

Minutes: Russell Township Board of Zoning Appeals  
Russell Fire-Rescue Station  
Monday, October 6, 2014

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

Also in attendance: Residents as shown.

Jennifer Dorka, Administrative Assistant, 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 she had published the legal notice for tonight's hearing in the Chagrin Valley Times on 09/25/14 and sent it by certified mail to the party and neighbors on 09/19/14.

**VARIANCE REQUEST #474 Mark A. DiLillo, 14881 River Glen Drive**

Request for variance for an existing 10 ft. x 15 ft. accessory building erected on the north side line in violation of Section 5.2.B which requires a 50 foot side yard setback in an R-5 zone.

The Chairman swore in applicant Mark DiLillo and residents Charles Butters and Patricia Settlemire.

*Mr. Downing made the motion to open the public hearing, Mr. Cuffari seconded and the motion passed unanimously.*

The applicant introduced himself and said he has been living at his property since 1993. He stated that he had not realized his accessory building would require a variance and he apologized to the board for his error in erecting it without a zoning permit and in violation of the side yard setback. He had erected the non-permanent shed adjacent to the garage that is part of his house, and uses it for storage of lawn and garden equipment. It is set on gravel, there is no electricity to it and no foundation so it is not attached to the ground. He is requesting a variance because there is no location that is conducive to placing the shed close to the driveway due to the topography and winter snow piles.

Mr. DiLillo presented a set of photographs and site plans, some of which were different from those submitted in his application, and he reviewed them with the board. He said he was aware of the front setback required from River Glen and S.R. 87, but was not aware of the side yard setback requirement of 50 feet. He noted that page 2 of the set explains his reasons for the variance request. The rear of the property slopes away steeply from the house and drive. The lot is on the corner of two roads and the Chagrin River flows through the rear yard. Because of the topography, location of River Glen Drive and S.R. 87 and the Chagrin River, the residence and driveway are located towards the north side of the property. Mr. DiLillo stated that he needed to place the shed on a flat surface and away from the snow piles, had tried to put it where it would not be visible from the road, and had sided it to match the house.

On page 3, an aerial view of the property, Mr. DiLillo had labeled the location of a deep ravine between his and his neighbor's property, and he noted that his own property includes approximately one acre of land on the other side of the Chagrin River which he cannot access. Two photos showed the shed on a gravel base and 4 x 4 base. The photo on page 6 showed that the area immediately behind his house slopes away, and the well casing is directly behind the side of the attached garage. The photo on page 7 showed the slope that falls from the driveway and that slope continues more steeply down to the river. If he could place the shed immediately behind the driveway it would still require a variance and he would have a problem when the driveway was being snow plowed. Mr. DiLillo explained that the photo on page 8 again shows the slope from the house and he stated that the place he stood to take the photo is 10 feet

below grade. The photo on page 9 shows the driveway sloping down to the turnaround, and he stated that the snow plow cannot push the snow up and out of the drive so it pushes it to the rear and then takes some of the snow from the top of the pile and removes it to the top of the driveway. This is the reason for large snow piles behind the turnaround area in the winter and why he cannot place the shed in that location. He explained that the photo on page 10 was taken from the second floor of his house, and the distance from the edge of the shed to the concrete turnaround is 14 feet. The photo on page 11 showed the view from the back of the shed to his neighbor's property with a large ravine between the two properties.

Ms. Moore asked the distance from the back of the shed to the property line. Mr. DiLillo said he did not know. He had received quotes from surveyors to locate that side line and the cost was approximately \$700 because one of the iron pins may be on the other side of the Chagrin River, making it a costly project. He said that even if he did pay for the survey and verify the location of the property line he would still require a variance because of the shed's location relative to the line. He felt it was not worth paying for the survey when he would still need a variance. Mr. Gokorsch asked if the site plan showing the shed on page 12, was an approximate location, and Mr. DiLillo said yes. He said the shed is either on the line or could be over the line. He explained that the photo on page 13 shows the view of the shed from the mailbox, and shows that it is barely visible from the road in its current location.

Mr. DiLillo said he had looked at other properties in the area on Access Geauga and he noticed that there is a shed on Stillwater Drive nearby that appears to be also on the side property line. He said there is nowhere on his property that is a logical location for a shed, but he did not know that when he purchased the lot. He asked the board for lenience to allow him to keep the shed in its current location since it would be difficult to move it and any other possible location would still leave it in violation of the zoning regulations.

Mr. Cuffari asked if the adjacent neighbors were aware the shed may be encroaching on their lot. Mr. DiLillo said he has not discussed it with them because he erected the shed three years ago when the neighbor at that time was renting out his property. Since then the property has been sold to new owners, and the shed was already there when they purchased their lot. Mrs. Steffen advised that she has talked to the neighbor, who is aware that the shed is either close to, or over the line. The neighbor does not have a survey of her lot. The neighbor received notice of this hearing but is not here tonight.

Mr. DiLillo pointed out the location of his well cap on the aerial view of his lot. The board reviewed the topography of the lot and noted that there does not appear to be a slope from the front of the house until the drop off to the river. However, Mrs. Steffen said that, in her capacity as Zoning Inspector, she had visited the site and there is a considerable slope from the road to the house where it flattens out in the turnaround area and then slopes off towards the drop off to the river. She suggested that the area around the house was graded level to build the house and the turnaround, so that the two-foot change in contour is now in the 11-foot dimension from the turnaround to the steeper drop off behind.

Mr. Gokorsch asked Mrs. Steffen if there are other sheds in similar locations in the neighborhood, and she replied that she did not know of any but because the lots are all wooded in that development, and the houses set far back on the lots, it is difficult to see any accessory buildings. She was not aware of any variances being granted in that development for sheds. She also stated that even the applicant's shed is barely visible from the road due to the slope.

Mrs. Steffen stated that there is a wet area next to the shed, and it is apparent from her visit to the site that water must flow past the shed and behind the turnaround then down to the river, since there is a bare area through there. This is northeast from the house. The wet area is within the 11-foot distance from the turnaround to the steep slope.

The Chairman then asked those in attendance for any comments relative to the proposed variance.

Resident Charles Butters, 14818 River Glen Drive, confirmed he was sworn in and stated that there are not any sheds on other lots in the development. He said he has been on the applicant's property and

could confirm that water does flow behind the shed and to the rear of the property. He thought it would be difficult to move the shed due to the dampness, the wet area and the drop off to the river.

Mr. DiLillo said he could not put the shed on the other side of the house because it is very damp there and he would not have access to it in the winter. Mrs. Steffen stated that because it is a corner lot, the shed is not permitted to be in the yards fronting on River Glen and S.R. 87. She said Mr. DiLillo had not applied for a zoning permit, because he told her he was not aware that he needed one. Mr. DiLillo added that he thought that the shed did not need a permit because it has no electricity and no lighting.

Mr. Butters noted that the creek in the ravine north of the applicant's lot also crosses his lot and there is always water running through it. He has been behind the house and there is a severe slope to the river. He supported the variance because he felt there is nowhere else suitable to put the shed, it is barely visible from the road and it matches the house and looks appropriate in its current location.

Pat Settlemire, 8139 Kinsman Road, confirmed she was sworn in and stated that she has a diagonal view of the applicant's back yard when the trees are bare. She said she has no objection to the variance and noted that most people in Russell need somewhere to store seasonal equipment.

There were no further comments from the applicant or the audience. *Mr. Cuffari made the motion to close the public portion of the hearing, Mr. Rybak seconded and the motion passed unanimously.*

The board discussed the variance request. Mr. Downing voiced a problem with voting on the request when the location of the side line is not known. Mr. DiLillo said he tried to find the iron pin at the northwest corner but it is overgrown with shrubs and he did not find it. Without that he did not even have a starting point for finding the rear pin at the north east corner across the Chagrin River. He decided not to pay a surveyor because he would need a variance regardless of the location of the line.

Mr. Cuffari said that although personally he could see that the location is the only place the shed can be placed, he was aware that the Zoning Inspector must verify the distance from the shed to the line, and only a surveyor can locate the line to be sure it is not encroaching onto the neighbor's property. He asked Mr. DiLillo if he would hire a surveyor to do this. Mr. DiLillo said he would either have to pay \$700 or he could try to move it closer to his driveway to erase any doubt as to encroachment of the line. He asked if it was incumbent on him to prove it is not over the line, and was told by the board that it was. The board indicated it must know if the shed is over the property line. Mr. DiLillo said it would be less costly for him to move it nearer the driveway if that would be acceptable to the board.

Mrs. Steffen showed the board the original site plan for the new residence zoning permit in 1987. This plan shows two dimensions from the house to the north side line of 55 feet and 50 feet. The 55-foot distance is not perpendicular from the side line so may not be correct. She measured 59 feet from the house to the northwest corner of the back of the shed. She could not verify that the 50 foot dimension is correct without determining the location of the side line. She had also measured 43 feet from the garage to the front of the shed. Mr. Cuffari said it could be assumed that the house is located no closer than 50 feet from the side line, and he would approve a variance if the shed was moved towards the house so that the distance from the north side of the house to the back of the shed was no more than 50 feet. This would at least mean the shed was not encroaching on the neighboring property. Mr. DiLillo said he could move it towards the concrete turnaround although he would only have about one foot for the snow plowing between the shed and the concrete.

The board discussed Mr. Cuffari's suggestion and agreed that the builder or zoning inspector at the time the house was built had written the 50-foot dimension on the site plan, so it could be considered accurate. Mr. DiLillo indicated he would be willing to move the shed if the board could approve a variance permitting the back of the shed to be no farther than 50 feet from the north side of the house. The board agreed that by relying on the accuracy of the original site plan there is a factual basis for the board to approve such a request. The Zoning Inspector would be able to verify that the northern side of the shed is 50 feet from the attached garage, and if the neighbor does a survey in the future the variance will still be valid since the shed can be verified to be on Mr. DiLillo's property. Mrs. Steffen showed the board the original new

residence zoning permit from 1987 which was signed on 08/29/1987 as 'ok' and initialed WFM (the then Assistant Zoning Inspector William Mason).

The applicant agreed to move the shed as discussed, but explained that he is going out of town for six weeks, and asked if he could move it in the spring. The Chairman advised that he should discuss this with the Zoning Inspector.

Mr. Rybak said he would like to continue the hearing so that the applicant could measure the distance he would need to move the shed and see if the new location would be workable for him. However, there will be changes on the board, and Mr. Cuffari suggested it would be fairer to the applicant to make a decision now since this board has heard his case tonight.

Mr. DiLillo asked to amend his variance request to ask that the northern side of the shed be located within 50 feet of the northernmost edge of the house and within the property line. Mr. Gokorsch asked the Zoning Inspector if she was comfortable with verifying that distance once the shed is moved, and Mrs. Steffen said yes.

*Mr. Downing made the motion to accept Applicant's Exhibit #1 photographs of existing property showing the shed and its location relative to the home and driveway, and also a topographical map of the subject property with the shed delineated as on the property line; and B.Z.A. Exhibit #1 zoning certificate Russell Township #1336 signed as being ok by WFM 8/29/1987; and B.Z.A. Exhibit #2 site plan of the subject property showing location of the house with measurements noted and added as notes showing 50 feet from the garage to the northern property line as prepared by En-V-Con Inc. of Chardon, Ohio. Mr. Cuffari 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: Yes, even relocated the shed will be substantially within the 50-foot side yard setback.
- 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 that the existing and the proposed location would be barely visible from neighbors or from the road.
- d) Whether the variance would adversely affect the delivery of governmental services: No testimony was provided on this factor, but the applicant had responded No to the question in the Notice of Appeal.
- e) Whether the property owner purchased the property with the knowledge of the zoning restriction: No, as stated in the Notice of Appeal the applicant was unaware of the problem until he received notice from the Zoning Inspector. Additionally, the deed does not indicate any reference to the zoning regulations.
- f) Whether the property owner's predicament feasibly can be obviated through some method other than a variance: No, testimony was presented by the applicant relative to the topography of the lot and a wet area to the north east of the residence. The applicant's testimony was supported by the Zoning Inspector and Mr. Butters.
- g) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance: Yes, because the structure is difficult to see from the neighbor's property, because of the ravine between the two lots, and because there are no other suitable alternative locations on the lot. Granting the variance as amended would be within the spirit and intent of the zoning requirement because the location of the shed is consistent with the open space spirit of the Resolution.

h) Such other criteria which relate to determining whether the zoning regulation is equitable: None.

*Mr. Cuffari made the motion to approve Variance Request #474 as amended, Mr. Downing 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 #474 was granted as amended - the shed to be moved so that the northern side of the shed would be located within 50 feet of the northernmost edge of the house and therefore within the property line.

**MINUTES OF AUGUST 4, 2014** – *Ms. Moore moved to approve the minutes as presented, Mr. Rybak seconded and the motion passed unanimously. Mr. Cuffari abstained due to his absence from that meeting.*

**OTHER BUSINESS** – The board briefly discussed procedures for running a hearing that the Chairman had written as a guide for the chairman of another township's B.Z.A. It was agreed that this should be finalized and kept as an unofficial guide for future chairmen of the board.

Mr. Gokorsch read aloud a Resolution of Appreciation for Fred Cuffari on his 25 years of public service to Russell Township that was adopted by the Board of Trustees and signed by all members of the B.Z.A. and the Zoning Commission. He presented the Resolution to Mr. Cuffari and thanked him for all his work on the board. Mr. Cuffari will be moving out of state and has resigned from the board effective as soon as a replacement is appointed.

There being no other business, Mr. Downing moved to adjourn, Mr. Cuffari seconded and the meeting adjourned at 8:17 p.m.

Respectfully submitted,

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Diana Steffen  
Secretary

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Date

\_\_\_\_\_  
Steve Gokorsch  
Chairman

\_\_\_\_\_  
Date

bza minutes 10-06-14