

Minutes: Russell Township Board of Zoning Appeals
Russell Fire-Rescue Station
December 6, 2010

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

William Downing was absent with apologies due to illness.

Also in attendance: Ric Machnics, Zoning Inspector.

The Chairman called the meeting to order at 7:00 p.m. Due to the unexpected absence of one member of the board the Chairman asked the applicants for tonight's hearings if they would prefer to postpone their requests until there was a full board. Eric and Laura Melkerson stated they wished to proceed with their applications tonight. The Chairman then swore in the applicants and those in the audience who planned to give testimony or make comment.

The Secretary confirmed that a legal notice for both hearings was published in the News Herald on 11/25/10 and in the Chagrin Valley Times on 11/26/10, and was sent by certified mail to the applicants and neighbors on 11/19/10.

VARIANCE REQUEST #455 Eric & Laura Melkerson, 7650 Northwick Court

Request for a 106 ft. front setback in lieu of 125 ft required per Section 5.2.B, for a new residence currently under construction at 7650 Northwick Court, subplot 6 in Rivendell Estates.

Mr. & Mrs. Melkerson were in attendance. The Chairman opened the public hearing.

Zoning Inspector Ric Machnics provided background to the zoning regulations that are being applied to the Rivendell subdivision. He stated that the Township amended the Planned Residential Development (P.R.D.) regulations around the same time the subdivision was being platted as a P.R.D. The required setbacks were changed in the P.R.D. regulations, so he asked the Prosecutor's Office for advice on which setbacks should be applied to the new subdivision. Sheila Salem researched the issue and discussed it within her office, and their position was that because the final plat was recorded with 125 foot front setbacks, that requirement applies. If a lot owner desired a smaller setback the owner would need to go in front of the B.Z.A. to request a variance. Mr. Machnics stated that is the Township's position as well as the Prosecutor's.

Mrs. Laura Melkerson confirmed she was sworn in. She stated she and her husband are owner-builders and had no idea the residence was in violation until they received an email from the lending bank on 10/26/10. The bank had sent an inspector to survey the property who found that one corner of the residence was within the front setback, so the bank asked if they had obtained a variance. The Melkersons replied they had not, as they had not known the residence was in violation of zoning.

Mrs. Melkerson stated that when they first staked out the lot they noticed a couple of things that they now question. The side markers were knocked down, which they dismissed as due to children or deer. Then two days prior to excavation they returned to check their measurements again and one was off so they measured everything and checked the corner pins in each direction and they appeared to be correct. Now in hindsight they question what happened since the house is within the front setback by 6 feet on one corner and 19 feet at another corner. Although they are not professional surveyors, Mrs. Melkerson said it is incomprehensible how this could happen. However, she recalled that at a Rivendell Design Review Committee meeting of the subdivision, two other owners of lots, brothers Bill and Chris Hann, who were not aware of the Melkersons' issues, told them about their experiences where they had filed police reports as it appeared someone was trying to sabotage their building. The iron corner pins and other

survey stakes on both their lots were pulled out and the wooden stakes were left bundled together at the rear of the lots. This happened twice and the Hanns had to have second surveys done. Mrs. Melkerson stated that now that they know of this other incident, they do not know if they made an error or if the pins and stakes were moved intentionally. There have been other incidents on their lot, such as garbage dumped and theft of materials. She also stated that their lot is 4 acres and she and her husband would never have purposefully located the residence 19 feet into the setback. Asked by Mr. Gokorsch who their original surveyor was, Mrs. Melkerson said that she and her husband did the surveying although they are not professional surveyors.

Mrs. Melkerson also stated that she believed granting the variance would not be a detriment to the neighborhood, because if the development was approved now they would not need a variance. From the street the residence being built on S/L 7 next door is at the 125 foot setback and you cannot tell any difference visually between the two residences. The pool and septic system are installed already. To move the residence would cost \$110,000, which is not financially feasible, so if the variance is not granted they would have to abandon the build and take the financial loss. Leaving a partially-constructed residence would affect the value of the neighbors' lots. Asked by the Chairman if the circle in the cul-de-sac was wooded, Mr. Melkerson said it is just grass.

Vivian Kocsis, owner of S/L 4, confirmed she was sworn in, and stated she supported the variance request because she could not tell the residence is 19 feet closer to the street than required. She also said there have been incidents on her lot of a tree cut down and a sign stolen.

Randal Lupi, owner of S/L 8, confirmed he was sworn in, and stated he also supported the variance request. He commented that he is the homeowners' association president, and the association sign and several grates were stolen. Other items are constantly being moved, and he had emails from the Hanns regarding the removal of pins and stakes. Mr. Gokorsch asked if the homeowners association had made a decision regarding its position on the Melkerson request, and Mr. Lupi said there has not been a vote on it, and he is in attendance as a lot owner, not as a representative of the homeowners association. Mrs. Melkerson said she is the vice-president of the homeowners' association, and it was felt preferable from a legal perspective not to involve the homeowners association. Mr. Lupi confirmed that the association is active. Mr. Cuffari asked if its by-laws provide for a say in the location of residences, and Mr. Lupi said no, their attorney advised that is the purview of the B.Z.A.

Mr. Machnics confirmed he has inspected the property and has measured the residence 106 feet from the edge of the right-of-way. He also confirmed that the Melkersons have a cul-de-sac lot, and that the cul-de-sac provisions of Section 4.5.B still apply, since the Prosecutor has ruled that the rules in place at the time the subdivision was platted apply. Mr. Machnics said Section 4.5.B has not changed since 1981. Asked by Mr. Gokorsch if there is any apparent change in the neighborhood due to the location of the residence, Mr. Machnics said that having been in the construction business his entire career he still could not tell from the street that it is not in the correct location.

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

Mr. Cuffari made the motion to close the public portion for the hearing for Variance Request #455, 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: No, the applicants testified that without the variance they would be unable to continue with the project due to the over-run costs, which would amount to \$110,303 according to an estimate dated 10/29/10.
- b) Whether the variance is substantial: No, this is a 15% variance. The history of the development and the changes in the P.R.D. regulations indicate that the developer could have used a lesser front setback, and this residence would then have been in compliance.

- 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, there was testimony from neighbors Mrs. Kocsis, S/L 4, and Mr. Lupi, S/L 8, that they have no problem with the variance from an aesthetic standpoint and do not believe it will negatively impact their neighborhood. Additionally, Mr. Machnics stated that when he looked at the property it is not obvious that there is an encroachment on the setback, and he also felt that a lay person would not be able to tell.
- d) Whether the variance would adversely affect the delivery of governmental services: No testimony was heard on this item.
- e) Whether the property owner purchased the property with the knowledge of the zoning restriction: Yes, according to the Notice of Appeal.
- f) Whether the property owner's predicament feasibly can be obviated through some method other than a variance: It is not feasible from the applicant's standpoint due to the alternative of moving the residence at an estimated cost of \$110,000. However, no testimony was heard from anyone else with experience of building in this community to support that this cost is reasonable.
- g) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance: The board agreed that from the testimony heard tonight substantial justice would be done by granting the variance.
- h) Such other criteria which relate to determining whether the zoning regulation is equitable: The estimate for moving the residence seems reasonable, and if the variance is not granted there would be an abandoned partially-built residence and abandoned property, since the applicants have stated they would not be able to cover the cost of relocating the residence.

Mr. Cuffari made the motion to approve Variance Request #455 as submitted, Mr. Madden seconded and upon roll call the vote was Mr. Cuffari –yes, Dr. Lerner – yes, Mr. Madden – yes, Mr. Gokorsch – yes, and the motion passed unanimously.

Variance Request #455 was granted.

VARIANCE REQUEST #456 Eric & Laura Melkerson 7650 Northwick Court

Request for a 32 ft sideyard setback in lieu of 50 ft required per Section 5.2.B, for a detached garage currently under construction at 7650 Northwick Court, subplot 6 in Rivendell Estates.

Mr. & Mrs. Melkerson were in attendance. The Chairman opened the public hearing.

Mrs. Melkerson stated that she understood the board can only consider facts, but she would like to present the big picture to explain the situation. Under the Design Review Committee (D.R.C.) rules a garage cannot be front loading, ie. face the street, so she submitted a site plan showing the detached garage beside and slightly behind the residence. This location seemed to 'chop up' the yard so she discussed other locations with the D.R.C., how to turn it to be within the rules. Because she is the Chairman of the committee, Mr. Lupi acted as Chairman for her case. Their code of regulations does not define front facing, so the committee discussed this in relation to a cul-de-sac lot. They finally agreed it would be simplest to locate the garage across from the attached garage and facing it.

Mrs. Melkerson said she had written the D.R.C.'s procedures, policies and application, and had mistakenly thought the sideyard setback required by zoning was 30 feet, and that has been written into the D.R.C. rules. After the foundation and footers were done she realized she should have submitted a new site plan to the Zoning Inspector showing the new location of the garage to be 40 feet from the side line. She sent it to Mrs. Steffen, who responded that 50 feet is required. Mrs. Melkerson said they then knew they would need to apply for a variance, and they stopped construction of the garage. There are footers and four courses of block, but they have not poured the concrete floor. She submitted an

estimate of about \$8,000 to redo the garage. This amount is not in their budget. She also stated that if the house had not been in the wrong location the garage would not have been so out of compliance as well. If they move the garage forward towards the residence there will not be enough room for vehicles to maneuver. They cannot move it back due to the septic system and pool already having been installed. They would have to move it to be front facing which is not permitted by the D.R.C. rules.

Mr. Melkerson said that the bank did not tell them the garage was within the sideyard setback because the side setback line is not shown on the recorded plat, but she and her husband realized they were out of compliance, so to address the situation they contacted the Zoning Inspector. Mr. Machnics confirmed he had stamped his approval on the original site plan showing the garage with a 60-foot side setback, and later a revised site plan with a 53-foot setback, but the garage is actually only 32 feet from the side line.

Vivian Kocsis, owner of S/L 4, confirmed she was sworn in and said she did not see anything aesthetically wrong with the current location of the garage.

Randal Lupi, owner of S/L 8, confirmed he was sworn in, and agreed with Mrs. Kocsis' comments. He also stated that the garage will enhance the residence and raise other property values.

Asked about the cost to move the garage, Eric Melkerson stated that the figure of \$8613 is accurate because their options are limited. It would either have to be front facing or they would have to move the septic system to make room farther back for it.

Mr. Machnics said that although the homeowners have provided an estimate to move the garage, they have not explained where they would put it with that estimate. They have expressed only aesthetics and not the practical application. He said there are many things that can be done, including adding on to the existing foundation into the area that is not within the setback.

There being no further comments, *Mr. Madden moved to close the public hearing, Mr. Cuffari 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, since this is a second garage the residence and property would still provide a return on investment without the additional garage.
- b) Whether the variance is substantial: Although this is a 36% sideyard variance, 362 sq. ft. of the garage is out of compliance, which is just under 50% of the structure. The board agreed that this is 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, according to testimony received from neighbors.
- d) Whether the variance would adversely affect the delivery of governmental services: No testimony was heard on this item.
- e) Whether the property owner purchased the property with the knowledge of the zoning restriction: Yes.
- f) Whether the property owner's predicament feasibly can be obviated through some method other than a variance: Yes, according to the Zoning Inspector there are other locations possible. Asked if there is an appeal process in the D.R.C. rules, Mr. Lupi said he did not know, but the homeowners association does not allow a front facing garage.
- g) Whether the spirit and intent behind the zoning requirement would be observed and substantial

justice done by granting the variance: As the owner/builder the homeowner has the responsibility to know and adhere to the zoning requirements. The board did not hear any substantial mitigating facts that would cause it to consider the spirit and intent would be observed if the variance was granted.

h) Such other criteria which relate to determining whether the zoning regulation is equitable: None.

Dr. Lerner made the motion to approve Variance Request #456, Mr. Madden seconded, and upon roll call the vote was Mr. Cuffari – No, Mr. Madden – No, Dr. Lerner – No, Mr. Gokorsch – No, and the motion failed unanimously.

Variance Request #456 was denied.

MINUTES OF NOVEMBER 1, 2010 – *Mr. Cuffari moved to accept the minutes as submitted, Dr. Lerner seconded and the motion passed unanimously.*

OTHER BUSINESS – Resident Charles Butters suggested that a sixth member of the board be appointed, who would be in reserve if a member was unable to attend. He said Ms. Port had brought this up at a Trustees meeting, since she thought it would give someone an opportunity to become familiar with the system. Mr. Gokorsch said the board and Trustees had discussed this previously, but he said the board will discuss it at the next meeting.

Dr. Lerner, whose term expires at the end of the year, said she has written to the Trustees to say she does not wish to continue on the board because of other commitments. Mr. Gokorsch asked that she remain on the board through the January meeting in order to complete procedures for the variance requests heard tonight. Mr. Madden has been appointed to the Zoning Commission, and if he accepts he agreed he would not start on that board until after the January meeting. Mrs. Steffen will advise the Trustees of the situation.

There being no other business, Dr. Lerner moved to adjourn, Mr. Madden seconded and the meeting adjourned at 8:10 p.m.

Respectfully submitted,

Diana Steffen
Secretary

Date

Steve Gokorsch
Chairman

Date

bza minutes 12-06-10