

Minutes: Russell Township Board of Zoning Appeals
Russell Township Hall
April 5, 2021

Present: Mr. Steve Gokorsch, Chairman
Mr. Dushan Boucek, Vice-Chairman
Mr. Bill Downing
Mr. Mark McGrievy
Mr. Matt Rambo

Also in attendance: Mr. Shane Wrench, Zoning Inspector; Mrs. Cathleen Birli, Zoning Secretary

The meeting was called to order at 7:00 p.m.

The legal notice was published in the Chagrin Valley Times and Geauga Maple Leaf on March 23, 2021.

The certified letters announcing the meeting were mailed Monday, March 22, 2021.

Mr. Rambo was introduced as the new board member.

All in attendance (9) were sworn in.

Mr. Boucek made a motion to open the public hearing for Variance #535. Mr. Downing seconded the motion and it passed unanimously.

Variance Application #535 – Submitted by Cliff Babcock, 9456 Fairmount Rd. The Applicant would like to split a parcel and create a five-acre lot, with existing house with the balance of the property to be a vacant lot for future building. The applicant would be seeking a variance to the required frontage (300') having only 179.32, thus seeking a variance of 120.68'. In addition, the owner DOES NOT intend to build at the minimum forward most set back but as required, the lot width is measured at the forward most setback, 125'. The applicant has 148.8' width, thus requiring a lot width variance of 151.19'.

Mr. Babcock, 9482 Fairmount Road, confirmed that he was sworn in.

Mr. Babcock explained 5 years ago he purchased a 30 Acre lot with a vacant home. He would like to split off a 5.2 acre conforming parcel including the farmhouse. The remaining 27 acre parcel will have a 179.32' lot frontage (300 foot required) and 117.7' lot width, requiring a 120.68' variance.

The 27 acre parcel is currently vacant and wooded.

He stated when he purchased the land 5 years ago, he understood that a 100' minimum frontage and 5 acres was what was required. The Zoning Inspector informed him that a variance will be required.

Mr. Babcock stated that the frontage request is similar to surrounding properties and the variance would be in keeping with Russell Township's low density residential large lot zoning.

Mr. Gokorsch asked if there is another access road other than the narrow strip from the road. **Mr. Babcock stated No. The land is landlocked.**

Mr. Boucek asked Mr. Babcock to verify on the site plan the outline of the 5 acre lot. He also asked if the lots are currently sub-divided. **Mr. Babcock stated they are currently sub-divided.**

Mr. Boucek asked the Zoning Inspector if there were any previous variances issued for these parcels. **The Zoning Inspector stated No. There was a permit issued in 1978 for an out building**

Mr. Boucek verified that the 27 acre frontage will be 179.32'. **Mr. Babcock answered Yes.** He asked if he has any plans to start construction. **Mr. Babcock answered No.**

Mr. Gokorsch noted there are a number of Riparian Setbacks and those areas are not buildable **Mr. Babcock said he understood.**

Mr. Gokorsch noted for the board that the 179.32' frontage is larger than the lots in the immediate neighborhood.

There were no comments from the public.

Mr. Boucheck made the motion to close the public hearing for request Variance #535. Mr. McGrievy seconded the motion and it passed unanimously.

The Board reviewed the Duncan Factors for Variance #535:

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. Mr. Gokorsch stated the remaining 117.7' lot width with a narrow access road to the 27 acres could be used for a future housing development.**

B) Whether the variance is substantial: **Yes. Frontage 50% variance, lot width 40% variance. Note: The 5 acre lot is conforming and the 27 acre parcel fits the character of the neighborhood.**

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. Mr. Gokorsch stated the 27 acre parcel has a smaller frontage (179.32') but it is similar to surrounding properties.**

D) Whether the variance would adversely affect the delivery of governmental services: **No. No testimony was given.**

E) Whether the property owner purchased the property with the knowledge of the zoning restriction: **No. The homeowner misunderstood the lot frontage requirements.**

F) Whether the property owners' predicament feasibly can be obviated through some method other than a variance: **Mr. Boucek stated No. This was the only option when lots are consolidated.**

G) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance: Yes: **The 5 acre parcel conforms to current Zoning. The additional parcel with a single house will fit the character of the neighborhood.**

H) Such other criteria which relate to determining whether the zoning regulation is equitable: **Mr. Gokorsch stated the existing chicken coup would be demolished since it is too close to the side lot line. Mr. Gokorsch verified to the zoning inspector that the chicken coup comes down.**

Mr. Downing made the motion to approve Variance #535. Mr. Boucek seconded the motion. Upon roll call the vote was Mr. Rambo – Yes, Mr. Downing – Yes, Mr. McGrievy – Yes, Mr. Boucek – Yes, Mr. Gokorsch – Yes. The motion was approved.

Variance Application # 536 – Submitted by Brant Semplak, 8720 Galloway Tr. The property is located in an R-3 Zone. The applicant is seeking to install a 46'x50' accessory structure that sits 30' off the property line. The required setback is 50'. The applicant is seeking a 20' variance.

Mr. Boucek made a motion to open the public hearing for Variance #536. Mr. McGrievy seconded the motion and it passed unanimously.

Mrs. Semplak, 8720 Galloway Trail, confirmed that she was sworn in.

Mrs. Semplak stated she has 5.1 acres and is seeking to build a 46' x 50' barn, 30' from the side lot line on the North side of the property instead of the required 50', requiring a 20' variance.

Mrs. Semplak showed on the exhibit an old shed behind the garage which will be removed and where the new larger barn will be built away from the septic tanks and leech field.

Exhibit A2 (septic and leech field location)

Mrs. Semplak stated that the new larger barn cannot be placed where the old shed was because of the septic tanks and leech field in the area

Mr. Semplak, 8720 Galloway Trail, confirmed that he was sworn in.

Mr. Semplak also stated that the closer they get to the septic tanks the closer they get to many mature trees that would need to be cut down. They want to preserve these old growth trees.

Mr. Boucek asked where the leech field are located. **Mrs. Semplak stated directly behind the house. She also stated they have high tension wires on their property.**

Mr. Gokorsch asked Mrs. Semplak to sketch on the exhibit the septic tanks, the length of the leech field and the high tension wires.

Mr. Gokorsch asked about the topography of the property. **Mr. Semplak said the area is flat until you get closer to the high-tension wires.**

Mr. Gokorsch asked if the area was dry. **Yes.** However, Mr. Gokorsch asked if the barn can be built 13' feet behind the septic tanks near the North side lot. **Yes. However, Mrs. Semplak showed on the exhibit the trees they would need to remove in order to locate it there and they would have no buffer from the power lines.**

Exhibit A6 (pictures of trees)

Mr. Boucek asked how far back the trees were from the house? **Mr. Semplak stated the trees are 115' to 125' from the house.**

Mr. McGrievy asked how many septic tanks they have? **Mr. Semplak said two tanks are 100' behind the house.** Mr. McGrievy asked if the trees are a buffer for the tension wires? **Mr. Semplak answered Yes.**

Mr. Boucek asked if the barn will be 13' from the septic tanks. **Mr. Semplak said Yes.**

Mr. Boucek asked when the septic was put in? **Mr. Semplak said the septic was there when they bought the property.** The zoning inspector said that would be a question for the Health Department.

Mrs. Semplak next showed an approval letter from the Red Raider Trails Homeowners Association Trustees and a chart showing the location and sizes of other out buildings in the neighborhood.

Exhibit A3 (approval letter)

Exhibit A4 (barn dimensions)

Mrs. Semplak showed a notarized affidavit from the affected neighbor closest to the structure on the North approving the structure.

Mr. Gokorsch stated that affidavits are inadmissible. Mr. Rambo also stated that witnesses need to be present to give testimony and answer questions.

Mr. Boucek asked if the architectural design will match the house. **Mr. Semplak said Yes. The design will be a Tudor style façade, which will match the house.**

Mr. McGrievy asked the purpose of the barn. **Mr. Semplak stated the barn will be used for storage.**

Mr. Gokorsch asked if there will be living quarters? **Mr. Semplak answered No.**

Mr. Boucek asked if it will have water? **Mr. Semplak answered No, only electricity.**

Mr. Rambo asked if there will be a driveway? **Mr. Semplak answered No.**

Mr. Boucek questioned the front East side footage to the roadway, which should be 196' feet, the site plan shows 156' feet. **Mrs. Semplak stated she measured incorrectly and the correct distance to the street is 196' feet.**

Mr. McGrivey asked Mr. and Mrs. Semplak to update the correct distance measurement, sign and date the site plan.

Comments from the Public:

Mr. Cedric McMillan, 8710 Galloway Trail, confirmed that he was sworn in. Mr. McMillan is the neighbor to the South of Mr. & Mrs. Semplak.

Mr. McMillan whose property is to the south, provided an exhibit showing a water run-off pipe and a retaining wall. The site topo plan shows that his property is lower than Mr. Semplak's property and he is concerned about surface runoff if construction is not done correctly. He stated Geauga Soil & Water recommended a pipe network for runoff from the new barn to eliminate erosion. This pipe will release water onto his property, which is a major concern for him.

Exhibit A (drainage site plan)

Mr. Gokorsch asked if the South subplot on the site plan is his. **Mr. McMillan said Yes.**

Mr. Gokorsch stated Geauga Soil & Water has authority over water runoff issues. The Board of Zoning Appeals has no jurisdiction in these matters.

Mr. McMillan said that the Semplak's four bedroom home was built in 1987 with a 1,200 foot leech bed. Since then, they updated to a five bedroom home putting more water into the leech field. Mr. Gokorsch stated Geauga County Health Department has authority over septic systems.

The zoning inspector stated that the applicants cannot get a building permit until the review plan report, for the barn location, is approved by the Geauga Soil & Water.

Mr. Boucek asked if he has any other concerns besides the septic? **Mr. McMillan stated Yes. He would like the barn moved back to the West to be more harmonious to the neighborhood.**

Comments from the Public:

Mrs. Twannamy McMillan, 8710 Galloway Trail, confirmed she was sworn in.

Mrs. McMillan stated 5 acres should be enough to build a barn and the setback should be met even if trees need to come down. She is concerned about water runoff and this ruling could set a precedent. There are no barns of this size in the neighborhood.

Mr. Gokorsch stated that precedent is not considered in BZA hearings. Each case is judged on the merits and compliance to the current zoning resolution.

Mrs. Semplak stated the Homeowner's Association approved the barn with 5 contingencies:

1. Zoning Approval.
2. Front Setback: East side to be located 196' from Galloway Trail.
3. Geauga County Soil & Water approval.
4. Drainage: gutters, downspouts and drains installed.
5. Landscape: Hire landscaper to design screening. South side - evergreens. East side - trees & beds. Screen from street.

Mrs. McMillan stated that the HOA Architectural Board did not approve the plans.

Mrs. Semplak said that the HOA Architectural Board had only two members at the meeting, one of which was Mrs. McMillan, and without a quorum, did not have the authority to make a ruling.

Their approval was provided by the Homeowner's Association (HOA) Letter which was submitted as an exhibit.

Exhibits:

Mr. Gokorsch asked Mr. and Mrs. Semplak to sign and date exhibits.

- Exhibit A1 (picture of the barn)*
- Exhibit A2 (picture of septic/leech field location)*
- Exhibit A3 (HOA approval letter)*
- Exhibit A4 (chart of neighborhood barn dimensions)*
- Exhibit A5 (picture of affected neighbor)*
- Exhibit A6 (pictures of trees)*

Mr. Gokorsch asked Mr. McMillan to sign and date exhibit.

Exhibit A (drainage site plan)

Mr. Downing made a motion to accept applicants' exhibits into the record. Mr. Boucek seconded the motion and it passed unanimously.

Mr. McGrievy made the motion to close the public hearing for Variance #536. Mr. Boucheck seconded the motion and it passed unanimously.

The Board reviewed the Duncan Factors for Variance #536

- 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.**
- B) Whether the variance is substantial. **Yes. A 40% side lot variance is substantial. Mr. McGreivy stated that there will be a 30' wooded area to the side lot line.**
- 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 Homeowner's Association approved the barn with conditions. There are multiple similar barns in the neighborhood. The South next door neighbor, however said the barn is the only one of this size on the street.**
- D) Whether the variance would adversely affect the delivery of governmental services. **No. No testimony was given.**
- E) Whether the property owner purchased the property with the knowledge of the zoning restriction. **No. They had no knowledge of this zoning restriction.**
- F) Whether the property owner's predicament feasibly can be obviated through some method other than a variance. **Yes. Other locations on the property could work, however these locations would necessitate the removal of a number of mature trees, impacting the look of the lot and of the neighborhood.**
- G) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. **Yes. The barn will conform to the character of the development and was approved by the HOA.**
- H) Such other criteria which relate to determining whether the zoning regulation is equitable. **Yes. Mr. Gokorsch stated that the water drainage concern must be reviewed by Geauga Soil & Water.**

Mr. McGreivy made the motion to approve Variance #536. Mr. Downing seconded the motion. Upon roll call the vote was Mr. Rambo – Yes, Mr. Downing – Yes, Mr. McGreivy – Yes, Mr. Boucek – No, Mr. Gokorsch – Yes. The motion was approved.

Mr. Boucek made a motion to open the public hearing for Variance #537. Mr. McGrievy seconded the motion and it passed unanimously.

Variance Application #537 - Submitted by Chase Dardis, 9380 Pekin Road. The property is located in the R-3 Zone. The applicant is seeking to raze and rebuild a new single family home. The property is preexisting and fails to meet the current lot frontage and width requirements. They are seeking a 56.30' variance for each as well as a side yard setback variance. Not meeting the required 50' setback, the applicant is seeking a 14' variance.

Mr. Chase Dardis, 9380 Pekin Road, confirmed that he was sworn in.

Mr. Dardis stated he has 10 acres and had a pre-existing house that has been razed and a second house that will be used for storage then razed when the new home is built. His lot frontage will be 193.70 feet, in lieu of 250 feet required, requiring a 56.30 feet variance. He is also requesting a 14 foot variance for the side yard (50 feet required). He will keep the existing driveway and pool house.

Mr. Boucek asked to verify that the second house will be demolished when the new home is built.

Mr. Dardis answered Yes.

Mr. Boucek asked if the new home could be located 69 feet from the side yard? **Mr. Dardis said Yes. However, he would like to line up the kitchen of the new home with the pool house. If it were not, he would also need to move the driveway.** Mr. Boucek asked if the side yard will now be 36 feet, instead of the existing 10 feet, where the second house currently sits? **Mr. Dardis answered Yes.**

Comments from the public:

Ms. Maria Livers, 9400 Pekin Road, confirmed she was sworn in.

Ms. Livers said she spoke with the zoning inspector regarding the placement of her pond, which is lower than the septic system.

Comments from the public:

Mr. Herb Holzheimer, 9378 Pekin Road, confirmed he was sworn in.

Mr. Holzheimer stated the pool house and barn are not in good shape and those impact the property values.

Mr. Gokorsch asked Mr. Dardis to sign and date the modified site plan – removing the garage from the site plan.

Exhibit A (site plan)

Mr. Downing made a motion to accept the applicants revised site plan exhibit into the record. Mr. Boucek seconded the motion and it passed unanimously.

Mr. McGrievy made the motion to close the public hearing for Variance #537. Mr. Boucheck seconded the motion and it passed unanimously.

The Board reviewed the Duncan Factors for Variance #537

- 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.**
- B) Whether the variance is substantial. **Yes. Mr. McGrievy stated a 28% reduction in side yard setback is substantial. Mr. Gokorsch stated the new side yard setback will be more conforming.**
- 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. No testimony was given.**
- D) Whether the variance would adversely affect the delivery of governmental services. **No. No testimony was given.**
- E) Whether the property owner purchased the property with the knowledge of the zoning restriction. **Yes. As noted on the variance application.**
- F) Whether the property owner's predicament feasibly can be obviated through some method other than a variance. **No. No testimony was given.**
- G) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. **Yes. Mr. Boucek stated Yes, based on the narrow lot width. Mr. Gokorsch stated the existing house which is 10' from the side lot will be razed and the new house location with a 36' side lot setback is more conforming.**
- H) Such other criteria which relate to determining whether the zoning regulation is equitable. **Mr. Gokorsch stated the existing lot frontage will be the same which although nonconforming is grandfathered.**

Mr. Boucek made the motion to approve Variance #537. Mr. Rambo seconded the motion. Upon roll call the vote was Mr. Rambo – Yes, Mr. Downing - Yes, Mr. McGrievy - Yes, Mr. Boucek – Yes, Mr. Gokorsch, Yes. The motion was approved.

Other Business:

Minutes:

Mr. Boucek made the motion to accept the Minutes from the February 1, 2021 meeting. Mr. Downing seconded the motion and it passed unanimously.

Findings of Facts:

Mr. McGrievy made the motion to accept the Findings of Fact from the February 1, 2021 meeting. Mr. Boucek seconded the motion and it passed unanimously.

Mrs. Cathleen Birli Date
Zoning Secretary

Mr. Steve Gokorsch Date
Chairman