

Minutes: Russell Township Board of Zoning Appeals  
Russell Fire-Rescue Station  
October 18, 2010

Present: Steve Gokorsch, Chairman  
William Downing  
Edith Lerner, Ph.D.  
Justin Madden  
Diana Steffen, Secretary

Fred Cuffari was absent with apologies.

The Chairman called the meeting to order at 7:06 p.m. The Secretary confirmed that a legal notice was published in the News Herald and Chagrin Valley Times on 10/07/10, and was sent to the applicant and neighbors on 10/05/10. The Chairman swore in applicants Dr. and Mrs. Richard Black.

**VARIANCE REQUEST #454 Dr. Richard & Mrs. Laureen Black, 7340 Wharton Road**

Request for a sideyard variance so as to continue the location of an existing accessory building 17.5 feet from the side property line in lieu of 50 feet required, in order to use the building for a non-agricultural use. The building was originally constructed for agricultural use within the sideyard setback.

Dr. Black stated he purchased and moved into the residence in July 2007, at which time the outbuilding was described as a summer cottage or outbuilding by the realtor. He is a nuclear medicine physician and has rented office space in Chagrin Falls since 2006. He is licensed in 31 states and reads 1,000 cases a month, 50 cases daily which would be considered a heavy workload for a week. He cannot work in his home due to the intense nature of his work so rented the office to be separate and productive. According to Dr. Black, the outbuilding would be ideal for home office use.

In 2007 Dr. Black still had two years left on his Chagrin office lease, but in December 2009 he spoke with the architect, Tony Paskevich, who designed the residence and outbuilding. Tony advised him that the outbuilding was built incorrectly within the setback line. It would have had to be pulled down and moved, however it was decided to use it as an agricultural building and therefore it was permitted to remain in its current location. Apparently the stakes for the entire property were in the wrong place when the house and outbuilding were built. The lots on Wharton Road are rectangular and the stakes for the property's western boundary were placed 50 feet farther east so the builder thought he had another 50 feet on the eastern side. Randall Pistone was the builder in charge of the outbuilding and Mr. Tesauro was in charge of the residence.

Dr. Black stated the house and the outbuilding were both completed in 1999. Asked if the original site plan, showing the proposed location of the outbuilding and a penciled-in actual location, was accurate, Dr. Black said it was, and due to the whole lot being off by 50 feet, the builder thought there was room to build in the current location.

Dr. Black stated that he does not see patients but uses a dark room with several computers. He would like to add more electrical power and to install a bathroom. Asked about the type of power, Dr. Black said he needed just enough to run computers and air conditioning for those computers. Mr. Madden explained that the main issue is whether the outbuilding must be taken down or a variance granted for a sideyard setback. Dr. Black said he understood and was asking to make some modifications to the structure. He said that because it is only 17.5 feet from the side line he cannot use it for other than agricultural uses, and he is requesting the variance so that he can use it as a home office. He stated he asked the neighboring property owner if he could purchase some land to increase the setback to 50 feet, but the owner's representative said he did not wish to sell any part of his property, and suggested they request a variance instead. If the outbuilding remains within the setback he cannot use it for anything.

Mr. Gokorsch explained that the request is for a sideyard variance for non-agricultural use, and not the use of the outbuilding for a commercial purpose. There is no issue with it being used as a home office,

since that is an extension of the residential use. Mr. Gokorsch said the board can accept testimony regarding the sideyard variance request. Mrs. Steffen stated that she understood Zoning Inspector Ric Machnics approves the proposed use as a home occupation.

Mrs. Black stated they have received a quote for \$130,000 to build a similar outbuilding in another location that would comply with zoning. The Chairman asked if they were requesting to keep the existing outbuilding as part of the residence and 17.5 feet from the side line rather than the required 50 feet, and Dr. Black said yes.

Dr. Lerner asked if the subject building could be moved. Dr. Black stated that it is made of stone, and he understood it could cost as much to move as to build a new building.

Mr. Madden asked when, if ever, did the adjoining property owner, Mr. Glazer, raise an issue about the location of the outbuilding. Dr. Black stated that his wife spoke to a representative of Mr. Glazer, and they have never spoken directly to him. They purchased the home in 2007 so any conversation that might have taken place would have been prior to that time and between Mr. Glazer and the DePerros, the previous owners. Mrs. Black said she spoke to Mr. Miller, the builder of the other homes on Wharton Road, who asked why the previous owners had not applied for a variance.

Mr. Gokorsch asked if they planned to make any exterior changes to the footprint of the building. Dr. Black said no. Mr. Gokorsch asked if there will be modifications that may cause noise to encroach on the neighboring property. Dr. Black stated that only the air conditioner might cause any noise, but his work does not make any noise. He agreed that he would work with the Zoning Inspector to put the air conditioner in a location that would not cause noise to encroach on the neighboring property. This would mean locating it on the north, west or south side of the building, and not on the east side. He also agreed to surround the air conditioner with shrubbery as a noise buffer.

Dr. Lerner asked if there would be any floodlights on the building. Dr. Black said there are currently a few low voltage accent lights that accentuate the cottage on the property. If a residence is built at some time on the neighboring lot it would be far from the building. The nearest other property is a vacant lot on Calley Lane. He stated he would not add any floodlights. Mrs. Black said they may install a security system.

Mr. Madden asked Dr. Black who transcribes his reports. Dr. Black said some are done by voice recognition and the rest by transcriptionists who are out of the area. He stated he does not have any employees and no security guards. Occasionally he may need to ask a computer technician to assist with computer issues. Mr. Gokorsch asked if there will be driveway access to the outbuilding, and Dr. Black stated no.

There being no further comments or questions, Mr. Madden moved 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: Yes, the residence and property can be sold without the variance. It was sold a few years ago without the variance, and testimony has shown the property is of use without a variance.
- b) Whether the variance is substantial: The board agreed that it is approximately a 60% variance, which is substantial. This is mitigated by the fact that the outbuilding has existed in full sight of the adjoining property owners for over ten years.
- 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 presented on this factor, and no neighbors were present to indicate that the variance would alter

the character of the neighborhood. The lot is mostly wooded and the outbuilding is not easily seen from off the property. The Chairman mentioned that the board had received a letter from attorney Terrence McHugh on behalf of Mr. Glazer, but because no one was at the hearing to testify for Mr. Glazer, the letter could not be admitted into the record.

- d) Whether the variance would adversely affect the delivery of governmental services: No testimony was heard on this factor.
- e) Whether the property owner purchased the property with the knowledge of the zoning restriction: The applicants had stated they were not aware of the zoning restriction and had referred to the realtor's fact sheet on the property where the building was referred to as both a summer cottage and a storage shed/outbuilding.
- f) Whether the property owner's predicament feasibly can be obviated through some method other than a variance: The board agreed that the building is not movable being made of stone. The applicants had tried to purchase additional land from the neighbor to put it in compliance, but their offer was not accepted. Based on the record, the predicament cannot be obviated by any means other than a variance.
- g) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance: Yes, it has been there since the lot was built on, and the building will not be changed in size, height or physical appearance. The fact that the boundary stakes were moved before it was built was not the fault of the current owners. The architecture matches the residence.
- h) Such other criteria which relate to determining whether the zoning regulation is equitable: The building has been in existence in its location for ten years, and there is nothing in the record that the applicants were aware of the problem with the location. There is no testimony that the building is an issue for neighbors or the neighborhood. There will be no change in the footprint of the structure. The regulation is equitable, and it would be equitable to grant the variance.

*Mr. Downing made the motion that application #454 submitted by Dr. and Mrs. Black be approved as submitted, Dr. Lerner seconded and upon roll call the vote was Mr. Downing – yes, Dr. Lerner – yes, Mr. Madden – yes, Mr. Gokorsch – yes, and the motion passed unanimously.*

Variance request #454 was granted.

**MINUTES OF SEPTEMBER 20, 2010** – *Mr. Madden moved to approve the minutes as submitted, Dr. Lerner seconded and the motion passed unanimously.*

There being no other business, Mr. Madden moved to adjourn, Dr. Lerner seconded and the meeting adjourned at 8:00 p.m.

Respectfully submitted,

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Diana Steffen  
Secretary

Date

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

Date