

Minutes: Russell Township Board of Zoning Appeals
Russell Fire-Rescue Station
Monday, May 4, 2015

Present: Steve Gokorsch, Chairman
Sarah Moore
William Downing
John Rybak
Dushan Boucek
Diana Steffen, Secretary

Jen Dorka, Assistant to the Fiscal Officer, was in attendance to record testimony given by Diana Steffen in her capacity as Russell Township Zoning Inspector. This testimony is included in the minutes.

The Chairman called the meeting to order at 7:00 p.m. The Secretary confirmed that a Notice of Public Hearing for the two variance requests tonight was published on 4/23/15 in the Chagrin Valley Times. On 04/17/15 it was sent to the applicant and neighbors for Appeal #478 by regular mail, and to the applicant and neighbors for Appeal #479 by certified mail.

The Chairman swore in all those in the audience who planned to give testimony or make comment.

CONTINUANCE OF VARIANCE REQUEST #478 – Bee Wee Trust, 7560 Twin Lakes Trail

Request for a rear yard setback of 45 feet for an in ground swimming pool in lieu of 100 feet required in an R-5 zone.

Thomas Woodman, architect, 29414 Eddy Road, Willoughby Hills, confirmed he was sworn in, and said he had been asked by the board to show the area of the proposed landscaping on the site plan. He had submitted a plan ten days ago, but he now presented a site plan to the board showing the landscaping area revised from that plan. He stated that two days ago he met with Kent McDonald, the neighbor to the north on Water Fall Trail, and as a result had made adjustments to the location of the landscaping area. They had determined sight lines from the McDonalds' house, deck and family room, and so he then adjusted the landscaping area towards the southwest from where it was shown on the previous plan. The plantings in the landscaped area are intended to block the view to the pool from the McDonalds' house. It was noted that because the existing oak trees are very tall and do not provide screening, the previous owner planted fir trees along the line of the landscape buffer when he built the residence, and those are shown on the site plan.

Mr. Woodman said the landscape architect will determine the planting materials, but he expected them to be a mixture of evergreens and deciduous trees. Although Mr. McDonald told him he would not object to the trees being planted on his property Mr. Woodman stated the homeowner applicant would prefer to keep them on the subject property. Asked what height the plantings will need to be to block the view Mr. Woodman said seven feet would be enough, the Nordic Holly is six feet but they would try to have them higher. The existing evergreens were twelve feet when planted and have grown to 25 to 30 feet in ten years. He showed the board a digital photo of the sight line from the edge of the hedge towards the McDonalds' property. He confirmed that the homeowner applicant will do whatever screening is necessary to block the view. Mr. Downing asked if the hedgerow appeared to be adequate in height to hide the pool when viewed from the McDonalds' property. Mr. Woodman said it was, the Nordic Holly was also tall enough at six feet, but he expected the landscape architects to put in taller plantings, such as fir trees and arborvitae.

Mr. Boucek said he was concerned about screening for the pool house and the other proposed buildings. Mr. Woodman stated that the pool house will not be higher than the existing garage, and in fact it may be six feet lower if they alter the design by removing the steps. Mr. Gokorsch asked about the location of the pump equipment, and Mr. Woodman responded that the preliminary plan is to put it on the southern side of the pool house with a buffer on the southern side. It may have a roof too, but the architects will not design it until the variance request is settled. Mr. Gokorsch asked Mr. Woodman to

designate the location on the site plan, and asked if the pump equipment could be enclosed so that there will not be adjacent noise pollution, and Mr. Woodman said he could commit to that request.

Mr. Boucek asked if the pool was to be strictly used for recreational purposes and not for training. He said usually lap pools are 45 to 65 feet, but training pools are 75 feet. Mr. Woodman said it was for use by the homeowners, and on being asked whether he could shorten the length he said he would have to ask the owners, but the pool would still need to be within a portion of the setback.

Ms. Moore said she understood from the last meeting that the pool area was to be redesigned so the pool would be located farther back. Mr. Woodman said that was why the pool house and steps were 'flipped' and the pool equipment moved. He has not had an opportunity to show that on the plan, but can email it to the board. He said he had understood at the last meeting that the main issue for the board was the landscaped buffer.

Ms. Moore suggested continuing the hearing to allow Mr. Woodman the opportunity to provide an updated plan which reflects the least impact on the rear setback as possible, recognizing that 50% is a substantial variance, and asking for a less substantial impact. She said it would be helpful to the board if he could design the pool to be shorter and/or redesign the area between the pool and driveway so that the pool was not as far into the setback. Additionally, a redesigned pool area may have a positive impact for the neighbors as far as the landscaping buffer. She also asked about safety aspects as far as the pool cover or a fence and gate. Mr. Woodman confirmed there will be an automatic retractable pool cover meeting ASTM standards.

Mr. Woodman asked if it would be possible to have conditional approval of the plans tonight, and the Chairman said the Board could vote on a plan if he was willing to hand draw the changes on it now. Mr. Woodman said he would prefer not to make changes tonight because they might not be accurate. He would prefer to have until the next meeting to work on them with input from the homeowner applicant.

The board clarified the issues Mr. Woodman will work on for the next meeting:

- 1) Moving the pool farther to the south/southwest and/or shortening the pool length to reduce as much as possible the 55% degree of nonconformance.
- 2) Minimizing the noise of the pool equipment affecting neighbors to the east by showing how the pool equipment will be enclosed and noise minimized.
- 3) Providing an updated plan showing the pool house and stairs in the proposed new locations.
- 4) Providing an updated landscaping plan that provides details of the height, types of plantings, as well as the density. It should also show the line of sight to the neighbor's property.
- 5) Specifics on the type of pool cover or fence and gate.

The Chairman asked for comments from the audience. Philip Uhlin, 7635 Water Fall Trail, confirmed he was sworn in, and stated that the plan does not show the common property line between his property and the McDonalds' property, and that he is also impacted because part of the rear line of the subject lot is also his rear line. He said he can see the buildings on the subject lot when there are no leaves on the trees, so he had planted some pine trees to try to block the view. He confirmed he would like to know the location of the property line, and if there would be a need to buffer his property with landscaping as well. He also stated that he objected to the variance because a 65-foot long pool will be visible from his deck, and there will be a noise issue. Mr. Uhlin said there is a pipe in the ground that carries water through the woods on his lot from a pond on his eastern neighbor's lot to the pond on the McDonalds' lot on the west side of his lot. If the water is too high it goes over a spillway and into a creek. Mr. McDonald marked the aerial photo to show the location of the pipe (Neighbors' Exhibit A).

The board clarified that Mr. Woodman will include a landscape buffer plan for Mr. McDonald's property and Mr. Uhlin's property as part of above-item no. 4.

Mr. Boucek made the motion to continue Variance Request #478 to the next meeting, Ms. Moore seconded and the motion passed unanimously.

VARIANCE REQUEST #479 – Henry G. Piper, Jr., Trustee and Thomas M. Piper, 15241 Russell Rd
Request to consolidate four parcels (Permanent Parcel Nos. 26-012700, 26-142000, 26-141900 and 26-214075) into two lots, wherein one lot requires 3 variances: 1) lot area of 4.8971 acres in lieu of 5 acres required in an R-5 zone per Section 5.2.B; 2) frontage of 214.88 feet, and 3) lot width of 219.76 feet, both in lieu of 300 feet required in an R-5 zone per Section 5.2.B.

In attendance were Mr. & Mrs. Henry Piper and their attorney Dale Markowitz of Thrasher, Dinsmore & Dolan.

Mr. Rybak made the motion to open the public hearing for Variance Request #479, Mr. Boucek seconded and the motion passed unanimously.

Attorney Dale Markowitz confirmed he was sworn in. He showed the board a plat from the 1960's and explained that his clients' parents purchased the property in 1966 when there was an old easement containing a farm drive that provided access to the property. The previous owner retained the 1.9 acre lot, and the parents purchased the three and four acre lots. The easement access was on the three acre lot where they built a home and a barn. The 1.9 acre lot was acquired as a separate lot of record in 1966. At that time the 1.9 acre lot conformed with zoning which Mr. Markowitz thought was one acre minimum, later changed to one-and-a half acre minimum. There could have been three homes built on the three lots.

Mr. Markowitz said the County Auditor advised that there was a boundary description done of the three and four acre parcels into one 7½ acre lot when it was deeded to his clients' parents. The 1.9 acre lot was held separately. In 2004 the County Treasurer called the Pipers and told them that the small 0.19 acre triangular lot by the road that their lots abutted was in foreclosure for nonpayment of taxes and asked if they would like to bid on it. They did so and purchased it and it is still a separate parcel.

Showing the plan with the four lots consolidated into two lots Mr. Markowitz said the driveway to the proposed residence on the 4.8972 acre lot would be just to the south of the triangular parcel. He explained that when Russell Woods Estates was created the old easement went across that property for about 1,500 feet. Mr. Markowitz presented the subdivision plat for Russell Woods Estates on which was drawn the location of the easement. Because the developer could not put in the street over the easement he conveyed to the Pipers the 0.59 acre part (containing the drive to their home) and the Pipers gave up their right to the rest of the easement. Chronologically this occurred before the triangular parcel was purchased in 2004. As of now the four parcels consist of 7.5 acres, 0.19 acre, 0.59 acre and 1.9 acres.

The Chairman noted that the lots the Pipers own all go to the center of Russell Road, and asked how that impacts the request. Mr. Markowitz said that the Russell Township Zoning Resolution requires lot area to be measured to the edge of the right-of-way. The proposed 5.2 acre lot is actually 5 acres when the right-of-way is deducted, and the 5.04 acre lot is 4.8971 acres when the right-of-way is deducted. The variance is required for the 4.8971 acres. He explained that when these lots were created all lots in Ohio went to the center line of the road. Later when the County Subdivision Regulations were created it was decided they should not encroach on the right-of-way. Ms. Moore asked about title to the area in the right-of-way since the deeds say, "subject to all legal highways." Mr. Markowitz explained that it is not an issue for the title or zoning because the County has an easement across the property.

Mr. Markowitz said brothers Henry and Thomas Piper inherited the lots when both parents had passed away, and they would like to sell them as two lots. They do not plan to build the house shown on the site plan, but it is a representation of the house that could be built there. The southerly lot is one tenth of an acre short of the lot area required. Frontage is 215 feet in lieu of 300 feet, a 28% variance, and lot width at the building line is 220 feet in lieu of 300 feet, a 26.667% variance. When the four lots were created there was not a 300-foot requirement.

Four photographs (Applicant's Exhibit #2) were presented by Mr. Markowitz, which he described as follows: a) from the edge of the woods on the Howells' lot to the west showing 87 feet across the lawn to

the residence; b) from the same location but looking east to the Pipers' southerly lot; c) from the lot line to the Howell home, a distance of 250 feet; d) from the 50-foot side setback towards the Howell home, a distance of 300 feet between the Howell home and the proposed new residence.

Mr. Markowitz stated that if they built a house on the existing 1.9-acre lot it would have 30-foot side yard setbacks, situating it closer to the Howell home, and requiring a narrower house.

Mr. Gokorsch noted that there are riparian setback areas over much of the proposed 4.89 acre lot. Mr. Markowitz confirmed that they are 25-foot riparian setbacks, and when locating the house they made sure to avoid them. If they built on the 1.9 acre lot there would be a smaller area available to build, but by consolidating the lots there is more space.

Henry Piper confirmed he was sworn in, and stated that when the 1.9 acre parcel was created by a previous owner he had the lot line go around the pond so it was on one parcel only. It is fed by water from both sides, and from a culvert and a spring. Mr. Markowitz said now that the pond will be located on both lots there will be a deed restriction so both owners share in the maintenance of the pond. He presented topographical maps of the proposed lots (Applicant's Exhibit #3). Mrs. Steffen mentioned that it will be a challenge to build on the new lot due to steep slopes and ravines.

Mr. Piper had prepared a map of Russell Road within the immediate area showing lot frontages at the street as follows (Applicant's Exhibit #4): south side going north to south – 353 ft., 601 ft., 600 ft., 280 ft., 311 ft., 187 ft., 152 ft., 99 ft., 307 ft., 306 ft., 188 ft., 261 ft., 180 ft., and on the north side going north to south – 506 ft., 300 ft., 290 ft., 402 ft., 378 ft., 317 ft., 413 ft., 164 ft., 457 ft., 189 ft., 436 ft. Across the street from the two lots is Russell Park Commission owned park land and also a lot owned by Nancy Janoch that is 1.29 acres with 290 feet of frontage. With the properties being heavily wooded and the homes set far back from the street it is difficult to determine lot sizes when driving by. The proposed home on the new lot will be down from the road and will appear to be a five acre lot with 300 feet of frontage due to the lots either side, and will be consistent with other homes on Russell Road.

Mr. Markowitz cited the Schreiner court case with Russell Township from the 1980's that determined that if there is a lot of record on a street with utilities it does not have to be combined with adjacent parcels under the same ownership. Although he believed the 1.9 acre lot could be built on they would prefer to combine the parcels and make a bigger lot. The proposed home will be secluded, being at a 20-foot lower topographical point at 1050 feet than the Howell's home at 1070 feet. The elevation at the road is higher. Mr. Piper confirmed that at the building line the elevation is 12 feet lower than the road. The rear of the home will be at 1040 feet.

Mr. Markowitz reviewed the practical difficulty factors. He stated that the variance is not substantial as far as lot area, and the 27% and 28% variances for frontage and lot width are not substantial because of the surroundings and location, and the fact that a smaller lot will become a much larger lot. The character of the neighborhood will not be altered, and there will be no detriment to adjoining neighbors, as demonstrated by the fact that there are no neighbors present with any objections. The variances will not adversely affect delivery of governmental services, the home will have a septic system and well water, with the advantage of the larger size of the lot providing more space for the septic system. The driveway will be at the apex of Russell Road with good sight distance clearance for the homeowner and for emergency vehicles. Mr. Piper said that the septic system had not yet been approved, but one was approved for the 1.9 acre parcel in 1986. Mr. Markowitz stated that there will be no violation of the spirit and intent of the zoning since they will be creating less nonconformity, and it will fit in well with the neighborhood.

Mrs. Steffen mentioned that Mr. Piper had been denied a variance in 1986 for the existing 1.9 acre lot, when the request was for two 30-foot side yard setbacks, 170 feet frontage and 132 feet lot width. She also stated that the board's legal counsel has advised that the Schreiner case involved platted sublots and the decision was specific to that case. As Zoning Inspector she would not agree that the 1.9 acre lot was buildable. Mr. Markowitz noted that the Schreiner case has been cited in other court cases.

Mr. Rybak listed the applicant's exhibits presented as follows:

- 1) Exhibit #1 – Proposed site drawing with dimensions showing the two proposed lots, Russell Road, the proposed house and frontage and lot width dimensions.
- 2) Exhibit #2 – Four photos showing the neighbor's home to the south and view to the north.
- 3) Exhibit #3 – Topographical maps marked as A, B, and C.
- 4) Exhibit #4 – Frontages on Russell Road for each of the properties in the area.
- 5) Exhibit #5 – Subdivision plat of Russell Woods Estates.

Mr. Rybak made the motion to accept Applicant's Exhibits #1 through #5, Mr. Boucek seconded and the motion passed unanimously.

Ms. Moore made the motion to close the public portion of the hearing, Mr. Boucek 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: The application indicates there would be no use and a total taking without the variance. There was testimony that the 1.9 acre lot was potentially buildable, although a previous variance request to this board was denied.

b) Whether the variance is substantial: The board agreed it is not substantial, the lot area request being 2.06% at 4.897 acres in lieu of 5 acres, frontage request being 28.37% at 214.88 ft. in lieu of 300 ft., and lot width request being 26.74% at 219 ft. in lieu of 300 ft.

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, topographically the proposed building site is below the street as well as below the existing neighboring home to the west. The proposed home will be 300 feet from that neighboring home. The new lot size will be more conforming, going from 1.91 acres to 4.89 acres. No evidence was presented to indicate that the character of the neighborhood would be substantially altered, but there was evidence that it will be more in line with the neighborhood. There was no evidence that adjoining property owners would suffer a detriment, since no adjoining owners are in attendance tonight.

d) Whether the variance would adversely affect the delivery of governmental services: No. Mr. Markowitz testified that governmental services would not be adversely affected, and Mr. Piper testified that the 1.9 acre lot had received Geauga County approval for a septic system in 1986.

e) Whether the property owner purchased the property with the knowledge of the zoning restriction: At the time of purchase by the applicant's parents, there were different requirements in effect. Mr. Markowitz has given the history of the changes and requirements over time.

f) Whether the property owner's predicament feasibly can be obviated through some method other than a variance: No. The application indicates no other consolidation is possible without the property losing value. Rezoning of the property is not appropriate. Testimony affirmed that the other lot at 5 acres is in compliance so only one lot requires a variance.

g) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance: Yes, evidence was clear that the variance would create less potential for nonconformity. Section One of the Russell Township Zoning Resolution, Statement of Purpose, clearly indicates the Pipers should be commended for coming to the board with this request. It fully symbolizes the purpose of the Resolution in terms of the Township's future character and development, recognizing limited capability in providing services, and insuring that the community continues as a low density residential community. The proposed lot also fits the character of the neighborhood.

h) Such other criteria which relate to determining whether the zoning regulation is equitable: The application indicates similar lot area variances have been granted. There are riparian setbacks on the lot, and part of an existing pond with a requirement to the lot owners to maintain it. Additionally the small triangular parcel will be absorbed into one of the lots, resolving the ownership issue.

Ms. Moore made the motion to approve Variance Request #479 Henry and Thomas Piper, 15241 Russell Road, to consolidate four parcels (PP# 26-012700, 26-142000, 26-141900 and 26-214075) into two lots, with 3 variances granted on the proposed southerly lot: 1) lot area of 4.8971 acres in lieu of 5 acres required in an R-5 zone per Section 5.2.B, 2) frontage of 214.88 feet, and 3) lot width of 219.76 feet, both in lieu of 300 feet required in an R-5 zone per Section 5.2.B. Mr. Downing seconded and upon roll call the vote was Mr. Downing – yes, Mr. Rybak – yes, Ms. Moore – yes, Mr. Bouchek – yes, Mr. Gokorsch – yes, and the motion passed unanimously.

Variance Request #479 was granted.

MINUTES OF APRIL 6, 2015 – An error in calculation of percentage of one of the variance requests for #477 Joyce Building Company was corrected and noted in the minutes.

Mr. Bouchek made the motion to approve the minutes of April 6, 2015, as amended tonight, Mr. Rybak seconded and the motion passed unanimously. Ms. Moore and Mr. Downing abstained from voting on the Hemlock Hills Conditional Use section. Mr. Downing also abstained from voting on the Joyce Building Company section.

FINDINGS OF FACT – VARIANCE REQUEST #477 – *Ms. Moore made the motion to approve the findings of fact as presented, Mr. Bouchek seconded and the motion passed unanimously by 4-0. Mr. Downing abstained.*

There being no other business, Mr. Rybak moved to adjourn, Mr. Downing seconded and the meeting adjourned at 9:06 p.m.

Respectfully submitted,

Diana Steffen
Secretary

Date

Steve Gokorsch
Chairman

Date