

**Minutes: Russell Township Board of Zoning Appeals
Russell Fire-Rescue Station
May 7, 2018**

Present: Steve Gokorsch, Chair
Dushan Bouchek
William Downing
Nick Grassi
Sarah Moore

Also in attendance: Jennell Dahlhausen, Zoning Secretary; Shane Wrench, Zoning Inspector; James Herkner; Dale Markowitz; John Crowley, Michael Crowley; David Morris; Earl Michal & Mary Beth Ball; Gene Kratus; Jeanne McMahon; Don Brinberg; Mary Pellerano, Laurel School; Brian Rafferty, Laurel School; Matt Stanich, Laurel School; Robert Baker, Laurel School; Kathy Jankowski.

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

The Zoning Secretary stated that both Public Hearings were properly advertised in the Chagrin Valley Times.

The audience members planning to give testimony were sworn in.

VARIANCE REQUEST #510: Requesting a frontage variance of 96.75 feet in lieu of the 250 feet requirement, a width variance of 96.75 feet in lieu of the 250 feet requirement, a side variance of 20 feet to the west in lieu of the 50 feet requirement, and a side variance of 20 feet to the east in lieu of the 50 feet requirement in an R-3 Residential zoned district per Section 5.2(B) at 7944 Fairmount Road.

Mr. Bouchek excused himself from the discussion and sat in the audience section of the room due to being a neighbor and living within 300 feet of the applicant.

Mr. Grassi moved to open the public hearing for variance request #510, seconded by Ms. Moore. Motion passed unanimously.

The applicant was informed that one of the members isn't able to vote due to having a conflict of interest. There isn't an alternate member to sit in his place, so there will only be four voting members on this request. The applicant still wanted to move forward.

Mr. Markowitz of Thrasher, Dinsmore and Dolan stated that he is representing Michael Crowley for the property at 7944 Fairmount Road. Mr. Markowitz presented a map from REALink showing the current driveway, which is on the east neighbor's property. The applicant plans to move this drive so it is on his property. A survey has not been completed yet but will be before the construction date of the proposed home.

The front porch has collapsed and separated from the home on the existing house. The front yard setback is today about 60 feet, side setback is 21 feet to the west of the home and 30 feet to the east. The lot is very long and narrow and is considered a "bowling alley lot". When the home was built and the lot sectioned off, the current front and side lot setback requirements weren't in place so it conformed to zoning requirements at that time.

The Crowley's would have to build a house sideways in order to meet today's side setback requirements. The proposed house is 84 feet wide and colonial style. Mr. Markowitz stated since the survey hasn't been completed yet, the applicant is asking for a 20 foot variance on either side of the home to ensure they have enough room to build, but the setbacks may be more in conformance. Although the applicant is requesting variances, the proposed home will more closely conform to current zoning, and they are correcting the driveway encroachment.

Mr. Gokorsch asked if the narrow side yard setbacks and this style of home are typical for this neighborhood. The Zoning Inspector confirmed these setbacks were common in that area and he feels the Crowley's are improving the property with the proposed home.

Mr. Gokorsch asked if the applicant plans to tear down the current home first, then build or will there be two homes on this lot for a period of time. Mr. Markowitz said their plan is to tear down as soon as they can and begin building, as long as the variance request is approved.

Ms. Moore asked the Zoning Inspector to confirm the side lot lines on the exhibits are accurate. He said they are according to REALink, however noted that REALink maps do not replace a survey.

A neighbor to the west at 7920 Fairmount Road, Mr. Morris, verified he was sworn in and stated that he can confirm the lots are a "bowling alley" style. He said he has no problem with the plans for the rebuild and agrees that a survey should be completed. He did inform the board that an active natural gas line runs along the property line. Mr. Morris was asked if he thinks the variance fits the character of the neighborhood. He said he feels it does.

The Chairman noted to the Zoning Inspector to be aware of the possible gas line right-of-way when reviewing future site plans.

Being that there was no further comment from the public, Mr. Grassi moved to close the public hearing for variance request #510, seconded by Ms. Moore. Motion passed unanimously.

Mr. Downing moved to accept exhibit A – a REALink map showing the lot lines and current driveway on the neighboring property, exhibit B – a picture of the house from the street, exhibit C – a picture of the proposed home, exhibit E - a picture of the house showing the orange fencing around the dilapidated front porch, and exhibit F – a close up picture of the dilapidated front porch, seconded by Ms. Moore. Motion passed unanimously.

Exhibit D was the same as exhibit A and was removed.

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 applicant answered yes, but they intend to replace the current home which sets very close to Fairmount Road (60 feet) with a newer home meeting the front yard setback and the side yard setback will be increased on both sides from the current side yard setbacks. The applicant requests 30 feet be allowed for each side yard to give flexibility in designing and siting the new home.*

B) Whether the variance is substantial: *No: The applicant answered no, since the use of the lot will become more conforming by meeting the front yard, maintaining the frontage and lot width as it currently is situated, as well as maintaining a minimum 30 foot side yard, and eliminating the encroachment of the current driveway which is partially on the lot to the east. The Board also heard testimony confirmed the footprint will be smaller than the current home.*

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: The applicant stated no, it will enhance the neighborhood by eliminating a driveway encroachment and setting the house back more than 100 feet from the road (approximately 125 feet). The home will be situated significantly further back than the approximate current 60 foot front setback. The home to the west is 137 feet from the road and the home to the east is approximately 120 feet from the road. The home to the east is set back approximately 30 feet from its side line in common with the applicant. The home to the west is setback approximately 28 feet from its west side line. However, it is 50 feet from its east line and therefore there will be greater separation between the applicant's new home and the existing home to the west. There was testimony from the Zoning Inspector and a neighbor to the west that the addition would improve the neighborhood.*

D) Whether the variance would adversely affect the delivery of governmental services: *No: The applicant answered by removing the driveway encroachment and setting the house further back, there would be less risk of emergency vehicles being impaired from getting to neighboring properties. The Board stated they appreciate testimony from Mr. Morris concerning the active natural gas line that runs next to the current home.*

E) Whether the property owner purchased the property with the knowledge of the zoning restriction: *No: The applicant answered no, it was only after acquiring the property and working on new home plans that the applicant became aware of the zoning restrictions.*

F) Whether the property owners' predicament feasibly can be obviated through some method other than a variance: *No: The applicant answered no, the lot existed in its current non-conforming state since before the current zoning was in effect, additional land cannot be acquired from the neighboring residential property owners and a variance is needed to construct any residence on the property. The Board said testimony from Mr. Morris confirmed the lot is a unique bowling alley style. The Board also added that the zoning requirements were changed in 1974 after the house was built.*

G) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance: *Yes: The applicant answered yes, since it will make the lot more conforming by eliminating the front yard setback deficiency, eliminating a driveway encroachment and creating setbacks that are consistent with setbacks for non-conforming lots contemplated by section 5.2(b) of the Zoning Resolution, and consistent with neighboring homes. The Board stated there was testimony from the Zoning Inspector that the homes to the east and west are consistent with the proposed home.*

H) Such other criteria which relate to determining whether the zoning regulation is equitable: *The current home will be removed and the new home will increase the value of the neighborhood, as stated in testimony from Mr. Morris.*

Ms. Moore moved to approve Variance #510, seconded by Mr. Downing. In favor; Mr. Downing, Mr. Gokorsch, Mr. Grassi, Ms. Moore. Mr. Boucek excused himself from this Public Hearing. Motion approved.

Mr. Boucek returned to his seat for the next variance hearing.

VARIANCE REQUEST #511: Requesting a side yard variance of 8 feet in lieu of the 30 feet requirement in an R-5 Residential zoned district (pre-existing lot under 3 acres) per Section 5.2(B) at 14953 Stillwater Drive.

Mr. Grassi moved to open the public hearing for variance request #511, seconded by Mr. Downing. Motion passed unanimously.

Additional audience members planning to give testimony were sworn in.

Mr. Ball stated that he applied for a variance in 2014 for an addition to his garage, which was denied because it was within the riparian setback. Mr. Ball has a new plan, which includes a breezeway from the garage to the house. The current garage is 26 feet and 6 inches from the side property line. The proposed garage will be 22 feet from the side property line, which requires an 8 foot variance. The current side setback doesn't conform to zoning requirements but is grandfathered. The current front yard setback is 103 feet and 6 inches and the proposed front yard setback is 78 feet and 6 inches. The current and proposed front setbacks conform to the zoning requirements.

Mr. Boucek asked the Zoning Inspector if a structure in the front yard variance is needed. The Zoning Inspector said no, since it will be connected to the house.

Mr. Kratus stated he is the neighbor to the southwest and that he has no issue with the addition. He feels this will improve the character of the neighborhood because he will now house the trailer in the garage, which currently sits outside.

Being that there was no further comment from the public, Mr. Grassi moved to close the public hearing for variance request #511, seconded by Mr. Downing. 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 applicant answered there is no where else to locate the garage. Currently the truck and trailer are stored outside and are damaged by the weather and it is not attractive.*

B) Whether the variance is substantial: *No: The applicant answered no, it does not change the current situation with the existing garage. The Board stated the current and proposed front setback conform to the zoning requirement, but the current and proposed side setbacks do not.*

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: The applicant answered no, it improves the character. The Board stated there was testimony from Mr. Kratus stating that it would improve the character of the neighborhood and allow Mr. Ball to store his trailer inside.*

D) Whether the variance would adversely affect the delivery of governmental services: *The applicant answered no. The Board stated there was no testimony to the contrary.*

E) Whether the property owner purchased the property with the knowledge of the zoning restriction: *The applicant answered no. The Board stated there was no testimony to the contrary.*

F) Whether the property owners' predicament feasibly can be obviated through some method other than a variance: *The applicant answered no. The Board stated there was no testimony to the contrary.*

G) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance: *Yes: The applicant answered yes, the current garage is 120 feet from the front and 26 feet and 6 inches from the side. The new garage will be 90 feet from the front, which conforms to the zoning requirement, and 22 feet from the side. The Board stated the applicant gave testimony the front setback was a little smaller than discussed but still conforms to the requirements.*

H) Such other criteria which relate to determining whether the zoning regulation is equitable: *The applicant answered that he should be allowed to garage his vehicles. The Board added that Mr. Ball's property has a riparian setback, which is not buildable and half of the current home (grandfathered) is within that setback. The riparian setbacks were changed after the home was built. These setback requirements limit the area available to build.*

Ms. Moore moved to approve Variance #511, seconded by Mr. Grassi. In favor; Mr. Boucek, Mr. Downing, Mr. Gokorsch, Mr. Grassi, Ms. Moore. Motion approved.

LAUREL SCHOOL ENVIRONMENTAL ANNUAL REPORT: Ms. Jankowski presented the annual Laurel School environmental report. She stated there is a new dew program, which entails the sprinkler system being turned on to remove the dew in the morning so there is less fungus. This program has been working well.

Mr. Gokorsch asked if there is new erosion in the creek area by the bridge. They stated the erosion was addressed in the past and haven't noticed any new erosion. Trees that were removed were cut above the base leaving the root system intact to help with erosion.

Ms. Moore moved to accept the Laurel School environmental report, seconded by Mr. Boucek. Motion passed unanimously.

MINUTES OF APRIL 9, 2018: Mr. Boucek reviewed several corrections to the minutes. *Ms. Moore moved to accept the minutes of the April 9, 2018 meeting as amended, seconded by Mr. Boucek. In favor; Mr. Boucek, Mr. Gokorsch, Mr. Grassi, Ms. Moore. Abstain; Mr. Downing. Motion approved.*

FINDINGS OF FACTS: *Ms. Moore moved to approve the Findings of Facts for variance request #509, seconded by Mr. Grassi. In favor; Mr. Boucek, Mr. Gokorsch, Mr. Grassi, Ms. Moore. Abstain; Mr. Downing. Motion approved.*

OTHER BUSINESS: There was nothing to report.

