

Minutes: Russell Township Board of Zoning Appeals
Russell Fire-Rescue Station
June 7, 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 7:00 p.m. The Secretary confirmed that she sent the Notice of Public Hearing to the neighbors and parties by certified mail on 5/25/10, and it was published in the News Herald and Chagrin Valley Times on 05/27/10. The CVT had only printed the first paragraph, but since the News Herald is considered the newspaper of general circulation in Geauga County, and publishing the notice in the CVT is done as a courtesy to residents, this omission does not invalidate the hearings. The Chairman then swore in all those in the audience who planned to give testimony at any of the three hearings.

VARIANCE REQUEST #449 John Steel, 15602 Chillicothe Road

Request for a use variance to permit limited rental of outdoor parking spaces for storage of boats, boat trailers, landscape trailers, small trucks, cars and small recreational vehicles in addition to the existing business. Such use is in violation of Sections 4.7.B, I and J. Property is located in the C-S Commercial and Services zone.

In attendance were Mr. & Mrs. John Steel and their attorney Pearce Leary.

Attorney Pearce Leary, 7720 Blackford Drive, representing John Steel, stated that Mr. Steel has owned his property for 22 years, and for the past 15 years has used a small portion at the rear for people to rent space to park boats and other vehicles. The area is behind the building line, and is a clean operation for mostly small boats and vehicles. Although he had not researched the history of the zoning regulations, Mr. Leary questioned whether the use was grandfathered because the regulations may have been enacted after Mr. Steel established this use. There are commercial lots on two sides and a residential lot to the south that is buffered by a wooded area. The Township garage is across the street and vehicles are stored there.

Mr. Leary questioned the applicability of Sections 4.7.B, I and J. He said 'I' appeared to be intended to cover a Manfredi type truck terminal with commercial storage, which is not Mr. Steel's use. He said 'J' prohibits commercial establishments from storing, leasing or sales of farm and garden equipment, and also recreational vehicles. Mr. Steel is storing one recreational vehicle, but would be willing to have it removed. 'B' states that all such vehicles must be stored behind the building line, which they are, and they are not stored for commercial purposes, nor for resale or leasing. Mr. Leary said the main hardship is that Mr. Steel has been renting space for 15 years and they believed the use was allowed when he started. He provides service that is within the spirit of the zoning code, since a number of Russell Township residents use it because they cannot store the vehicles on their residential property.

Asked by Mr. Downing if the convenience is that people can take the vehicles in and out when they want, Mr. Steel stated that in the winter the vehicles are stored inside at the Burton Fairgrounds which must be vacated in the summer, so they are moved to his property where people can conveniently take them out at weekends. Mr. Leary confirmed that the intent is the storage should be temporary. The area is within a secure area that is gated, with a fence so the vehicles cannot be seen from the street. Mr. Gokorsch said he did not see any wording about sales in 'B' and read aloud that paragraph. He noted that it states that no storage is permitted in front of the building line, and that storage of vehicles for commercial purposes is prohibited, which he interpreted to mean for payment. Mr. Leary agreed that storage must be

behind the building line, but questioned whether the use is commercial, since there are no sales but just storage as a convenience to people. Mr. Gokorsch clarified the question by stating that he interpreted "commercial purposes" to mean that the service was offered in exchange for payment. When asked, Mr. Leary agreed that that was an interpretation for "commercial purposes."

Resident Ben Yospur, 8437 Music Street, confirmed he was sworn in, and said it appeared that a commercial business is being run at the weekend next to residential property.

Albert Mldineo, 8360 Dines Road, asked, if the variance is granted and in the future the property is sold, would the use would be allowed to continue. Mr. Machnics stated that the use would continue unless it was abandoned for two years.

Tom Sloe, 15565 Chillicothe Road, confirmed he was sworn in and stated that Mr. Steel's business is opposite his property, and although he sees landscaping vehicles going in and out he has never noticed boats. The property always looks good, and because the commercial lots are not permitted to tie into sewers they are limited on what they can do. This service does not have a negative impact on services or infrastructure, has been there 15 years, and Mr. Steel does a great job with his property.

Dale Markowitz, 100 7th Avenue, Chardon, confirmed he was sworn in and stated that he owns the property next to Mr. Steel's to the north. He agreed with Mr. Sloe that the property is well kept, and stated that he does not visit his property often, and was unaware Mr. Steel was storing boats. He said the use variance would run forever because there was a case involving mobile homes at the Supreme Court that confirmed the use was forever unless abandoned for two years. He asked the board to require the woods be maintained between Mr. Steel's lot and his property, if it grants the variance, in order to screen the storage. He was marketing his property for a professional office building and would not want boat storage next to it unless it was well screened, in which case he would not have any objection. As an attorney who has worked with Russell's zoning for 36 years, he was aware that boat storage is not a permitted use in Russell's commercial districts. If there is a question of interpretation of the zoning code as to whether it is permitted, then it is automatically prohibited.

Mr. Machnics stated that since he has been Zoning Inspector he has never received any complaints about Mr. Steel's property and never saw boats or other equipment going in and out of the property. The use came to his attention through the aerial photos the Geauga County Auditor provides on its website. He was unaware of the storage use until that time, and noted that Mr. Steel keeps the area clean and well screened. Mr. Machnics said he has never had any reason to visit the property as Zoning Inspector.

Resident Robert Kent, 8260 Cloveridge Road, confirmed he was sworn in and said he had lived about 12 houses away from Mr. Steel's property for 12 years and was unaware he stored boats. The property is a clean operation, and he never saw any problems with it.

Mr. Cuffari explained that a use variance is subject to a much higher standard than an area variance, since an unnecessary hardship must be proved by the applicant. He asked Mr. Steel whether he wished to focus on those standards so the board would be aware of his thoughts. The board can only rule on the facts presented by people at the hearing. He asked if the applicant felt he had adequately answered the question of what special conditions would cause an unnecessary hardship due to a literal enforcement of the Zoning Resolution. Mr. Leary stated that Mr. Steel has had the use for 15 years, no one ever said he could not do it, and he has improved his property with a solid wooden fence and crushed gravel in the storage area. He has 25 storage spaces but it is less than half full, and he has invested money over the years to try to hide it. That is the special condition, plus the zoning does not permit people to put them in their front yards so Mr. Steel is alleviating their hardship by providing this use. He does not advertise, it is just by word of mouth. Asked by Mr. Downing if Mr. Steel had ever approached the Township for permission, Mr. Leary said not, and he did not mean to say that the use had ever been permitted. Mr. Gokorsch asked if the fact that the use had been going on for 15 years was the unnecessary hardship. Mr. Leary said Mr. Steel had invested a considerable amount of money, cleared the space, and both Mr. Steel and other people use it. Mr. Downing asked if the hardship was that there was a fence and the area was secured. Mr. Leary said that was part of it, since the gate makes it easy for people to go in and out.

Mr. Madden asked if there was any contention as to the applicable section, and Mr. Leary stated that Section 4.7.B was the most applicable.

There being no further comments from the audience, *Mr. Cuffari made the motion to close the public hearing, Dr. Lerner seconded and the motion passed unanimously.*

The board reviewed the standards for a use variance:

- a) Why the variance from the terms of the Zoning Resolution will not be contrary to the public interest: The variance would not be contrary because the property is well maintained. No facts were presented to indicate the continued storage of these prohibited vehicles would present any detrimental impact on neighboring properties provided it was properly screened. One neighbor stated he was not aware of the storage, and it is clear that the public did not know it was there for the last 15 years.
- b) Because of what special conditions will an unnecessary hardship result from a literal enforcement of the zoning regulations: The applicant has made an effort to improve and maintain the land so that it facilitates the requested use, although enforcing the regulation will not affect that. In the Notice of Appeal the applicant stated he believes the depth of the lot itself "allows for a clean, well-maintained, out-of-sight temporary storage of vehicles."
- c) What the unnecessary hardship is which will result from a literal enforcement of the Zoning Resolution owing to the special conditions set forth in sub-paragraph "b" above: The applicant stated he has been doing this use for 15 years and has worked hard to do it in an effective fashion for his customers and the Township. No additional facts regarding unnecessary hardship were provided in testimony.
- d) How the spirit of the Zoning Resolution will be observed if the variance is granted: There was no testimony provided on this standard, and the board agreed the use was contrary to the zoning regulations.
- e) Why substantial justice will be done if the variance is granted: In the Notice of Appeal the applicant stated that Township residents would benefit from having outside storage of large vehicles.

Mr. Cuffari added that although it was stated the use has been going on for 15 years, the board cannot make a judgment on whether this is an unnecessary hardship. The board did not hear any testimony on the degree of impact the termination of the use would have on the viability of the business. There was no testimony that the Township is interpreting the Zoning Resolution in a way that is not within the intent and spirit of the Resolution. He said if the applicant feels the zoning regulation is not stated appropriately then he might wish to address it with the Zoning Commission.

Mr. Cuffari made the motion to approve variance request #449 by the applicant John Steel as submitted, Dr. Lerner seconded and upon roll call the vote was Mr. Cuffari – No, Mr. Downing – No, Dr. Lerner – No, Mr. Madden – No, Mr. Gokorsch – No, and the motion failed unanimously.

Variance request #449 was denied.

Variance Request #450 Faith Baptist Church, 14254 Chillicothe Road

Request for an area variance to permit the transfer of one of its three parcels, PP#26-703300, 1.511 acres, to a neighboring property owner, reducing its total acreage from 4.311 acres to 2.8 acres thus increasing its nonconformity, minimum 5 acres required for a church per Section 6.5.C.2.

In attendance were Paul Dunlavey on behalf of Faith Baptist Church, and Paul Taylor, the proposed purchaser of the parcel.

The Chairman, Mr. Gokorsch, asked why some of the exhibits submitted with the application had the name of the Western Reserve Land Conservancy on them. Paul Taylor, 8396 Dines Road, confirmed he was sworn in, and said his father-in-law Ed Meyers, works for the W.R.L.C. and had printed maps for him. Mr. Gokorsch said his wife works for the W.R.L.C., so he would not have wanted there to be any conflict of interest.

The Chairman opened the public hearing for Appeal #450.

Paul Taylor stated that he has water issues on his eastern boundary due to water runoff from S.R. 306 through the church's parcel on Dines Road. So he spoke to Pastor Dennis Michelson about those issues and in the process discussed whether the church might be interested in selling that parcel to him. It is a separate 1.51-acre parcel and both properties are in the 5-acre district. The church has a total of 4.53 acres now, so it is nonconforming. Mr. Taylor said his residential property is also nonconforming at 3 acres, and his principal interest is to bring it up to code on his eastern boundary, where his house is set back only 29 feet from that eastern sideline with the church parcel. He stated he currently has 180 feet of frontage on Dines Road, and the R-5 zoning requires 300 feet. If he purchased the parcel to become part of his lot then his sideyard setback would be brought into conformance with more than the required 50 feet at 214 feet, as would his frontage by going to 360 feet. He would still have less than 5 acres of land.

Mr. Gokorsch asked about the water issues. Mr. Taylor stated that due to the grade the rainwater from S.R.306 runs downhill to the west towards the Chagrin River. In doing so it runs from the eastern edge of the Faith Baptist Church parcel through the middle of that parcel, then to the north of his house to his western lot line. When there is a heavy rainfall the water pools about eight inches on his patio even though he has put in French drains. Because of trees on his lot there is not enough room to cut in a swale. When he put an addition on to his house three or four years ago he graded his back yard, but there is still too much water. The runoff then floods the driveway of the Bunkins, his neighbors to the west.

Mr. Gokorsch asked what Mr. Taylor would do about the water issues if he did purchase the parcel next to his lot. Mr. Taylor stated that currently he does not have enough room between his residence and the lot line to work on any problems, and yet he has made a significant investment in his house and property. He stated that the church is unable to maintain the vacant lot and there are dead trees that need to be taken out. There are pine trees that are dying due to all the water. He has taken a couple of trees down that were presenting a hazard on his lot. He planned to cut out the dead trees and grape vines and handle the runoff, which should fix both his and the Bunkins' problems. Mr. Taylor stated that the land slopes from S.R.306 to the north and northwest, and most of the runoff flows naturally to his lot. To funnel the water away from his house a landscaper advised him to put in a swale to take the water to the back of his lot. Mr. Taylor said he was not sure exactly how this would be done, but right now even with French drains and footer drains he is not able to handle the runoff.

Lucille Squire, 14238 Chillicothe Road, confirmed she was sworn in and stated she lived adjacent to Faith Baptist Church on its north side. That land was filled to raise it to a higher grade to build the church building, and ever since she receives runoff from the property and from the downspouts of the building. She said she did not want to have more runoff come onto her property.

Pat Flanigan, 8405 Dines Road, confirmed he was sworn in and stated he lives opposite the subject parcel. He said water does come from S.R. 306, and on his side of the road it flows across his property to his pasture that is downhill from his residence. There is a lake there when it rains. He supported the variance because he said Mr. Taylor has improved his property and the vacant parcel is neglected now, although Mr. Taylor has made an attempt to clean it up. If he purchases it, that will be an improvement for the neighborhood as Mr. Taylor will keep it maintained. Mr. Taylor commented that the parcel is a buffer for him from S.R. 306 since it is wooded. His house was built in the early 1950's prior to the current zoning, and he wants to make sure that buffer remains wooded. He wants to keep it safe and an improvement to the aesthetic and property values of the neighborhood.

Don Green, 8430 Dines Road, confirmed he was sworn in and stated that his property is at the northwest corner of S.R. 306 and Dines Road, so he is adjacent to both the church and to Mr. Taylor. He said they are both excellent neighbors, and anything they do will be an improvement to the neighborhood. He does not have any water issues, and the water runs downhill to the northwest. He said it would be in his best interest for the subject parcel to be residential rather than part of a church property.

Mr. Machnics explained the history of the Faith Baptist Church property and the zoning for churches. In 1949 the original Zoning Resolution allowed churches as a permitted use, and half-acre lots were permitted in the residential zones. In 1953 the Resolution was amended to require 1.5 acre lots in the residential zones. In 1967 churches became a Conditional Use requiring three acres. In June 1970 Faith Baptist Church purchased the land and in 1972 plans were approved for the church by the Zoning Commission. The church was built after that approval. In 1992 the Resolution was amended to require five acres for a church. Mrs. Steffen said that the Zoning Commission minutes of 9/11/1972 show that the Commission asked for an additional access drive from Dines Road via the subject parcel, but since that time the Conditional Use regulations for churches have been amended to require access and service roads not to be "drawn through streets which are designed for residential traffic or built-up residential areas."

Asked by Mr. Downing if the variance would result in a reduction of the compliance of the church in acreage, Mr. Machnics replied that it would since it is currently nonconforming and the acreage would be reduced further. Mr. Downing asked if Mr. Taylor sold his land in the future could the subject parcel be built on. Mr. Machnics said it must be combined with the rest of Mr. Taylor's lot. Mr. Taylor said he was planning to combine both parcels so the subject parcel could never be built on. Ed Meyers, 9825 Music Street, Novelty, said Mr. Taylor had asked him how this variance would be within the spirit of the zoning. He said that both the church property and Mr. Taylor's would still be nonconforming as far as acreage, with the decrease in size of the church lot and the increase in size of Mr. Taylor's lot. However, it would also result in two conformances. These would be the new conformance of the sideyard setback and of the frontage on Mr. Taylor's lot.

There being no further comments from the audience, *Dr. Lerner made the motion to close the public hearing for Appeal #450, Mr. Madden seconded and the motion passed unanimously.*

The board discussed whether the parcel could ever be split off again from Mr. Taylor's lot if the variance is granted. Mr. Machnics stated that with new procedures enacted recently in Geauga County, the Zoning Inspector now has the opportunity to review all lot splits and must approve them before they can be recorded, so the parcel could not be split off since it would result in two nonconforming lots. Mr. Downing read aloud Section 7.5.C regarding nonconforming lots of record, which prohibits the transfer of nonconforming lots that are held in contiguous single ownership, unless they are re-subdivided to conform to the regulations for the district.

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 as far as the church lot with the building, but the vacant parcel was originally proposed for an access drive, which is now not encouraged by the Zoning Resolution.
- b) Whether the variance is substantial: No, due to the fact that both the church property and Mr. Taylor's property are nonconforming as far as acreage, and the variance would result in an increase in nonconformance in the church property but a reduction in nonconformance in Mr. Taylor's property, plus new compliance on his land of two other existing nonconformances, the sideyard setback and the frontage.
- 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, there would not be any detriment according to several neighbors who stated the variance would improve the

character of the neighborhood. They believe Mr. Taylor will remove dead trees, vines and potential hazards on the subject parcel. Mr. Taylor has also stated that he plans to work to alleviate the water runoff issues.

- d) Whether the variance would adversely affect the delivery of governmental services: No testimony was provided on this factor.
- e) Whether the property owner purchased the property with the knowledge of the zoning restriction: No, and the Zoning Inspector provided testimony on the history of the zoning for churches that has been amended several times.
- f) Whether the property owner's predicament feasibly can be obviated through some method other than a variance: There was no testimony provided on this factor.
- g) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance: Yes, the sideyard setback and frontage on Mr. Taylor's property would become conforming. The church already is nonconforming as far as acreage but Mr. Taylor's acreage would increase putting it nearer conformance. The variance would be in keeping with the character of the neighborhood since Mr. Taylor plans to improve the status of the trees, shrubs and the water runoff issues. The church cannot sell the parcel otherwise as the Township would not permit it to become more nonconforming.
- h) Such other criteria which relate to determining whether the zoning regulation is equitable: The board has heard testimony that the regulation is equitable.

Mr. Downing made the motion to approve Variance Request #450 as submitted, Mr. Cuffari seconded and upon roll call the vote was Mr. Cuffari – Yes, Mr. Downing – Yes, Dr. Lerner – Yes, Mr. Madden – Yes, Mr. Gokorsch – Yes, and the motion passed unanimously.

Variance request #450 was granted.

Variance Request #451 Kathryn A. Neros 8246 Cloveridge Road and Dr. Robert A. Kent, Jr., 8260 Cloveridge Road

Request for an area variance for a lot split to convey a 0.2558-acre parcel from 8246 Cloveridge Road to 8260 Cloveridge Road, reducing the lot size of 8246 Cloveridge Road from 1.4048 acres to 1.149 acres thus increasing its nonconformity, in violation of Section 7.3.

In attendance were Dr. Robert Kent, one of the applicants, and attorney Dale Markowitz. Mr. Markowitz explained that he was representing Dr. Kent and his wife Jennifer Wojtowicz in accomplishing a lot split with their neighbors on both sides, Kathy Neros at 8246 Cloveridge Road and Willard Combes at 8278 Cloveridge Road. Mr. Markowitz showed a large map with an aerial photo of the three lots. He explained that when the developer of the subdivision, Roscoe Sanders, built houses there he was not concerned about the location of the lot lines. This resulted in a number of houses being built across the lot lines, as was the case with Dr. Kent's house. A piece of land was swapped in the 1970's with the lot to the west so that the house would be located on its own lot. This was before both Dr. Kent and Ms. Neros owned the lots. The Combes house was also close to the side line. The Kent driveway is right at the Combes lot line at the road, as is the Neros driveway at the Kent lot line.

Mr. Markowitz handed out a GIS map and the original subdivision plat to show that the three lots were all parallelogram shaped. Dr. Kent commented that when the community pool was built farther west there was not enough land, and this may have affected the subject lots. Mr. Markowitz said Dr. Kent hired Rudy Schwartz to resurvey the three lots to straighten out the problems, and Mr. Schwartz had written legal descriptions of the lots as they are and as they would like them to be with proposed land swaps.

Referring to the plat of survey and lot split prepared by Schwartz Land Surveying, Inc., Mr. Markowitz stated that Parcel A, 0.1385 acres, will transfer from Dr. Kent to Ms. Neros, and Parcel B, 0.1385 acres,

will transfer from Ms. Neros to Dr. Kent, as an equal exchange. Dr. Kent will give Parcel D, 0.1288 acres, to Mr. Combes to provide a greater sideyard setback for his house, in exchange for Mr. Combes giving Dr. Kent Parcel C, 0.1288 acres, as an equal exchange. These four splits have been approved and are at the Geauga County Planning Commission. The three lots will have the same amount of land but with more side yard and front yard and the elimination of the encroachment of the septic system.

Regarding the septic system, Mr. Markowitz stated that when Dr. Kent purchased his lot he found that both his septic system and the one at 8246 Cloveridge were failing. It was determined by the County that there was not enough room for replacement fields, so both owners received variances from the County Health Department to install sand filter systems with off-lot discharge so replacement fields would not be necessary. He gave the board copies of the sewage system installation permits for 8260 and 8246 Cloveridge Road. Dr. Kent's old system was partly on the Combes lot. Mr. Markowitz pointed out on the survey the locations of the three septic systems, all in the front yards and not affected by the land swaps.

Mr. Markowitz said that there is some land behind Dr. Kent's lot that is owned by Ms. Neros due to the original configuration of the lots. This is marked as Neros Parcel No. 2, 0.1034 acres, and Parcel E, 0.2558 acres. Ms. Neros cannot access it for maintenance due to wetlands, and if there was an emergency there then the access would be across Dr. Kent's lot. There used to be a shed there that was used by the developer but that has been demolished leaving a concrete pad. Ms. Neros is willing to sell this land to Dr. Kent, which will decrease the size of her lot, so that it becomes more nonconforming, while increasing Dr. Kent's lot. The final size of the lots if all the transfers happen will be Neros parcel 1.149 acres, Kent parcel 1.8775 acres, and the Combes parcel 1.5081 acres.

Mr. Markowitz explained that a variance is required to complete the sale of the two parcels at the rear because Ms. Neros' lot is already nonconforming being less than 1.5 acres, and the sale will increase that nonconformity to 1.149 acres. However, it is logical that the two parcels be a part of Dr. Kent's lot.

Dr. Lerner asked if the rear parcels are marshy, and Dr. Markowitz said it is wetland. Resident Carol Mantz, 8257 Chagrin Mills Road, stated she lived behind Ms. Neros' lot, and that the land drains down to her lot which is becoming progressively wetter. She said they installed French drains to try to prevent the water going in their house and flooding their backyard but it is getting worse. There are many trees between her property and the ones behind and it was not a wetland in the past. She has lived there twenty years and does not know why there is more water coming onto her lot. Mr. Gokorsch explained that the variance concerns redrawing boundary lines and does not involve any new construction or disturbance of earth. Dr. Kent stated that water comes through his yard from higher land.

There being no further comments, *Mr. Cuffari made the motion to close the public hearing, Dr. Lerner 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 facts were presented on this factor.
- b) Whether the variance is substantial: The transfer of the quarter-acre parcel will increase the nonconformance of one lot, but being in a five-acre zone this is not substantial.
- 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: There was no testimony given on this, and there will not be any change made that will affect the water situation.
- d) Whether the variance would adversely affect the delivery of governmental services: There was no testimony on this factor.
- e) Whether the property owner purchased the property with the knowledge of the zoning restriction: No, according to the Notice of Appeal.

