

Minutes: Russell Township Board of Zoning Appeals  
Russell Fire-Rescue Station  
November 2, 2015

Present: Steve Gokorsch, Chairman  
Sarah Moore  
William Downing  
John Rybak  
Dushan Bouchek

Also in attendance: Diana Steffen, Zoning Inspector.

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

The legal notice was published in the Chagrin Valley Times on October 22nd. The certified letters for the meeting were mailed on October 19th.

**HACKAMORE WOODS HOMEOWNERS ASSOCIATION:** Amended and Restated Declaration of Covenants, Easements, Restrictions and Assessment Lien.

Kevin O'Connor, 8325 Corral Circle, confirmed that he was sworn in.

Mr. O'Connor had given the board a copy of the resolution that the homeowners association would be comfortable adopting if the amendment was passed. Mr. Gokorsch said the previous issue the board has was not resolved; there is still a chain on the access road blocking the access to the fire pond. Mr. Gokorsch suggested that the township pays to have the hydrant moved, and therefore moving responsibility of the access road solely to the homeowners association. The township will no longer be responsible for the access road. Mr. O'Connor said the homeowners association would be willing to do this and give back the easement that is on the fire pond. Two of the three property owners have been contacted and approved of this also; the neighbor next to the pond has not been contacted yet. The two properties where the construction would be for the new standby have given their approval. Mr. Gokorsch said that it is up to the Trustees of Russell Township to fund the moving of the standpipe and when this is completed, they will have to agree to transfer the responsibility of the of the right of way to the homeowners association. Mr. Gokorsch advised that until this decision is made by the trustees, that the fire department must have access to the existing hydrant and the chain across the road needs to be moved, as this is a safety issue. The board said that as long as the township has access to the fire pond, then the chain that's blocking the road needs to be taken down. Ms. Moore said she noted that there was no action taken to remove the chain blocking off the road to the fire pond up to this point.

*Mr. Downing made the motion to accept the Homeowner's Association Declaration of Covenants as amended. Mr. Rybak seconded the motion and it passed unanimously. Upon roll call the vote was Mr. Downing – Yes, Mr. Rybak – Yes, Ms. Moore – Yes, Mr. Bouchek – Yes, Mr. Gokorsch – Yes. The motion passed by a unanimously vote.*

**CONTINUANCE OF VARIANCE REQUEST #483:** Request to allow existing residence to remain as a commercial accessory building in the front yard upon construction of new principal residence building, in violation of section 4.7.V, cede access building shall not be used as a residence.

*Mr. Bouchek made the motion to open the public hearing for variance request # 483. Mr. Rybak seconded the motion and it passed unanimously.*

Mike Franc, 14948 Chillicothe Road, confirmed that he was sworn in.  
Chris Franc, 14948 Chillicothe Road, confirmed that she was sworn in.

Mr. Franc gave the background history of the property. His parents purchased the property in 1969 and at the time the lot was zoned commercial. The house was built in 1840. The land was purchased to open the antique shop. The house was in very bad shape when the property was purchased and needed some renovations to create a show room. The business was a success and the showroom became too small. In October of 1972 a zoning permit was acquired to build the barn which became the showroom for the antique business. In March of 1973 the barn and new showroom were opened. In 1977 the zoning for the lot was changed and the property became non-conforming. Mrs. Steffen said in 1992 the property was rezoned and became an R5 zone, but the same business has been there since 1973. Mr. Franc said there has only been one mailing address for the home and the business. The business has been run out of both buildings since 1973, the primary show room is in the barn and the house is used for all of the office business and additional storage.

Mr. Franc is asking to build a new home on the back of the property, return the show room to the renovated house that will become the store, and tear down the pole barn and the garage. He needs a variance for an accessory building in front of the house in an R-5 zone.

Mr. Rybak asked how long it will take to build the new home. Mr. Franc said that they are contracting out the project and the final plans are being drawn up. Mr. Rybak asked how long from moving into the new home until the showroom will be moved out of the barn? Mr. Franc said at this best guess it would be six months to a year. The board asked Mr. Franc how many renovations needed to be done to the house before the showroom could be moved in? Mr. Franc replied not a great deal; the kitchen needs to be removed, there will be new wiring and plumbing in the existing home. Mr. Gokorsch advised that there couldn't be two residences on one lot. Mr. Franc said that within a month of moving into the new home that they would start transitioning the old home and showroom, and understands that there can't be multiple residences on one lot.

Mr. Boucek asked if that since the lot is currently non-conforming and has been for a while, does the non-conforming change. Mrs. Steffen said the non-conformance can't increase. Mr. Gokorsch said there are two commercial buildings now and after the home is built there will only be one home and one commercial building; this should reduce the degree of non-conformance. Mrs. Steffen asked that if the variance is granted will Mr. Franc sign a time agreement so if that the house and store are not moved within the time set, the case can be sent to the prosecutor. Mr. Gokorsch said that is something the zoning inspector will have to monitor, and to consider the time when the occupancy permit is obtained as the start of the moving clock. Mr. Franc agreed to this.

The applicant asked to amend the request to say "accessory building in front of new construction to be used solely as commercial and not as residential." Mr. Downing clarified that the new building would be the primary building and the renovated house will be the accessory building and not a residence.

*Ms. Moore made the motion to accept the amended variance request for variance #483. Mr. Rybak seconded the motion and it passed unanimously.*

*Mr. Boucek made the motion to close the public hearing for variance request #483. Mr. Rybak seconded the motion and it 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, there was no testimony on the return of the property.**

B) Whether the variance is substantial. **Yes, the variance is substantial. The applicant is asking for complete exemption from section 4.7.V.**

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 character of the property and neighborhood will be maintained, by maintaining the historic home. The garage and pole barn will be removed enhancing the property. The property is close to the intersection of SR87 and SR306 which is the heart of the commercial district. The accessory building will be for commercial use not residential, keeping with the historical use of the property in the commercial district.**

D) Whether the variance would adversely affect the delivery of governmental services: **No testimony was given. Both the business and the residence have the same address.**

E) Whether the property owner purchased the property with the knowledge of the zoning restriction: **No. The property was zoned commercial when it was purchased and subsequently the zoning changed. The applicant resides on the property and is familiar with the property and provided the history of how the property became non-conforming. The deed to the property speaks to the zoning changes; E is not answered.**

F) Whether the property owners' predicament feasibly can be obviated through some method other than a variance: **The property is unique given the history. This is an R-5 zone on the fringe of the commercial district, and requires a variance given current zoning.**

G) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance: **Yes. The planned location for the antique shop in the accessory building close to SR 306 is the spirit of current zoning. Locating the access drive and parking close to SR 306 will shield other residences in Hemlock subdivision from the noise of commercial use.**

H) Such other criteria which relate to determining whether the zoning regulation is equitable: **With this variance an existing non-conformance will be reduced. This is an 1840 century home which will be preserved in its existing location. Future commercial activity will be closer to SR 306 shielding residential areas from noise. Future commercial activity will be restricted to a single structure. The planned location for the new residence will not encroach on the riparian areas.**

*Mr. Bouchek moved to approve variance request #483 as amended by the applicant. Ms. Moore seconded and the motion passed unanimously. Upon roll call the vote was Mr. Downing – Yes, Mr. Rybak – Yes, Ms. Moore – Yes, Mr. Bouchek – Yes, Mr. Gokorsch – Yes. The motion passed by a unanimously vote.*

**VARIANCE REQUEST # 485:** Request for a front yard setback of 90 feet for a detached garage on lieu of 125 feet required in and R-5 zone per section 5.2.B.

Benjamin McCauley, 15154 Russell Road, confirmed that he was sworn in.

*Mr. Bouchek made the motion to open the public hearing for variance request #485. Mr. Downing seconded the motion and it passed unanimously.*

Mr. McCauley lives in an R-5 zone and is requesting a 90 foot setback instead of the 125 foot setback. The current setback is 47 to 48 feet, and Mr. McCauley would like to build a garage. Mr. Gokorsch asked why there were two driveways. Mr. McCauley said there were two residences on the property that are grandfathered in. There is currently a barn and milk house on the property; the barn was moved from across the street in 1905.

Mr. Gokorsch asked if the new garage would be closer to Russell Road than the barn is. Mr. McCauley said no that the barn will be 5 to 10 feet closer to the road than the garage will, and plans to have the face of the garage parallel to the home. Due to the terrain and contour of the property this is the only location for this type of structure as it is the flattest area.

Mr. Gokorsch asked what was going to be on the second floor of the garage that is shown in the plans, and would there be plumbing or heat on the second floor. Mr. Gokorsch said there can't be multiple residences on the property according to Russell Township's zoning. Mr. McCauley said that there would be no plumbing on the second floor, but there might be heat. This structure will not be set up for a living area; the plan for the second floor is light storage. Mr. Gokorsch asked if the second residence on the property is occupied, and asked about the condition of the barn. Mr. McCauley replied yes the second residence is being occupied, and the old barn needs a lot of work and is not suitable for a garage.

Mr. Boucek asked if any trees would be taken down, and if the driveway would be changed. Mr. McCauley replied that three trees will be taken down a maple, oak, and crabapple. The driveway might be widened slightly to accommodate the garage doors, but there will be no major changes. Mr. McCauley said that back when that was a farm, the second residence was for the workers on the property. Mrs. Steffen said that both houses were built before zoning was created, so both houses are non-conforming and are grandfathered in.

*Mr. Boucek made the motion to close the public hearing. Mr. Rybak seconded the motion and it 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, this will allow the new structure to be built a reasonable distance to the house and in the best location.**

B) Whether the variance is substantial: **No, 28% is not a substantial variance; the structure will be parallel to the rear line of the home and behind the barn.**

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 is no substantial alteration to the property.**

D) Whether the variance would adversely affect the delivery of governmental services: **No. There was no testimony and there is no change in access.**

E) Whether the property owner purchased the property with the knowledge of the zoning restriction: **No. The applicant answered that he had no knowledge of the zoning restrictions.**

F) Whether the property owner's predicament feasibly can be obviated through some method other than a variance: **No. Given the existing location of the primary residence being close to the road. Also based on the topography this is the best location.**

G) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance: **Yes, based on the based on the previously noted factors.**

H) Such other criteria which relate to determining whether the zoning regulation is equitable: **The applicant answered the house is from the 1900's. This variance will not increase the non-conformance.**

*Mr. Boucek made a motion to approve variance request #485. Mr. Downing seconded the motion and it passed unanimously. Upon roll call the vote was Mr. Downing – Yes, Mr. Rybak – Yes, Ms. Moore – Yes, Mr. Boucek – Yes, Mr. Gokorsch – Yes. The motion passed by a unanimously vote.*

**VARIANCE REQUEST # 486:** Request for a west side yard setback of 44.87 feet for conversion of existing barn into a residence, in lieu of 50 feet required in an R-3 zone per section 5.2.B.

*Mr. Boucek made a motion to open the hearing for #486. Mr. Downing seconded the motion and it passed.*

Bill Bridge, 9085 Fairmount Road, confirmed that he was sworn in.

Mr. Bridge had a power of attorney to act for his wife and mother who own the home.

Mr. Bridge said that the barn was built in the 1980's and has had no additions. He has spoken with the Zoning Inspector about the barn. For years the barn has been a dwelling. The history of the property is that there were two dwellings on the property; on December 13, 2010 the front home was destroyed in a fire. Mr. Bridge said the barn was converted into primary residence which is still occupied. There was a subsequent electrical fire which caused damage to the barn. Mr. Gokorsch asked if the old house was rebuilt after the fire, and asked if Mr. Bridge understood that there was only one residence allowed on a lot. Mr. Bridge replied that there are no plans to rebuild the house, and he understands only one residence per lot.

Mrs. Steffen said that Mr. Bridge never had any permits for renovating the barn originally. The only reason that the barn is taxed as a dwelling is because the auditor saw that it was being used as a home. After the main home burned down, the owner's couldn't rebuild due to the residence that was in the barn that has no permits. The previous Zoning Inspector tried to get Mr. Bridge to get a zoning permit, but there was no permit obtained. Mr. Gokorsch asked if the barn can be recognized as a residence. Mrs. Steffen replied yes, if the variance is granted and the owners go to the zoning office and get a permit. The only permit that was issued was for electrical and no other maintenance. Ms. Moore indicated that according to section 5.2.B technically a building that already exists doesn't need a permit. Mrs. Steffen said he can't get a building permit until a zoning permit is issued. This residence is illegal and there was never a permit issued for the building when it was built. There were zoning laws in place in the 1980's requiring permits.

There is an agricultural permit for the building, but to change the building to a residence, Mr. Bridge needs a permit. Mrs. Steffen restated that there can be no building permit until a zoning permit is issued, and the previous zoning inspector never issued a permit to rebuild after the fire.

Mr. Gokorsch said that he understood that a variance was needed to make the barn into a residence. They will not rebuild the old home and this variance will result in only one non-conformance on this lot.

Mr. Bridge said that the front home was destroyed, and after that he got a letter for a zoning violation, and he doesn't want to rebuild a non-conforming home. The permit he obtained was for structural and electrical repair to the barn after the electrical fire. The structural repairs were to reframe the roof and put a new roof on the barn. Ms. Moore asked Mr. Bridge if he had an occupancy permit. He replied no, he didn't, after receiving a letter about the zoning violation he came to the board of zoning appeals to try and become in compliance. Mr. Ryabk asked if he was living in the barn, and he replied yes they were. Mrs. Steffen said that there was a fire repair permit issued but the building inspector wasn't allowed in the home to inspect the work. Mr. Bridge said he didn't refuse to let the building inspector in, the inspector showed up to the house when no one was home. The inspector left a tag and Mr. Bridge received the zoning letter the same day.

The board asked Mrs. Steffen if this variance was in best interest of the township. Mrs. Steffen said that it is as long as Mr. Bridge gets a zoning permit, and a building permit and gets the inspections done to make the barn a legal residence.

Mr. Boucek asked Mr. Bridge what kind of electrical work was done with the permit that was received. Mr. Bridge said that the fire was due to high voltage surge with underground wire that hit a copper pipe and burned the front of the barn 20 feet wide. The permit fixed the framing, outside sheathing, roof, and rafters. Wiring was replaced, but no new electrical panel was installed. The second floor only had framing and there was no plumbing or wiring work done. Ms. Moore asked if there were two septic systems. The applicant said that there was a septic for the house and the barn was tied into the house septic, and he wasn't sure when the tie in happened. Mr. Boucek pointed out that the original home had 3 bedrooms and the plans for the barn are going to be 4 bedrooms.

Mrs. Steffen said that if the variance is approved this will still be non-conforming and will not be in compliance until the applicant gets a zoning permit; she wants to make sure that Mr. Bridge applies for one if the variance is approved, and he goes into the zoning office and gets a zoning permit for residency. Mr. Boucek asked Mrs. Steffen what the options for the applicant were if the variance was not approved. Mrs. Steffen replied that the applicant would have to move; he can't have an accessory building without a primary building. Even if he built a new home he would still need a side yard variance for the barn.

Nancy Leirer, 9043 Fairmount road, confirmed that she was sworn in.

Nancy Leirer owns the property to the west and she has no problem with the variance, the barn has been there since she moved in and she supports the variance.

Mr. Gokorsch asked if the barn fits the character. Mrs. Leirer said that the barn does fit the character of the area, it is non obtrusive, well maintained, and she is in full agreement and has no problems with this.

*Mr. Boucek made a motion to close the public hearing for variance request # 486. Ms. Moore seconded the motion and it 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. There can be no beneficial use without the variance. This will allow the barn to be a residence.**

B) Whether the variance is substantial: **No. The variance is only 10.26%**

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. Testimony from the neighbor to the west is that it is non altering or detrimental, and fits the character.**

D) Whether the variance would adversely affect the delivery of governmental services: **There was no testimony.**

E) Whether the property owner purchased the property with the knowledge of the zoning restriction: **Unknown and there was no testimony.**

F) Whether the property owner's predicament feasibly can be obviated through some method other than a variance : **No. There was testimony that the owners predicament can't be resolved without the variance, the only other option is to move.**

G) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance: **Yes. All zoning setbacks except the single side yard are in compliance.**

H) Such other criteria which relate to determining whether the zoning regulation is equitable: **Given the hardships presented this variance request appears to be equitable and starts the process to allow the barn to become the primary residence on this lot.**

Ms. Moore said that based on the zoning inspector this is the best interest to the township.

*Mr. Boucek made the motion to approve variance request #486. Mr. Downing seconded the motion and it passed unanimously. Upon roll call the vote was Mr. Downing – Yes, Mr. Rybak – Yes, Ms. Moore – Yes, Mr. Boucek – Yes, Mr. Gokorsch – Yes. The motion passed by a unanimously vote*

**MINUTES OF September 28, 2015** – *Ms. Moore made the made the motion to accept the minutes of September 28, 2015 as amended. Mr. Downing seconded the motion and it passed unanimously.*

*Ms. Moore made the motion to accept the findings of fact #481 as presented. Mr. Boucheck seconded the motion and it passed unanimously.*

*Ms. Moore made the motion to accept the findings of fact #484 as presented. Mr. Boucheck seconded the motion and it passed unanimously.*

