

Minutes: Russell Township Board of Zoning Appeals  
Russell Town Hall  
May 29, 2007

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

Also in attendance: Ric Machnics, Zoning Inspector.

The Chairman called the meeting to order at 7:00 p.m. The Secretary confirmed that a Sunshine Notice scheduling this special meeting was sent to five newspapers on 5/15/07 and posted at the Administration Building. A legal notice for the two hearings tonight was published in the Chagrin Valley Times and News Herald on 05/17/07 and was sent to the parties and neighbors on 05/16/07. The Chairman then swore in all those in the audience who planned to give testimony during either hearing.

**CONTINUANCE OF APPEAL #437 Grazia and Jeffrey Thornberry  
14735 Hillbrook Lane North**

Request for two variances to construct a detached garage in the front yard, in violation of Section 4.7.V, and with a front yard setback of 50 feet in lieu of 125 feet required per Section 5.2.B in an R-5 zone.

Jeffrey Thornberry presented a revised site plan and aerial view showing the proposed garage now with a front yard setback of 75 feet and rotated 90 degrees. This will move the garage 25 feet farther from the front line, and by rotating the garage, only one end will face the neighbors' condominium. He then reiterated his explanation of his lot from the previous meeting. Asked about the drop in height from the proposed location to his driveway, Mr. Thornberry stated it was about 4 feet. Mr. Machnics confirmed that the right-of-way of the non-existent road is 50 feet, and therefore the garage would be 100 feet from the front property line. Mr. Gokorsch asked why the garage could not be located closer to the driveway to be less intrusive for the neighbors in one of the Hillbrook condominiums. Mr. Thornberry replied that he needs the area for an entranceway to the garage from the driveway, so he can move vehicles in and out. He has not spoken to an excavator yet, but will locate the garage as close to the driveway as is reasonable. Mr. Downing said that at the last meeting there was discussion of locating the garage by the driveway by excavating the bank. Mr. Thornberry said that may be an option, but he would have to look into drainage issues, as he could not put it in a hole. He remarked that the worst rise on the property is across from the front door on the west side of the house where the terrain is a vertical rise. Water flows down that hill and along the driveway, and there is a pipe onto the driveway from the flat area above that carries water to the lake.

Mr. Thornberry said he wished to amend his variance request to locate the garage in the front yard, with a front yard setback of 75 feet now, rather than the requested 50 feet. He stated that he has only a 2-car garage and because his property is difficult to maintain, he needs several pieces of equipment, such as a tractor, that should be stored under cover. They moved in last June and have found they are restricted with only one garage, and think it would be difficult to resell without more storage space.

Mr. Downing said that even rotated the garage is still out in the middle of the meadow. Mr. Thornberry said that there are trees around the area behind. Mr. Machnics confirmed that there is a rise of about 40 feet from the garage location to the side property line that is all trees, and the property falls towards the house. The meadow area is also on a slight slope. He stated that the proposed location is the most appropriate from a construction standpoint, since it would be more difficult to cut into the area where it drops off to the driveway and would not work as well aesthetically. There would be considerably more expense involved due to the amount of excavation required, plus a larger foundation that would have to be a retaining wall on three sides. Mr. Downing asked if the garage could be moved farther to the rear from its planned location, but Mr. Machnics said that trees

would then have to be removed to allow space around it for the large equipment needed when building. If the trees were not removed they would die eventually due to the disturbance.

Joe and Sue Harrison, immediate adjoining neighbors at 14661 Hillbrook Lane North, Unit 6 of the Hillbrook condominiums, presented three photographs. One photo showed the view from their home across the Thornberrys' front yard. Three stakes were visible, and Mr. Thornberry stated that the middle stake marked the location of the garage. The other photos were taken from the Thornberrys' driveway and showed the rise towards the meadow area. Mr. Harrison said he felt the proposed structure at 24 ft. by 36 ft. is larger than a usual 3-car garage of 20 ft. by 30 ft., and is therefore 44% larger in footprint than a standard 3-car garage. It will be a large mass in the middle of the meadow and is 20 feet high. He agreed that the property is very difficult to work with due to its topography, but was concerned that the structure is larger than standard size. Mrs. Thornberry stated they planned to landscape around the garage so it would not stand out, and they have turned it so that only one side will be seen from the neighbors. Mr. Thornberry stated he could not spend \$50,000 to excavate into the hillside to make it less visible, and needed to build a usable building for his needs. Mr. Harrison said he objected to both the height and size of the garage.

Mr. Gokorsch asked Mr. Machnics if there is a problem with building a retaining wall on the south, north and west sides if the garage was cut into the hillside. Mr. Machnics confirmed there would be a problem, and issues with drainage and waterproofing for the foundation. These would include more substantial footer, block that is reinforced, and filling the inside of the cavity of the floor with proper fill.

Mr. Thornberry stated he might be able to compromise on height, if he could place it in the best location. Asked by Mr. Cuffari as to an appropriate height, Mr. Machnics stated he was unable to comment on an architectural issue. Asked about a standard height, Mr. Machnics replied that the height limit in Russell is 36 feet. Mr. Downing suggested that if the garage was lowered by 3 or 4 feet, that would be equal to the amount of excavation required in the location by the driveway. Mr. Thornberry said he would look into whether there is a different design that would serve his purposes and have a lower height, and he asked for a continuance to be able to provide information on this.

*Mr. Cuffari made the motion to accept Applicants Exhibits 1 through 3 and the Harrisons' Exhibits 5 through 7, being 5 photos and one plot plan, Mr. Galemmo seconded and the motion passed unanimously.*

*Mr. Cuffari made the motion to continue Variance Application #437 to the next regular meeting at the request of the applicant, Mr. Downing seconded and the motion passed unanimously.*

**REQUEST TO AMEND CONDITIONAL USE #422 Russell Township Land Development LLC  
Rivendell Subdivision, PP #26-179100 Caves Road**

Request to amend the Conservation Easement to permit a storm water facility to be located in Open Space Parcel C.

In attendance were Matt McGill, owner of the property, Dale Markowitz, attorney for the owner and Tom Beutler, engineer for the owner. In attendance for the Township Trustees were James Dickinson, Chairman of the Board of Trustees, Roy Podojil, Chairman of the Russell Park Commission, Kyle Dreyfuss-Wells, Executive Director of the Chagrin River Watershed Partners (C.R.W.P.), Rachel Webb of the C.R.W.P., and engineer Joseph K. Ferenczy of URS Corporation.

Mr. Markowitz stated that the B.Z.A. approved Rivendell Subdivision for a conditional use permit for the 16-lot development under existing zoning. It includes open space areas with a conservation easement enforced by the Township Trustees and Park Commission. Since the original approval, the engineer had designed two detention basins partly in the open space that were approved by the County, and neither the County nor the engineer realized they were not allowed there. The owner and developer of the property at that time was David Knott, who did not understand all the restrictions on the conservation easement. Then McGill Properties bought the property and did not know until recently that it was an issue. Mr. Markowitz stated he had not known the open space would be subject to stormwater facilities, and the plans approved by the B.Z.A. showed easements on the lots only. Mr. Markowitz said the Geauga County Planning Commission has now changed its rules so this type of error should not happen again. The preliminary plats that are reviewed by the Township will show stormwater facilities.

Mr. Markowitz proposed four steps to resolve this situation:

- 1) He asked the B.Z.A. to approve an amendment to the conditional use to maintain the stormwater facilities in the open space;
- 2) He needs approval from the Township Trustees and Park Commission to amend the Conservation Easement to allow the facilities to be located in their easement areas in the open space;
- 3) Need to amend the Declaration of Covenants, Conditions, Easements and Restrictions to provide for allowance of facilities in the open space and to provide for future funding and maintenance of the facilities within the open space;
- 4) Need to redesign the basin that is below Sublots 11 and 12 because the southern portion is less than 30 feet from the current location of Griswold Creek.

Mr. Markowitz stated that although Russell has a 30-foot riparian setback, he understood from Ms. Dreyfuss-Wells that a basin within a setback should still be 50 feet from a stream. So his client is prepared to move the facility to a 50-foot setback. They would redesign the basin and submit it to Geauga Soil & Water Conservation District for approval, then amend the Declaration that gives right of access, changing the legal description and plan to show where the basin will be located. Mr. Markowitz said he has redrafted the Declaration to meet those goals, and Ms. Dreyfuss-Wells has asked for one change, that no future facilities be permitted in this open space area.

Jim Dickinson, on behalf of the Russell Township Board of Trustees, stated that in December 2004 the Trustees and the Park Commission entered into the conservation easement agreement with David Knott who was represented by Mr. Markowitz. To do this there were negotiations with Mr. Knott and it was agreed there would be no building, no dumping, no filling or excavation, no mining or drilling and no habitat disturbances in the open areas, and no herbicides nor detrimental activities in order to protect the water and soils. Mr. Markowitz had drafted the negotiated contract. Mr. Dickinson said that until recently the Trustees were not aware the basin had been built; the owner should have asked for an amendment to the conservation easement before constructing the basin. The Trustees asked the C.R.W.P. to review the project and Mr. Markowitz' proposals, and tonight Ms. Dreyfuss-Wells, Ms. Webb and engineer Joe Ferenczy will present the views of the Trustees and Park Commission.

Using a Powerpoint presentation, Ms. Dreyfuss-Wells stated that C.R.W.P. provides assistance to member communities such as Russell to minimize flooding and erosion, and to improve development practices and site design to reduce long term infrastructure costs. Joe Ferenczy is the consulting engineer to the C.R.W.P. on behalf of the communities. As part of the review, Mr. Ferenczy, Rachel Webb (C.R.W.P.), Mr. Dickinson, Mr. Podojil and Ms. Shale met at the site to view a possible redesign. The resulting options have been reviewed by the G.S.W.C.D., Geauga County Planning Commission and Geauga County Engineer, and these alternatives will be presented tonight.

Mr. Ferenczy stated that the owner proposed moving the basin 30 feet from Griswold Creek, and the C.R.W.P. was asked by the Township to examine that option as well as potential to move water storage farther from the creek, possibly out of the conservation area. The contributing drainage area and the road would not change. Showing a site plan with the location of the basin, Mr. Ferenczy said that Griswold Creek has erosion, maintenance and stabilization problems, so there is a question as to whether a 30-foot setback is enough. The owner would stabilize the area and restore riparian vegetation, but Mr. Ferenczy cautioned that this may require additional disturbance of the conservation area. The detention basin would also remain close to the creek, requiring long term funding to maintain the basin and an enforcement mechanism to ensure the maintenance occurred.

Mr. Ferenczy stated that on behalf of the C.R.W.P. he could recommend three modified alternatives that would move the basin more than 30 feet from the creek. This is based on the fact that the C.R.W.P. model riparian setback regulation that is being considered by the Russell Township Zoning Commission would require a setback of between 50 and 75 feet from Griswold Creek. Mr. Ferenczy presented the alternatives using a topographical site plan:

- 1) Relocate the basin away from the creek but within the conservation easement, with the alternative of maintaining a riparian setback of either 30 feet as proposed by the applicant, 50 feet as optionally permitted by the C.R.W.P. model resolution, or 75 feet as recommended by the model resolution.
- 2) Relocate the basin outside of the conservation easement area, with the alternative of relocating it within the cul-de-sac and the 20-foot easement between sublots 11 and 12 if possible, or relocating it along the 20-foot easement, or relocating it on sublots 11 and 12.
- 3) A combination of alternatives 1 and 2.

Mr. Ferenczy said the first decision that is required is whether to permit the detention basin to remain in the conservation easement area. If it cannot remain there, further analysis would then be required to see if the second alternative would work from an engineering standpoint.

Mr. Downing asked, because there is an outside bend of the creek near to the edge of the basin, is the bank likely to erode there due to the water flow pattern? Mr. Ferenczy said a detailed analysis would have to be done for streambank protection, but the best solution is to stay away from the creek. Mr. Markowitz questioned Mr. Ferenczy about the alternative locations.

Chairman of the Trustees, Jim Dickinson, stated that there are two issues, engineering and legal. The Trustees had asked the C.R.W.P. for engineering advice on whether it was feasible to build the basin out of the protected open space. The answer is that it is feasible. The owner infringed on the private rights of the grantees of the conservation easement. Mr. Dickinson said Mr. Ferenczy has demonstrated that the basin can be built on the non-protected property. Ms. Dreyfuss-Wells agreed and stated that the alternatives would meet water quality and quantity requirements and be aesthetically pleasing.

During discussion of the alternatives Mr. Gokorsch explained that they are just proposals at this time and that the Board of Zoning Appeals would need to see final engineering drawings in order to make any decision. Mr. Downing asked which setback from the creek the C.R.W.P. was recommending. Mr. Ferenczy said he understood it is 50 feet. Mr. Machnics commented that Russell has an existing 30-foot riparian setback requirement.

Mr. Markowitz stated that originally there was to be piping in the road and cul-de-sac, but at some point after the B.Z.A. and County approval, an engineering decision was made that the best protection for the creek was to put a detention basin in the conservation easement area that would slow the water and reduce flow to the creek. Even without a basin there would need to be a structure in the open space at the outlet.

Tom Beutler, Design Engineer for Land Design Consultants, stated there were issues with some of C.R.W.P.'s alternatives. Regarding using the cul-de-sac and road right-of-way, the Geauga County Engineer does not agree with the E.P.A. in that the G.C.E. will not permit anything to be built in the right-of-way. Regarding the 20-foot easement between the two sublots, there is a problem with the slope dropping off there, since a flat area is needed to store water and there is also not enough width to keep the basin within the 20 feet. Regarding using sublots 11 and 12 for the basin, the County Health Department requires the septic fields to be undisturbed. For these reasons the basin was placed in the open space where the elevation is 1035 feet to 1039.5 feet, a 3.5 to 4 foot slope, whereas in the alternative areas there would have to be a 10 foot drop and other governmental agencies would have to be involved. Mr. Ferenczy said he understood that the County Engineer has recently realized that their regulations need to be changed. Ms. Dreyfuss-Wells stated that on her conversations with someone in the County Engineer's Office it appeared that there is potential to use the cul-de-sac for bioretention. She said that in the last year drainage maintenance districts are being considered by the County Engineer.

Mr. Beutler said that in regard to using a 30 or 50-foot setback from the creek, he could redesign the basin to accomplish this, and still satisfy the County's stormwater requirements and the E.P.A. for water quality. The basin would still remain in the open space but would be closer to the sublots.

Mr. Dickinson objected to the engineer telling them what could be done on the open space area where the owner in fact has no right to build. The Trustees and Park Commission have the legal right over that area, and the owner is in violation of their rights by building the detention basin. He asked that the basin be removed from the conservation easement area onto the owner's property. Asked by Mr. Markowitz if that is the position of the

Board of Trustees and has been voted on at a public meeting, Mr. Dickinson said that there has not been a vote. Mr. Markowitz said this position was contrary to his discussion with the Trustees at a Board of Trustees' meeting. Mr. Cuffari stated that the B.Z.A. had assumed when scheduling this hearing that the Trustees and McGill Properties had resolved this issue. He recommended continuing the hearing to allow Mr. Markowitz and the Trustees to do so.

Mr. Markowitz, on behalf of his clients, asked for a continuance to the next regularly-scheduled meeting.

*Dr. Lerner made the motion to continue the public hearing for Russell Township Land Development LLC to the next regularly-scheduled meeting on June 25<sup>th</sup>, Mr. Cuffari 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.*

**MINUTES OF MAY 14, 2007** – Mr. Downing asked for a change on page 4 to write the exact acreage of Mr. Thornberry's lot in Appeal #437.

*Mr. Galemmo made the motion to approve the minutes of May 14, 2007, as amended, Dr. Lerner seconded and the motion passed by 4-0. Mr. Cuffari abstained due to his absence from that meeting.*

**FINDINGS OF FACT #436 HAMBRICK** – *Mr. Galemmo made the motion to approve the Findings of Fact as submitted, Dr. Lerner seconded and the motion passed by 4-0. Mr. Cuffari abstained due to his absence from that hearing.*

There being no other business, Mr. Galemmo moved to adjourn, Mr. Cuffari seconded and the meeting adjourned at 9:00 p.m.

Respectfully submitted,

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Diana Steffen  
Secretary

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Date

\_\_\_\_\_  
Steve Gokorsch  
Chairman

\_\_\_\_\_  
Date

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