

Minutes: Russell Township Board of Appeals
Russell Fire-Rescue Station
June 6, 2011

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

Also in attendance: Ric Machnics, Zoning Inspector.

The Chairman called the meeting to order at 7:04 p.m.

VARIANCE REQUEST #460 Craig Seabrook 14444 Watt Road

Mrs. Steffen advised that this appeal has been withdrawn. Mr. Seabrook submitted a letter dated June 6, 2011, to say that he had decided to withdraw his appeal requesting a variance.

APPEAL #461E William W. Bridge III, 9085 Fairmount Road

Alleges error by the Zoning Inspector in failing to issue a zoning certificate for the reconstruction of a residence destroyed by fire, and in issuing a notice of violation for the second structure on the lot.

The Secretary confirmed that a legal notice was published in the News Herald and the Chagrin Valley Times on 5/26/11, and was sent by certified mail to the appellant and neighbors on 5/20/11.

The Chairman stated that the board has the authority under Section 9.2.A of the Russell Township Zoning Resolution to hear this appeal. This states that the Board of Zoning Appeals shall have the power: "To hear and decide appeals where it is alleged there is error in any decision made by an administrative official in the enforcement of this Resolution. For such an appeal no fee shall be charged." He then swore in William Bridge, Ric Machnics and resident Charles Butters.

Mr. Cuffari made the motion to open the public hearing, Mr. Rybak seconded and the motion passed unanimously.

William Bridge, 9099 Fairmount Road, confirmed he was sworn in, and explained that he is the contractor agent for Sherlee Palladino, record landowner of 9085 Fairmount Road, and he has been married to Lisa, Mrs. Palladino's daughter since 1977. On 11/22/10 Lisa Bridge entered into a land contract to purchase the property at 9085 Fairmount Road. Mr. Bridge said he has power-of-attorney to act for Lisa Bridge and Sherlee Palladino. He is here as the contractor agent for the request to replace the existing residence at 9085 Fairmount Road that was destroyed by fire.

As a result of Mr. Bridge's application for a zoning certificate dated 3/28/11, to replace the residence that was destroyed by fire, the Zoning Inspector issued a Notice of Violation on 4/13/11. Mr. Bridge said he felt this was wrong because the notice was sent to him, but he cannot receive it because he is not the property owner. He believed this to be a procedural error. In that notice there was wording to say, "...we are unable to issue a zoning certificate for any other proposed buildings on the property." Mr. Bridge stated he is not proposing any buildings, but is only proposing to replace the existing residence destroyed by fire. That dwelling was built in about 1973 and it was conforming and was a single family residence. He said he is asking for a zoning certificate for a building that was conforming and is a conforming use. He stated he did not think there is a zoning regulation that allows a zoning inspector to conditionally say he is going to refuse a zoning application for a fire-damaged building that was conforming. If there was a violation with respect to the second building on the property, which he did not know if that has been verified, then that is a separate issue. It should not be the cause for denial of replacement of a fire-damaged building.

To clarify the complaint, Mr. Gokorsch asked Mr. Bridge if he was saying that the wrong person received notification and so the property owner was not informed of the action. Mr. Bridge replied that that was not entirely true since he had told his wife and mother-in-law. He felt the notice was sent improperly but the property owners are aware. Mr. Gokorsch said if it was a procedural error, would it be important for the notice to be re-issued to the property owner since it went to the wrong person? Mr. Bridge said again that the property owners are aware. The violation notice could be sent, but as far as the application for a zoning certificate, he has power-of-attorney saying this can be handled by the contractor on behalf of the owner. He would like the board to consider that the response to the application for a zoning certificate was a notice of violation, which he believes to be a procedural error.

Mr. Gokorsch asked if Mr. Bridge's contention was that the property was in conformance with the zoning regulations of the Township prior to the fire, and Mr. Bridge replied that he was not qualified to say so. He said there was a residence that was conforming to zoning with a zoning certificate issued, and the house had been built in 1973, as best he could determine. After the fire, by notice on 4/13/11, they are being denied the right to rebuild a conforming building. Mr. Gokorsch asked if he was saying that the lot was in conformance prior to the fire and he was bringing it back to conformance. Mr. Bridge said that he is not a lawyer and is not qualified to answer, but a zoning certificate was issued almost 40 years ago for the residence. With regard to the second building on the property, he is not certain whether a zoning permit was issued for an agricultural building and at some point that was made into a residence by remodeling the inside. The County records found on Access Geauga show two residences being taxed since 1991. The remodeled residence is the only building standing, which it does not say in the Notice of Violation, but he knows that the reason they are not being granted a zoning permit for replacement of the existing structure is because of this building.

Mr. Cuffari asked if there have been two residences on the property since 1991. Mr. Bridge replied yes, as best he can determine from Access Geauga, both with 9085 as the address. There are separate phone lines and electric meters, but one septic system and one tax bill for both dwellings. He clarified that it was the front residence that was damaged.

Zoning Inspector Ric Machnics confirmed he was sworn in. He read aloud a letter he had written to Sherlee Palladino dated 1/19/11. (A copy of this letter is attached to these minutes.) Mr. Machnics said that he then received a letter from Mr. Bridge dated 03/10/11, which he also read aloud. (A copy of this letter is attached to these minutes.) He then stated he sent another letter to Mr. Bridge, dated 03/21/11, which he also read aloud. (A copy of this letter is attached to these minutes.) Mr. Machnics stated that Mr. Bridge then met with him on 03/22/11, and during their appointment Mr. Bridge asked him to correspond directly with him so the issue could be worked out. Subsequently Mr. Bridge brought in an application for a zoning certificate dated 03/28/11. Mr. Bridge had put his name as the applicant with the name of the owner of record being Sherlee Palladino. Mr. Bridge had signed the application. Another letter was then received from Mr. Bridge, dated 03/31/11, which Mr. Machnics read aloud. (A copy of this letter is attached to these minutes.) Following this he sent Mr. Bridge the Notice of Violation dated 04/13/11, regarding 9085 Fairmount Road, which he read aloud and said was sent by certified mail. (A copy of this Notice of Violation is attached to these minutes.)

Mr. Machnics read aloud Zoning Resolution Section 10 Conformance and Enforcement, 10.3 System of Zoning Certificates, "For the purpose of enforcing the zoning regulations in this Resolution provided, there is established a system of zoning certificates to be administered by the Inspector, his deputies and assistants, and the Board of Zoning Appeals. No person shall locate, relocate, erect, construct, reconstruct, enlarge, or structurally alter any building or structure within the territory of Russell Township without obtaining a zoning certificate, and no such zoning certificate shall be issued unless the plans for the proposed building or structure fully comply with the zoning regulations then in effect. A zoning certificate shall likewise be required for any new use, or for a change of use of land, building, or structure, or for a nonconforming use or structure, or for the use of a lot or land in a new subdivision, except as specifically exempted by this Resolution or the Ohio Revised Code. The Inspector shall issue all zoning certificates and shall keep a record of the same. Where the approval of the Board of Zoning Appeals is necessary, he shall not issue a certificate until such approval is obtained."

Mr. Machnics stated that the correspondence he read aloud speaks for itself. In zoning he does not look at one particular structure but looks at the whole lot. Right now there is one residence on that property and that residence has not ever been permitted to be there. Mr. Machnics stated that he will not issue a zoning certificate for a second residence since the zoning specifically states it to be illegal. Mrs. Palladino's existing structure is in violation because it does not have a zoning certificate.

Mr. Bridge asked under what authority the Zoning Inspector is able to deny review of his application for a zoning certificate to replace the fire-damaged residence, based on the fact that a zoning certificate was lacking on another structure. Mr. Machnics stated that he had told Mr. Bridge that he would not review his application because there is already a residence on the property. He cannot issue a certificate for a second residence on one lot, since the zoning does not allow it.

Asked by Mr. Cuffari if he is here to contend that the Zoning Inspector made a procedural error in not formally denying the application to build, Mr. Bridge said yes, that is the first reason he is here, as far as either an acceptance or a denial.

Mr. Bridge said the second reason concerns the Notice of Violation, which he believes to be a separate issue that should not be connected to replacing the fire-damaged residence. The second residence has not been occupied since April 1st, and he has not tried to rent it out. Mr. Bridge said Mr. Machnics cited Section 10.3 but he was not trying to do any of the things written in that section. He only asked for a zoning certificate for a fire-damaged building, and if it is legally necessary to deny it then he would expect to see the reasons for denying it. He said a court would have a hard time with this. Mr. Gokorsch asked if the existing building will not be used as a residence, and Mr. Bridge replied that he does not have the authority to say at this time. He believes the Notice of Violation should stand on its own and not be connected to replacing the other residence. If Mr. Machnics had inspected the property and the residence had not caught fire there would be a violation which would have been dealt with in a different way procedurally.

Mr. Downing asked if he believed the barn was converted to a residence during his mother-in-law's ownership, and Mr. Bridge replied yes. Mr. Downing said that she changed the use without permits and now Mr. Bridge thinks a permit should be issued. Mr. Bridge said he is not a lawyer and cannot respond. Mr. Downing suggested continuing the appeal so the board could contact its legal counsel.

Mr. Bridge stated he understands that zoning prohibits two residences on one lot, but again, if there had not been a fire, Mr. Machnics could have come out and written a violation. He said the fire should not be the trigger for the violation notice.

Mr. Cuffari asked Mr. Bridge to clarify that he stated the Zoning Inspector should have formally denied or approved the application for a zoning certificate to replace the fire-damaged building, and secondly that the Zoning Inspector should have sent the Notice of Violation to the owner of record rather than Mr. Bridge, since Mr. Bridge has authority, not for matters of record for the property, but for the fire-damaged building only. Mr. Bridge said yes, he has authority to make application for replacement of the residence damaged by fire. Mr. Cuffari asked if he was asking the board to consider whether there was a mis-service by the Zoning Inspector with respect to the zoning violation, and Mr. Bridge said yes.

Mr. Rybak asked Mr. Machnics if he usually corresponds with the owner or the contractor when a contractor makes an application. Mr. Machnics replied he works with the applicant who is acting on behalf of the owner. In this case Mr. Bridge filled out the application, and Mr. Machnics was specific that he needed two sets of drawings, including elevations with the structural and working drawing, but only the site plan was submitted. Mr. Gokorsch asked Mr. Machnics to confirm that Mr. Bridge had asked him to work with him directly, and Mr. Machnics said yes.

Upon questions from Mr. Johns, Mr. Bridge stated he believed Mr. Machnics could have issued a Notice of Violation before there was a fire to trigger it. Now there is a timing deadline for the insurance payment from the fire. Mr. Machnics stated he had discussed with Mr. Bridge the fact that the structure is non-

conforming, may have been agricultural, but was converted to a residence, and he cannot act on the other residence until he is advised that the existing one is an accessory building only. He has not been asked to go to the property to determine if it has been turned into an accessory building. He has asked Mr. Bridge to file an application for the existing structure which is the prime residence on the lot now, but he has never received any application for it. Asked by Mr. Cuffari what his normal protocol is for an incomplete application, Mr. Machnics said it remains pending on his desk, since he does not pursue an applicant to bring in information. People often find their circumstances change, and it is their responsibility. Mr. Cuffari asked, if he received the application to replace the damaged residence on March 28th, and supporting documentation was not received, would he let the application wait until he received it. Mr. Machnics replied yes. Mr. Bridge said he had not heard his application was incomplete until now; he had dropped off the plans with Mrs. Steffen who told him it was complete. Mr. Machnics said he had advised Mr. Bridge that he needed two sets of drawings showing elevation and footprint. Mr. Bridge said he never received a letter saying his application was incomplete. Mrs. Steffen stated that she does not tell an applicant that an application is complete without drawings, plus it is Mr. Machnics' decision as to whether an application is complete. She was aware that Mr. Machnics discussed the application with Mr. Bridge by phone after it was submitted.

Mr. Cuffari reiterated the two errors now being alleged: 1) The Zoning Inspector should have formally approved or denied the application; 2) The Zoning Inspector should have sent the owner of record the Notice of Violation. He asked Mr. Bridge if there are any other errors he is alleging, and Mr. Bridge replied no.

Mr. Cuffari moved to close the public hearing, Mr. Johns seconded and the motion passed unanimously.

Mr. Downing pointed out that on the Notice of Appeal the appellant had written that the second error was, "The zoning inspector was erroneous in issuing a violation for the second structure located on the property which has been in existence for 30 years and on the tax duplicate for more than 20 years." It does not allege an error for being sent to the wrong person. Mr. Cuffari said that there are the two alleged errors as explained by the appellant during testimony tonight, so the appeal has been amended to reflect the facts heard tonight.

The board discussed the first alleged error – that the application for a zoning certificate to replace the fire-damaged residence should have been approved or denied. The board agreed that the application was still pending as Mr. Machnics awaited further information. This is usual protocol when an application is not complete.

Mr. Cuffari made the motion that on the question of whether there was an error on the part of the Zoning Inspector in terms of not having formally approved or denied the application, there was no error. Mr. Johns seconded and upon roll call the vote was Mr. Cuffari – yes, Mr. Downing – yes, Mr. Johns – yes, Mr. Rybak – yes, Mr. Gokorsch – yes, and the motion passed unanimously.

The board discussed the second alleged error – that the Notice of Violation was not sent to the correct individual. Since Mr. Bridge's wife has a purchase agreement for the property, the board asked Mr. Bridge to confirm who is the correct owner. Mr. Bridge replied that the current titled owner is Sherlee Palladino, although Lisa Bridge has a memorandum and affidavit that shows she has an interest in the property. Mr. Machnics confirmed he understands that Mrs. Palladino is the owner of record, but he has the written authorization from Lisa Bridge for her husband to act in all matters regarding the reconstruction of the damaged residence. From his discussions with Mr. Bridge regarding both the existing dwelling and the reconstruction of the other dwelling, he believed Mr. Bridge had the legal authority to make decisions for both buildings. Mr. Cuffari said that if there is an error in understanding then the board can ask the Zoning Inspector to correct it and send the Notice of Violation to the owner.

Mr. Cuffari made the motion to ask the Zoning Inspector to correct this misinterpretation of who should be representing the current owner of record with respect to the Notice of Violation, and to reissue the notice of Violation to the owner of record. There was no second to the motion.

Mr. Gokorsch made the motion asking if the board believes the Zoning Inspector made an error in sending the Notice of Violation dated April 13, 2011, to Mr. Bridge rather than Mrs. Palladino. Mr. Cuffari seconded and upon roll call the vote was Mr. Cuffari – yes, Mr. Downing – no, Mr. Johns – no, Mr. Rybak – no, Mr. Gokorsch – no, and the motion failed by 4-1.

The amended appeal alleging error by the Zoning Inspector was denied in both instances.

There was a five-minute recess.

MINUTES OF MAY 2, 2011 – *Mr. Rybak made the motion to approve the minutes of May 2, 2011, as submitted, Mr. Downing seconded and the motion passed unanimously.*

FINDINGS OF FACT #458 DEER LAKE ESTATES HOMEOWNERS ASSOCIATION – *Mr. Downing moved that the Findings of Fact for #458 be approved as submitted, Mr. Johns seconded and the motion passed unanimously.*

There being no other business, Mr. Rybak moved to adjourn, Mr. Cuffari seconded and the meeting adjourned at 8:35 p.m.

Respectfully submitted,

Diana Steffen
Secretary

Date

Steve Gokorsch
Chairman

Date

Attachments: Letter dated 01/19/11 from Ric Machnics to Sherlee Palladino
Letter dated 03/10/11 from William W. Bridge III to Ric Machnics
Letter dated 03/21/11 from Ric Machnics to William W. Bridge III
Letter dated 03/31/11 from William W. Bridge III to Ric Machnics
Notice of Violation dated 04/13/11 from Ric Machnics to William W. Bridge III

bza minutes 06-06-11