

**Minutes: Russell Township Board of Zoning Appeals
Russell Fire-Rescue Station
October 3, 2016**

Present: Steve Gokorsch, Chairman
Dushan Boucek
William Downing
Nick Grassi
Sarah Moore

Also in attendance: Shane Wrench, Zoning Inspector; Jennell Dahlhausen, Zoning Secretary; Rick & Danielle Pappalardo; Charlie Butters; Daniel Previte; Cathy Cox; Cathi Nevery; Holly Ashley; Illona Lesko; Natalia Lesko.

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

The Zoning Secretary stated the Public Hearing was published in the Chagrin Valley Times.

VARIANCE REQUEST #498: Requesting a side yard setback of 14 feet for a storage building in lieu of the 30 feet required in an R-5 zoned district per Section 5.2(B).

Mr. Boucek moved to open the public hearing for variance request #498, seconded by Mr. Grassi. Motion passed unanimously.

The audience members were sworn in.

Ms. Pappalardo presented pictures and stated that a swale on her property requires her to build a shed in her back yard close to the lot line. The photos also included a picture of cattails in the swale. She said although her request is to place the shed 14 feet from the property line, she can go up to 18 feet from the property line if desired and reduce the peak of the shed by about 2 feet. She also said there are bushes growing along the fence line where the shed is proposed, which should block the view of the shed when they grow taller.

Ms. Pappalardo brought attention to a picture which shows no windows on the side of the house to the east that would be most affected. The Pappalardo's have been in the process of fixing up the property since they purchased the home several months ago.

The proposed structure will be wooden and placed next to a board-on-board fence that divides the properties, which is 8 feet tall and about 24 feet long. The Board asked the Zoning Inspector about distances to nearby structures. It was determined that the applicants house is about 48 feet from the east fence and about 39 feet from the west fence. The neighbor to the east is about 39 feet from the fence and the neighbor to the west is about 51 feet from the applicant's home.

The Board discussed issues relative to fire safety and the applicant stated they would store an all-terrain vehicle (ATV), snow blower, lawn tools, renovation tools and maybe a motorcycle in the shed. Lawn equipment, gasoline and cars will be stored in the garage attached to their home.

There used to be a shed in the rear yard. According to the Pappalardo's, it was in the same location as the swale and the ground stays wet for days after a rain. Ms. Moore asked if the Pappalardo's requested

quotes from excavating companies to redirect the storm water. Ms. Pappalardo said they didn't contact any outside companies and that the shed is going to be built by Mr. Pappalardo and Mr. Previte. Mr. Pappalardo said they will be digging 15 post holes and building the shed raised from the ground.

The Board asked if they were able to move the shed closer to their home. Ms. Pappalardo said there is a beautiful stone garden area that was one of the selling points of the home. There is also a walkway that would have to be torn up. The proposed area is the most level and driest area of the property.

Ms. Cox is the neighbor to the east of the Pappalardo's and would be most affected by the shed. She expressed her concern with the shed being so close to her home and doesn't think the bushes that Ms. Pappalardo mentioned would grow tall enough to block her view. She added that she followed the proper zoning side lot setback when she built her shed. She doesn't feel that granting the variance would conform to the look of the neighborhood.

Ms. Moore asked Ms. Cox if she feels the proposed location of the shed would impede her view from her deck. Ms. Cox answered not necessarily, but said the shed on the property to the west of the Pappalardo's is in line with her shed and the previous shed on Pappalardo's property was directly in the middle of the sheds. Ms. Cox provided a photo of the current sheds and the location of the swale.

Ms. Cox main concerns included: how close the shed would be to her house, the aesthetics (the shed would make the property look crowded), animals making a home under the shed and the size of the shed. Mr. Gokorsch asked Ms. Cox if she feels the Pappalardo's are committed to improving the property since it was purchased. Ms. Cox responded yes.

Ms. Natalia Lesko stated that she lives with her mother, Ms. Illona Lesko, which is two houses west of the Pappalardo's. She said they agree with all of Ms. Cox concerns. The Lesko's built a shed about 20 years ago and it was built on a base. Although their property is also wet, the shed is dry. Ms. Lesko added there is a reason the zoning is in place and she doesn't feel the variance should be granted.

Mr. Gokorsch expressed his concern with fire safety since the shed will be so close to the neighbor's house.

Mr. Pappalardo said he is concerned with the shed being in the back of the property because there isn't any lighting and there are fox and coyotes in the area.

Ms. Moore asked the Zoning Inspector if he feels the shed could be built in the back yard. He said there would have to be a lot of excavation due to the drainage, which he feels could be considered a difficulty to the applicant.

Mr. Gokorsch asked the Zoning Inspector if he feels the neighbors are in the same situation as the Pappalardo's since the swale also runs in their backyards as well. The Zoning Inspector responded that the Pappalardo's situation is different because the swale runs right where the shed used to be on the property.

Being that there was no further comment from the public, Mr. Grassi moved to close the public hearing for variance request #498, seconded by Ms. Moore. Motion passed unanimously.

Mr. Downing made the motion to accept the Boards Exhibit 1 - delineating the garden area discussed on the northeast corner of the home and the location of the proposed shed with the distances from the property line, seconded by Mr. Boucek. Motion passed unanimously.

Mr. Downing made the motion to accept the Pappalardo's Exhibit 1 – picture from the west to the rear of the property showing the foliage and swale, Exhibit 2 – closer version of exhibit 1 showing the flat land, Exhibit 3 – picture from the street facing north showing the parking area next to the home and the hedges, Exhibit 4 – picture from the applicants deck facing east towards the fence and proposed location, Exhibit 5 - picture showing the side of the most effected neighbor's home without windows on that side of the home, Exhibit 6 – a picture in the backyard showing the cattails in the northwest corner of the yard, seconded by Mr. Boucek. Motion passed unanimously.

Mr. Downing made the motion to accept Ms. Cox's Exhibit 1 – picture of the back yards, from Ms. Cox shed towards the swale, Exhibit 2 – picture from Ms. Cox back yard of the Pappalardo's back yard showing the location of the old shed, Exhibit 3 – picture showing the fence that is on the property line, Exhibit 4 – picture showing Ms. Cox shed, Exhibit 5 – picture showing the proposed location of the shed, Exhibit 6 – pictures showing a neighbor's 16 feet by 16 feet shed, Exhibit 7 – a picture taken pointing west showing that Ms. Cox shed is in line with the shed that used to be on Pappalardo's property and the shed of the property to the west of Pappalardo's, seconded by Ms. Moore. Motion passed unanimously.

Mr. Gokorsch asked if any Board members would like to invite the Fire Chief to a meeting to hear his view on this matter before voting. No Board members expressed interest in continuing the Public Hearing to hear the Fire Chiefs input.

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 board answered yes. The applicant answered that the shed should increase the value of the property since it will add extra storage. There is no beneficial use of this part of the property currently.

B) Whether the variance is substantial: The board answered yes. This is a 53% variance which is considered substantial. The applicant answered no.

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: The board answered yes. The applicant answered no and stated there is a fence and trees blocking the proposed area from the most effected neighbor's property. There was however testimony from two neighbors that have lived in this neighborhood for a long period of time that they felt the variance would impact the essential character of the neighborhood.

D) Whether the variance would adversely affect the delivery of governmental services: The board answered no. The applicant answered no and 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 applicant stated they purchased the property without the knowledge of the zoning requirements and swale. The property deed however clearly states that the Russell Township Zoning Resolution must be followed for this property.

F) Whether the property owners' predicament feasibly can be obviated through some method other than a variance: The board answered yes. The board believes other locations or a different design is possible. The applicant answered no due to the swale, which keeps the ground wet for days after a rain. There was testimony from neighbors and the Zoning Inspector to the contrary. A neighbor to the west built an elevated shed, which doesn't have any water problems. The Zoning Inspector did state that this property is different than the adjoining properties due to the location of the swale.

G) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance: No. The applicant answered that the addition of a shed to the property will be useful. There was testimony from neighbor Ms. Cox, that the spirit and intent of the variance request does not meet the zoning requirements and that the BZA would not be doing the township justice if they grant the variance request.

H) Such other criteria which relate to determining whether the zoning regulation is equitable: The applicant answered the area is at the top of a small hill and is hidden by a fence with tall bushes growing next to it. The closest home to the east is about 51 feet from the proposed location of the shed. The Board discussed issues relative to fire safety and the applicant stated they would store an all-terrain vehicle (ATV), snow blower, lawn tools, renovation tools and maybe a motorcycle. Lawn equipment, gasoline and cars will not be stored in the shed.

Ms. Moore stated that she has been on the Board for several years and all of the testimonies given included good facts. She added that in her time on the Board she has never seen so much tension among neighbors. She said this is a concern to her and reminded them that no matter what decision the Board makes, they are still neighbors and need to get along in the future.

Mr. Downing moved to approve Variance #498 as submitted by the applicant, seconded by Ms. Moore. Against; Mr. Boucek, Mr. Downing, Mr. Grassi, Ms. Moore, Mr. Gokorsch. Motion denied.

The Board took a small break from 8:46 p.m. to 8:49 p.m.

MINUTES OF SEPTEMBER 12, 2016: Mr. Downing noticed the last sentence in the second paragraph on page two stated that Mr. Molnar didn't think he would be able to see the shed in the winter and section C of the Duncan factors on page two stated he wasn't sure if he would be able to see it. Mr. Downing asked to change the answers to the same response to be consistent. *Ms. Moore moved to accept the minutes of the September 12, 2016 meeting as amended, seconded by Mr. Grassi. In favor; Mr. Downing, Ms. Moore, Mr. Grassi, Mr. Gokorsch. Abstained; Mr. Boucek. Motion passed.*

FINDINGS OF FACT: *Ms. Moore moved to approve the Findings of Facts for variance request #497 from Paul and Karen Bellitto at 14711 Sleepy Hollow Drive, seconded by Mr. Downing. In favor; Mr. Downing, Ms. Moore, Mr. Grassi, Mr. Gokorsch. Abstained; Mr. Boucek. Motion passed.*

OTHER BUSINESS: Mr. Gokorsch discussed the possibility of having an alternate person fill in if a board member could not make a meeting. There were several meetings this year that a full board wasn't present and if someone wants to hold off on a variance request until a full board is available, it could cause the applicant to push back the start of their project until the next building season. Mr. Gokorsch stated the person would only fill in if another member is absent. If the hearing is continued,

