

Minutes: Russell Township Board of Zoning Appeals
Russell Fire-Rescue Station
Monday, June 2, 2014

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

Fred Cuffari was absent with apologies. Zoning Inspector Ric Machnics was also absent.

The Chairman called the meeting to order at 7:03 p.m., and announced that the hearing for Hemlock Hills Homeowners Association was being rescheduled to a date when three members of the board could attend. Two members will be recusing themselves from the hearing because they are residents of the Hemlock Hills subdivision, and one is a member of its homeowners association, so to have a quorum the other three members must be in attendance.

VARIANCE REQUEST #472 Earl Michael Ball II, 14953 Stillwater Drive

Request to construct an attached garage within the 120 foot riparian setback of the Chagrin River in violation of Section 4.16.H.1.

Due to the absence of one member of the board the Secretary had contacted the applicant on May 30th to advise him that there would be four members in attendance, and that a majority vote of the entire board was required to grant a variance. Mr. Ball had said he wished to proceed with the hearing as scheduled.

The Secretary advised she published the legal notice for the hearing in the Chagrin Valley Times on 5/22/14 and sent it by certified mail to all the parties on 05/16/14.

The Chairman swore in Michael Ball and neighbor Joy Willmott.

Ms. Moore moved to open the public hearing, Mr. Downing seconded and the motion passed unanimously.

The applicant, Michael Ball, stated that due to the way his house is situated there is a small garage to the right of, and in front of, his house. He proposed building a new garage on the other side of the house connected to it by a three-season breezeway. The existing garage is so small that the larger modern vehicles cannot fit into it. His house is within the 120-foot riparian setback from the Chagrin River, and he needs a variance since the garage is also proposed to be within that setback. He has lived on the property for less than one year, but the previous owner told him the property never flooded because of a high bank with gabion baskets that were installed many years ago on his side of the river. Mr. Ball said that the water was high once since he moved there, and the neighbor across the river told him that was the highest he has seen in twenty years. The proposed location for the garage is the natural place for it, since there is nowhere else that would be within other zoning regulations. It will be in compliance with the front yard setback, the side yard setbacks, and the property will not exceed lot coverage requirements. The only variance needed is from the riparian setback regulation.

Mr. Gokorsch said he did not notice gabion baskets shown on any of the submitted site plans. Mr. Ball said they consist of four feet of metal mesh with several feet of large rocks installed into the bank. He had taken a photo but it was not available in hard copy. He noted that the garage will be farther from the river than his house. He has seen the water rise to 80% of the bank of the river, and he reiterated that the previous owners said they had never seen the property flood. He reviewed the site plan with the board. Mr. Ball said that there is a family room addition on one side of the house and another addition had been planned on the other side, so he assumed he would be allowed to build a garage.

Neighbor Joy Willmott, 14915 Stillwater Drive, asked how far the proposed garage would be from the river. Mr. Ball said it would be farther than the existing home. Mr. Gokorsch asked if he had a topographical map that would show how high off the river the new garage would be, or relative to the existing house. Mr. Ball did not have such a map, but said the garage will be at the same elevation as the house. Mrs. Steffen gave the board a copy of the FEMA flood plain map for the area, and Mr. Ball explained that the lower portion of land below the bank is in the flood plain, and that is the only area that floods. The flood plain does not extend beyond that area, and he is not required to have flood insurance. The new addition would not be in the FEMA flood plain area. He marked the location of the proposed garage addition on the FEMA flood plain map as outside of the flood plain, and noted that the site plan he submitted was accurate since it is a survey.

Ms. Moore asked if the Zoning Inspector had asked an expert from the County to review the location. Mrs. Steffen said no. Mr. Rybak asked the distance from the proposed garage to the river. Mr. Ball said he did not know. He said most of the garage will be within the riparian setback. Ms. Moore asked if he can park his cars in the existing garage. Mr. Ball said he has modified it to be able to park one vehicle, but would like to park more than one vehicle inside, and if he enlarges it the garage will be encroaching even closer to the side line or would be in front of the house.

Mr. Downing asked the dimension from the proposed garage to the nearest side line, and Mr. Ball said he did not have the exact distance, but it is a long way. Mrs. Steffen said the minimum side yard is 30 feet. Mr. Ball scaled the distance on the survey map and the garage would be approximately 90 feet from the north side line. Mr. Rybak asked if Mr. Ball was aware of the restriction when he purchased the property. Mr. Ball responded no, and because of an existing addition on one side of the house, and a proposed second addition on the other side of the house, both of which are closer to the river than the location of his proposed garage, he assumed he could build a garage that would be farther from the river than the house. Asked by Mr. Gokorsch if the previous owners had permission to build the second addition, Mr. Ball said he did not know, but he understood the first addition was built in about 2000 before the riparian setback amendment was adopted. He stated that he had consulted with Ric Machnics regarding possible locations and they concluded this was the most suitable.

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

Mr. Downing made the motion to accept Applicant's Exhibit 1, FEMA flood plain print amended by the applicant to show the location of the proposed garage, and Applicant's Exhibit 2, site plan of the existing lot and house with the proposed garage shown on an official professional surveyor's diagram, which does not contain topography map or distance between the proposed structure and the side of the river nor identify the distance to the closest neighbor, Ms. Moore seconded and the motion passed unanimously.

Mr. Rybak moved to close the public portion of the hearing, Ms. Moore 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: There was no testimony to indicate any negative impact on the property with or without the proposed garage.
- b) Whether the variance is substantial: Although the applicant indicated the variance is not substantial given that the house is within the riparian setback, it is in fact substantial since the proposed garage will be completely within that setback. It is not grandfathered because it did not exist prior to the adoption of the regulation.
- c) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance: No testimony was presented to indicate any alteration to the neighborhood or detriment to adjacent properties.

- d) Whether the variance would adversely affect the delivery of governmental services: No testimony was presented on whether there would be any impact, and the driveway access appears to be adequate.
- e) Whether the property owner purchased the property with the knowledge of the zoning restriction: There was testimony from the owner that he was not aware of the restriction, and because of drawings he had seen for a proposed addition to the house, he was under the impression that he would be able to build a garage. However, the applicant had acknowledged that those drawings may have been prepared prior to Section 4.16 being adopted.
- f) Whether the property owner's predicament feasibly can be obviated through some method other than a variance: Mr. Downing said no based on testimony presented, because the result of moving the garage out of the riparian setback would be to place it directly in the front yard, which is also not permitted. Mr. Gokorsch said if it was placed next to the small garage there would be a side yard issue, but Ms. Moore said there was not enough information presented to make a full determination on that since it is not known whether moving it closer to the residence would impact the side yard setback. She also noted that as far as the requested location, without a clear delineation of the side yard distance from the garage to the north side line, and without a clear delineation of the riparian setback area there is not enough information to make a full determination. Therefore it is not known whether it can be located out of the riparian setback and still comply with other zoning requirements. Mr. Downing noted that the existing small garage is 28 ft. 6 ins. from the side line, and the requirement is 30 ft. Ms. Moore said it is not known if the proposed garage could be placed 30 ft. from the south side line, since the small garage might be able to be modified. However, the board does not have enough information to make that determination. Mr. Gokorsch said that since the small garage is already within 30 feet of the side line it would have to be demolished in order to allow for the proposed garage to replace it in that location. The proposed garage would then be outside of the riparian setback. Ms. Moore said it may be able to be placed more than 30 feet from the side line and still be large enough for four bays.

Mr. Ball asked if he could address that issue. *Ms. Moore moved to reopen the public hearing, Mr. Rybak seconded and the motion passed unanimously.*

Mr. Ball stated that when he consulted with Mr. Machnics he found that there were zoning restrictions of a 70-foot front yard setback and a 30-foot side yard setback. He drew the farthest extent of the riparian area on the site plan. He uses the existing small garage for tools and yard equipment and does not want to tear it down. If he did so and tried to place a four-car garage in that location he would then have a conflict with the zoning requirements for 70-foot front setback and 30-foot side setback, plus the prohibition on accessory buildings in the front yard. He said the only reasonable location is the one he is proposing. If he placed it on the south side it would not work with the driveway, so it would not be close enough to the house to be attached. It would have to be detached and would then be considered to be in the front yard.

Ms. Moore moved to close the public hearing, Mr. Rybak seconded and the motion passed unanimously.

Mr. Gokorsch said the board has heard that Mr. Machnics has reviewed the survey map, and the applicant has testified that Mr. Machnics suggested the proposed location as the optimal position due to the restrictions on side yard and front yard, as well as the restriction on having an accessory building in front of the house.

- g) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance: Mr. Downing said yes, in that the applicant has demonstrated a need for a garage to store cars and he has consulted with the Zoning Inspector to find the best solution with minimal impact. Mr. Rybak agreed, and said the Zoning Inspector had marked out possible locations to try to give the applicant the ability to attach the garage so it would not be a separate building, and to get it as close to the house as possible so that they could be connected. Ms. Moore said she was not comfortable with the location since she has not seen a topographical

map. She said that the purpose and intent of the riparian regulation is stated in Section 4.16.A.1 "to regulate the location of buildings, structures, uses, and related soil disturbing activities within riparian setback areas that would impair the ability of these areas to..." There are several purposes written into the regulation. She said a topographical map would be helpful with regard to 4.16.A.1.c and d, since disturbance there could have an impact on downstream areas. This is why she asked if the Zoning Inspector had consulted with an expert from the County. Without such information she felt it is difficult to answer this factor. Mr. Gokorsch said there are mitigating factors, first being that the house is entirely within the riparian setback since it was there before that regulation, and secondly there are gabion baskets protecting the bank and house, and those baskets are also between the proposed garage addition and the water.

- h) Such other criteria which relate to determining whether the zoning regulation is equitable: Ms. Moore said the regulation does provide for grandfathering of structures within the riparian setback. However, it is difficult to reconcile allowing a new structure farther from the river but still within that setback with other regulations in the Zoning Resolution that would require a variance.

Mr. Gokorsch noted for the record that no adjoining neighbors have opposed the request.

Mr. Downing made the motion to approve as submitted Variance Request #472 on behalf of Michael Ball of 14953 Stillwater Drive, Mr. Rybak seconded and upon roll call the vote was Mr. Downing – yes, Mr. Rybak – No, Ms. Moore – No, Mr. Gokorsch – Yes, resulting in a tie vote of 2-2.

The motion failed and Variance Request #472 was denied.

MINUTES OF APRIL 7, 2014 – *Ms. Moore made the motion to accept the minutes of April 7, 2014, as submitted, Mr. Rybak seconded and the motion passed unanimously.*

There being no other business, Mr. Downing moved to adjourn, Ms. Moore seconded and the meeting adjourned at 8:04 p.m.

Respectfully submitted,

Diana Steffen
Secretary

Date

Steve Gokorsch
Chairman

Date