labeled 13 to 16, of the side and back yard showing the relative distance from the corner of the house to the retaining wall with one of the locations on the back patio identified as location 3; Hackamore Woods Homeowners Association exhibit #2 presented by Mr. Mason.

Mr. Downing made the motion to accept as submitted Applicant's exhibits 2, 3 and 4 as previously identified, and Hackamore Woods exhibit #2, which consists of a letter and photo. Mr. Cuffari seconded and the motion passed unanimously.

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: No testimony was presented as to any effect.
- b) Whether the variance is substantial: Yes, according to testimony presented to the Board. In its current location the shed needs a 56% side yard variance, 27% front yard depth variance, plus a variance to permit an accessory building in the front yard, all of which are also prohibited by the deed restrictions of Hackamore Woods. These factors are mitigated by the fact that the yard is unusual since testimony presented indicated it is bowl shaped and has water issues. However, there does not appear to be an alternative that is acceptable to the applicant, although several with either no or less substantial impact were discussed during the hearing.

- 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: The Board agreed that testimony was heard that the essential character of the neighborhood would be altered since there are no other accessory buildings in the development that are located in the front yard. No facts were presented that adjoining properties would suffer a substantial detriment, even though the current location is not preferred by the Homeowners Association. No appraisals of neighboring properties were presented to indicate a lowering of property values due to the shed's proposed location. Mr. Madden said he believed there to be a detriment to adjoining properties due to the visual effect, and to the Homeowners Association that has rules that must be followed.
- 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: No facts were heard to indicate another solution which was acceptable to the applicant. The applicant stated there would be additional expense to move the shed but no costs were provided. Mr. Cuffari said that of the other possible locations, location 1 might be viable but would require a variance, and he felt there is no viable solution that would not require a variance. Mr. Downing said there are other possible locations that would at least require fewer variances than the three requested. Mr. Madden said that locations 1 and 2 were suggested because the applicant had indicated he could move the shed, but the applicant also said moving it to the back yard was not ideal and if he could not keep it in its current location then he would take it down. The Homeowners Association had indicated the back yard was a viable location, and testimony presented by the applicant at the last meeting indicated that the storage shed in the back yard contains an ATV. Mr. Cuffari disagreed because of the water in the back yard causing difficulties for bicycles to be stored there. The Board agreed that alternatives to the present request existed, but one would still require a variance.
- g) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance: All members of the Board said no. Mr. Cuffari commented that he believed possible location 1, which would require one variance, might be acceptable to the spirit and intent of the Zoning Resolution. However, the applicant would also have to satisfy deed restrictions that go beyond the authority of the Board of Zoning Appeals. Additionally, the applicant testified he is not interested in this location.
- h) Such other criteria which relate to determining whether the zoning regulation is equitable: None.

