

Minutes: Russell Township Board of Zoning Appeals
Russell Fire-Rescue Station
Monday, March 9, 2015

Present: Steve Gokorsch, Chairman
Sarah Moore
John Rybak
Dushan Bouchek
Diana Steffen, Secretary

William Downing was absent with apologies.

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. and the Secretary confirmed that she had sent a Sunshine Notice to three newspapers and posted it at the Administration Building, to reschedule the regular March meeting from 03/02/15 to tonight.

APPEAL #477 Joyce Building Co., Inc.

Request for variances from Section 5.2.B to build a residence on Sublot 51 Chagrin Heights Subdivision No. 1, on Hazelwood Drive, Permanent Parcel #28-008500. Proposed front yard setback 37 ft in lieu of 70 ft required, proposed left (west) side setback 6.78 ft in lieu of 30 ft required, proposed right (east) side setback 5.85 ft in lieu of 30 ft required.

In attendance for Joyce Building Co., Inc. were applicant Bill Joyce, attorney Joseph R. Klammer, and Joseph Gutoskey, President of Gutoskey & Associates, Inc. Also in attendance was Ann Mitchell, Gauga County Assistant Prosecuting Attorney, legal counsel to the Board of Zoning Appeals.

Mrs. Steffen stated that the Notice of Public Hearing was published in the Chagrin Valley Times on 02/19/15 and, due to the rescheduled date, again on 02/13/15. It was sent by certified mail to the applicant and neighbors on 02/13/15 and a letter announcing the rescheduled date was sent via regular mail to the neighbors on 02/23/15. Mrs. Steffen also noted that she called the applicant on 02/12/15 to advise him there would be four out of the five members of the board in attendance tonight, and of the requirement of three members voting in the affirmative to pass the variance, and he said he would like to proceed tonight.

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

Mr. Rybak made the motion to open the public hearing for Variance Request #477 Joyce Building Co., Ms. Moore seconded and the motion passed unanimously.

Joseph Klammer, 7842 Center Street, Suite 6, Mentor, confirmed he was sworn in, and stated that Sublot 51 was platted in the 1920's or 1950's prior to zoning, and is unique in that it is partly in Russell and partly in South Russell Village. He referred to an Eleventh District Court of Appeals case, involving Russell Township, *Schreiner v. Russell Township Board of Trustees*, which he said addressed the same situation. He said that in that case the Township tried to have the property owner join two adjoining lots together. Mr. Klammer had submitted "Joyce Building Company – Applicant's Position Brief," in which he discussed the applicant's position on Ohio law, sanitary sewer and public water health issues, safety forces impact: police, safety forces impact: fire, school services, wetlands and waterways, and traffic impact. Mr. Klammer explained that the Schreiner case held because property owners' rights are held higher than the government's right to control property where "zoning regulations that effectively make a landowner's property valueless without any corresponding public benefits can constitute unconstitutional takings."

According to Mr. Klammer, the Supreme Court ruled that a zoning regulation must legitimately advance a governmental interest to be valid. He noted that Section 9.14 of the Russell Township Zoning Resolution

dictates that area variances must be based on factors taken from another court case, *Duncan v. Middlefield*. This ruled that there must be a balance between government interest and private property rights so as not to render a property valueless, with utilities, police and fire availability taken into consideration to determine whether there is any legitimate basis to restrict use of a property. He noted that the Supreme Court has also ruled that public sewers are preferable to septic systems, and both sewers and public water are already available to the subject lot. There will be no additional burden to the police or fire departments or to the school system, with a slight tax benefit to the school. There are no wetlands or waterways, the topography on the lot is perfect for a small home consistent with the others on Hazelwood Drive. There will be no traffic impact and no change in utilities or governmental services.

Mr. Klammer introduced Joseph Gutoskey, 10135 Gottschalk Parkway, Suite 4, Chagrin Falls, who confirmed he was sworn in, and presented a copy of the plat for Chagrin Heights Subdivision No. 1, dated August 1st, 1925, (Applicant's Exhibit A) that shows that was the date Sublot 51 was created. He said Russell Township zoning started in 1967, which Mrs. Steffen corrected to 1949, and said the lot precedes the zoning code. He then presented a map showing Hazelwood Drive Sanitary Sewer, dated 1975, (Applicant's Exhibit B) that he had obtained from the Geauga County Department of Water Resources, which shows the public improvement project of sanitary sewers to all the lots within the development.

Mr. Gutoskey stated that he has been a civil engineer for 30 years, with a specialty in land development, and has worked on many subdivisions. He is a registered Professional Engineer and registered Land Surveyor in Ohio, and has been in business since 1993. He stated that there are no wetlands or streams on the subject lot, and no impediments to building a house on the lot where utilities are available. Regarding traffic, at an average of 2 ½ trips a day per person for a single family, there would be 5 trips per day. The house will be constructed similar to others in the neighborhood and so it will be in character. There will be no effect on governmental services. Mr. Rybak asked how they chose the front yard setback, and Mr. Gutoskey said that the house next to it is 37 to 40 feet. Mr. Joyce presented a Geauga REALink map of the area (Applicant's Exhibit C) that showed outlines of the residences on the lots. Mr. Gokorsch noticed that the residences on Hazelwood appear to be in line and have identical setbacks, except one that is out of place. Mr. Gutoskey said the acreage of the subject lot is 0.2139 acre.

Mr. Klammer introduced Bill Joyce, President of Joyce Building Co., who has been a developer and builder for 20 years, and has undergrad training in Finance. He knows this property well and chose to ask for the 37-foot front setback variance to be consistent with others on Hazelwood as opposed to setting the house back farther, which would affect neighboring properties to the northwest.

Bill Joyce, 7070 Country Lane, Bainbridge, confirmed he was sworn in, and stated he started his company in 1994 and two of the first homes he built were on Hazelwood Drive, purchased from the previous owners of the subject lot, in 1994 and 1995. He was aware of the lots attached to the residence at 101 Hazelwood, and had tried to buy them for some years. When the owner died he bought the lots from the heirs with the intent to build homes. Last year he obtained a variance from South Russell to build the first home, which is a 2,550 sq. ft. four bedroom colonial, designed for a family moving back to Chagrin Falls. That home is at 105 Hazelwood Drive. South Russell Village has a 10 ft. side yard setback requirement, and he obtained one side yard variance and a front yard variance. As you go east on Hazelwood the homes tend to be set farther back, and he set this home at 43 feet from the right-of-way. The existing home that he had purchased is a small stone cape cod that has a front setback of 37 feet. That setback is the reason he is proposing the same front setback, although he does have enough room on the lot to set it at the required 70 feet. However, he said it would then be far back and would look odd. Knowing the minimum square footage in Russell to be 1500 sq. ft. he felt this is ideal for his clients who are moving back to the area, since there will be a master bedroom on the first floor and two bedrooms on the second floor. Mrs. Steffen mentioned that the design submitted with the application shows three bedrooms on the second floor and one on the first floor. Mr. Joyce said those plans do not reflect the actual building plan. He said they are also reducing the width of the house footprint to 34 feet from the 35-foot width shown on the design, and confirmed that the footprint will not be changed.

Regarding the existing front yard setbacks of homes on the north side of Hazelwood Drive, Mrs. Steffen said that she measured them on Geauga REALink and the approximate dimensions are 109 at 65 feet, 111 at 68 feet, 113 at 67 feet, 115 at 65 feet, and 117 at 57 feet.

Mr. Joyce stated that the tax value of Sublot 51 as vacant land is \$6,000, according to the County Auditor's records. The valuation in the purchase contract is \$50,000. Asked by Mr. Gokorsch if he had considered placing the home farther back on the lot, he stated that he had since at 70 feet he would not require a variance, and he was not opposed to doing so, but he felt it would be more appropriate to line it up with the neighboring house.

The Chairman asked for comments from the audience.

Valarie Mariola, 15911 Hemlock Road, confirmed she had been sworn in, and suggested that the board should not be considering this application, but if it decides to do so she would present arguments on that. She explained her reasons for asking the board not to consider it. The lot is in the R-3 zone. Section 5.2 Residential Zones A.1 Permitted Uses, states, "A single one-family dwelling per lot." The definition of lot in Section 2 Definitions states that a lot is "a parcel of land considered as a unit, regardless of parcel designation, devoted or to be devoted to a certain use or occupied by a building or group of buildings and accessory uses that are united by common ownership, interest or use, and the open spaces belonging to the same, and conforming to the regulations for such district. The term "Lot" as used herein includes contiguous lots of record under common ownership, and may or may not coincide with a Lot of Record." Mrs. Mariola said she believed that, due to this definition, the variance should encompass all six parcels owned by Mr. Joyce. The table in Section 5.2.B defines minimum lot requirements, which the subject lot does not meet, so it is not a lot. She referred to Section 7.5 Nonconforming Lots of Record, and said that according to "B" Mr. Joyce cannot build a dwelling unless he re-subdivides the parcels into a conforming lot, and according to "C" he cannot sell them unless they are re-subdivided to conform. She noted that he had stated in the Notice of Appeal that he had knowledge of the zoning restrictions when he purchased the property. Mrs. Mariola said that the Township emphasizes protecting open space, the water table and over-population of the community, and she urged the board not to consider the request. However, if the board does want to do so she would like to present seven points of merit on denial of the application.

The Chairman asked Mrs. Mariola if her argument is that this property is not a lot, and she said yes. He then asked Assistant Prosecuting Attorney Ann Mitchell to advise if this is accurate. Ms. Mitchell said that if the subdivision was platted in the 1920's or 1950's the lots were divided into sublots, each of which could be built on, and since they predated the Zoning Resolution they are considered nonconforming lots. Such lots are dealt with in the Zoning Resolution, but there was a court case, *Schreiner v. Russell Township Board of Trustees*, which determined in that case that the platted sublots were buildable lots as long as they were otherwise in conformance. It is a case by case analysis. It did not specifically strike down that section of the Zoning Resolution, but this case did determine that a plat map establishes the lots. Mr. Gokorsch responded to Mrs. Mariola that the Township cannot require the applicant to consolidate all the parcels into one lot. However, Mrs. Mariola confirmed that she believes the parcel to continue to have value even if not developed.

As a result of this information, Mrs. Mariola presented to the board her 'Position Paper – Points of Merit on Denial of Zoning Variance Application,' (Neighbors' Exhibit 1) which she read aloud. She gave her opinion on each of the factors used to determine a practical difficulty. This paper is part of the record as an exhibit accepted by the board. She stated that the applicant has already gained a reasonable return on the nine parcels he purchased together for \$125,000 in 2013, because he sold three of the parcels for \$75,000 and built a 2518 sq. ft. home which he stated he would sell for approximately \$300,000. Assuming he did so and gained a 25% builder profit, he would have gained \$56,000, or approximately \$130,000 on his \$125,000 investment, and he still owns the existing house and six more parcels. If he builds three more houses on these lots, assuming he removes the existing house, he will have more than a reasonable return. Mrs. Mariola questioned the fact that a T sewer connection is apparently in place for the subject lot, since a sewer line to the development in Russell Township was not approved until 1999. She stated that the variance is substantial in asking for a 47% variance for the front setback, and 77.4% and 80.5% variances for the side yard setbacks. She noted that other homes in the Chagrin Heights

Subdivision in Russell Township have an average side yard setback of 33.16 feet. Until building plans are submitted, it is not possible to determine if the character of the neighborhood will be substantially altered, but she said placing two homes within 10 feet of one another will do so. There are 48 homes in the subdivision that each exist on multiple parcels, which, if the variance is granted, could result in many of them being torn down and new houses built on each lot. Mrs. Mariola said there would not be an effect on delivery of government services except that the 10 feet between the houses is a hazard to fire safety. She said the owner has said he bought the property with knowledge of the restrictions. As far as obviating his predicament through some method other than a variance, Mrs. Mariola stated that Mr. Joyce can consider his remaining six parcels as one lot, since he could build a single home on them, probably without any variances, and at the same time achieve a fair rate of return.

With regard to the spirit and intent behind the zoning requirement, Mrs. Mariola stated that the Township wrote the nonconformance section correctly, since it prevents overbuilding and protects the large lot zoning and preserves the rural atmosphere. There are 27 houses on well water within 1000 feet of this property. Large lot zoning is to protect from over-crowding and over-building and the resulting increase in impervious surfaces which prevent regeneration of the water table. As far as other criteria, Mrs. Mariola stated that Mr. Joyce has not worked with the neighbors and if he does want to do so he should not attempt to build four houses on these parcels. She also noted that on his application Mr. Joyce said the lots were improved with city water, sanitary and storm sewer connections, allowing for smaller lots and higher density when they were platted. She said this is not correct, city water was extended into South Russell in 1955, and sewer connections made available in 1999 in Russell. If the lot was in fact improved with a sewer connection in 1980 it was done in error. In 1925 when the land was platted there were no improvements to justify the size of the lot other than the typical home style and size at that time. She urged the board to consider that at this time Mr. Joyce has the option to consolidate lots, but if he builds another house or sells some of the parcels in South Russell, he may return to the board to ask for further relief.

During her presentation Mrs. Mariola presented the board with a Geauga REALink plan showing the nine parcels purchased by Mr. Joyce (Neighbors' Exhibit 2), photo of the new house built by Mr. Joyce at 105 with the Sprinkle house next to it at 109 Hazelwood (Neighbors' Exhibit 3), noted as photo #1 in B.a of the Position Paper, Geauga REALink plan showing the proposed house superimposed on it (Neighbors' Exhibit 4). Mr. Gokorsch asked the Zoning Inspector if the lot does narrow towards the rear, and Mrs. Steffen replied yes. He asked the width of the lot 65 feet back from the road, Mrs. Steffen said she has not determined that, so Mr. Gokorsch said they do not have any facts regarding the side yard setbacks if the house was moved to 65 feet back. Mr. Klammer said they would lose about one foot if the house was moved back, and that would be acceptable to Mr. Joyce. Mrs. Mariola also presented a list of the side yards on other lots in the subdivision (Neighbors' Exhibit 5) within Russell Township. She did not include homes on Hazelwood because they are not in Russell.

Mrs. Mariola said there are 11 neighbors in attendance. Ms. Moore asked for their names and addresses, which were given as follows: Rick Kondas, 139 Fairview, Lori Kondas, 139 Fairview, Bill Stone, 127 Fairview, Emilie Unkrich, 131 Fairview, Wayne Segal, 134 Fairview, Jannine Mason, 15889 Hemlock, Deborah Stephen, 113 Hazelwood, Diane Armington, 15879 Hemlock, Doug Phillips, 15905 Hemlock, Robert Stephen, 113 Hazelwood, Tim Mariola, 15911 Hemlock.

Mrs. Mariola presented another Geauga REALink plan showing the Chagrin Heights Subdivision in Russell Township (Neighbors' Exhibit 6), on which she had highlighted those lots where houses straddled more than one parcel. She said that if the variance is granted, it would open up the possibility for the houses to be torn down and new ones built on each individual lot. Mrs. Steffen confirmed that this is an accurate representation of the lots.

Mr. Klammer presented a list of houses on Hazelwood, Birchwood and Mapleridge in South Russell with the side yard setbacks (Applicant's Exhibit D), which he said showed that the side yard setbacks being requested are not out of character with the neighborhood. He stated that he understood that the Township wants to preserve green space, but these lots would not have been platted if they were to be preserved as such. He reiterated that this issue was addressed in the Schreiner case, when the

Township talked about combining lots. That case decided, although there is the Nonconformance section in the Zoning Resolution, that even though resolutions are valid they can never be unconstitutional. Ms. Moore asked if he was saying the Resolution is unconstitutional. Mr. Klammer said it is fact specific, the courts look at diminution in value. The twelve lots in that case that Russell said should be combined would have lowered the value, which would not be constitutional. Mr. Gokorsch advised Mr. Klammer that the question of combining lots is not part of this request, but involves area variances for a structure on a lot of record.

Ms. Moore noted that Mrs. Mariola raised an issue with the definition of 'lot', and she asked Mr. Klammer if he considered the definition of the subject lot to refer to the lot as it is platted, since the legal description indicates it is platted and recorded as a residential lot. Mr. Klammer responded that in the Zoning Resolution the definition of nonconforming lots requires them to be joined together, which was addressed in the Schreiner case. The court said it does not matter what the Resolution means if the rule is unconstitutional on the facts of a certain case, but that does not mean the Zoning Resolution is invalid. Ms. Moore asked that the board's legal counsel provide a privileged opinion at the appropriate time. Mr. Klammer said the regulation can be appropriate in some instances if it does not eliminate someone's reasonable rate of return. Ms. Moore asked Mr. Klammer if the last sentence defining lot in Section 2, which says, "The term "Lot" as used herein includes contiguous lots of record under common ownership, and may or may not coincide with a Lot of Record," would have applicability to this application. Mr. Klammer responded that applying it to this request would be unconstitutional because it is worse than the Schreiner case, due to the diminution in the property value. In the Schreiner case the loss in value would have been \$16,000 per lot, but in this instance Mr. Joyce has said the purchase agreement is for \$50,000, and the current taxable value is \$6,000. Ms. Moore said there were not enough facts at this time to determine, if the lot is unbuildable, if this is an unconstitutional taking. Mr. Klammer suggested tabling the request so he could bring in facts to support his assertion.

Mrs. Mariola said that the lot consists of two parcels, one in Russell and one in South Russell, and unless they are joined together the parcel in Russell does not have frontage on Hazelwood. Mrs. Steffen explained that there are two parcel numbers but it is platted as one subplot. Mr. Gutoskey confirmed this information.

The Chairman asked the audience for their comments.

Lori Kondas, 139 Fairview Road, neighbor directly across the road from the subject lot, was sworn in by the Chairman, and asked for clarification on the loss of value. She understood Mr. Joyce had paid \$125,000 for all the parcels and has already received a reasonable rate of return. Mr. Klammer explained that the Schreiner case rejected combining sublots that had been platted previously, since it would destroy the previous values of individual sublots. He said that is why the Duncan factors are used for an area variance, one being whether there would be a reasonable return without the variance, and another being whether the property owner's predicament can be obviated by any other method than a variance.

Bill Stone, 137 Fairview Road, neighbor across the road from the subject lot, confirmed he was sworn in, and asked what is considered a reasonable return, since Mr. Joyce purchased the parcels with full knowledge of Russell and South Russell's regulations. He asked if the Schreiner case is being used in order to incur a much higher rate of return. Mr. Klammer responded that this happens all the time. He referred to the *Shimo vs. Mayfield Heights* case which went to the Ohio Supreme Court. The developer bought the property by Interstate 271 knowing it was zoned residential, but believing that would be out of character with the neighborhood and therefore unconstitutional, and with the hope of proving the zoning regulations to be unconstitutional. The developer prevailed in that case. Mr. Gokorsch asked if Mr. Joyce had also purchased the subject lot with the intention of developing it and finding the Township's zoning to be unconstitutional. Mr. Klammer said no, he knew it was a platted subplot for a single family home since the 1920's, and that he could apply for a variance. Ms. Moore said that since the board has not yet ruled on the variance request, the issue of the board engaging in an unconstitutional act by denying the variance is moot at this time. Mr. Stone asked Mr. Gutoskey if he was compensated for attending tonight's hearing, and Mr. Gutoskey responded that he was, his rate being \$150 per hour.

Deborah Stephen, 113 Hazelwood Drive, confirmed she was sworn in, and stated that she understood Mr. Joyce does not want the property value destroyed, but she asked the board to consider the neighbors already living there, who enjoy having a home on several parcels because of the green space it provides. She said that although the homes have small side yard setbacks those setbacks are not as small as the setbacks Mr. Joyce is planning. The house he built at 105 Hazelwood is less than 15 feet from wall to wall with the adjacent home. She suggested he could have put the driveway there instead of putting the garage out front and breaking up the flow of the neighborhood, since the other homes are farther back. She opposed the variances, which will make the house look ridiculous due to the lot's location on the corner. It will be very noticeable as people drive in from Hemlock Road and will negatively affect the neighborhood.

Mr. Gokorsch asked how many people in the audience believe the essential character of the neighborhood will be substantially altered if the variances are granted. Twenty-five people indicated they agreed with that statement.

Julie Bidar, 15890 Hemlock Road, confirmed she was sworn in, and stated that the requested side yard setbacks are a substantial variance to the regulations.

Mr. Stone noted that it has been said that the community was planned in the 1920's, but at that time the homes were under 1,000 sq. ft., and the garages were at the back of the properties and for one car only. The reason for putting the garage in front is only to save on the expense of the concrete driveway. He said the applicant is building 2015 homes on 1920's lots. Mr. Stone said that green space brings value to a property. He had a letter from Mrs. Sprinkle, 109 Hazelwood, who could not attend tonight. Mr. Gokorsch said the letter could be read but could not be taken into consideration without Mrs. Sprinkle being in attendance. Mr. Stone stated that if other homes are pulled down and new houses put on each subplot it will change the character of the neighborhood.

Mrs. Stephen discussed a conversation she had had with Nick Turchan, the owner of the house built by Mr. Joyce at 105 Hazelwood, regarding the effect his home has had on the adjacent neighbor, Mrs. Sprinkle. Nick Turchan, 105 Hazelwood, confirmed he was sworn in, and said the comments on his conversation with Mrs. Stephen were taken out of context. Mr. Joyce had asked if he would be interested in buying the vacant lot after it was purchased by Mr. Joyce, and since he had two children and was looking for a property in the Chagrin Falls school system, he did due diligence in looking at the neighborhood. He knew his home would be larger than the others but it was designed to fit the neighborhood. Due to delays with the approval in South Russell he was not able to plant landscaping before the winter. He will be planting shrubbery and trees in the spring to improve the view. He stated that in his conversation with Mrs. Stephen he had said he wanted to maximize the back yard for his family and so located the house nearer the front of the lot.

Mr. Klammer presented a photograph (Applicant's Exhibit E) which Mr. Turchan confirmed was of his home at 105 Hazelwood.

Eliza Tanner, 206 Hazelwood Drive, was sworn in by the Chairman, and stated that the value of her house will go down as the green space is removed and houses built close to each other. She confirmed the new house has changed the character of the neighborhood.

Robert Stephen, 113 Hazelwood Drive, confirmed he was sworn in, and said the photo shows the Sprinkle house is completely overshadowed by the house built by Mr. Joyce. He was opposed to the variance because if four houses are ultimately built on four lots, without even driveways between them they will look like row houses.

Walter Peckis, 102 Fairview Road, was sworn in by the Chairman, and stated that he was a volunteer with Russell Township Fire Department for 17 years, with seven years as Fire Chief, and is now retired. He said that, although there may be no increase in demand for the police and fire departments at this point, there is a potential concern if four houses are built each ten feet apart. If one catches fire the volunteer department response time is three to seven minutes, and will require mutual aid. He said that if

one is on fire and they are located close to each other then there is usually a loss of three homes instead of one. He emphasized that it is very difficult for the fire department to handle several house fires at once, due to the number of people who may be in the homes, the use of fire hydrants that may be frozen, and the need for tankers of water. He said building houses close together is a huge risk, and that the amount of destruction and heat when a house burns is incomparable.

Danielle Renton, 106 Hazelwood Drive, neighbor opposite the new house at 105 Hazelwood, was sworn in by the Chairman, and stated her home was the first one Mr. Joyce built in the neighborhood twenty years ago. Her home is close to her neighbor's home but she did not believe her home has harmed the neighborhood. Her lot was green space with trees and people were not happy when her house was built, and she believes the builder will make sure the proposed house will be done right.

Mary Blalock, 111 Hazelwood Drive, confirmed she was sworn in, and stated that the Rentons' house has a long driveway along the side line, so there is space between the homes, plus their house is in line with others near it. She confirmed that the house does fit with the neighborhood whereas the new house at 105 Hazelwood is set forward, and is very close to the adjacent home.

Mr. Turchan commented that he had tried to make his new house fit the neighborhood by choosing grey siding to match some other houses. He confirmed for the Chairman that when he has planted his landscaping he believes his property will look more like the others in the neighborhood.

Mrs. Stephen commented that only Mr. Turchan's house has garage doors in front facing the street, his house is 2,550 sq. ft. whereas the other houses are between 1,200 up to 1,600 sq. ft., which means his house is two and a half times bigger than others in the neighborhood. She said it does not fit in, especially with the lack of windows at the front.

Mr. Klammer presented a photograph of Mrs. Renton's home at 106 Hazelwood Road (Applicant's Exhibit F). He stated that South Russell requires 2,400 sq. ft. minimum size, whereas Russell requires a minimum of 1,500 sq. ft. Because the proposed house is 1,700 sq. ft. it is within the zoning requirement. Mrs. Steffen mentioned that the minimum size in Russell is 1,250 sq. ft. when there is a basement that is 60% of the projected floor area. South Russell's minimum square footage for a one-story residence is 2,000 sq. ft.

Mr. Klammer asked Mr. Joyce if Mr. Turchan had liked and wanted the design he chose for his house, and if his concern was to build something that the neighbors would also like. Mr. Joyce replied yes to each question. Asked about valuation of the property, Mr. Joyce stated he has a degree from John Carroll University in management finance, and was in commercial real estate for five years doing property valuations. He said he has built 55 houses and developed four subdivisions. Mr. Klammer asked if, during that time, he has come to understand the value of residential property. Mr. Joyce said very much so, and he has been involved in many property sales. Mr. Klammer said that the lot was valued at \$6,000, but under contract to build it is valued at \$50,000, and asked if Mr. Joyce thought this was a fair value for that property. Mr. Joyce said yes. Mr. Klammer asked what the lot would be worth if he cannot build on it, and Mr. Joyce said probably \$6,000 due to the side yard of the existing home next to it. He confirmed he cannot use the lot for a commercial use, and that the diminution in value from \$50,000 to \$6,000 would be considerable. Mr. Gokorsch asked if there was a type of house that could be built on the lot that would increase the valuation, and Mr. Joyce said there is a big demand for having the master bedroom downstairs, and that increases the value.

Tim Mariola, 15911 Hemlock Road, confirmed he was sworn in, and said he believed Mr. Joyce already has a signed contract because he was determined to build in spite of knowing he would need to obtain variances. Mr. Joyce indicated that was incorrect.

The Chairman said the board needs further information before making a decision: 1) the board needs an expert to provide testimony as to whether there would be a change in neighbors' property values if the variance is granted. He would like to have an independent valuation of the lot; 2) the board will ask the Russell Township Fire Chief to provide testimony; 3) with regard to the constitutional issue, he said the

board considers the person's right to use their property to be important, while at the same time considering the impact on the Zoning Resolution. He asked Ms. Mitchell to provide an opinion.

Ms. Moore asked for a copy of the building plans and the architect to be available to answer questions about the plans. Mr. Klammer said they do not have an architect. Mr. Joyce said there are not many lots that are developed that are similar. Two are on Hazelwood which he bought twenty years ago for between \$27,500 and \$29,000, the lot at 105 Hazelwood transferred for \$75,000 prior to construction of the residence, and a lot at 300 Miles Road transferred for \$69,000. He thought it would be difficult to obtain appraisals but those lots are similar in size and location.

Mr. Rybak asked Mr. Joyce if he could draw the footprint of the house on the site plan with respect to the dimensions on the lot, and if he could have it reproduced to show where the house is proposed to be if it is moved back, including the dimension between the proposed residence and the existing house to the east. Mr. Joyce said he could do this. Mr. Gokorsch mentioned that the residents have said the house needs to be set farther back so it is in line with other homes on the road. Mr. Rybak said the side yard setbacks will need to be refigured and the variance request will change to reflect the new setbacks. He said that since the neighborhood appears to have front setbacks of 60 to 65 feet, he suggested the front setback should be in that range. Mr. Gokorsch asked if moving the house farther back on the lot will have any impact on the sewer and water for the lot, and Mr. Gutoskey said it would not. Ms. Moore asked Mr. Joyce if he has the ability to make the house narrower, and Mr. Joyce said yes. Mr. Boucek asked if there was a landscaping plan. Mr. Joyce said he did not have one at this time. The drawings submitted are preliminary so that the residence can be redesigned if required. He said he has a letter of intent showing the real estate value, but he does not know what the house will look like. Mr. Gokorsch asked Mr. Joyce if he could build a different house and still have a reasonable economic return, and Mr. Joyce said he could. Ms. Moore suggested that another design might look better, and Mr. Joyce said he could design a 1½ story home to keep the roof line down.

Mr. Rybak made the motion to continue the public hearing to the April meeting, if the board has received the required supporting information, Ms. Moore seconded, and the motion passed unanimously.

Mr. Rybak listed the exhibits to be accepted as follows:

Applicant's Exhibit A – Chagrin Heights Subdivision #1 platted in 1925.

- " " B – Sanitary sewer map of Hazelwood Drive dated 1975.
- " " C – Geauga REALink map showing the existing front setbacks on Hazelwood.
- " " D – List of existing side yard setbacks on Hazelwood, Birchwood, Mapleridge.
- " " E – Photograph of the residence located at 105 Hazelwood.
- " " F – Photograph of the residence located at 106 Hazelwood.

Neighbors' Exhibit 1 – Points of Merit on Denial of Zoning Variance Application.

- " " 2 – Geauga REALink map with an 'X' marking the lots owned by the applicant.
- " " 3 – Photograph of the side of the residence at 105 Hazelwood.
- " " 4 – Geauga REALink map showing the property with the proposed house and the characteristics of the lot as to the dimensions and proposed setbacks, but not to scale in the rear.
- " " 5 – List of side yard setback measurements of residences on Hemlock, Birchmont, Laurel and Sylvan.
- " " 6 – Geauga REALink map of the Chagrin Heights Subdivision showing the property locations of multiple lots per one dwelling.

The hearing for Appeal #477 was continued to the next regularly-scheduled meeting on April 6th, 2015.

MINUTES OF FEBRUARY 9, 2015 – *Mr. Boucek made the motion to approve the minutes as submitted, Mr. Rybak seconded and the motion passed unanimously. Ms. Moore abstained.*

