

Minutes: Russell Township Board of Zoning Appeals
Russell Fire-Rescue Station
August 20, 2012

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 7:00 p.m. The Secretary announced that the legal notice for both hearings tonight was published in the News Herald and the Chagrin Valley Times on 08/09/12, and she sent it to the parties and neighbors by certified mail on 08/06/12. Mr. Gokorsch swore in all those who planned to give testimony during either hearing.

VARIANCE REQUEST #467 Charles F. Imm, 14842 Watt Road

Request to locate an accessory building in the front yard in violation of Section 4.7.V, and with a side yard setback of 17 ft. in lieu of the required 50 ft., and front yard setback of 20 ft. in lieu of the required 100 ft. per Section 5.2.B in the R-3 zone.

The applicants, Charles and Teresa Imm, were in attendance.

Mr. Cuffari moved to open the public hearing for Variance Request #467, Mr. Downing seconded and the motion passed unanimously.

Charles Imm confirmed he had been sworn in, and apologized for not being aware that he should have met with the Zoning Inspector to obtain a zoning permit before building his shed. He stated that due to the slope on his property he is limited in a location that is flat enough for a shed. He built it at the front of his property because that is the only flat area and it has access to the driveway. This is critical since the purpose of the shed is to house a snow plow that he will use to clear the driveway. Mr. Imm said he did ask his immediate neighbor to the south if he had any objection to the location, and because he said he did not Mr. Imm commenced construction. When he received a letter from the Zoning Inspector he stopped all work on the shed.

Upon questioning by the board Mr. Imm said he purchased the property in December 2010. He has an ATV to which he attaches the snow plow for the winter season. He built the shed beside a concrete area off the driveway, and this provides access from the shed to the driveway for his snow plow. The concrete apron was there before he bought the property. Mr. Imm confirmed that there is no other flat ground that has access to the driveway.

Mr. Gokorsch asked the Zoning Inspector if he had inspected the site. Mr. Machnics stated he had visited the site twice, and he could see that the concrete apron has been there for some time and has not recently been increased in size. The property rises drastically from Watt Road and the residence is cut into the hill because the topography continues to rise behind the house as well. He said it would be very difficult to build anything in the rear yard because of the topography, and also in the side yard because you would have to cut into the hill. Mr. Gokorsch asked if there is another location possible for the shed and Mr. Machnics said he was not aware of another area because there is nowhere that provides accessibility to an accessory building either at the rear or to the side of the house.

The board reviewed photos submitted by Mr. Imm. Mr. Johns asked if the shed could be placed beside a bush just off the driveway but nearer the garage, and Mr. Imm replied that one of the photos showing him holding a yardstick beside the garage demonstrates the steep and high slope up from the driveway which makes that location unusable, and stated that he cannot reach his woodpile in the backyard with his ATV

in the winter due to this slope. Another photo showed the view of the shed from Watt Road, and Mr. Johns asked if anything blocks the view of the shed from the road. Mr. Imm said there are some bushes and one tree, and he would be prepared to add shrubbery if asked.

Mr. Downing said one of the photos appears to show a flatter area to the left of the driveway behind the building line and asked Mr. Machnics if this could be a suitable location for the shed. Mr. Machnics stated that having inspected the property he could see that the slope rises considerably on the left side of the house and garage as viewed from the front. He said the topographical map confirms this. Mr. Gokorsch asked Mr. Imm to mark the location of the shed on an Access Geauga topographical map, and noted that the front of the house on the south side is at 1120 feet above sea level, and the location of the shed is at 1112 feet, so there is an eight foot fall between the house and the shed. Immediately behind the house the slope rises to 1130 feet and Mr. Gokorsch noted that there did not appear to be anywhere to place the shed behind the house because the land continues to rise in the back yard.

Mr. Johns asked Mr. Machnics if there is any similar structure close to the road in that vicinity on Watt Road. Mr. Machnics replied there are no others but several other residences on the west side of the road are placed into the same hill.

Jim Pracker, resident at 14830 Watt Road, confirmed he was sworn in and stated that he is the affected neighbor to the south. He has lived there since 1970, and could verify that the front of his driveway at the road is at 1000 feet above sea level, but farther back it is at 1200 feet. His property slope is the same as the applicant's. He said he had no objection to the variance, because he has some bushes that will hide a view of it from his property. He believed the shed is not noticeable from Watt Road because the road was cut through below and the shed is elevated above. He said that Mr. Imm needs easy access to his snow plow, especially since the wind comes over the hill and in the winter as much as four feet of snow has dropped in front of their houses. He said he does have an old shed in the very rear of his lot where a horse used to be kept.

Phyllis Pracker, resident at 14830 Watt Road, confirmed she was sworn in, and stated that she had no objection to the variance, and that she thought the shed is not noticeable from Watt Road. Asked by Mr. Gokorsch if it fits with the character of the neighborhood, she stated that, "it works for me."

Mr. Downing said that he understands there is a steep rise in the topography, but asked if it is an insurmountable task to flatten an area in order to put the shed elsewhere within the zoning rules. Mr. Machnics said that the photo showing Mr. Imm with the yardstick is deceiving because the land rises two feet in every two to five feet. He explained that the area that is at 1120 feet and at the corner of the house comes to a point that is not only a slope down to a point but also going up away. Although something could probably be done it would require considerable excavation and expense.

Asked by Mr. Johns if there were any other accessory buildings so close to the road in Russell, Mr. Machnics said the only ones he was aware of are shelters for children waiting for school buses. There are also agricultural farm stands.

Mr. Gokorsch asked if the topography of Mr. Imm's lot near Watt Road is unique, and Mr. Machnics stated that it is due to the extreme rise of the slope to the west and south, and the shed appears to be at least 15 feet above the road. This is confirmed by the topographical map. Mr. Imm stated he could dig into the slope and relocate the shed but it would still be four feet above the driveway and his ATV cannot reach that area. He said he needs access to the driveway, and cannot keep it in the garage because he parks his cars there. The current location is the only practical one, and he said that because of the way the road is cut in below you cannot see the shed from the road.

Mr. Cuffari asked the Zoning Inspector if it is the Township's position that there is no objection to the location of the shed and that Mr. Machnics concludes that this is the only practical location to put the shed on the property. Mr. Machnics said yes, unless the applicant invests substantially in developing another area that would comply with the setbacks. He had no objection to the variance being granted.

Mr. Rybak asked Mr. Imm if he knew of the zoning restriction when he purchased the property in 2010 and Mr. Imm said no.

There being no other comments *Mr. Cuffari moved 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: The application stated there would be a beneficial use without the variance, and there was no testimony presented tonight to indicate otherwise.
- b) Whether the variance is substantial: Yes, the request is for a 17 foot side yard instead of the required 50 feet, and a 20 foot front yard in lieu of 100 feet, and according to Township testimony there are not known to be other such structures in a similar location except school bus shelters.
- 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, according to testimony from neighbors. Also the board did not hear any testimony that it would have an impact on the character of the neighborhood.
- d) Whether the variance would adversely affect the delivery of governmental services: No testimony was provided on this factor, but the applicant stated in the Notice of Appeal that it would not have any effect.
- e) Whether the property owner purchased the property with the knowledge of the zoning restriction: No.
- f) Whether the property owner's predicament feasibly can be obviated through some method other than a variance: No other method was offered into testimony.
- g) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance: With regard to 'substantial justice', testimony was presented that this is the only practical location for such a building to be constructed. The spirit and intent will be observed since in order for the applicant to enjoy and use his property, in light of the circumstances of the road and the topography, this can only be accomplished by approval of the variance. The shed is intended to house the snow plow and needs to be in that location in order for the owner to access it. Although there was no testimony as to whether the spirit and intent is being observed, it is the responsibility of the Township to defend zoning, and the Township's position is that the proposed location is suitable and the Zoning Inspector stated he has no objection.
- h) Such other criteria which relate to determining whether the zoning regulation is equitable: Due to the topography of the property testimony was given that for the shed to serve its function would require substantial excavation anywhere else on the lot. The Township Zoning Inspector has stated that the structure is not very big at 8 ft by 10 ft 6 ins.

Mr. Downing made the motion to accept Applicant's Exhibit #1, the Access Geauga topographical map showing the location of the building site relative to the property line, Mr. Johns seconded and the motion passed unanimously.

Mr. Cuffari made the motion to approve Application #467 on behalf of Charles Imm as submitted, Mr. Downing 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.

Variance request #467 was granted.

Variance Request #468 Lynne Gerace, 7585 Thistle Lane

Request to locate an accessory building in the front yard in violation of Section 4.7.V, and with a front yard setback of 97 ft. 2 ins. in lieu of the required 125 ft. per Section 5.2.B in the R-5 zone, which requires that the side yard on the street side of a corner lot shall be the same as the front yard required for that street.

Applicant Lynne Gerace, architect Richard Siegfried of RSA Architects, LLC, and Brooks Conn of Brooks Construction were in attendance.

Mrs. Gerace confirmed she was sworn in and introduced Richard Siegfried who she said would speak on her behalf. Mr. Siegfried confirmed he was sworn in, and presented an aerial and topographical map of the site and photos taken at various locations and described in a photo key. He stated that Mrs. Gerace's lot is unique because Thistle Lane is horseshoe shaped resulting in the lot being required to have a 125-foot setback on three sides. Mrs. Gerace wishes to construct a woodworking shop as a gift to her husband, who is an accomplished woodworker and currently uses two-thirds of the garage for this work. There is little buildable area where the structure could be built behind the 125-foot front setback, because the septic system is located behind the residence. On the west side there is a large wooded area and they do not want to remove trees, plus there is an intermittent stream draining that area. There is also a drainage area in front and behind the residence. This leaves only the area behind the parking pad where there is about 97 feet to the edge of the right-of-way rather than the required 125 feet. The accessory building will be attractive, 25 ft. by 29 ft., set back from the pad a few feet, and will not be visible from the road due to trees.

Mrs. Gerace stated she has spoken to all of her neighbors who received the notice of the hearing by certified mail, and they have been supportive and have no concerns about the project.

Mr. Siegfried described the first page of photos he had just submitted that showed views towards the proposed location from the residence and from the driveway, and from the location to the existing garage. Mrs. Gerace said that one tree will have to be removed, but it is not healthy and is dangerous and will need to come down regardless of new construction. Mr. Siegfried stated that they plan to add more landscaping. He described the second page of photos. One showed the view from the proposed site towards Thistle Lane. Although the leaves will drop in the fall there are some pine trees, and the woods are dense. The other photos showed the view from Thistle Lane towards the proposed site.

Mr. Gokorsch remarked that the topography appears to be flat except for a swale across the back of the property. Mr. Siegfried replied that there is also a ditch that runs across the front of the property, and the green area shown is the septic area. He explained that the third page of photos shows the driveway entrances to neighboring properties on Thistle Lane, whose homes are set back as far as the Gerace residence and are not visible from the road. He said the planned location is the only place to build the accessory building in a practical fashion.

The Chairman asked Mr. Machnics if he had any comments. Mr. Machnics stated that the Zoning Commission is reviewing this type of situation and is clarifying the language. He said he has no objection to the variance, and that the building will not be visible from the street except during the winter.

Mr. Gokorsch noted that this lot and the one behind it are unique in the Township due to their configuration in the center of the Thistle Lane circle. Mr. Cuffari remarked that if it was not for the fact that Thistle Lane curves around the side yard requirement would be 50 feet, which the proposed location is within.

There were no further comments from the audience or the board.

Mr. Downing made the motion to accept Applicant's Exhibit #1 consisting of 4 pages that show the topography of the lot area with a photo key of photos of the various areas on the property, and three pages of photos that show views of the building site from the property, views from the site to the street

and views from the street; Applicant's Exhibit #2 Access Geauga aerial site plan with riparian areas identified. 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: The applicant stated in the Notice of Appeal that the property would yield a reasonable return without the variance, and there was no testimony presented tonight to indicate the property would not yield a reasonable return nor have a beneficial use if the variance is not approved.
- b) Whether the variance is substantial: As a 20% variance the board agreed this is not substantial. This is a unique situation and the structure will be 97 feet from the road right-of-way. If the setback was considered to be a side yard it would meet the zoning requirement of 50 feet. Although there was no specific testimony the evidence shows the proposed structure is located a considerable distance from other residences. The accessory building will be a single story and is 25 ft. 4 ins. by 29 ft. 4 ins. The board agreed the variance 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: No testimony was heard to indicate any impact on the character of the neighborhood.
- d) Whether the variance would adversely affect the delivery of governmental services: No, according to the notice of appeal, and no testimony was presented tonight to indicate there would be a problem.
- e) Whether the property owner purchased the property with the knowledge of the zoning restriction: Yes, according to the notice of appeal. However, Mrs. Gerace stated she was not aware that her property was mostly considered to be front yard and she asked to amend her application to say that she was not aware of the zoning restriction when she purchased the property.
- f) Whether the property owner's predicament feasibly can be obviated through some method other than a variance: Based on testimony heard the applicant believes there is no other location due to the configuration of the lot being a front yard on three sides with a drainage area to the west side and the existing septic area plus the replacement area being located across the area behind the house and towards the street. However, it is inconclusive as to whether there is a suitable area on the west side of the residence, although that is not preferred by the applicant due to it being densely wooded and would require the removal of substantial numbers of trees.
- g) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance: Testimony was provided regarding the unique configuration of the lot and the fact that it must conform to a front yard setback on 180 degrees of its profile, and the fact that the proposed building is substantially farther away from the road than it would need to be if it was a side yard with no road there. It will not be visible from the street except perhaps in winter, and even with that the spirit and intent of the zoning is adhered to with the placement of the building in the proposed location.
- h) Such other criteria which relate to determining whether the zoning regulation is equitable: It was noted that the Zoning Inspector, on behalf of the Township, had no objection.

Mr. Johns moved to approve Variance Request #468 as requested, Mr. Downing 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.

Variance Request #468 was granted.

MINUTES OF JULY 9, 2012 – Mr. Downing apologized for being absent from the last meeting. *Mr. Rybak moved to approved the minutes of July 9, 2012 as submitted, Mr. Johns seconded and the motion passed unanimously by 4-0.* Mr. Downing abstained due to his absence from that meeting.

OTHER BUSINESS – Mr. Gokorsch asked the Secretary to contact attorney Todd Hunt to inquire if there is anything else he needs in his review of the management of conditional uses.

There being no other business, Mr. Cuffari moved to adjourn, Mr. Rybak seconded and the meeting adjourned at 8:17 p.m.

Respectfully submitted,

Diana Steffen
Secretary

Date

Steve Gokorsch
Chairman

Date

bza minutes 08-20-12