

Minutes: Russell Township Board of Zoning Appeals  
Russell Fire-Rescue Station  
Monday, April 6, 2015

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

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

The Chairman called the meeting to order at 7:02 p.m. The Secretary confirmed that a Notice of Public Hearing for the two variance requests tonight was published in the Chagrin Valley Times on 03/26/15, and was sent to the applicants and neighbors on 03/19/15. The Chairman swore in all those in the audience who planned to give testimony tonight.

#### **HEMLOCK HILLS HOMEOWNERS ASSOCIATION CONDITIONAL USE #476 – Revision to Condition #5**

When the Homeowners Association had received the list of conditions agreed to by the HHA and the BZA, one of the officers of the HHA, Sara Sustin, asked for clarification of Condition #5, Food and Beverage. Mr. Gokorsch said the board has re-written that condition, which he read aloud:

**Food and Beverage:** A concession stand may be operated in the pool area. Pre-packaged food and beverages may be sold in the pool concession stand, including snacks, candy bars, bottled water and soft drinks. Food prepared elsewhere may be brought to the recreation area to sell at the concession stand, such as pizza and sandwiches that require no onsite heating or cooking. Food preparation and serving of plated meals cooked onsite is not permitted within the pool area as part of the concession stand operation, however, picnics which include grilling are permitted in the entire recreation area, as long as these do not include the sale of food. A single vending machine selling beverages is permitted within the pool area.

Ms. Sustin had suggested further changes, which were not included because they were not requested during the hearing. However, Mr. Gokorsch clarified that microwave heating of pizza brought in to the concession stand was acceptable, but that plated meals served restaurant style were not permitted.

*Mr. Rybak made the motion to change the wording in Condition #5 as described by the Chairman for Conditional Use request #476, Mr. Boucek seconded and the motion passed unanimously by 3-0. Mr. Downing and Ms. Moore abstained.*

#### **LAUREL SCHOOL CONDITIONAL USE #380 – Annual Review of Environmental Management Plan** – In attendance were landscape architect Kathy Jankowski of Knight & Stolar, and Matt Stanich, Butler Campus Manager.

Ms. Jankowski stated she had submitted the annual review to the Township's consultants, the Chagrin River Watershed Partners, which made some minor suggestions. They asked when the invasive plants map would be updated. Mr. Stanich said he has started to do so this year and will make any necessary modifications. He is waiting for germination this spring. Ms. Jankowski said that each year they reduce the use of fertilizers as everything stabilizes. Mr. Downing asked if they expect to eradicate the invasive species or just keep them to a minimum. Ms. Jankowski responded that this is an ongoing procedure. Buckthorn constantly re-populates and must be treated wherever it re-appears. Mr. Stanich said there is only a small infestation of phragmites around the ponds now and they have better control of that plant.

Asked if there were any problems with keeping pesticides locked away, Mr. Stanich said no, they were kept in a locked cabinet.

*Ms. Moore made the motion to accept Laurel School's annual report of the Environmental Management Plan, Mr. Downing seconded and the motion passed unanimously.*

### **CONTINUANCE OF VARIANCE REQUEST #477 Joyce Building Company**

In attendance was Ann Mitchell, Geauga County Assistant Prosecutor and legal counsel to the Board of Zoning Appeals.

*Ms. Moore made the motion to go into executive session under ORC 121.22.G.5 regarding matters covered under state law of conversations between this board and its legal counsel, Mr. Rybak seconded and the motion passed unanimously.* The board moved into executive session at 7:15 p.m.

The board reconvened into public session at 7:34 p.m.

In attendance for Joyce Building Co., Inc., were applicant Bill Joyce, attorney Joseph R. Klammer, engineer Joseph Gutoskey, and architect John Fisher.

At the last meeting the board had listed exhibits received from the applicant and from the neighbor, but had not yet officially accepted them.

*Ms. Moore made the motion to accept Applicant's Exhibits A through F and Neighbors' Exhibits 1 through 6 into the record, Mr. Boucek seconded and the motion passed unanimously by 4-0.* Mr. Downing abstained due to his absence from the last meeting.

Mr. Rybak noted that the board had asked if the proposed residence could be moved back to have a 60-foot front setback, and the revised plan submitted for this meeting shows it in the 40-foot range. He asked for the rationale for doing this. Mr. Klammer presented the revised site plan (Applicant's Exhibit G) to the board. Mr. Gutoskey explained that using the sewer plan for that area they reviewed the setbacks of other houses along Hazelwood and plotted the new house at 105 Hazelwood. He stated that the house on the corner to the west of the subject lot is set back 36 ft. from Hazelwood and 15 ft. from Hemlock Road, and the house next door to the east of the subject lot is set back 42 ft. and the new house at 105 Hazelwood is set back 40 ft. The other houses on the north side of Hazelwood vary from 51 ft. to 70 ft. setback, which he listed as: 115 – 65 ft., 117 – 57 ft., 119 - 57 ft., 201 – 62 ft., 203 – 64 ft., 205 – 70 ft., across the road on Fairview 137 – 25 ft., 134 – 43 ft., on the south side of Hazelwood 114 – 45 ft., 119 – 34 ft. to Hazelwood and 16 ft. to Mapleridge, 118 – 45 ft., 202 – 30 ft., 204 – 35 ft. They have tried to align the proposed house with the existing two-story A-frame house next door at 101 Hazelwood. The new house at 105 is not in line with the others on the street.

Mr. Gutoskey presented the sewer plan for Hazelwood Drive (Applicant's Exhibit H), with the fire hydrants marked on the plan. He stated there is one on the south side of Hazelwood opposite 101. The next hydrant is just past the intersection with Mapleridge. Mr. Klammer asked if, in his experience, setting the house back consistent with the side yard and setback of the house to the right is sound planning for the subdivision, and Mr. Gutoskey said yes. Mr. Gokorsch noted that the new house at 105 is out of place where it is situated. Mr. Klammer said that by moving the proposed residence back they are asking for less of a variance. He asked Mr. Gutoskey, as a civil engineer, does he work on subdivisions designing water systems with attention to fire safety. Mr. Gutoskey said yes, and confirmed he designs roads, water and sewer for new subdivisions. Asked if the location of the nearest fire hydrant to the subject property is a safe location, he said yes, in the City of Cleveland there are hydrants 300 feet apart, and in Cuyahoga County they are more than 500 feet apart. It depends on who has control of the water system. Mr. Klammer asked if that is sound engineering, and Mr. Gutoskey said yes, and confirmed that there is a hydrant near the subject property. Asked if he had any information regarding moving the road to accommodate one single family home for fire, he said no. Asked, whether the homes are closer or farther apart, do they follow the road lines, he said yes. Asked if there are building mandates such as fire walls

that he has to follow, he said yes, when doing a project the Insurance Service Organization (ISO) for single family homes goes by the distance between homes, but there is another longer calculation that takes into account constants of how far apart, and number of stories. Mr. Klammer said the property to the left is really old and so has no safety, and Mr. Gutoskey agreed. Mr. Klammer said the property to the right, if they needed to increase the fire wall to keep it safe, could that be done. Mr. Gutoskey said yes. He said they can rate the east wall of the proposed home.

Mr. Rybak remarked that the new site plan shows dimensions to the east side line from the proposed residence, but the lot narrows towards the rear and he asked the dimension from the farthest point back of the residence before it notches in. Mr. Gutoskey said it is 5.69 feet to the side line. Mr. Rybak asked the dimension between the existing house to the east and its western side line, Mr. Gutoskey said it is 2 feet. He confirmed that the distance between the existing house and the proposed house will be 7.67 feet, and he marked the dimensions on the site plan. Mr. Rybak asked if the house to the east is built with special fire provisions on its western wall, and Mr. Gutoskey said no. Mr. Klammer asked if there were any topographical features on the existing house's property that would permit some land to be given to the subject lot, and Mr. Gutoskey said no.

John Fisher, architect, 7159 Selworthy Lane, Salem, Ohio, confirmed he was sworn in and stated he had designed the drawings submitted prior to tonight's meeting (Applicant's Exhibit I). The client wants a simple home with a front porch and living space oriented to that porch, and the client dictated to him a width of 34 feet and to try to diminish the profile as it recedes to the back of the lot. The style is consistent with the Chagrin Falls area. He confirmed he cut out the notch to the back on the right in order to gain more distance in the back and require less of a variance. Mr. Gokorsch asked if he had designed the drawings submitted previously with the initial application, Mr. Fisher said no. Mr. Gokorsch asked if the previous drawings are part of the request, and Mr. Fisher said they have adjusted them.

Mr. Boucek asked Mr. Fisher if he had walked the neighborhood when he was designing the residence, in order to try to make it align with others in the area. Mr. Fisher stated he was familiar with the area but did not walk the neighborhood. He designs homes, institutional buildings, some business and retail buildings. Mr. Boucek asked if he has designed a home under 30 feet wide, he said not that he recalled. Mr. Boucek suggested there are different ways to lay out floor plans that are narrower than 34 feet, and asked, if it was under 30 feet wide, how far back could it be moved. Mr. Gutoskey said he was not sure because of the lot lines converging towards the rear. Mr. Boucek said the board had asked for a different footprint of a narrower home. Mr. Klammer asked if his question pre-supposed the board would allow a certain level of variance, but Mr. Boucek said no, and asked if they had prepared a landscape plan, but Mr. Fisher said no. Asked if they planned to do so, Mr. Joyce said he could.

John Frazier, Fire Chief of Russell Township confirmed he had been sworn in, and stated that he had prepared a statement commenting on the proposed construction. He read aloud his letter to the Zoning Inspector dated April 6, 2015. Chief Frazier explained that his department is involved in zoning cases when there are issues concerning health and safety. The amount of water necessary to extinguish a fire (fire flow) in a building is calculated based upon several factors, including building area, construction, occupancy and exposure. This exposure factor is controlled through the Township's zoning, since it has a direct impact on the health and safety of the residents. He stated that the closer a building is to the property line or to an adjacent building the greater the exposure factor and a greater risk of the adjacent structure catching fire. The Township's Public Fire Protection Classification, through the ISO, specifically rates structures and their exposure factor. He noted that the needed fire flow to extinguish a fire in a structure depends on the exposure factors, or distance between buildings, as follows: more than 30 feet – 500 gallons per minute, 21 to 30 feet – 750 gpm, 11 to 20 feet – 1,000 gpm, and 00 to 10 feet – 1,500 gpm. The setbacks that were determined by previous zoning boards have been utilized by the Fire Department to establish planning guidelines, equipment specifications, tactics and strategy in combating fires in Russell Township. Chief Frazier stated that in his opinion, to be consistent with the fire protection standards of Russell Township and the ISO Public Protection Classification Rating, the Township must consistently use the established setbacks and side yard clearances in order to preserve the health and safety of the residents of the Township from the perils of fire. He noted that the fire flow figures are calculated for a sustained hour of flow.

Chief Frazier stated that 30 hydrants in the Chagrin Heights development do not meet the minimum ISO flow rate of 500 gpm. It is an old system that buys water from Cleveland. Mr. Rybak asked about the flow rate in the hydrant nearest the subject lot, and Chief Frazier said he could check the older records because when ISO inspected they flowed the hydrants, but it is less than 500 gpm. He stated that the Fire Department cannot depend on the hydrants to put out a fire in that development. Ms. Moore asked when the hydrants were last tested, and he responded that the last ISO inspection was 16 years ago. The Township is due another because they are usually done every 15 years. Mr. Gokorsch asked if he would expect the flow to increase or decrease over time. Chief Frazier said it decreases due to corrosion in the system, some of the water lines are 4 inch diameter and were not built to current standards and flow rates. To extinguish a fire in the Chagrin Heights development they use a tanker as well as the hydrant, since there is not enough water in the development to extinguish a fire. The flow rate using their own equipment is 2,000 gpm, since their tanker's shuttle rate is up to 1,500 gpm.

Mr. Gokorsch asked the Chief to explain the exposure factor. Chief Frazier said that in the last month Underwriters Laboratories published completed sample testing on exterior walls, and found the variable depends on the construction materials of the walls. With the modern construction materials using vinyl siding and foam board insulation, there was a house where within two minutes of a gas grill outside catching fire, the attic was on fire. The exposure threat is real. Mr. Gokorsch asked the response time for the Russell Fire Department, being a volunteer department. Chief Frazier said the average response time is about six minutes.

Ms. Moore asked the Chief if he knew if the water pipes in the development were installed when the subdivision was developed. Chief Frazier said he assumed that was the time because some of the hydrants only have 2½ inch outlets which have been out of date for 50 years. Traditionally hydrants have three outlets, either 2½ or 4½ inch, and there is a combination of both types in Chagrin Heights.

Ms. Moore asked if the equipment used and the type of training of staff for firefighting is based on the Township's zoning regulations. Chief Frazier said it is, and explained that one element is the water delivery system. They have to truck water and design the apparatus to use from a pumper to the fire, with more than 30 feet between buildings they must provide at least 500 gpm for an hour, with two 3 inch lines at 250 gpm. A minimum of two of these lines provide the minimum flow rate of 500 gpm. As the flow requirement goes up lines must be added, which means more personnel and equipment. ISO rates the Township on the distances between homes, so as the distance becomes less the potential of a change in the ISO rating for the Township goes up. Ms. Moore asked if, based on the statements in his letter, he believed the public health, welfare and safety is impacted negatively by diverging from the required setbacks in the Zoning Resolution. Chief Frazier said yes, based on what is being proposed and what has been built.

Mr. Gokorsch asked Chief Frazier if structures have been moved in order to be within the Fire Department's guidelines. Chief Frazier replied yes, an outbuilding had to be moved to be consistent with the setback and it had the same issues as this request. He said there is a problem where, if a building is moved to accommodate the lot it is on, it may just be moving the hardship to someone else next door. If the neighbor wants to build on to their home you have created a hardship. Simply moving the proposed house back on the property may not work for the neighbor who wants to build on to their home, because it may be too close to the neighbor's addition in the future.

Mr. Klammer asked the ISO rating in Russell, which Chief Frazier said is classification 5/9, but in that development it is class 5. Chief Frazier said the benefit is huge, and confirmed there was new home construction in the Township during that determination. Asked if any improvement made to the water impacts the rest of the Township, he said yes, because the dry hydrants were installed to provide year round water supply.

Mr. Klammer asked if the 5/9 rating was done 16 years ago when the flow rating was done. Chief Frazier said yes, in that development. He said he knew the flow was not enough to supply enough water, so they rely on their shuttle, which is a tanker that carries water to the fire. All of Geauga County relies on

shuttles. If there is a fire alarm in Russell both Bainbridge and Chester automatically respond, because there is not usually public water, which is different from Cuyahoga County and Cleveland. Mr. Klammer asked the gallons per minute flow on the tanker truck, which Chief Frazier said is 2,000 gpm. He said that in this development the water flow of the public water system is not adequate. Mr. Klammer said that using Chief Frazier's calculation the required flow is 1,500 gpm and his tanker truck can do 2,000 gpm, but parts of the Township do not have public water so what is the reason for this. Chief Frazier said there are other factors, they have 2,000 feet of supply hose because they need bigger volume and pressure, and need 1,000 gpm at the other end. Mr. Klammer asked if, because the proposed residence would have a 40 foot setback there would not be a big effect, and Chief Frazier agreed.

Mr. Klammer asked Chief Frazier if he worked full time in other fire departments. Chief Frazier said he works full time as Fire Chief in Pepper Pike. Mr. Klammer asked if there are some zoning districts there that typically have 15 foot setback areas, the Chief said he was not aware of any. Asked about condos the Chief said there are about a dozen on Hillbrook Lane North in the Township that are tied together as one structure with fire walls. He confirmed that a fire wall creates a barrier between condos. Mr. Klammer asked if he was familiar with this in Pepper Pike, and the Chief responded that there are some condos in Pepper Pike. There is a problem with the new house built by Mr. Joyce at 105 Hazelwood where there are gables on the east and west sides so the eaves are the primary exposure on the house to the attic and roof, with homes 12 to 15 feet away. The roof line is on the exposure side so with the eaves both exposed to the adjacent house if the first house caught fire then the adjacent one would too. Mr. Klammer noted that the left side line of the subject lot is the rear line for the adjacent lot on the corner, and asked if the proposed house was moved 7 feet to the left it would increase the fire safety to the right. He said they would be 15 feet or more apart. Chief Frazier said he would need to look at the drawing because Mr. Klammer's description was not clear.

Ms. Moore asked what is Pepper Pike's water source, and the Chief replied Cleveland Water. She asked if there are several variables that must be considered in Russell regarding the equipment and vehicles to use, the Chief replied yes, and agreed that one is the water supply, but also the location of residences in this area compared to others. That directly affects the equipment they use to suppress a fire, and as the variables change it affects the ability of the fire fighters to fight a fire. Ms. Moore asked if changing the variables could jeopardize fire fighters' lives, and the Chief replied yes, as well as others nearby. He said that when they train their fire fighters to respond with their equipment they train them based on the equipment and water supply and nature of the structures and distance between structures. Asked if the training on equipment is as meaningful as possible in order not to put the fire fighters at risk unless they have to, the Chief responded yes. Ms. Moore asked if it was correct to say that when a tanker is driven on a street they can use all the water and still not suppress a fire, and the Chief said yes. She asked if they need additional tankers to come and be close to the structure to maximize their ability to suppress a fire and minimize loss of life, and he said yes.

Mr. Rybak asked if the pumper has two hoses at 250 gpm each, and the Chief said that when buildings are closer together it raises the flow rate until it is 1,500 gpm at 0 to 10 feet. This requires 6 lines to handle buildings under 10 feet apart, which exceeds their capability and requires 2 people on each line. Ms. Moore asked if based on the geography of the street and the homes, is there a maneuverability issue for the tankers setting up on the street. Chief Frazier said there is but it is not unique to this development. He explained that they carry a portable tank on the tanker truck which can be set up and filled and they have a specific operation to do that based on the number of people available, since it must be done quickly.

Ms. Moore said that at the last hearing Mr. Peckis testified that he lives at 102 Fairview and that this request would create a clear fire hazard and be problematic for the Fire Department. She asked the Chief if he had any reason not to believe Mr. Peckis' opinion, since he resides in the neighborhood and has been Fire Chief. Chief Frazier said no, he had no problem with Mr. Peckis' opinion. He worked with him for many years and they share the same opinions regarding setting up the engines, and Mr. Peckis has firsthand knowledge of how to set the system up.

Valarie Mariola, 15911 Hemlock Road, confirmed she was sworn in and asked, if the required flow is 1,500 gpm and the tankers carry 3,000 gallons, would there be enough water for just 2 minutes. Chief Frazier said yes. She asked how close the nearest dry hydrant was, and the Chief said Riddle Road has the best dry hydrant. He said it is approximately a mile and a half from the subject lot, and would take about 20 minutes round trip for each shuttle to provide water to a fire on Hazelwood. They would need 10 to 12 tankers that come from all over the county as well as from Portage County. Each community has one tanker and minimum manpower, and there is potentially a time lag to do this.

Bill Stone, 137 Fairview Road, asked about the fire rating of the building, and asked if anyone in attendance has IRC certification, and if not, is it appropriate to discuss it.

Mr. Klammer asked how many hoses are needed to get to 500 gpm, the Chief said two, and Mr. Klammer asked if there are enough for that in the pumper, the Chief said yes, and to get to 750 gpm would require an extra line and depend on manpower. Mr. Klammer said there is already a problem with 750 gpm so they use mutual aid, and asked if the system is designed to support each other for fire safety in areas with no public water. The Chief said there are other factors, such as personnel, equipment and water supply. Mr. Klammer asked how many Russell fire fighters work in other cities as well. The Chief said 14, and there are 40 people on the roster. He confirmed that they are trained first to be fire fighters, and then in a particular community trained on that equipment. Mr. Klammer asked if they are trained to fight fires 15 to 30 feet apart, and Chief Frazier said he would not necessarily agree with that. Mr. Klammer asked if his 14 fire fighters work in cities that have 15 foot setbacks and condos, and the Chief said yes.

Mr. Downing asked for clarification, there is a huge support system with tankers, but other than Chester and South Russell being nearby, if it is a quick small fire could they run out of water within a few minutes? The Chief said yes. He also explained that a primary goal is life safety, and they must first focus on determining if there are people in the building and rescue them before attacking the fire. Mr. Gokorsch asked if their equipment and the training of fire fighters on that equipment is based on protecting the area of Russell Township specifically, and the Chief said it was.

Deborah Stephen, 113 Hazelwood, asked if it makes a difference if it can be assumed that the A frame house and the Sprinkles' house do not have fire proof materials in them, and also whether having wooden fences one foot from the property line and 10 to 14 feet from the house, would have any effect, even if the new structure would have fire walls. Chief Frazier said if one of the houses was on fire, the fire would commute to the adjacent house. He said that cars, gas grills, and lawn mowers can catch fire and the heat can catch the neighboring house on fire. Even with fire walls there are likely to be windows on the wall, which are vulnerable. A porch also becomes a huge eave and draws the fire up quickly to the attic. He said there are many factors involved with exposure.

Mrs. Mariola asked, if someone needs to be rescued from a second floor window, how much space is required for the fire fighter to put up a ladder and use equipment. The Chief said the ladder must be out one third the height of the window, so they must estimate the height of the window sill, but if the neighboring house is on fire they will not be able to do that and have to go in elsewhere. If an adjacent house is too close, as in Cleveland, it will catch fire and then the fire fighters are battling two fires at once.

Because Mr. Joyce had written in answer to 4.e of the Notice of Appeal that he had knowledge of the zoning restriction when he purchased the property, Ms. Moore asked him if he knew about the Zoning Resolution and its restrictions. Mr. Joyce said that was correct. Ms. Moore asked if he purchased S/L 51 at the same time as other lots or at a separate time, and he said he purchased two lots in 1994 and built two homes on them, but he purchased four sublots containing nine parcels together. Asked if the purchase agreement enumerated value to each subplot, he said it gave tax values at closing, and all the parcels were included in one price.

Ms. Moore mentioned that Mr. Klammer had written in his brief that one additional home will make no difference to the fire safety impact, and she asked Mr. Joyce if he had provided any expert testimony showing that the fire safety impact was nonexistent, and he responded he did not have any. Mr. Klammer objected, and stated that both the engineer and architect constitute experts. He asked Mr. Joyce if his

opinion had changed regarding the fire safety impact of the proposed residence as a result of the Fire Chief's testimony, and Mr. Joyce said it had not. Mr. Gokorsch asked if he wanted to modify his request based on the Fire Chief's testimony, and Mr. Joyce said he was open to any improvements in design, size and location.

Mr. Klammer stated that since the last meeting he had submitted an appraisal of the subject lot (Applicant's Exhibit J) on behalf of Mr. Joyce. Mr. Joyce confirmed he commissioned the appraisal from appraiser Brian DeLisio, who valued S/L 51 at \$75,000, and he would suffer an economic loss if he cannot build on it. Mr. Gokorsch asked if he knew the zoning restrictions when he purchased it, and Mr. Joyce said yes. He also said he did not have an ongoing business relationship with Mr. DeLisio but found his name in the Yellow Pages. He gave Mr. DeLisio information on the sale price of S/L 54 and of some similar lots to review of which he might not have been aware. Mr. DeLisio had visited the site and taken photos, had provided him only the valuations documented in the report, and only adjusted the valuations up or down as part of his appraisal. Mr. Joyce said he did not discuss these adjustments with Mr. DeLisio. He was not aware if Mr. DeLisio had reviewed the Zoning Resolution. He said he does not have a signed contract with his client to pay \$50,000 for the lot, but has a verbal agreement. Ms. Moore asked the name and address of his client, which Mr. Joyce said was Steve and Mary Mueller, 6762 S. Oneida Court, Centennial CO 80112-1161 (address provided after the hearing).

The Chairman asked for comments from the board and from the audience.

Mrs. Patsy Sprinkle, 109 Hazelwood Drive, confirmed she was sworn in and presented a letter she had written to the board (Neighbor's Exhibit 7), which she read aloud. She strongly objected to granting the variance. After three attempts to gain a variance in South Russell Mr. Joyce had built a large, awkward house on the lot next to her home. This house is out of character with the neighborhood where smaller houses are located on two or three similar-sized lots. The new house is so close to her home that it blocks the sun to her home. She is concerned at the danger of fire. Mrs. Sprinkle said the new home is 17 feet from her home. She mentioned she has no hard feelings towards the family living next to her.

Mrs. Deborah Stephen objected to the variance and said Mr. Joyce has already received an economic return on the four lots by selling one for \$75,000 and building a house on it, plus he receives rental income from the existing home at 101 Hazelwood.

Mr. Klammer asked Mrs. Sprinkle what the setbacks of her home are, and she responded the house was built in 1948, and she thought the front yard setback was approximately 70 feet, and the side yards are not conforming, the west side being under 7 feet and the east side is small. They have an easement to go on their neighbors' property to get to their garage. The frontage is less than 50 feet, her house is 35 feet wide and is 1,350 sq. ft. She confirmed the east side yard setback is less than 10 feet. Mr. Klammer noted that Mrs. Sprinkle's house and property is identical in frontage and setbacks to the proposed residence. Mrs. Mariola stated that Mrs. Sprinkle's home was originally on two lots when it was built, and until the home at 111 was built there was vacant land next to it. It is nonconforming now, but did fit into the neighborhood, and that is why her driveway encroaches onto the neighboring property now.

There being no further comments, Mr. Rybak made the motion to close the public hearing for Variance Request #477, Mr. Boucek seconded and the motion passed unanimously by 4-0. Mr. Downing abstained.

During the board's deliberation of the findings of fact Mr. Klammer stated that the most recent drawings submitted contain their final request. Asked if he wished to amend the variance request to reflect the setbacks shown in the newest drawings, Mr. Klammer said yes. Mr. Gutoskey stated the variance request is: 1) front yard setback 42.5 ft; 2) left (west) side yard setback 7 ft; right (east) side yard setback 5.69 ft.

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, testimony presented indicates there would be a reasonable return. Although due to a lot width of 50 feet and side yard requirements of 30 feet it is understood a variance is required in order to build a residence, testimony has shown that a different structure could be built on the lot that would allow for less of a variance.

b) Whether the variance is substantial: Yes, there has been considerable testimony confirming the variance is very large, and as presently submitted one side yard setback is 5.69 feet, an 88% variance. (At the time of the adoption of the minutes Mr. Rybak noted that the calculation was 81%.)

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: Yes, 25 people indicated they objected at the hearing last month. A letter was submitted from the neighbor of the newly constructed home relative to the impact on her property and the character of the neighborhood (Neighbors' Exhibit 7). The majority of the properties on that north side of Hazelwood have 60 foot front yard setbacks except for the subject lot and the two adjacent properties.

d) Whether the variance would adversely affect the delivery of governmental services: Yes, due to the Fire Chief's letter dated April 6, 2015 as well as his testimony presented tonight. Clearly there are public benefits to Russell Township that come with the zoning restrictions. The Fire Chief testified that the setbacks in the Zoning Resolution have been utilized by the Russell Fire Department as planning guidelines for equipment, tactics and strategy. The variances requested are against the public health, safety and welfare, since Russell Township does not have water equipment and water supply systems to attack and suppress a fire to multiple structures. To grant the variances would create a safety risk for the firemen combating a potential fire as well as a fire safety risk to residents in that area. Additionally, no evidence relative to fire suppression materials in the west wall of the existing structure at 101 Hazelwood was presented. The point was made by a resident that there was no testimony relative to IRC certification and exterior buildings relative to fire suppression.

e) Whether the property owner purchased the property with the knowledge of the zoning restriction: Yes, according to the Notice of Appeal and testimony from the applicant.

f) Whether the property owner's predicament feasibly can be obviated through some method other than a variance: The applicant purchased the lot as vacant land and so he is in the same predicament as when he purchased it with full knowledge of the Zoning Resolution.

g) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance: No, the Zoning Resolution is the result of extensive surveys of Russell residents and how they want the Township to be developed, and the neighbors to the subject lot have given their opinions on the request. The Zoning Resolution is related to the health, safety and welfare of the residents. Fire Chief John Frazier and former Fire Chief Thomas Peckis have both provided testimony indicating that there is a significant health, safety and welfare issue in not enforcing the minimum requirements and setbacks and in granting a variance.

h) Such other criteria which relate to determining whether the zoning regulation is equitable: The property was purchased as vacant land with knowledge of the Russell Township zoning restrictions.

Mr. Rybak listed the exhibits presented tonight:

Applicant's Exhibit G – Revised site plan showing the new proposed side yard setback to the east of 5.69 feet, as well as the west side yard of the existing house to the east of 2 feet to the property line.

" " H – Sanitary sewer map showing the water main, and front yard and side yard setbacks of houses in the area.

- " " I – First and second story plan of the footprint of the proposed house, both plans and elevations.
- " " J – Appraisal of the subject lot by Brian DeLisio.

Neighbors' Exhibit 7 – Notarized letter from Mrs. Sprinkle.

*Mr. Rybak made the motion to accept Applicant's Exhibits G through J and Neighbors' Exhibit 7, Mr. Bouchek seconded and the motion passed unanimously. Mr. Downing abstained.*

*Mr. Rybak made the motion to grant Variance Request #477 Joyce Building Company, as amended, Ms. Moore seconded and upon roll call the vote was Mr. Rybak – No, Ms. Moore – No, Mr. Bouchek – No, Mr. Gokorsch – No, and the motion failed unanimously by 4-0. Mr. Downing abstained.*

Variance Request #477 was denied.

The Chairman called for a five-minute recess.

**VARIANCE REQUEST #478 Bee Wee Trust, 7560 Twin Lakes Trail**

Request for a rear yard setback of 45 feet for an in ground swimming pool in an R-5 zone in lieu of 100 feet required per Section 5.2.B.

In attendance on behalf of Bee Wee Trust was Thomas Woodman, architect, who had submitted a power-of-attorney document from J. Michael Kolk, Trustee of Bee Wee Trust, authorizing Mr. Woodman to act for him with regard to the variance request.

Mr. Woodman, 29414 Eddy Road, Willoughby Hills, confirmed he was sworn in and stated he was representing Bee Wee Trust with regard to the rear yard variance request for an in ground pool. Because the site plans submitted with the application did not accurately show the required 100 foot rear yard setback on the west side of the lot, he presented a revised site plan. This correction does not alter the proposed rear setback of the pool.

Mr. Woodman explained the history of the lot. The previous owner purchased the lot and an existing house, but he built the current house behind that one, living in that existing house while the other was being built. Because the terrace of the new house encroached on the footprint of the existing house, he purchased and moved into the home next door at 7540 Twin Lakes. Once the new home was completed the old one was demolished and he moved into the new home. He later built a tennis court, but when he wanted to sell the property at 7540 he reconfigured the common side lot line in order to keep the tennis court on his lot at 7560. The line is not straight because it was necessary to maintain five acres on the lot being sold. He added an evergreen buffer which is now on the adjacent lot. The property has been sold and the new owner has engaged the architects who designed the new home (a company in New York and himself) to design an addition, the pool and a pool house. The addition and the pool house will comply with the zoning setbacks, but the pool does not.

Using the site plan, Mr. Woodman explained that the driveway goes behind the house to a courtyard in front of the main entrance to the house, and then around to the attached garage on the other side of the property. The house overlooks a large pond in the front yard and the septic field is in front of the house. The well is on the east side of the house. An orchard was planted on the west side, and the new owners want to build a master bedroom addition on the first floor on that side that will match the garage on the other side. He showed on the site plan that the proposed addition will be just out of the 100 foot rear setback. Due to that addition and the orchard, the pool and pool house cannot go on that side of the house. It also cannot go in the front yard due to the pond and slope from the house.

Mr. Woodman said the pool will be 90 feet from the east side line, and 140 feet from the house next door. The house behind is two football fields away with another pond in between. The proposed pool location provides the most privacy for both the neighbors and the homeowners due to the woods to the east and the hedges and evergreens to the west. Due to the angle of the rear property line the area within the

required setback narrows to the west. They cannot put the pool house in the courtyard because the brick drive has radiant heat under it to melt the snow, and it gives access to the house. They also cannot cut off access to the garage, so the only location available for the pool house is behind the garage where it will not be visible from the road. If they move the pool to any other location it would have to be much smaller, and the owner wants to have a 65 ft by 16 ft lap pool. The pool house will be 35 feet behind the garage. It will not be visible from adjoining properties.

Mr. Boucek noted that the trees along the rear property line behind the proposed location of the pool have a high canopy, and said they do not appear to provide any screening for the property behind. Mr. Woodman agreed and said they plan to put in landscaping between those trees and the end of the pool, as was done around the tennis court. The evergreens along the rear line were planted five years ago when they were 15 feet high, and they are now 20 to 25 feet.

Kent McDonald, 7575 Waterfall Trail, was sworn in by the Chairman, and stated he owned the property to the rear of the subject lot. He said he had an agreement with the previous owner to plant 14-foot Norwegian Spruce trees across the back of the property, and the big ones now shield his home. Mr. Woodman said the hedges are 12 feet high, and along with the evergreens they will provide screening from the pool. He said if he stands in the middle of the pool location he can see Mr. McDonald's house and the evergreens, so that house is visible from the pool 15 feet back from the end of the pool. Mr. McDonald said he agreed to the tennis court location as long as the trees were planted and maintained.

There followed a discussion between two members of the board, Mr. Woodman and Mr. McDonald regarding landscaping.

The Chairman asked Mr. Woodman to bring in documentation to clarify the type of landscaping that will be done to screen the pool from the McDonalds' property. He recommended continuing the hearing to the next meeting so that Mr. Woodman can confer with the landscape architect. Mrs. Steffen said that, as Zoning Inspector, she had visited the site with Mr. Woodman. She suggested that since there will be excavation of the pool area, the spoils could be used as a mound at the end of the pool. This might provide a better buffer from noise than trees alone, and along with evergreen landscaping would screen the pool from the McDonalds' property.

Mr. Gokorsch said that safety is a concern, and Mr. Woodman stated there will be an automatic cover over the pool. Mr. Gokorsch asked him to consider the noise that the pool equipment makes when choosing a location and structure for it. He said that if the neighbor can hear a loud noise that would not be within the spirit of the zoning. Mr. Boucek suggested moving the pool back and narrowing the pool house in order to reduce the variance requested.

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

**MINUTES OF MARCH 9, 2015** – Mrs. Steffen explained a change she had just made to the minutes in order to correct an error. *Ms. Moore made the motion to approve the minutes as presented, Mr. Boucek seconded and the motion passed unanimously.* Mr. Downing abstained due to his absence from that meeting.

There being no other business, Ms. Moore moved to adjourn, Mr. Boucek seconded and the meeting adjourned at 10:00 p.m.

Respectfully submitted,

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Diana Steffen  
Secretary  
bza minutes 04-06-15

Date

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Steve Gokorsch  
Chairman

Date