

Minutes: Russell Township Board of Zoning Appeals  
Russell Fire-Rescue Station  
January 31, 2011

Present: Steve Gokorsch, Chairman  
Fred Cuffari  
William Downing  
Diana Steffen, Secretary

Also in attendance: Ric Machnics, Zoning Inspector.

The Chairman called the meeting to order at 7:01 p.m. The Secretary announced that a legal notice for tonight's hearing was published in the News Herald and Chagrin Valley Times on 01/20/11, and was sent by certified mail to the applicant and neighbors on 01/13/11.

**VARIANCE REQUEST #457 Kai & Kerry Monahan, 7635 Twin Lakes Trail**

Request to locate a 1,950 sq. ft. accessory building in the front yard of a corner lot in violation of Section 5.2.B "side yard on the street side of a corner lot shall be the same as the front yard required for that street," and 4.7.V "accessory buildings shall not be located in the front yard."

Mrs. Kerry Monahan was in attendance. The Chairman swore in Mrs. Monahan and Mr. Machnics, and then advised the applicant that the board currently has only three members, which means that to grant the variance there must be a unanimous yes vote of 3-0. Because of this situation he asked the applicant if she would prefer to defer the hearing until there is a full board. Mrs. Monahan stated she would like to proceed tonight with three members on the board.

The Vice-Chairman opened the public portion of the meeting.

Mrs. Monahan stated that she and her family moved into their home last June and soon realized they needed an accessory building to house extra vehicles, an indoor workshop and an athletic area for their children consisting of a bounce-back wall for practicing lacrosse and softball. There would be a basic utility area on the first floor and the second story would be for storage. She would like it to resemble a guest house rather than a garage, but it would definitely not be used as a guest house.

Mr. Machnics confirmed that the accessory building must be located behind the front line of the house. He explained that the appeal is necessary because the property is a corner lot. The front of the residence faces Twin Lakes Trail, and there is another front yard fronting on Hemlock Road. This limits the backyard area of the existing residence and limits the area for constructing an accessory building.

Mr. Machnics also confirmed that the front of the accessory building must be located behind the shortest distance to the house from the edge of the right-of-way. Due to a discrepancy over the dimension of the residence to the right-of-way of Twin Lakes Trail Mrs. Monahan stated that the surveyor's plan submitted with their application shows the correct dimension of 189 feet. The proposed accessory building is shown on the site plan at 193 feet and therefore will be located behind the front of the residence.

Because there are two large areas that are considered front yard Mr. Machnics stated that this limits the area where the accessory building can be placed. Mrs. Monahan stated that the septic system and field are situated behind the residence. There are thick woods on the side line to the west. Mr. Gokorsch asked if the fact that the corner lot is not perpendicular has any bearing on the appeal and Mr. Machnics stated that it does not, the measurements are taken at the shortest points. Mrs. Monahan said that the only location in compliance with zoning is behind the house and that is not practical due to the septic system and the septic field, which would have to be driven over to reach any building there. Also it would spoil the view from the screened-in porch on the back of the house. She said it is logical to have a connecting driveway from the existing driveway opposite the attached garage. It is heavily wooded to Hemlock Road so the accessory building would not be visible from that road. Asked if there was a reason

the residence was so close to the side line Mr. Machnics stated that Brad Remington, the builder who had completely renovated the residence, had obtained a variance for an addition on that side.

At this time the Chairman swore in Mrs. Corinne Reid, 7660 Twin Lakes Trail, who had just arrived.

Mrs. Monahan stated that their basement is unfinished and 'choppy.' Originally they planned to redo the basement but it is only useful for storage. She said that for aesthetics they plan to match the accessory building to the residence and will add a porch plus a dormer window in the roof. She said they can be flexible about the size. Mrs. Reid was advised there is not a limitation on size.

Mr. Cuffari asked Mr. Machnics if the building can practically be located in the rear yard or side yard considering the location of the septic fields. Mr. Machnics said no, the area behind the house with the septic system would be impractical, since the applicants will need their vehicles and tractor to have access to the building, and it is not practical to have them traverse the septic fields. If placed farther back behind the septic area the building would encroach on the rear yard setback of 100 feet.

Mr. Cuffari asked if there is access for safety equipment to the back yard, and Mr. Machnics replied that it would be more practical for them to access the proposed location, since safety vehicles could drive up the driveway direct to the structure.

Mr. Cuffari asked Mr. Machnics if, in his opinion, the proposed location is out of character for the neighborhood. Mr. Machnics replied that it is not. Mrs. Monahan noted that their neighbors to the west, the Dolans, have an accessory building similar to the one they are proposing that is also located to the side of the residence.

Asked by Mr. Gokorsch if there is a conflict with the location of the replacement septic field, Mr. Machnics stated no; when he met with Mr. Monahan he had asked him about this and had reviewed information in the property file and there do not appear to be any issues.

At Mr. Downing's request Mrs. Monahan showed on the site plan the locations where they took the seven photos they had submitted of their property from Twin Lakes Trail and Hemlock Road. She said that even in winter their home cannot be seen from the roads, as shown in several of the photos. Mrs. Reid confirmed that the area between the proposed building and the roads is heavily wooded. Mr. Downing identified the photos by number on the site plan along Hemlock Road and Twin Lakes Trail relative to their orientation, as shown by Mrs. Monahan. Mr. Downing asked Mr. Machnics if he would agree that the house is not visible from the roads because of the wooded area, and Mr. Machnics replied yes.

Mr. Gokorsch said that the site plan shows the proposed building to be 64 ft. by 40 ft. which is 2,560 sq. ft. This conflicts with the application for the zoning certificate where the applicant had put it at 1,950 sq. ft. He asked which square footage is correct, and Mrs. Monahan said the larger size includes a porch. Mr. Machnics said he understood that whether or not there is a porch the footprint is going to be 2,560 sq. ft., and Mr. Monahan had advised him he would clarify this. (Later, after the hearing was closed, Mrs. Monahan received a text message from her husband confirming that 2,560 sq. ft. is the correct size and that this includes a porch.)

There being no further testimony or questions, *Mr. Cuffari made the motion to close the public portion of the hearing, Mr. Downing 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: Yes, no testimony was presented to indicate the property could not continue to be used as it is now.
- b) Whether the variance is substantial: Mr. Cuffari said that with the building in the middle of the front yard it appears to be substantial, but due to the natural screening of trees across the lot he felt it is

not substantial in this case. Mr. Gokorsch said he felt it is substantial under any circumstances due to the large size of the building and its location in the front yard, but this is mitigated by the wooded screening rendering it not visible from the roads, plus the unusual shape of the lot, a "U" shape and not a normal 'L' shape which also makes it less visible. Mr. Downing said he believed that the location is really a side yard with a front yard setback rather than a front yard. Mr. Machnics commented that he interpreted the Zoning Resolution, Section 5.2.B at the three asterisks to mean a corner lot has two front yards, and Section 4.7.V does not permit accessory buildings in the front yard. The board concluded that the variance is not substantial since the building appears to be in the side yard, but it is the Township's interpretation that it is in the front yard.

- 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 Zoning Inspector had testified that the proposed variance would not have any impact on the character of the neighborhood. No other testimony was received, although the applicant had submitted photos from the two roads that indicate the building will be shielded by woods.
- d) Whether the variance would adversely affect the delivery of governmental services: No testimony was provided on this. However, the board agreed that, if the variance is not granted and the building is constructed in compliance with zoning behind the residence, there will be a safety hazard due to the difficulty of access by safety vehicles.
- 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, the residence was built on one side of the lot, thus creating a large front yard, and with the septic system behind the residence there is nowhere feasible that is in compliance with the zoning regulations.
- g) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance: Yes.
- h) Such other criteria which relate to determining whether the zoning regulation is equitable: Mr. Gokorsch said important criteria include testimony regarding the shape of the lot and screening by the trees. Although the structure is large it will not be visible from the two roads.

*Mr. Cuffari made the motion to approve Variance Request #457 as submitted, Mr. Downing seconded and upon roll call the vote was Mr. Cuffari – yes, Mr. Downing – yes, Mr. Gokorsch – yes, and the motion passed unanimously by 3-0.*

Variance Request #457 was granted.

**MINUTES OF JANUARY 10, 2011** – *Mr. Cuffari moved to approve the minutes as submitted, Mr. Downing seconded and the motion passed unanimously.*

**ALTERNATE MEMBERS** – Mr. Gokorsch reported on his discussion with the Board of Trustees at a recent Trustees meeting. He had explained that the board was unanimous in agreeing that having alternates will not solve a non-existent problem. One of the Trustees felt that since some members of the board may retire before long and need to be replaced there should be alternates who are ready to step up. Mr. Gokorsch had explained the reasons the board did not feel this was appropriate, and that there are many procedural questions. Mr. Machnics said that the Board of Trustees would need to establish definitive rules and protocol for the board to use. He understood the main issue that other townships have is that although alternates are eager to attend meetings when they start, as time goes on they lose interest and may not attend meetings. He said he would like to see alternates, because there are times when he is aware that there will not be a full board in attendance at a meeting and he gives an applicant

the option of waiting until there will be a full board. There have been times when the applicant opts to do this.

Mr. Cuffari said that unless protocol is clarified by legal counsel and unless there are rules and procedures in place, he would excuse himself from a meeting where an alternate was to take the place of a regular member. It was agreed that if the Board of Trustees decides to have alternate members there must be procedures and protocol written into a resolution per the requirements of the Ohio Revised Code.

**OTHER BUSINESS** – Mrs. Steffen said that Justin Madden attended his first Zoning Commission meeting and was asked by the Commission if the Board of Zoning Appeals had any issues with interpretation of the Zoning Resolution in appeals that Mr. Madden had been involved in. Mrs. Steffen asked the board if there were issues it would like to relay to Mr. Madden for the Zoning Commission to discuss. The board asked her to tell Mr. Madden that there was some confusion over the definition of front yard in a corner lot, and that there were questions discussed at the last zoning workshop that have not been resolved. Mrs. Steffen will provide a copy of the last workshop's minutes to Mr. Madden.

Mrs. Steffen mentioned that Laurel School is preparing its annual update of the Environmental Management Plan. The Facilities Director, Mary Ann Pellerano, has asked if the board's review could take place at the April meeting since she is unable to attend the March meeting. The board agreed to this request.

There being no other business, Mr. Cuffari moved to adjourn, Mr. Downing seconded and the meeting adjourned at 8:10 p.m.

Respectfully submitted,

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Diana Steffen  
Secretary

Date

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Steve Gokorsch  
Chairman

Date