

Minutes: Russell Township Board of Zoning Appeals  
Russell Fire Station  
April 19, 2007

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

Also in attendance: Ric Machnics, Zoning Inspector.

A sunshine notice to reschedule the regular April meeting from April 23 to tonight was sent to five newspapers on 04/06/07, and was posted at the Administration Building. A notice was also posted on the doors of the Historic Town Hall announcing the change in location to the new Fire Station at 14810 Chillicothe Road. The meeting date was rescheduled so that a full board would be available for Variance Request #435.

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

**APPEAL #435 Ted Poucher, 8611 Kinsman Road**

Request for two variances to construct an attached garage, specifically a side yard setback of 20 feet in lieu of 50 feet required and a rear yard setback of 82 feet 9 inches in lieu of 100 feet required per Section 5.2.B in an R-5 zone.

In attendance were Mr. and Mrs. Ted Poucher and their representative, J. Albert Klauss.

The Secretary confirmed that the legal notice was published in the News Herald on 04/09/07 and was sent to the applicant and neighbors on 04/06/07. The Chairman swore in the applicants, Al Klauss, Ric Machnics and those in the audience who planned to provide testimony or make comment.

Mr. Klauss stated the property is located on the south side of Kinsman Road, a few lots east of the Russell Administration Building. The house was moved from the corner at S.R. 306 a long time ago onto the nonconforming lot that is too narrow for the R-5 zone in which it is situated. The Pouchers purchased the property much later and have put an addition on the rear of the house. The property is limited in building area due to there being a large ravine/swale that goes through the lot to S.R. 87, with the land falling from the house to the ravine on the east side.

Mr. Klauss explained that there is an existing old barn that was there when the Pouchers bought the property; it is dilapidated and the Pouchers' insurance company will no longer insure it. They wish to tear down this structure and rebuild a new garage on almost the same footprint, but with a new foundation. He presented photographs showing the ravine, existing barn and topography. He presented drawings of the front of the house and new garage with a covered walkway connecting the two, the floor plan of the current barn with the proposed new floor plan superimposed on top and the required 100-foot rear yard setback and required 50-foot side yard setback marked on it in orange. The existing barn is nonconforming, being 82' 9" from the rear line and 20 feet from the west side line. Mr. Klauss stated that the proposed garage will not encroach any farther into the setbacks, although it will have a different configuration on its east side; the new footprint was highlighted in pink. The existing barn is 1600 sq. ft. and the proposed garage is 1680 sq. ft.

Mr. Klauss submitted letters from two neighbors supporting the variance, but neither were in attendance. Donna Weiss Carson, owner of the lot directly abutting the affected part of the rear line, was in attendance and stated she had no objection to the variance.

Mr. Klauss presented photos showing 1) the back of the residence showing an above-ground pool next to it, with the grade falling away from the pool area; 2) the pool; 3) the back of the house that contains the master bedroom with a bay window looking towards the rear and a patio on the east side, also showing window wells under the

bay window and on the side of the house. There is a finished basement below the bedroom and the window wells bring in natural light to the basement and also access in case of fire. It is not possible to build in front of the home and if the garage was located farther forward it would block access to the house.

Ted Poucher stated that the septic leach field is in front of the house and the secondary field is in the flat area in the rear on the east side. He said that the lower area on the east side and to the front of the lot is like a river when it rains. He stated that his house is approximately 500 feet from Kinsman Road and the neighbor's house adjacent on the west side is approximately 250 feet from Kinsman Road.

Mr. Klauss stated that woods surround the entire rear part of the property and there are no houses to the south. Mr. Poucher stated there is an old shed on his property; Mr. Machnics said it is about 20 feet from the east side line. Ms. Weiss Carson stated the barn on her property is about 1200 feet from the Pouchers' rear property line. She said that replacing the existing structure will be an improvement and using the same footprint is an excellent idea.

The Chairman opened the hearing to the audience. Zoning Inspector Ric Machnics stated that if the applicant built on top of the existing foundation then no variance would be required, but he understood Mr. Klauss had investigated and determined it would not be substantial enough to carry the new structure. Mr. Machnics said he had suggested moving the above-ground pool, but Mr. Klauss felt that having the barn directly behind the house would not meet the needs of his clients. Mr. Klauss said if they turned the barn it would still need a rear yard variance and would be very close to the house, blocking the bay window and light to the basement. It would also not be appropriate on a five-acre lot to sandwich it in behind the house. Mr. Machnics also pointed out that since the proposed structure is attached to the house it could be located in front of the house and not require a variance. Mr. Klauss stated that architecturally and taking the site and location of the house into consideration, the proposed site is the appropriate location. He said the existing structure must be removed due to its poor condition and the fact that it cannot be insured. Mr. Machnics confirmed that it is dilapidated.

There being no further testimony, Mr. Downing made the motion to close the public hearing, Dr. Lerner seconded and the motion passed unanimously.

Applicant's exhibits were identified as follows: 1) Photo of pool; 2) Photo of rear of home; 3) Photo of residence showing window wells; 4) Site plan with setbacks as well as footprint of old and new structures.

*Mr. Downing made the motion to accept Applicant's Exhibits 1, 2, 3 and 4 as submitted, 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: Yes.
- b) Whether the variance is substantial: Yes, but there are mitigating factors: a) proposed structure will be on nearly the same footprint as the old barn; b) the floor space is only increasing 80 sq. ft. out of 1600 sq. ft.; c) the degree of nonconformance to the rear and west side will not increase; d) it is consistent with the property to the west that has similar side yard dimensions; e) the houses on either side are much closer to the road than the applicant's house, making 250 feet between the proposed structure and the neighbors' homes; f) the applicant's lot and the two adjacent lots are long and narrow.
- 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: No, the Zoning Inspector stated the existing barn is dilapidated and a neighbor testified it would improve the neighborhood; the new structure will be on nearly the same footprint and the Zoning Inspector testified that if the foundation was not so poor it could have been built without a variance, and having a new foundation does not alter 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: The appellant stated "No" in the application.
- f) Whether the property owner's predicament feasibly can be obviated through some method other than a variance: The Zoning Inspector had suggested that the garage could be put in front of the house in the front yard, since it is to be attached to the house.
- g) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance: Yes, since the new structure is on the same footprint as the old one, it is a replacement and will be only 80 sq. ft. bigger.
- h) Such other criteria which relate to determining whether the zoning regulation is equitable: None.

*Mr. Cuffari made the motion to approve Variance Request #435 as submitted, Dr. Lerner seconded and upon roll call the vote was Mr. Cuffari – yes, Mr. Downing – yes, Mr. Galemmo – yes, Dr. Lerner – yes, Mr. Gokorsch – yes, and the motion passed unanimously.*

Variance request #435 was granted.

**RIVENDELL SUBDIVISION – Conditional Use Application #422, Permit #2991** – The Zoning Department has determined that a detention basin has been built in the Open Space area which is protected from any disturbance by a conservation easement held by the Russell Township Board of Trustees and Park Commission. Dale Markowitz, attorney for McGill Properties, developer of Rivendell Subdivision, had asked to be on tonight's agenda to explain why this happened. In attendance were Mr. Markowitz, Tom Beutler, engineer with Land Design Consultants, and Rebecca Schlag, Assistant Prosecuting Attorney.

Mr. Markowitz submitted to the board the Soil & Water Pollution Prevention Plan for Rivendell Subdivision dated May, 2005, and designed by Land Design Consultants. Mr. Markowitz explained that after the board approved the Planned Residential Development with variances in 2003, the owner at that time, David Knott, prematurely recorded the grant of conservation easement in December 2004. This was a mistake, as it should not have been recorded until the plat was recorded with the Declaration of Covenants, Conditions, Easements and Restrictions, that included Exhibit 'C', the Grant of Conservation Easement. On the plat approved by the B.Z.A. one detention pond was shown by the street nearer the entrance, and a storm sewer easement shown running between sublots 11 and 12.

In 2005 Mr. Knott started work on the development plans, including the storm water controls, and another detention basin was included in the Open Space below the two sublots. The purpose of the conservation easement on Block 'C' was that there should be no disturbance to prevent damage to Griswold Creek. However, neither Mr. Knott or Land Design Consultants realized that the area was to remain natural. Part of the detention facility on subplot 16 is also in an Open Space area, which the conservation easement also does not permit.

Mr. Gokorsch said tonight is the first time that the board has seen this plan that shows the detention basin. Mr. Markowitz explained that this Soil & Water Pollution Prevention Plan is only submitted to the Geauga Soil & Water Conservation District, who were unaware of the Open Space restrictions and approved it. The preliminary plat that was submitted to the Russell Township Zoning Inspector did not include this plan, so the Township was not made aware of the detention basin. He was also not aware of the location of the detention basin, or he would have returned to the B.Z.A. for approval. Carmella Shale at the G.S.W.C.D. determined this was an appropriate location.

There was discussion regarding the danger to Griswold Creek from silt and to the facility from flooding of Griswold Creek. Mr. Machnics expressed concern that the steep earthen banks could collapse in a severe flood situation. It was not known whether the detention basin is also in violation of the 30-foot riparian setback requirement. Mr. Markowitz said it does appear to be about 30 feet from the creek, but he will ascertain this for the board.

