

Minutes: Russell Township Board of Zoning Appeals  
Russell Fire-Rescue Station  
Monday, July 7, 2014

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

Also in attendance: Ric Machnics, Zoning Inspector.

The Chairman called the meeting to order at 7:00 p.m., and swore in Patrick O'Keefe, Erik Gerard, Ric Machnics and resident Charles Butters.

**VARIANCE REQUEST #473 Patrick O'Keefe, 8535 Century Lane**

Request to construct an accessory building with a side yard dimension of 15 feet in lieu of 50 feet required in an R-3 zone per Section 5.2.B.

The applicant, Dr. Patrick O'Keefe, was in attendance.

The secretary confirmed that she had published the notice of public hearing in the Chagrin Valley Times on 06/26/14, and sent it by certified mail to all the parties on 06/24/14.

*Mr. Downing moved to open the public hearing for Variance Request #473, Ms. Moore seconded and the motion passed unanimously.*

Dr. O'Keefe confirmed he was sworn in, and stated the reason he wants to build a garden shed less than 50 feet from the side property line is that it is difficult to find an appropriate location on his property for it that will allow access to the equipment he planned to store in it. He said he could show in detail on the site plan why certain locations would not provide a suitable area for it, including a riparian area that crosses the middle of the back yard, and a low-lying area on the west side of the residence. This leaves an area near the existing driveway and garage, but the septic tanks are in that area and he needs to leave access to them and to the leach field in the back yard.

Asked by the Chairman to explain where the septic and riparian areas are located, Dr. O'Keefe presented an aerial photo taken ten years ago that showed the location of the septic tanks with spruce trees planted around them. The Chairman labeled the location of the tanks on the photo. Dr. O'Keefe mentioned that the spruce trees are also visible on one of the photos he submitted with the application. He had drawn the leach field on the site plan submitted with the application, but presented a septic system plan that showed an accurate depiction of the location of the septic tanks and leach field. Dr. O'Keefe said he must keep access available to the tanks for pumping, and stated that there are about twelve distribution boxes at the leach field. Mr. Gokorsch noted that there is a curtain drain around the leach field, and Dr. O'Keefe said it feeds into a swale that runs diagonally through the back yard to the south and is at times like a small river.

Zoning Inspector Ric Machnics stated that he had inspected the property and could verify that the distribution boxes, leach field and septic tanks are in the locations shown on the septic system plan. He noted that the Geauga County Health Department prefers to have no buildings within 50 feet of the well head, which is located near the garage and driveway and is 40 feet from the east side line.

Mr. Downing noted that the topographical map indicates the area on the west side of the house to be flat, but Dr. O'Keefe said the ground was regraded close to the house, and Mr. Machnics confirmed that there is almost a ridge dropping off from that side of the house. Dr. O'Keefe stated that this area remains wet and mossy, unlike anywhere else on the property, and for that reason it would not be a good location for a

shed. By locating it on the east side, although it would be closer to the neighbor's property, the neighbor's house is set farther back from the road than his house, and the neighbor does not use the area in the vicinity of the proposed site for the shed. He has spoken to his neighbor about the variance request.

Mr. Cuffari asked if there is anything preventing the shed from being located slightly farther to the west and so farther from the side line. Dr. O'Keefe stated that since submitting his application he has determined that he could move it five feet over so it would be 20 feet from the line instead of 15 feet. He had wanted to be sure that he left enough area for access to the septic tanks, but moving it to 20 feet would provide access to the back yard between the side line and the shed for any trucks that may need to go back on the property. Recently he had some trees removed in the back and trucks were able to go through. Mr. Gokorsch asked if there would still be enough access if the shed was 25 feet from the side line, but Dr. O'Keefe said that there would be little room to maneuver trucks for access to the septic tanks in that case, and Mr. Machnics agreed. Ms. Moore asked if heavy equipment must be kept from running over the curtain drain and leach field, and Mr. Machnics said yes. Dr. O'Keefe said putting the shed 20 feet from the property line would keep the side of the structure clear of the septic tanks.

Asked by the Chairman to confirm his current request, Dr. O'Keefe said that he had submitted his application for 15 feet because he was asked to be precise, but he since had determined that 20 feet would be workable. He amended his request to 20 feet from the side line for the accessory building, and then drew the correct location on the septic system plan.

Since no front yard setback for the shed had been determined, Mr. Gokorsch asked if the north side of the proposed structure will be behind the southern, or rear, line of the residence, and Dr. O'Keefe said yes. He was asked to draw the swale on the septic system plan, and mentioned that the aerial photo depicts the septic tanks more accurately than the photos he had submitted with the application. Mr. Machnics confirmed that the septic tanks are shown in the correct location on the aerial photo and on the septic system plan. Ms. Moore asked if there is a requirement for how far a building must be from a septic tank versus a well, and Mr. Machnics said there is not, but the tanks are not weight bearing generally, and are not designed to bear the weight of a backhoe or car. She asked if the accessory building could be located 25 feet from the line, but Mr. Machnics said he thought 20 feet was the maximum in order not to encroach on the septic system.

Mr. Downing noted that the applicant has amended his request to a side yard of 20 feet.

There were no other questions or comments from the board, Zoning Inspector or audience.

*Mr. Downing made the motion to accept Applicant's Exhibit #1, site plan of the subject property which includes the septic distribution boxes and the septic tanks on the property, and some indication where the swale runs through the property with various topographical lines, and the side line shown as 20 feet for the subject accessory building, and Applicant's Exhibit #2, aerial photo of the applicant's property showing the location of the septic tanks at the rear of the house. 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 the property would not yield a reasonable return nor have a beneficial use if the variance is not approved.
- b) Whether the variance is substantial: It is substantial being 30 feet out of 50 feet, a 60% variance.
- c) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance: There was testimony that the structure will be placed near the home, so that fact, combined with the fact that no neighbors were present to testify regarding this factor, indicates the structure would not substantially alter the neighborhood nor be a detriment to the adjoining property.

- d) Whether the variance would adversely affect the delivery of governmental services:  
No testimony was presented to indicate any impact on the delivery of governmental services.
- e) Whether the property owner purchased the property with the knowledge of the zoning restriction: The applicant stated "No" on the Notice of Appeal. It was noted that the deed submitted with the application does mention that the property is subject to zoning.
- f) Whether the property owner's predicament feasibly can be obviated through some method other than a variance: No, due to the swale and riparian area to the south, the septic tanks and leach field to the west, and the required well head buffer to the north of the proposed site for the structure.
- g) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance: Ms. Moore referred to Section 5.1 which identifies a number of Township objectives that zoning regulations seek to fulfill. It is apparent from a review of these objectives that the spirit and intent of the zoning requirement will be observed by granting the requested 20-foot setback. These objectives include geological conditions, on-site sewage disposal, protection of the water table recharge, the semi-rural character, and the wildlife.
- h) Such other criteria which relate to determining whether the zoning regulation is equitable: None, other criteria has already been noted.

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

*Mr. Cuffari made the motion to approve Variance Request #473 as amended to a side yard dimension of 20 feet in lieu of 50 feet required in an R-3 zone, Ms. Moore seconded and upon roll call the vote was Mr. Cuffari – yes, Mr. Downing – yes, Mr. Rybak – yes, Ms. Moore – yes, Mr. Gokorsch – yes, and the motion passed unanimously.*

Variance request #473 was granted.

**HEMLOCK HILLS HOMEOWNERS ASSOCIATION, for property at Sublot 37 (PP#26-067800) Cloveridge Road** – Request for modification of permit number 0.1244A and the conditional variance granted on April 23, 1963. Request to modify two conditions imposed at that time in order to: 1) expand the geographic area of the Community Center Area, and 2) be allowed limited sale and consumption of food and beverages for members and their guests only.

Ms. Moore advised the Chairman that she was recusing herself from this hearing due to being a resident of the Hemlock Hills subdivision. Mr. Downing advised the Chairman that he was recusing himself from this hearing due to being a resident of the Hemlock Hills subdivision and a member of the Hemlock Hills Homeowners Association. A quorum of three members of the board remained to hear the request.

Mrs. Steffen stated that she had published the notice of public hearing in the Chagrin Valley Times first on 05/21/14 and sent it by certified mail to the applicant and neighbors within 300 feet of the subject property on 05/22/14. She had then sent a letter by regular mail to the applicant and neighbors on 05/30/14 to advise them of the cancellation of the 06/02/14 meeting. When the hearing was rescheduled for tonight she published the notice of public hearing in the Chagrin Valley Times on 06/26/14 and sent it by regular mail to the applicant and neighbors on 06/24/14.

Erik Gerard, President of the Hemlock Hills Homeowners Association, was in attendance.

The Chairman explained that conditional variances are no longer used, and the board has considerable latitude in how it handles this case. He asked Mr. Gerard to explain what the Homeowners Association is asking the board to do. Mr. Gerard confirmed he was sworn in, and said he worked for some time with the Zoning Inspector regarding the correct paperwork required. The 1963 variance has some unique

elements such as prohibiting dancing, and the boundaries for the recreation area left out certain homes. The Homeowners Association is requesting two changes to the conditions attached to the variance regarding the swimming pool operation.

The first request is to permit prepackaged food and beverages to be sold at the pool, and to be brought to the pool area by members and their guests for consumption on site. The way the condition is currently written not even a bottle of water may be consumed at the pool. This is not practical for children on a hot day, or when a swim meet is held at the pool. All other facilities the Hemlock Hills swim team goes to for swim meets are permitted to sell food and beverages.

The second request is to expand the geographical area of the membership in order to invite more families to join the pool. According to the U.S. Census the population of Geauga County and Russell Township is aging, and Hemlock Hills also has fewer families with children than in the past. There are now 43 families with pool membership. The pool committee met with its treasurer who told them the pool is being operated at a deficit. They would like to expand the geographical area to invite more families to join, in order to keep the pool a viable facility in the community. Asked if a break even number was known, he explained that the Swim Association that ran the pool was dissolved last year and so this is the first year the Homeowners Association has operated it. The financial records have gaps, so they put together an estimated budget for this year, but will have accurate figures at the end of the year. Membership is totally voluntary, and there is also a sponsorship membership for residents who want to support the pool financially, since having the pool and tennis courts as a community facility increases property values. There is also a ball field for soccer and baseball that is used for community picnics. The property is a focal point for the residents of Hemlock Hills. Mr. Gerard stated that there are 168 homes in the Hemlock Hills subdivision, and the recreation area includes an additional 47 homes, so there are a total of 215 homes within the geographic area of the recreation area. They would like to offer membership to an additional 500 homes in Russell.

Mr. Cuffari said he was not sure it was appropriate for the board to consider the proposal, and asked if an attorney had been consulted. Mr. Gerard said that they have not hired an attorney but have consulted knowledgeable resources, and worked with the Zoning Inspector to complete the appropriate paperwork. He understood the Township has discussed proper procedure with the County Prosecutor, so based on all the information received, they have applied to modify the permit and conditional variance. Mr. Cuffari said that it appeared to him that a conditional use permit would be more appropriate, which would include parameters such as traffic, parking, access for emergency forces, noise etc. The board would work with the Homeowners Association to agree on reasonable constraints. Mr. Gokorsch explained that the area variance granted in 1963 is not the issue, but the conditions attached to it are an issue, since the board is working with a procedure from 50 years ago that today the zoning does not recognize. He asked the Zoning Inspector if he had discussed a conditional use permit with Mr. Gerard. Mr. Machnics said he had not, as he immediately contacted the County Prosecutor for advice, and was recommended the Homeowners Association ask for a modification of the permit and the conditional variance. Mr. Gokorsch said it appears some of the conditions are not enforceable, and he asked Mr. Machnics if he enforces the condition of no food or beverages at the pool. Mr. Machnics said he does not enforce that condition. Mr. Cuffari explained that this condition would not be included in a conditional use permit, and he would like to consider a conditional use application since private recreational areas are allowed under the Conditional Use section of the Zoning Resolution, rather than try to amend a conditional variance which would not be approved today. Mr. Gokorsch said the board is more concerned at the number of parking spaces than of the membership numbers, of the opinion of the safety forces as to the capacity of the pool, and of the impact on the neighbors.

Mr. Gerard asked if he would need to apply for a new variance if he applied for a conditional use permit, but Mrs. Steffen explained that the existing area variances concerning the size of the lot for the recreational area, and the rear setback for the pool would still be valid since they run with the land, and would not need to be part of a conditional use application. Mr. Cuffari said the board would want to hear how the pool operation would be handled if the membership expands in the future. Mr. Gokorsch noted that in 1963 the homeowners (within one-half mile of the subject lot) were polled regarding approval of the pool and 75% approved it. He felt that a similar poll held today would provide meaningful data to the

