

Minutes: Russell Township Board of Zoning Appeals
Russell Town Hall
October 26, 2009

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

Justin Madden was absent with apologies.

Also in attendance: Ric Machnics, Zoning Inspector.

The Chairman called the meeting to order at 7:00 p.m.

The Secretary confirmed that a legal notice for both hearings tonight was published on 10/15/09 in the Chagrin Valley Times and News Herald, and was sent by certified mail to the applicants and neighbors on 10/09/09. The Chairman swore in all those in the audience who wished to give testimony or make comment.

VARIANCE REQUEST #446 Charles Watts, 8397 Top Rail Lane

Request for variances for an existing 48 sq. ft. accessory building located in the front yard in violation of Section 4.7.V, 13 feet from the east side property line in lieu of 30 feet required, and with a 51-foot front depth in lieu of 70 feet required per Section 5.2.B for a nonconforming lot in an R-5 district.

Charles Watts was in attendance, and stated he had prepared a Power Point presentation that includes three photographs that were not included in his application. However, he did not bring a projector. He asked to postpone the hearing until the next meeting, when he will bring a projector. The Chairman recommended he bring hard copies of the photographs too. The hearing was deferred to the next meeting.

VARIANCE REQUEST #447 Gregory & Elaine Hocevar, 14780 Russell Lane

Request for a variance to construct an accessory building with a 15-foot side yard in lieu of 30 feet required per Section 5.2.B for a nonconforming lot in an R-5 district.

Mr. & Mrs. Hocevar were in attendance. The Chairman opened the public hearing. Gregory Hocevar, who had been sworn in earlier, stated that he sought a sideyard variance of 15 feet for a pole barn to be constructed parallel to the existing barn. He presented an aerial view of his property that showed a 20-foot sanitary sewer easement around part of the lot, which he said takes some of the area where he could have built on the south side or at the rear. From the house to the sewer easement is 160 feet, to the woods in the back 185 feet. He is unable to build close to that easement. His lot is 900 feet long, sloping down a steep hill to the Chagrin River. The red lines drawn on the photograph (later accepted as Applicant's Exhibit #3) represent the location of drain tiles that were installed to prevent water settling, and according to Mr. Hocevar, to move those

would be an economic hardship for him. One drain is located just west of the existing barn, represented in the photo by a blue dot, and just east of the proposed barn, represented by a pink dot. Mr. Hocevar stated that in the rear he has drains that go over the hill to alleviate the water that settles at the rear. He said the yellow highlighted areas represent trees, and the topography prevents him from building in the middle area where he would also have to cut down live trees.

Mr. Hocevar showed photos of the 30-year-old existing barn that is hidden from the road by trees. He stated that the land has contours and rolling areas, and to excavate those would destroy the trees.

Mr. Hocevar mentioned that in his application package he had submitted a letter from Mr. Culek, the neighbor to the north. Mr. Culek had written that he had no problem with the barn being located 15 feet from his property line. Mr. Culek was unable to attend the hearing as he has just had surgery, but he had said he would be willing to speak to the board over the telephone.

Members of the board asked a number of questions. Mr. Hocevar confirmed that he planned to raze the existing 10 ft x 10 ft shed eventually. The proposed barn is 16 ft x 20 ft. He said he has a \$10,000 piece of lawn equipment that is stored outside, plus lawn equipment in the shed, that will be moved to the new barn, and patio furniture that needs to be stored inside during the winter. He said that if the new barn was built partly on the footprint of the old barn it would be on top of the drain tiles, and he would have to excavate and move them. For this reason he wanted to locate the new barn to the west of the tiles. Asked why the existing shed is too close to the side line, Mr. Hocevar said that 29 years ago there was no requirement and it was not a permanent structure at that time. Mr. Machnics stated he does not have a zoning permit on file for that shed.

Mr. Downing asked why the barn could not be located farther to the south to be in compliance, and Mr. Hocevar replied that the land slopes down. Mr. Machnics explained that there is a higher area near the property line and then it slopes down to the south and to the west. He said he has visited the site. Asked by Mr. Gokorsch if excavation would be required if the proposed barn was located farther south in compliance with zoning, Mr. Machnics said yes, and then the foundation would need to be built up on one side, therefore the proposed location is the least expensive potential site for the proposed structure.

Mr. Hocevar explained that when he bought the property there was a marsh where the existing shed is located, and he filled in the area and removed some crabapple trees and re-contoured it. Mr. Machnics stated that the topographical map is not reflective of the changes Mr. Hocevar has made over the years.

Mr. Machnics said an area of at least 20 feet would need to be dug out if the new barn was located 15 feet farther south than the requested location. Topsoil would need to be removed and stone or other fill brought in to level the site. Mr. Hocevar said he would also have to remove two trees in the middle of the yard in order then to utilize the barn, since he wished to have the doors facing south. The proposed location would not require

excavation. He agreed that he will still need to drive over the drain tiles for access to the barn from the south, but this has never damaged them in the past. He said he did not want to dig them up and replace them elsewhere. Mr. Machnics stated that the barn could be located farther south but that Mr. Hocevar thinks that to have access he would have to take down several trees. Mr. Machnics said he had misunderstood Mr. Hocevar, having thought that the doors would face east rather than south. He agreed that if the doors face south then some trees would have to be removed to provide access. The distance from the proposed location to the drip line of the trees is about 20 feet.

Mr. Gokorsch asked for comments from the audience. Bruce Cesen, 14794 Russell Lane, had been sworn in and stated he is the neighbor to the south and that he had no problem with the variance request.

Mr. Cuffari asked if any nearby properties have similar structures close to the property line. Mr. Hocevar mentioned some properties, but Mr. Machnics said he would have to check his files to verify. Mr. Machnics also stated that Mr. Hocevar's lot is over 3 acres in an R-5 zone, which means there should be a 50-foot sideyard setback. However, a variance was granted to build on this lot in 1978, which included 30-foot sideyard setbacks and a 70-foot front setback. For this reason Mr. Machnics said he would have allowed a 30-foot setback for the barn.

Mr. Cuffari advised the applicant that he had not seen sufficient evidence to grant a variance. Photos of the area of the proposed location and showing the trees, or a sketch, and information on whether the structure's location would be consistent with the neighborhood, would be helpful. He said he was concerned that the structure is three times the size of the existing one, and if Mr. Hocevar would like to have time to obtain some evidence then the board could continue the hearing. Mr. Machnics said he could research structures in the area and provide that information to the board. The applicant stated that the Zoning Inspector had already visited the site and had also reviewed the application with him. He showed the board a color aerial view of the lot and Mr. Machnics marked the location of the drip lines of the trees.

Mr. Downing said that Mr. Machnics had indicated the barn could be located to the south without a problem when he thought the doors would face east. Since Mr. Hocevar wishes to have the doors on the south side this would require removing trees. Mr. Downing suggested that the doors could be put on either the east or north sides with a drive providing access from the front of the property. Dr. Lerner asked Mr. Hocevar if he could put the doors on the north side if the barn was moved to the south. Mr. Hocevar said he would have to move the barn right around, and he would put in one door rather than two doors.

There being no other comments from the board or the audience, *Mr. Downing made a motion to close the public hearing, Mr. Cuffari seconded, and upon roll call the vote was Mr. Cuffari – yes, Mr. Downing – yes, Dr. Lerner – yes, Mr. Gokorsch – yes, and the motion passed unanimously.*

Mr. Downing made the motion to approve Variance Request #447 as submitted, Mr. Cuffari seconded.

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 request stated there could be a beneficial use without the variance.
- b) Whether the variance is substantial: Yes, the request is for 50% of the reduced side yard of 30 feet that is already under variance. The structure is 3.2 times the size of the existing structure, 320 sq. ft. versus 100 sq. ft. Mr. Cuffari also noted that if there were no expansion of size from the existing structure, he would not consider the variance to be 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 facts were presented regarding this factor. One neighbor had testified he had no problem with the variance.
- d) Whether the variance would adversely affect the delivery of governmental services: No testimony was presented on this factor.
- e) Whether the property owner purchased the property with the knowledge of the zoning restriction: The applicant stated in the Notice of Appeal that he had knowledge for the dwelling only. He had obtained a variance in 1978.
- f) Whether the property owner's predicament feasibly can be obviated through some method other than a variance: The Zoning Inspector testified that if the barn was moved farther south, and with a south-facing entrance, then some trees would need to be removed. No other feasible location was suggested.
- g) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance: Mr. Cuffari said the board has not been presented with sufficient facts.
- h) Such other criteria which relate to determining whether the zoning regulation is equitable: None.

Upon roll call vote on the motion to approve the variance, the vote was Mr. Cuffari – No, Mr. Downing – No, Dr. Lerner – No, Mr. Gokorsch – No, and the motion failed.

Variance request #447 was denied. The Chairman explained to the applicant that he could appeal the decision to the Court of Common Pleas, submit a different variance request, or comply with the setback requirements.

