

Minutes: Russell Township Board of Zoning Appeals
Russell Township Fire-Rescue Station
November 30, 2009

Present: Fred Cuffari, Vice-Chairman
William Downing
Edith Lerner, Ph.D.
Justin Madden
Diana Steffen, Secretary

Steve Gokorsch was absent with apologies.

Also in attendance: Ric Machnics, Zoning Inspector.

The Vice-Chairman called the meeting to order at 7:00 p.m., and noted that he would chair the meeting in the absence of the Chairman.

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. Mr. Cuffari opened the public hearing and swore in all those in the audience who planned to give testimony or make comment. The Secretary confirmed that a Sunshine Notice rescheduling the date and location of tonight's meeting was sent to five newspapers. A legal notice for Variance Request #446 was published on 11/19/09 in the Chagrin Valley Times and the News Herald, and sent to the applicant and neighbors on 11/17/09.

Charles Watts confirmed he was sworn in, and gave a PowerPoint presentation. He said the issue is that he would like to keep the shed. The property value will not change whether the variance is granted or not, but his lot is very wet and he needed a location that is dry and safe that his children can access for their bicycles. He located the shed behind a tree and matched it to the house. There is a severe water problem in his yard making access to his other shed at the back difficult for his children, since it is always wet and muddy. He has parked his car outside his garage in the summer for a couple of years so that the bikes can be stored in the garage. In attempting to obviate the situation Mr. Watts said he has redone the back yard three times. The first time he re-graded the yard and removed trees but then the water flooded the cul-de-sac and froze in the winter. So then he re-graded again and added five catch basins and 340 feet of eight-inch double-walled pipe, and created a retention area in the back to catch the water, but that did not solve the problem either. One issue is that there is still a lot of water that comes down the hills behind his yard, and so his back yard is always wet. He then added 320 feet of drain tile and gravel and re-graded again, which has not solved the problem, but he is now able to mow the back yard most of the year. He has spent over \$10,000, but the yard still

floods. Mr. Watts stated that he redid his deck and patio and raised the patio up to try to keep water away from the house, which prevents other locations for the shed near the house.

Mr. Watts showed photographs of the catch basins, retention area at the back and a swale cut around the house. He has to force water away from the house, which would otherwise have provided a potential location for the shed. He put gravel under the deck, raised the patio over one foot and along the back of the house in order to redirect water around the house towards the driveway.

Mr. Watts showed photos of the result of all the work he has done. The photos showed a heavy rain with flooding through the middle of the back yard, the reason being that his property drains the surrounding lots beside and behind his lot. Mr. Watts stated that his house was built into a creek, and when it rains his property drains the whole area. He built the retaining wall along the topo line around the east side of the house.

According to Mr. Watts, if he moved the shed into the woods it may still not be far enough from the side line, and if he moved it back it would be into an area that is always wet. He then showed photos of the location of the shed, and explained that he had thought he had enough room to the side line since he maintains all the open area to the east of the shed. He said that in fact the dog's invisible fence flags in one photo show the approximate location of the property line. Showing photos of the shed, Mr. Watts said he sided it to match the house and had a brick apron installed. He pointed out that a steep hill slopes down to the shed, which would be six inches higher on one side if he had not installed block on the other side. He cannot move the shed farther back because of the steep slope.

Mr. Watts stated that, in his opinion, the shed has not changed the character of the neighborhood since his property is well maintained. The closest neighbor's home is up the hill. Due to the water issue the only way to find another location for the shed would be to remove most of the hill, according to an excavator, which would cost several more thousands of dollars. Mr. Watts said the variance is not substantial, being for a 48-square foot shed. He planned to landscape around it to hide it. He felt he is within the spirit of the zoning if the intent is to have a nice residential area, and it would be an injustice not to grant the variance. He would lose the \$2,000 that the shed and brickwork cost. He stated that he provides a service to the neighborhood by taking other yards' water runoff, and he has spent \$10,000 trying to resolve drainage issues without help from neighbors.

Mr. Madden asked if the shed was prefabricated or built from scratch. Mr. Watts replied that it was a kit, and he had to dig down and put in limestone and a block foundation. Mr. Downing said that one of the photos submitted with the application showed a swing set with slide, and asked if it is usable. Mr. Watts said it was usable because it is placed on four inches of rubber mulch, although it is still damp underneath. There is a sandbox in one corner of the mulch but it never dries out. Mr. Downing said the back yard appears to be the flattest area on the lot. Mr. Watts said it is like a bowl and he has re-graded it to drain to the front, and has raised the patio 15 inches to protect the house. Mr.

Machnics stated he has visited the site and can confirm this. Mr. Downing suggested the shed could be located right behind the retaining wall where it juts into the back yard, but Mr. Watts said the yard rises at a 30-degree angle, and he must keep the wall or the hill would collapse onto the patio. It is flat for two or three feet then rises, and he uses it for access to the woods. Asked by Dr. Lerner if the shed could be located on the stone patio between the house and the retaining wall, Mr. Watts said it is not level since he had it graded so the water flows around the house and along by the wall.

Mr. Cuffari asked Mr. Machnics how far back the shed would need to be moved to be in the side yard and out of the front yard. Mr. Machnics said that it is 51 feet to the edge of the right-of-way and should be 70 feet, so it would need to be moved 19 feet. He thought there was approximately 15 feet between the side of the shed and the place where the retaining wall starts and the land rises, but Mr. Watts said it is only about five feet. To have one edge of the shed parallel with the edge of the garage, and therefore out of the front yard, Mr. Machnics said it would need to be moved 19 feet back. Mr. Cuffari noted that to do that would require some excavation, but asked if it would be possible to move the shed into the side yard, and Mr. Machnics replied that it would be possible but there would be some expense involved in cutting into the hill. Mr. Watts said that if the shed were to be moved there and be level it would need a ramp or he would have to excavate down and need another retaining wall and more drainage. Mr. Machnics agreed, but also noted that there is already an existing shed in the back of the property.

Dr. Lerner asked why the shed could not be placed by the swing set area using the rubber mulch. Mr. Watts said his children would have to go through the wet area, which they do when walking but it would not be practical for them to ride their bikes there. They would have the same difficulties as using the shed at the back, except it would save 10 or 12 feet. Mr. Madden asked if the shed at the back is in a wet area and asked what is kept in it. Mr. Watts said it is wet, always muddy in front of it, and the gravel underneath gets washed out. He stores his riding mower, ATV, generator, patio furniture, and other garden equipment in it.

The Vice-Chairman opened the hearing to the audience. David Kruse, President of the Hackamore Woods Homeowners Association, stated he was there as proxy for William Mason, Chairman of the Architectural Control Committee, who was unable to be present tonight. He confirmed he was sworn in. He said he would like to read Mr. Mason's letter that had been submitted to the Board on 11/18/09. The Vice-Chairman explained that the Board would not be able to consider Mr. Mason's testimony due to his absence, but that because Mr. Kruse is an officer of the homeowners association, he could present testimony. Mr. Kruse then read the letter aloud and paraphrased it accordingly. He stated he agreed with Mr. Mason that the property is one of the best-maintained properties in the neighborhood, and he added that the Watts family has tried to improve the property. Regarding the second paragraph, Mr. Kruse said he agreed with the comment that the association has appreciated the Zoning Department and the Board of Zoning Appeals enforcing the zoning rules in the past, and agreed with the other statement that the building lots are undersized at about one acre so therefore strict adherence to zoning rules pertaining to setbacks is especially critical to the development.

Regarding the third paragraph, Mr. Kruse stated that Mr. Mason had taken photos that were complimentary of the way the shed matches the house, but he said they also show it is clearly in the front yard of the property. The fourth paragraph states Mr. Mason's opinions. Referring to the fifth paragraph, Mr. Kruse stated that he believed that Mr. Watts has made efforts to mitigate the water problems in his back yard, but he also believed there are other measures that can be taken to put the shed in the back yard and gain access, such as a rubber path to both sheds. The subject shed is a temporary type of building, and the homeowners association's concern is that to permit it in its current location would set a precedent in the neighborhood for such structures. Mr. Kruse said he valued the Watts family as caring neighbors, who are sensitive to the needs of the neighborhood, and he believed this is an opportunity to work with them on a plan to move the shed to another location.

Mr. Cuffari asked if the Architectural Control Committee's standards permit sheds to be in the side yard. Mr. Kruse said he believed they must comply with the Township zoning requirements. Kevin O'Connor, resident of Hackamore Woods at 8325 Corral Circle, confirmed he was sworn in, and stated that the deed restrictions require any structure on a lot to be no closer than 70 feet to the edge of the right-of-way. He stated the shed would be acceptable in the side yard if it complies with the setback requirement. Mr. Cuffari asked Mr. Watts if he agreed with the statement that the existing location does not meet the Architectural Control Committee's standards. Mr. Watts said no, because he has not read them, but he did agree that the shed does not meet the zoning requirements. Mr. Cuffari said he was trying to ascertain if the Committee's standards are the same as the Township zoning requirements, or whether they go beyond them. Mr. O'Connor stated that the homeowners association is updating the standards, which contain statements that explain the development, such as single-family residences and character of the neighborhood.

Matt Galemmo, resident of Hackamore Woods at 14831 Hitching Post Lane, confirmed he was sworn in, and stated that he has lived there 22 years, and most of the properties have water problems, since Hackamore Woods was not developed correctly. He said he has a large amount of water flowing through his yard from S.R. 306 and S.R. 87, as do his neighbors, and they all have wet back yards. However, when he wanted to build a shed recently, he contacted the County Building Department and the Zoning Department and went through the correct procedure. Because of the slope in his back yard he had to excavate several inches and put down slag, and the shed is level and stays dry. He felt that it would be appropriate for Mr. Watts to locate the shed in the back yard since there is already one shed there. Mr. Watts commented that he did not have to obtain a zoning permit because the shed is under 80 sq. ft. Mr. Machnics confirmed that but stated that he still needed to follow the setback regulations. Asked by Mr. Cuffari why he did not approach the Architectural Control Committee, Mr. Watts stated he did not know it existed, and had been to only one homeowners association meeting.

Mr. Cuffari advised the applicant that he had the right to ask for a continuance to another meeting if he wished to consider the testimony presented tonight or meet with the Architectural Control Committee. After a five-minute recess, Mr. Cuffari stated that he

had not heard sufficient facts to ascertain how having the shed in the side yard would impact whether zoning was fair and equitable in this case. He had also not heard sufficient facts regarding the extent of excavation required if the shed were to be moved farther back and out of the front yard. Mr. Watts then requested a continuance so he could work with Mr. Machnics to determine accurate measurements and potentially to meet with the Hackamore Homeowners Association regarding alternatives.

Mr. Downing made the motion to continue Variance Request #446 as requested by the applicant, Dr. Lerner seconded and the motion passed unanimously.

The Vice-Chairman asked Mr. Kruse if he could attest to all the facts he had put in the letter he had submitted to the board on 10/26/09 on behalf of the Hackamore Woods Homeowners Association, and Mr. Kruse said he did.

Mr. Downing made the motion to accept B.Z.A. Exhibit #1 from the Hackamore Woods Homeowners Association as authorized by Mr. David Kruse who is present to attest to it being his document on behalf of the Hackamore Woods Homeowners Association, Dr. Lerner seconded and the motion passed unanimously.

Mr. Downing made the motion to accept Applicant's Exhibit #1 which is a PowerPoint presentation consisting of 25 pages indicating his variance request and identifying locations of existing structure and water course and topography etc. Dr. Lerner seconded and the motion passed unanimously.

MINUTES OF OCTOBER 26, 2009 – Greg Hocevar, the applicant for Variance Request #447 heard at the meeting of 10/26/09, was in attendance. He had been granted permission by the Vice-Chairman to review the draft minutes tonight just before the meeting started, and he said he wished to comment on two items missing from the minutes. As a result of some discussion, the Board agreed not to make any change regarding the first item, which referred to the accuracy of the topographical map submitted by the applicant. Regarding the second item, it agreed to add wording that would clarify that Mr. Machnics had stated that the applicant's proposed location was the least expensive potential site for the proposed structure.

Dr. Lerner made the motion to approve the minutes as amended, Mr. Downing seconded and upon roll call the vote was Mr. Downing – yes, Dr. Lerner – yes, Mr. Cuffari – yes, and the motion passed unanimously by 3-0. Mr. Madden abstained due to his absence from that meeting.

FINDINGS OF FACT #447 HOCEVAR – *Dr. Lerner made the motion to accept the findings of fact for Variance Request #447 as presented, Mr. Downing seconded and upon roll call the vote was Mr. Downing – yes, Dr. Lerner – yes, Mr. Cuffari – yes, and the motion passed unanimously by 3-0. Mr. Madden abstained due to his absence from that meeting.*

