

Minutes: Russell Township Board of Zoning Appeals
Russell Fire-Rescue Station
September 28, 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 6:56 p.m.

The meeting was sunshined in the papers on October 9th. The legal notice was published in the Chagrin Valley Times on October 17th. The certified letters for the meeting were mailed on October 15th.

CONTINUANCE OF VARIANCE REQUEST #481: Request for a side yard setback of 30 feet for an extension to existing detached garage in lieu of 50 feet required in an R-3 zone per section 5.2B.

Mr. Rybak made the motion to open the public hearing. Mr. Downing seconded the motion and it passed.

George Clemens, 102 Spring Drive, confirmed that he was sworn in. Mr. Clemens is the architect working on the plans for the Wenger family.

Anna Wenger, 8925 Galloway Trail, confirmed that she was sworn in.

Reid Wenger, 8925 Galloway Trail, confirmed that he was sworn in.

Mr. Clemens presented the board with amended drawings of the plans for the addition on the detached garage. The drawings show a six inch pipe and permeable driveway on the addition. He told the board that the addition is the best option for the family since there is a courtyard in-between the house and the current detached garage. The courtyard is the family's primary outside space, the side door is the primary entrance into the house, and the front door is hardly used.

Mr. Clemens explained to the board where the septic and leech field is on the new drawings that were submitted. Mr. Clemens also pointed out on the drawing that there is going to be a rain garden behind the addition on the detached garage to collect the rain to prevent the water flowing onto the neighbor's property. In addition to the rain garden there will be a six inch pipe that will be installed from the addition directing water down the driveway to the street. He says this should also correct the current issue of water flowing down the side of the yard from the garage flooding the neighbor's yard. The new driveway will be gravel; this will also help prevent any new rain water from going into the neighbor's yard.

The homeowners are also going to plant a row of arborvitae along the property line to make a wall of screening. There is currently no screening. The raised bed for the arborvitae should help with the water problem, and also with screening some of the noise and lighting from the cars in the garage. Mr. Gokorsch suggested that the arborvitae be planted closer to the garage to capture more of the water that is running off the current detached garage onto the neighbor's property.

Kathleen Blazar, 8891 Galloway Trail, confirmed that she was sworn in.

Jon Blazar, 8891 Galloway Trail, confirmed that he was sworn in.

Mrs. Blazar is the neighbor of Mr. and Mrs. Wenger. Mrs. Blazar insisted that the new drainage pipe for the addition be pointing towards the street and not towards her property. She said that the plans for the new pipe seem acceptable and hope this prevents the rain water from flowing into her yard and flooding her basement and garage.

Ms. Moore asked Mr. Clemens about the lighting that will be added to the garage addition, and whether it would be disturbing to the neighbors. Mr. Clemens said that is why they have the additional screening being planted along the property line. This will help screen against the new lighting and the current lighting on the garage. The homeowners have also put the current garage lights on a timer, and have shortened the time that they are on. The addition will not have floodlights or lights shining towards the neighbor's property.

Mrs. Moore asked Mr. Clemens if he had thought about reconfiguring the garage. Mr. Clemens said they have not; reconfiguring the garage will disrupt the use of the garage.

Mr. Downing asked if the current garages had floodlights. Mrs. Wenger said that there are currently new LED lights on the garage which are a lot brighter than they thought the lights would be, and the lights are currently on a timer. She said they are going to get new lights that are dimmer and decrease the timer so the lights are not on as long.

Mr. Downing asked if the new master drawing was signed, and Mr. Rybak replied that they were not. Mr. Clemens signed the document.

Mr. Gokorsch asked the Blazers if they were okay with the new plans. They said yes they were okay with the plans.

Mr. Rybak moved to close the public hearing for appeal #481. Mr. Downing seconded the motion and it passed. The public meeting was closed.

Ms. Moore moved to accept the township's exhibit #1 and applicant's exhibits #1, 2, 4-8. Mr. Downing seconded the motion and it passed.

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. No testimony was given to indicate any negative impact on property value.**

B) Whether the variance is substantial. **No. The request is not seen as substantial. There is no increase to the existing lot non-conformance of 40% due to an existing structure. The prior owner stated the property was less than three acres so a variance was not needed for the original detached garage (40% non-conforming). Townships exhibits show that the property is over three acres and requires a variance.**

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. This variance is seen as enhancing the adjoining property and the neighborhood. There was a neighbor testimony about water, lighting and landscaping screening needed to correct current problems. These new plans mitigate these problems and enhance the neighborhood.**

D) Whether the variance would adversely affect the delivery of governmental services: **No. The applicant indicated "no" on the application. No evidence or testimony given to indicate otherwise.**

E) Whether the property owner purchased the property with the knowledge of the zoning restriction: **No. The variance application indicated "no".**

F) Whether the property owners' predicament feasibly can be obviated through some method other than a variance: **No. This is a challenging area for new construction due to existing landscaping, pool and septic. There is no room behind the current garage to expand. Exhibit #7 shows unbuildable septic and leach areas. Although the area between the house and the detached garage would not require a variance, there was testimony showing the area is not architecturally acceptable and would negatively impact the look of the home and the character of the neighborhood.**

G) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance: **Yes. There was testimony given that the spirit of our zoning would be observed and substantial justice would be granted because it corrects existing drainage and light encroachment issues.**

H) Such other criteria which relate to determining whether the zoning regulation is equitable: An historical issue that was tried to be corrected. **Next door neighbors that were directly affected were present at both hearings and provided input on lighting, drainage, and landscaping. The architect adjusted the original plans to address their concerns. When asked whether the updated plans were acceptable the neighbors responded "yes".**

Mrs. Moore moved to accept the applicant's exhibit #1 into the record. Mr. Boucek seconded and the motion passed unanimously.

Mr. Rybak moved to approve variance request #481 as submitted. Mr. Boucek seconded and the motion 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 # 483: Request to allow existing residence to remain as a commercial accessory building in the front yard upon construction of new principal building, in violation of Section 4.7.V.

Mr. Downing made the motion to open hearing #483. Mr. Rybak seconded the motion and it passed.

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

Mr. and Mrs. Franc discussed their plans with the board about building a new house on the back of their property. They are currently living in a century home and would like to relocate the business into the century home once the new home is built. This would make the current century home an accessory building that will be in front of the house. Their business is currently located in a poll barn and the barn will be removed after the business is moved and the new home is built. The board said there should only be only one residence on the property. Mr. Franc said they plan to remodel the century home, the kitchen, first floor bedroom, and laundry room into display areas. The bedrooms on the second floor will become storage rooms.

Mr. Downing asked if the barn and the current home are the same square footage. Mr. Franc said that the barn is a little smaller, but with the remodeling they will be similar. Mr. Rybak advised the board that the square footage of the barn is 1,100, and the home is 1,106. Mr. Gokorsch asked if the footprint of the house would change with the remodeling. The homeowners replied it will not.

Mr. Boucek asked if there would be two septic systems on the property, one for the current home and one for the new home. Mr. Franc told the board that there will be a septic put in for the new home and that he is unsure about the current septic. Mr. Gokorsch said that Geauga County Health District will only allow one septic and one well per property.

Ms. Moore asked if the owners thought about designating the current home as a century home. Mrs. Franc said the home is already tagged as a century home.

Ms. Moore requested she and any other board members wanting advice from legal counsel be afforded the opportunity before considering the matter.

Mr. Gokorsch clarified that the current property had a home and a barn used as a shop, and when the new home is built there will still be one home and one building for the shop so the use has not changed. The change will be that currently there is no building in front of the home and after everything is done there will be a building in front of the home.

Mr. Rybak asked why the homeowners aren't planning on building the new home more north. Mr. Franc said that the terrain goes down and they wanted the home to be as high on the hill as possible.

Ms. More asked Mrs. Steffen the Zoning Inspector to check if any buildings in the township are in front of homes and being used as commercial buildings.

Edward Istenes, 14979 Hook Hollow, confirmed that he was sworn in.

Mr. Istenes asked how close the new home will be to the property line. The board was advised that there is riparian area that doesn't allow the home to be built near the Istenes property line. There is a minimum buildable distance of 80 feet from their property line.

Ms. Moore made a motion to hold hearing in abeyance so the board can seek legal counsel. Mr. Boucek seconded the motion and it passed.

VARIANCE REQUEST # 484: Request for a side yard setback of 27 feet for a detached garage on lieu of 50 feet required in an R-3 zone per section 5.2.B.

Ms. Moore made a motion to open the hearing for #484. Mr. Rybak seconded the motion and it passed.

Bethany Hurtuk, 15702 Chillicothe Road, was sworn in.
Ed Hurtuk, 15702 Chillicothe Road, was sworn in.

Mr. and Mrs. Hurtuk live in South Russell, but own a rental home in Russell. The rental property is behind their home and was purchased to protect the views from their property. This property is an old farm. In 2006 the original garage was removed from the property and was not rebuilt. They would like to rebuild the garage now. Mrs. Hurtuk said the family might, in the future move into the rental house and they would need a garage. They would like to rebuild the garage in the same spot the old one was.

Mrs. Hurtuk gave the board a drawing that shows the driveway and the access to SR 306. The driveway is in line with the barn and is currently 30 feet from the property line. The old garage was 16 X 30 and had a 28 foot side lot. The new garage will be 22 X 22 with a planned 27 foot side yard. There are two buildings shown on the map, building A & B which are original buildings on the property. The owners would like to keep the buildings. Building A is an old building that stored milk. Building B is a well house. Mrs. Hurtuk said they also want a turnaround in the driveway so that no one has to back out onto SR 306.

Mr. Gokorsch asked about the area behind the buildings. Mrs. Hurtuk said that area is flat and grass covered, but there are two big tree stumps. Mr. Gokorsch suggested putting the garage behind the two buildings. Mrs. Hurtuk said that would increase the length of the driveway, and they couldn't put in a turnaround. Mr. Gokorsch said a turnaround is a convenience, and suggested putting the garage next to the entryway. That area would be flat enough to build the garage. Mrs. Hurtuk said that they want all the buildings evenly spaced, putting the garage next to the entryway would make the buildings look like a cluster. The character of the property is very old and they wouldn't have built a sideways garage at the time the rest of the structures were built and the homeowners want to keep the original character of the property. Also the pine trees in that area are tall but skinny; in that location there is a risk of one of the trees falling on the garage.

Mr. Rybak asked where the septic was; the homeowner replied that it was out front. Mrs. Hurtuk said that the garage on the property to the north is 9 feet from the property line. Mrs. Steffen indicated that there was a permit issued for this building 9 feet from the common property line. Mrs. Steffen said the neighbor also has a building 20 feet from the south line.

Mr. Rybak asked the owners if they were one hundred percent set on having the garage in the same location, and if they would consider putting the garage somewhere else. The homeowners indicated that the spacing between the buildings is a very big concern of theirs, along with the tall trees, and keeping the character of the old farm. They plan on making the garage look like the current home, and not look too modern. Mr. Gokorsch said that the garage can't be in front of the house, but the homeowners wouldn't need a variance if the garage was behind the other buildings. Mrs. Hurtuk explained that they like the view of the property with all the outbuildings as the property has a charming look to it, and they would like to keep the same view and charm of the property. They want to keep the property and buildings historically accurate, which is why they want the garage back in the also original location.

Mrs. Hurtuk told the board that the foundation of the original garage is so old that it was made from sandstone. Mr. Rybak advised the home was built before 1949 and there was no zoning in effect.

Ms. Moore asked if the distance to the well and milk house were the same from the house or if one was closer. Mrs. Hurtuk said they were approximately the same in distance. Ms. Moore asked how far apart the two buildings were from each other. Mrs. Hurtuk replied that they are about 25 feet apart. Ms. Moore advised that the Board's suggested location for the garage behind the two out buildings will make the new structure too close to the current outbuildings and the house which could affect fire safety. The garage should be further away from the other structures rather than closer, and this supports the original location of the garage and variance request.

Mr. Boucheck asked if the original barn was parallel to the other structures. The measurements show that it is not parallel. The measurements were 26 feet side yard at the front of the barn and 29 feet at the back. Mrs. Hurtuk said she wasn't sure but it looked like it was parallel. Mr. Boucheck asked the homeowners if they would consider putting the new structure the same way the old one was or if they would have the entire structure with a 29 foot side yard. The homeowners indicated that they would and could even make it so there was a 30 foot side yard. Ms. Moore asked if the applicants would like to amend their request in the application to stay in line with the barn and no less than 30 feet from the property line. The homeowners said yes they would, and the request was amended to state; "New construction no closer than 30 feet from the property line."

Ms. Moore made the motion to admit applicant exhibit 1 & 2. Mr. Downing seconded and the motion passed unanimously.

Ms. Moore made the motion to close the public hearing for variance request #484. Mr. Downing 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: there was no testimony regarding the use or return for the property.**

B) Whether the variance is substantial: **No. The variance request is less substantial than the original location, and directly in line with the existing barn. Other properties in the area have more substantial variances.**

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 were no neighbors present to give testimony or challenge this variance request. Placement of the new building was seen as key to maintaining character and original design for the property. The trim will match the house so they will be uniform and in character.**

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

E) Whether the property owner purchased the property with the knowledge of the zoning restriction: **No. The owner indicated that they didn't know of any zoning restrictions.**

F) Whether the property owner's predicament feasibly can be obviated through some method other than a variance : **No. Following discussions on potential alternate placement, this was seen as necessary to maintain the character of the original property.**

G) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance: **Yes. There was no dissenting neighbors regarding placement and with this variance the character of the original farm would be maintained.**

H) Such other criteria which relate to determining whether the zoning regulation is equitable: **It was important to the Board that this is a century home and that the new structure covers less area then the old and will be built 30' from the side lot reducing the existing variance.**

Mr. Downing made the motion to approve variance request # 484 as amended. Mr. Boucheck seconded and the motion passed unanimously. Upon roll call the vote was Mr. Downing – Yes, Mr. Rybak – Yes, Ms. Moore – Yes, Mr. Boucheck – Yes, Mr. Gokorsch – Yes. The motion passed by a unanimously vote.

Ms. Moore made the motion that agenda item #2 be held until the next meeting's agenda. Mr. Boucheck seconded the motion and it passed unanimously.

MINUTES OF September 8, 2015 – *Ms. Moore made the made the motion to accept the minutes of September 8, 2015 as presented. Mr. Boucheck seconded the motion and it passed unanimously.*

Ms. Moore made the motion to accept the findings of fact #482 as amended. Mr. Boucheck seconded the motion and it passed unanimously.

There being no other business, Mr. Downing made a motion to adjourn. Mr. Boucheck seconded and the meeting adjourned at 8:31 p.m.

Respectfully submitted,

Jennifer Dorka Date

BZA minutes 09-28-15

Steve Gokorsch Date
Chairman