

Minutes: Russell Township Board of Zoning Appeals
Russell Fire-Rescue Station
April 4, 2011

Present: Steve Gokorsch, Chairman
Fred Cuffari
William Downing
Charles Johns
John Rybak
Diana Steffen, Secretary

The Chairman called the meeting to order at 7:00 p.m. and announced that Ric Machnics, Zoning Inspector, was out of town and unable to return in time for the meeting. The Chairman then swore in all those in the audience who planned to give testimony during the hearings.

LAUREL SCHOOL Conditional Use #380

Annual Review of Environmental Management Plan

Kathy Jankowski, Knight & Stolar, Inc., 3029 Prospect Avenue, Cleveland, stated she was sworn in. She was representing Laurel School tonight, being the landscape architect for the school. She explained that Mary Ann Pellerano, Director of Facilities Services, had planned to attend, but something unavoidable just came up. She introduced Stuart Smith, the new groundskeeper at the Butler Campus. Ms. Jankowski stated that Laurel School has submitted the Environmental Management Plan (E.M.P.) annually to the Township since 2002, and this acts as a check to make sure the maintenance program is followed as far as not over-applying chemicals and using good green management practices. The E.M.P. was submitted on 02/02/11 to the Township and its consultant, the Chagrin River Watershed Partners (C.R.W.P.), who reviewed it and only found a few problems with log keeping. Some daily logs did not include weather data, but it was found that recommended guidelines were in fact followed as far as chemical application at the appropriate time for the weather conditions and lack of rain for 48 hours following application. Ms. Jankowski stated that in future Ed O'Connell, Maintenance Manager, Facilities Services, will oversee the log keeping. She also stated that they are still working to eradicate invasive species such as buckthorn.

Asked about frequent use of Prosecutor, a herbicide, Ms. Jankowski said it was applied throughout the season where needed, but to limited areas at different locations, such as trails, edges of the fields and tennis courts. They do not spray close to the ponds. At the end of the season they test the ponds and have found no trace of this herbicide in them. She said they review usage with C.R.W.P., and that the 9-gallon application rate includes just 4 ounces per gallon of Prosecutor.

Ms. Jankowski explained the drainage from the fields to the irrigation ponds, and said there is a large buffer between the ponds and the creeks. Every year they use less fertilizer and it appears the filtering is working well since there is no algae in the ponds.

Asked about the record keeping Ms. Jankowski showed the board the forms used, and said that at their own annual review they tweak the forms as required. Last season started well, but after a while the groundskeeper did not record all the data on the forms, which was one reason he no longer works for Laurel School. Now Ed O'Connell will review the data weekly at the campus to provide more internal controls. She has also reviewed the E.M.P. with Stuart Smith, the new groundskeeper, and emphasized that the data must be recorded. Mary Ann Pellerano, as Director of Facilities Services, will also oversee the work at the Butler Campus. Ms. Jankowski agreed to have Mr. O'Connell initial the forms when he reviews them as a matter of protocol.

Ms. Jankowski said the water wells have been capped now that the campus is tied in to the waterline. The septic system is operational. Stuart Smith said that the entire system is inspected weekly by a septic company. The water is recycled several times through the system before it goes to the mounds and drains out. Ms. Jankowski said it then leaches into the wooded areas, which are a long way from Griswold Creek.

Mr. Cuffari made the motion to approve Laurel School's Environmental Management Plan Update as submitted, Mr. Johns seconded and the motion passed unanimously.

Mrs. Steffen announced that she published a legal notice for the following two hearings on 3/24/11 in the News Herald and the Chagrin Valley Times, and mailed it by certified mail to the parties and neighbors on 3/18/11.

VARIANCE REQUEST #458 Deer Lake Estate Homeowners Association

Request to locate a boat dock and canoe rack with a 5-foot sideyard in lieu of 50 feet required in an R-5 zone per Section 5.2.B. Property is currently part of 9090 Fawn Court, but 0.1981 acres is proposed to be replatted as part of a land swap between 9090 Fawn Court (owner: Susan Slovich) and Block A (owner: Deer Lake Estates Homeowners Association).

In attendance were John Wurzbarger, President of Deer Lake Homeowners Association (H.O.A.), Susan and Mike Slovich, James and Angela Hambrick, and attorney Jeffrey Huntsberger.

Jeffrey Huntsberger confirmed he was sworn in and stated he was with McDonald Hopkins, LLC, was representing the Hambricks, but would also be speaking for the Slovichs and the H.O.A. Referring to the submitted site plan, Mr. Huntsberger stated that the goal was to obtain access to Deer Lake by residents who own homes in Deer Lake Estates. The H.O.A. owns the area shown on the plan as Block A, the Hambricks' home overlooks the lake, and the Slovichs' home is to the north. The original Declaration written when the subdivision was platted includes a restriction of no permanent structures on Block A. The H.O.A. wishes to install a boat dock and canoe rack, both of which are considered permanent structures. To solve this problem the Slovichs are offering to swap some property with the H.O.A., and the new H.O.A. land, shown as Parcel 1 on the plan, would be the location for the dock and rack, since it would not be subject to the same restriction as the rest of Block A. However, the proposed dock and rack would then be only five feet from the Slovichs' new boundary line, and so a variance is required. Mr. Huntsberger said the Slovichs and Hambricks are in favor of this solution because the dock will be hidden from view of both their homes. The dock will be built into the side of the slope by the lake. The H.O.A. also favors this location.

Mr. Gokorsch asked about the sequence of events required. Mr. Huntsberger replied that he is working with David Dietrich at the Geauga County Planning Commission (G.C.P.C.), and he understands that the restrictions on Block A will not apply to Parcel 1, even when it is added to Block A. The H.O.A. will obtain title insurance on this from Chicago Title that will state that the Block A restrictions will not apply to Parcel 1. There will be a replat of Block A and the Slovich parcel. Mr. Huntsberger stated that he has also been a member of the G.C.P.C. for seven years, but is not aware of a similar land swap having been done before. Mr. Gokorsch asked why the H.O.A. cannot remove the restriction on Block A, and Mr. Huntsberger stated that to do so would require unanimous approval of all members, which is exceedingly impractical. There are 35 homes in Deer Lake Estates.

John Wurzbarger, 15571 North Ridge Drive, confirmed he was sworn in. He stated he is the current President of the H.O.A. When a survey was sent to their residents the number one issue was a lack of access to the lake for recreational uses. Because unanimous approval is required to change the Block A restriction for permanent structures they asked everyone to vote, and the results were: 3 or 4 did not vote, 26 to 27 approved a change, and 2 or 3 voted against. The H.O.A. then agreed to proceed with finding a resolution, and the Slovichs, Hambricks and the H.O.A. have worked hard to come up with this solution. Mr. Wurzbarger said the H.O.A. is also working on changing the rules and regulations, which does not require a unanimous vote. Mr. Huntsberger confirmed for Mr. Downing that when Parcel #1 on the site plan becomes part of Block A, there will be no boundary line but the restrictions on Block A will not apply to Parcel #1.

Mr. Gokorsch asked the size of the proposed dock. James Hambrick, 9099 Fawn Court, confirmed he was sworn in, and stated he is the adjacent neighbor to Block A. Mike Slovich, 9090 Fawn Court, confirmed he was sworn in. Mr. Hambrick said he has agreed to provide the funds to build a first-class recreation area on Parcel #1 and Mr. Slovich has agreed to swap that area he now owns with an equal-size piece from Block A. Although there is only a rendering of the dock so far, he expected the dock and associated deck to be about 20 ft. by 20 ft., or about 400 sq. ft. It may go along the lakeshore 25 ft. and then back about 15 ft. They have

not yet engaged a landscaper designer. They would like to locate the dock five feet from the Slovichs' new property line. Asked about the canoe rack Mr. Hambrick stated there is a swale that cuts into the side of the hill and they would like to place it there, where it will be out of sight. They may landscape around the top, but there will not be any structure there, just the canoe rack. Mr. Huntsberger noted that if it is placed farther from that property line it will be visible from Mr. Hambrick's home. Mr. Rybak asked if there are photos showing the views from the Slovichs' and Hambricks' homes to that area, and Mr. Slovich replied that there are not, but the topographical lines on the site plan show the steep drop off from his property.

The Chairman asked for comments from the audience. Cal Block, 8960 Lanes End Drive, confirmed he was sworn in, and objected to the variance request because it will cause a precedent to be set for others wanting to locate a structure close to a property line. He said there is access to the lake for everyone who lives in the development via trails on both sides of the lake. He said there are more members of the H.O.A. who object and that most were not even aware of the proposal until some of them received the notice of the hearing from the Township. There are several members who do not accept changes to the bylaws, so there is not 100% acceptance as required. He is concerned at the liability for the H.O.A. if a nonmember has an accident with a boat or canoe and files a lawsuit. Mr. Cuffari explained that each request is handled on merit and no precedent is set by decisions of the board. Mr. Wurzbarger refuted the contention that members were not aware of the proposal, by explaining the process the H.O.A. had used to notify members.

Mr. Gokorsch asked about emergency access to the dock and lake. Mr. Huntsberger stated that there is a path now that will be improved for easier access, but it will still be just a path. Mr. Hambrick stated the right-of-way from Fawn Court to Block A is eight feet wide. Mr. Downing recommended that if there is to be increased activity at the lake there must be adequate access for safety forces. Mr. Hambrick said the dock area will be just above the water with room for a few chairs. Mr. Downing said there was nothing in the application regarding height or dimensions of the dock. Mr. Slovich showed the board photos of the existing dock on his property, which is similar to the one proposed. Asked by Mr. Gokorsch if they were willing to modify the request to clarify the maximum size of the proposed dock, Mr. Huntsberger agreed, and Mr. Hambrick and Mr. Slovich stated 400 sq. ft.

The Chairman asked for questions from the board. Mr. Downing asked if emergency vehicles can go down the access path, and Mr. Huntsberger said that pickup trucks go down there on a regular basis, since that has been the access to Block A for the past 20 years. Mr. Wurzbarger said they will put more gravel on the trail. Mr. Huntsberger said they will talk to the Fire Department about the access trail. Mr. Downing asked if people bring boat trailers down to the lake, and Mr. Huntsberger stated they are not permitted, only kayaks and canoes, and the purpose of the rack is so people can keep them there, and the H.O.A. will have some there for common use. They do expect additional use of the lake, but the members have said they will use it perhaps once or twice a year, and some a few times a month. Mr. Johns asked if there was a second access to the lake, and Mr. Huntsberger said there was one on the other side of the lake that is rarely used. Mr. Huntsberger asked Mr. Hambrick if there is access to the dock through his property, and Mr. Hambrick replied that his home is on the same hill as Block A and the dock, and he built a paved driveway on the south end of his property that is a full width, so an ambulance could go down it and across his back yard to the lake and dock. Although he has an electric gate at the entrance to his property, when the Fire Department puts on its siren the gate automatically opens. Mr. Block said that Mr. Hambrick's back yard is mostly grass and if it was wet an emergency vehicle could not get down the hill.

There was a discussion between Mr. Block, Mr. Huntsberger and Mr. Wurzbarger regarding the H.O.A.'s efforts to find a resolution.

Mr. Gokorsch said that one of the factors the board must consider is whether the variance will affect the delivery of governmental services. So far there has not been any expert testimony presented as to whether more people are at risk due to the increased usage of the lake if the variance is granted. He said he would like the Fire Department to provide feedback on the access for its vehicles to the lake area. Mr. Huntsberger agreed to contact the Fire Department.

Mr. Downing asked for dimensions to be shown on the site plan of the exact location of the canoe rack and the exact dimensions of the rack and dock.

After discussion with Mr. Hambrick, Mr. Huntsberger asked for a continuance to the next meeting.

Mr. Cuffari moved to continue Variance Request #458 to the next regularly scheduled meeting, Mr. Rybak seconded and the motion passed unanimously.

VARIANCE REQUEST #459 Douglas & Ellen Naylor, 7029 Kinsman Road

Request for a front yard setback of 105 feet for an addition to the residence in lieu of 125 feet required in an R-5 zone per Section 5.2.B. Existing front setback is 112 ft. 4 ins.

Mrs. Ellen Naylor and her architect George Clemens were in attendance. The Chairman swore in Mr. Clemens.

George Clemens, 35 South Main Street, Chagrin Falls, confirmed he was sworn in, and stated the request concerns a residential addition for a lot on Kinsman Road. He showed the board a topographical map of the area, and said the property is located on the big hill on Kinsman Road going east from Falls Road. There is also a steep ravine below the property that is 50 feet deep, so the residence cannot be seen from either uphill or downhill from the road.

Mrs. Naylor confirmed she was sworn in earlier, and stated that the residence was built in 1858. Mr. Clemens stated that there is a guest house in front of the residence that predates zoning and the current setback requirements. He said the Naylor's are new owners who wish to preserve the house but make it suitable for today's needs for their family. The plan is for a kitchen addition that, due to the location of the guest house, appears to be in the back yard. The entry to the residence does not face the road but is on the east side of the house, so it is really a side addition that is considered a front addition due to it being on the Kinsman Road side of the house.

Mr. Clemens said the photos submitted with the application show that only the guest house is visible from Kinsman Road. Because the guest house is in front of the residence, and because there is a privacy fence beside the guest house, plus the ravine, the main residence is not visible from the road. The addition will be behind the privacy fence and the guest house. It is a one-story addition to match the Western Reserve nature of the house and will not be visible from the road. The neighbors on the other side of Kinsman Road are significantly closer to the road than this residence. Mr. Clemens presented an aerial photo showing the subject residence and three neighboring residences on the other side of the road, with the dimensions to the center line of Kinsman Road. The three residences were all closer than the subject residence, being 60, 70 and 100 feet, compared to the Naylor's home that is 112 feet. Mrs. Steffen confirmed that the zoning is R-5 on both sides of Kinsman Road.

Mr. Clemens said they want to keep the value of the property and preserve the old house. If it is not made more functional there is a chance that someone would tear it down. This owner wants to make it better to live in. He showed the board the existing footprint of the home and the guest house, and the proposed layout of the kitchen that will provide a more functional area. He said the addition will be complementary to the existing Western Reserve style.

There being no further comments, *Mr. Cuffari made the motion to close the public portion of the hearing, Mr. Johns 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: There was no testimony about the impact of the variance on the subject property, but the board agreed that for such an old house the proposed expansion of the kitchen area will make the use of the property consistent with modern day living, and therefore it would be at a disadvantage as regards value if the variance is not granted.

