

Minutes: Russell Township Board of Zoning Appeals
Russell Fire-Rescue Station
Monday, June 1, 2015

Present: Steve Gokorsch, Chairman
Sarah Moore
William Downing
John Rybak
Dushan Bouchek
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 7:00 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 5/21/15, and sent by regular mail to the applicant and neighbors for the continuance of Appeal #478 Bee Wee Trust, and by certified mail for Appeal #480 Leonti.

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

Due to the absence at the beginning of the meeting of the representatives for the Bee Wee Trust, the Chairman announced that Appeal #480 Leonti would be heard first.

VARIANCE REQUEST #480 – Melanie Leonti, 15471 Riddle Road

Request for a side yard setback of 16.3 feet for a detached garage in lieu of 50 feet required in an R-5 zone per Section 5.2.B.

Three nonconforming garages exist 16.3 feet from the side property line, and are intended to be removed and replaced by a new garage, with reconstruction permitted only in accordance with the current Resolution per Section 7.4.C. The replacement garage is proposed to be erected at the same distance from the side property line, 16.3 feet, which requires an area variance from the 50-foot side setback requirement in Section 5.2.B.

In attendance were applicants Joe and Melanie Leonti, and Ryan Sanders and Tim McDonough of Premier Custom Builders.

Ms. Moore made the motion to modify the agenda to hear Variance Request #480 first, and to open the public hearing for that request, Mr. Downing seconded and the motion passed unanimously.

Ryan Sanders, Premier Custom Builders, 49 W. Orange Street, Chagrin Falls, representing Mr. & Mrs. Leonti, confirmed he was sworn in, and explained that the request is to replace the existing garages with a new garage in the same location. Using a site plan with 2-foot contours he showed the proposed location superimposed over the existing buildings, and noted a retaining wall that will remain in place. He stated that the second garage building has an attached extra garage that is at a different height below the retaining wall. He showed photos of the existing garages and retaining wall. He estimated the height of the existing garages to be about 14 feet, and Mrs. Steffen said that the application states the proposed height of the new building to be 25 feet.

Mr. Gokorsch asked why the garage could not be built to the east of the residence. Mr. Sanders said that would be directly in front of the house, and Mrs. Steffen explained that due to the unusual situation of the lot in relation to Riddle Road, the area to the east of the house is considered to be the front yard and an accessory building is not permitted there. Asked by Ms. Moore why the garage cannot be located to the north of the existing garages, Mr. Sanders stated that it would then be closer to the 25-foot riparian setback, plus as a builder he tries to use the same location because changing it will affect water runoff on the property and in this case it would block views from the back of the home. The 50-foot setback would locate it directly behind the home.

Ms. Moore asked about the area to the west of the existing garages and Mr. Sanders replied that the retaining wall would be impacted as well as the views from the rear of the home affected. He agreed that the retaining wall is a grading issue. The retaining wall extends 30 to 40 feet from the existing garage, and to place the garage farther west but far enough from the residence would require removing the retaining wall. The garage will be facing the front yard and there needs to be room to pull out and turn around. Asked if he could move the garage farther out of the setback area, he stated that would require changing the grade and it would block views from the home.

Mrs. Steffen, speaking as Zoning Inspector, mentioned that the drive slopes down from the road to the garage area. Mr. Sanders said that using the proposed location will allow them to maintain the retaining wall. However, Mr. Boucek noted that the site plan shows the northwest corner of the garage to be over the retaining wall. Mr. Sanders said that is not shown correctly, since it would compromise the integrity of the retaining wall, and he stated that the corner of the garage will be in front of the existing retaining wall, as shown in a photo (Applicant's Exhibit D).

Mrs. Leonti marked on the site plan the location of the septic system on the east side of the residence, and the leach field on the other side of the riparian area. Mr. Boucek asked about moving the garage farther towards the north. Mrs. Steffen stated that when she visited the site she noted there appears to be a well cap just to the west of the residence, plus the building would be half behind the residence. The gravel drive extends 18 feet to the north from the front corner stakes for the proposed garage, and she questioned if there would be room for a turnaround area. Mrs. Leonti said the cap is in fact a clean out from two catch basins, and she labeled it on the site plan, along with two catch basins and the active well to the south of the residence.

The Chairman asked Mrs. Steffen if the variance request will change the existing nonconformance, and Mrs. Steffen replied that it will not, the distance from the south side line will be the same for the new garage as for the existing garages.

Mr. Boucek asked about a structure that is in the front yard. Mrs. Leonti explained that it is a horse barn that it not currently being used but that will remain. Mr. Boucek said a loft is shown above the proposed garage, and asked about its proposed use. Mrs. Leonti stated it will be for storage. Asked by Ms. Moore why the garage cannot be located farther to the north Mr. Sanders said it would create a difficult turnaround from the drive.

Mr. Downing asked Mrs. Leonti if there would be heating or plumbing installed in the loft of the proposed garage, to which she replied there would not. Mr. Downing asked if the Leontis would sign the drawing of the loft indicating it will not be changed into living space at any time. Mr. Leonti wrote on the drawing (Applicant's Exhibit H) that the garage loft will not be used as living space, and signed it.

Mr. & Mrs. Leonti confirmed they had been sworn in by the Chairman prior to the hearing.

There being no other questions from the board or comments from the audience, *Ms. Moore made the motion to close the public portion of the hearing, Mr. Downing seconded and the motion passed unanimously.*

Mr. Downing made the motion to accept Applicant's Exhibits A through H, Ms. Moore seconded and the motion passed unanimously. Exhibits were listed as follows:

- A – Photo looking down driveway to the existing garage structures.
- B – Photo looking at the existing structures from the west.
- C – Photo of existing garage structures from the corner of the house.
- D – Photo looking up the driveway with back of house, and showing retaining wall and stakes for proposed structure.
- E – Photo looking down driveway past the stairway at the side of the house, and existing garages showing the driveway area with stakes for the new structure.
- F – Official site plan showing the location of the existing and new buildings, the existing home

and garage buildings, the replacement garage building, and two-foot contours.
G – Site plan with expanded view of the house and garages and proposed garage, delineating the cleanout behind the house and the active well located on the southern edge of the property.

H – Drawing showing the loft area with stairwell, which applicant has indicated will not be used as living space.

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, as indicated by the applicant in the Notice of Appeal.

b) Whether the variance is substantial: Yes, it is a 67% variance, however it does not increase the degree of nonconformance, having the same side yard as the existing structures.

c) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance: No, the new structure will be similar in design and materials to the existing residence. There is no possible building lot to the south of the property because of the location of the street. The applicant indicated the neighborhood would not be altered and no neighbors have appeared to challenge that statement. The lot is tucked away off Riddle Road and is surrounded by trees.

d) Whether the variance would adversely affect the delivery of governmental services: The applicant indicated no, and no evidence has been provided to indicate otherwise.

e) Whether the property owner purchased the property with the knowledge of the zoning restriction: Yes. The owner purchased the lot with the existing side yard setback of 16 feet. The deed dated July 28th, 2011, indicates the attachment of restrictions, easements and zoning ordinances.

f) Whether the property owner's predicament feasibly can be obviated through some method other than a variance: The board heard testimony relative to the front setback, and the spirit of the zoning is to insure there is an openness of spaces. There is no yard to the south and the property owner in the application stated that in order to preserve the view of the landscape and make use of the driveway the side yard setback must be 16 feet. There was testimony that moving the location, other than as proposed, would impede the view. Additionally the water well is to the east, a cleanout for the catch basins is behind the west wall of the residence, and a riparian setback area is to the rear of the house.

g) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance: The Notice of Appeal stated there would be no interference with the spirit and intent, and no evidence was otherwise presented.

h) Such other criteria which relate to determining whether the zoning regulation is equitable: The variance would not create a change in the side yard setback from the existing setback, and neither the existing retaining wall, nor the grade would be disturbed.

Mr. Rybak made the motion to approve Variance Request #480, Mr. Boucek seconded, and upon roll call the vote was Mr. Downing – yes, Mr. Rybak – yes, Ms. Moore – yes, Mr. Boucek – yes, Mr. Gokorsch – yes, and the motion passed unanimously.

Variance request #480 was granted.

CONTINUANCE OF 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 lieu of 100 feet required in an R-5 zone.

In attendance representing the Bee Wee Trust were Thomas Woodman, architect, and Roger Dorer, landscape architect.

The Chairman swore in Mr. Woodman, who presented revisions made to the site plan since the last meeting. He presented a revised site plan showing the pool reduced in size from 65 ft x 16 ft to 58 ft x 18 ft. The rear setback has been reduced to 50 feet from 45 feet. Mr. Woodman said he had spoken to neighboring property owners Mr. McDonald and Mr. Uhlin, and he proposed planting evergreen spruce trees along the northern line on the Bee Wee Trust property to block the view from their homes of the swimming pool. Mr. Uhlin said he had not agreed to this, and Mr. Woodman said he mistakenly included Mr. Uhlin, but had spoken only with Mr. McDonald. Mr. Woodman stated the site plan shows a hedge now behind the pool that will be no less than 6 feet above the pool coping, and will be about 7 feet tall. The existing hedges are 11 to 12 feet tall now. The proposed hedge will block the view from the neighbors' properties whether or not the evergreens are also planted.

Mr. Woodman introduced Roger Dorer, landscape architect, who was in attendance to answer any specific questions about the landscaping. Mr. Woodman said the revised plan also shows a new configuration of the pool house. The new hedge will wrap around the pool with a stone retaining wall on the eastern side. He said the plan also shows the pool equipment enclosed by a minimum 6-foot high wall. He said the recommendation is not to put a roof over it because of the exhaust and noxious fumes. The equipment will be hidden and directed upward and not outward, and will be located beside the pool house. There is room for the pump equipment area to expand to the east and the west. Ms. Moore asked if there is enough square footage to accommodate the equipment in that area without a safety issue, and Mr. Woodman said yes. He said there will be an automatic pool cover to ASTM F1934-91 standards, as required by the zoning regulation. He said he could not give further specifics on the cover because they do not have an installer at this time. The Chairman said that the Zoning Inspector will enforce the automatic cover.

Ms. Moore reviewed the items listed at the last meeting that Mr. Woodman was to address:

- 1) To move the pool and/or shorten the length to reduce the degree of nonconformance – the pool has been shortened from 65 ft to 58 ft, and adjustment in width from 16 ft to 18 ft, reducing the variance from 45 ft to 50 ft rear yard setback. Mr. Woodman said that he would prefer to have leeway of two feet in case of needed adjustments on the site, but they may be able to locate the pool 52 feet from the rear line.
- 2) Noise from the pool equipment – equipment will be moved from the northeast side of the spa to the southeast side of the pool house, and will be located within an enclosed wall with adequate square footage to house the equipment in a safe manner.
- 3) Updated plan showing pool house and stairs in revised location – plan has been provided tonight.
- 4) Landscaping drawing with more detail and showing line of sight to the neighbor's property – line of sight to the McDonald and Uhlin properties is shown, but more detail is required from the landscape architect.
- 5) Pool cover or gate – plan indicates automatic cover to ASTM F1934-91 standards.
- 6) Site plan to show the property lines of the Uhlin and McDonald lots relative to the screening issue – Mr. Woodman has shown the line of sight on the plan.

Mr. Boucek asked for clarification of the requested setback for the pool, since it appears from the site plan that the edge of the pool is about 30 inches from the proposed 50 foot setback line. Mr. Woodman stated it will be behind the end of the existing hedge no less than 50 feet from the rear property line, but will be approximately 52 feet 6 inches from the property line. The distance from the existing garage to the edge of the pool will be 80 feet. Asked why the other end of the pool was not moved nearer the edge of the garage, Mr. Woodman said there is to be a sitting area by the cabana in order to be able to sit around the pool. It will be the only location on the southern end of the pool to sit where it is paved. Regarding grade issues, Mr. Woodman stated that the cabana is below the driveway, with four steps dropping 6 inches and a step up 6 inches to the pool house and pool coping. The pool coping has a 9-inch dropoff

from the hedge, and the grade will be tapered off. They are attempting to locate the pool in the ground and in the existing grade.

Philip Uhlin, 7635 Waterfall Trail, confirmed he was sworn in, and asked if the exhaust in the pool equipment could be vented through a roof to reduce any noise from it. Roger Dorer, landscape architect, confirmed he was sworn in and said that a pool installer has not yet been contracted, so he is unable to say if that could be done at this time. Mr. Uhlin suggested a requirement to reduce noise could be a roof over the structure, since it would not prevent having a pool heater. Mr. Dorer said that typically a pool heater is situated so that nothing is directly attached to the exhaust, and it is not within an enclosure because of the venting issue. Ms. Moore showed Mr. Uhlin the location of the pool equipment on the plan behind the pool house. Mr. Gokorsch noted the concern regarding noise, and said that the Zoning Inspector could verify that whatever is installed will comply with zoning regulations relative to noise as far as affecting adjacent neighbors.

Kent McDonald, 7575 Waterfall Trail, confirmed he was sworn in, and said he was concerned that the evergreens shown on the plan would be under the canopy of the existing trees and would not survive. He also asked if they could be moved more onto or within the applicant's property line and off Mr. McDonald's property as proposed. The area shown for the trees is heavily shaded all day. Mr. Dorer said the exact location will be determined by the health of the existing trees and the density of the canopy. They would prefer to provide screening on the subject property to avoid being under the canopy. He stated that based on the height of the trees and the sun exposure he thought that evergreens would thrive. Mr. Dorer marked on the site plan the location on the applicant's property where the evergreens could be situated to provide adequate screening for both neighbors. Locating them nearer the proposed hedge would be drier and sunnier but it could put them in competition with the 6-foot high hedge, which will be shaded by the conifers. He said if the conifers are placed behind the hedge then the hedge will need to be lower and supplementary to the trees behind it.

The Chairman asked the neighbors if they agreed to the concept of changing the landscaping by using plantings that will be low to high so they grow in a fashion that will shield their properties. Mr. Uhlin said he had no problem with that but he does have an issue with the pool being located into the 100-foot rear setback.

Mr. Woodman said that the goal is to have instantaneous screening, which is why they are planning both evergreens and a hedge. It will be best to have screening now rather than wait for 10 years for it to grow. The owner would prefer not to plant anything on the neighbors' properties, since this can cause problems. He would even prefer to remove some trees on the subject lot in order to replant instead of planting on the neighbors' properties. Mr. Uhlin said there is a ravine behind his house and when the leaves are down he can see up to the subject lot. Mr. Dorer drew on the site plan an area behind the proposed hedge that would be a suitable location for a landscaped area to buffer the pool from Mr. Uhlin's lot. He said there is a 15-foot width behind the pool that allows for a planting area, where evergreen trees could be planted without removing the existing trees. He asked for it to be noted that the health of the existing trees that are to remain in conjunction with new trees could be an issue as to whether they will survive the construction or the new landscaping between the back of the pool and the drip lines of the trees. Mr. Gokorsch asked if the existing trees were to die would they be replaced, and Mr. Dorer said no, because of their size and age no trees would be planted to replace them. However, he said that additional landscaping could be put in to increase the depth of the buffer. Asked if planting trees on the neighbors' properties would guarantee the sight line would be obscured to the pool, Mr. Dorer said he could not agree to that because both of the adjoining neighbors have identified that area as too dark and shady. He could put evergreens on the subject lot. He marked on the site plan the area that is not viable for evergreen trees as 'A' – not viable for planting of evergreen trees, 'B' – location for viable visual buffer.

Mr. Woodman clarified that the trees colored green on the site plan are not existing trees. Mr. McDonald said the existing trees on his property, that are west of the existing hedges and proposed pool area, used to be edged and mulched all around them, but are now not maintained on the sides that face his home. He asked if the trees proposed to be planted on his lot northwest of the pool area could be moved closer to the applicant's property line. Mr. Gokorsch asked Mr. Dorer to mark on the site plan that the trees will be planted as close to the property line as possible and the beds around them edged and mulched and

maintained. Mr. Dorer asked for the ability to plant trees such that water would not be dammed up on the property, since the direction of water flow through the lot is in the area the trees would be planted and they would likely die. He marked on the site plan 'C' – Area suitable for evergreen visual buffer close to the property line with the condition of adjustment to permit reasonable and natural drainage.

Mr. Boucek asked why the existing Norway Spruce are so hardy in that location, and Mr. Dorer said that area tends to be reasonably dry and in full sun, which makes that area suitable for Norway Spruce. He felt that the area marked 'C' could be successful too. He also emphasized that he would not want to be pinned down to one type of tree since there are many types of spruce, but he could limit the plantings to a spruce of some kind. He also asked to have flexibility with the plantings behind the pool due to the existing slope, wanting browse resistant plantings, a moderate rate of growth to achieve heights of 10 to 15 feet, dense all year round, and narrow. Mr. Gokorsch said the only requirement is that the neighbors do not see the pool area from their homes, so the plantings must be such that the neighbors cannot see through them during all four seasons of the year. The Zoning Inspector will enforce this over all of the seasons.

Mrs. McDonald asked if the applicant will look into a roof for the pool equipment. Mr. Gokorsch said the board requests that the equipment is installed such that the noise regulations of the Township are followed. Ms. Moore said the police would need to be contacted if there is excessive noise.

There were no further comments or questions from the board or the audience.

Mr. Woodman asked to amend the variance request from 45 feet to 52 feet 6 inches from the pool coping to the rear property line.

Exhibits were noted as follows:

Neighbor's Exhibit A – Aerial map showing an underground pipe connecting two lakes on neighboring properties with its approximate location between the two properties. Mr. McDonald signed this exhibit.

Applicant's Exhibit 1 – Site plan of property showing proposed new structures with an amended rear yard setback of 52.5 feet, and including new landscaping to provide year round screening, and marked 'A' – area not viable for planting because of shade and moisture; 'B' – location of viable buffer at rear of the pool area; 'C' – area suitable for evergreen visual buffer as close to the property line relative to the McDonalds' sight line, with the condition of adjustment to permit reasonable drainage.

Mr. Downing made the motion to accept Neighbor's Exhibit A and Applicant's Exhibit 1, Mr. Rybak 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: The application states there will be an enhanced value with the variance; however, the property will yield a reasonable return and have a beneficial use without the variance.

b) Whether the variance is substantial: It is still substantial but an effort has been made to reduce the variance request since it has been decreased from 45 feet to 52.5 feet; there has been testimony from one or more neighbors indicating a concern about the extent of the request with the opinion that it is substantial.

c) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance: the Board has not heard any comments regarding an alteration to the essential character of the neighborhood, which has large homes on five acre parcels. The Board has made a significant attempt to address landscaping, and the applicant has designated areas and types of plantings with input from the neighbors.

d) Whether the variance would adversely affect the delivery of governmental services: No, according to the Notice of Appeal, and there has been no testimony to indicate otherwise.

e) Whether the property owner purchased the property with the knowledge of the zoning restriction: Yes, per the application.

f) Whether the property owner's predicament feasibly can be obviated through some method other than a variance: The extent of the variance has been reduced because, at the request of the Board, the applicant decreased the length of the pool and moved it, so the variance was less than 50%. The predicament can be obviated through redesign of the proposed pool area and adjoining pool house and cabana. During the hearing on the first night the applicant stated that the pool could not be located in front of the residence due to the large pond and also the septic field in the front yard.

g) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance: Application indicates yes, testimony from the neighbors indicated no.

h) Such other criteria which relate to determining whether the zoning regulation is equitable: Given the area that exists on the property, and the diagram submitted, it appears as though there could be a design of the pool, pool house, cabana and spa with a smaller dimension that could minimize encroachment into the setback area, but no such design has been presented.

Ms. Moore made the motion to close the public hearing for Variance Request #478, Mr. Downing seconded and the motion passed unanimously.

Mr. Rybak made the motion to approve Variance Request #478 as amended with restrictions, Mr. Boucek seconded and upon roll call the vote was Mr. Downing – Yes, Mr. Rybak – Yes, Ms. Moore – No, Mr. Boucek – Yes, Mr. Gokorsch – No. The motion passed by a vote of 3-2.

Variance Request #478 was granted as amended.

MINUTES OF MAY 4, 2015 – *Ms. Moore made the motion to approve the minutes as submitted, Mr. Downing seconded and the motion passed unanimously.*

FINDINGS OF FACT – VARIANCE REQUEST #479 PIPER – *Ms. Moore made the motion to approve the Findings of Fact for Variance Request #479 as presented, Mr. Boucek seconded and the motion passed unanimously.*

OTHER BUSINESS – Mrs. Steffen mentioned two procedural items to the Board.

Ms. Moore made the motion to adjourn, Mr. Rybak seconded and the meeting adjourned at 9:18 p.m.

Respectfully submitted,

Diana Steffen Date
Secretary

Steve Gokorsch Date
Chairman

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