

The **Board of Zoning Appeals** of the City of North Royalton met on **March 27, 2013** to hold a Public Hearing in the Council Chambers at 13834 Ridge Road. The meeting was called to order by Chairman Dan Kasaris at 7:42 p.m.

Present: Chairman Dan Kasaris, Vice-Chairman Anthony Rohloff, Robert Jankovsky, Victor Bull, Dale Gauman, Prosecutor Donna Vozar, Building Commissioner Dan Kulchytsky, Secretary Lynn Brinkman.

**Approval of Minutes:**

Mr. Kasaris: May I have a motion to approve the February 27, 2013 Minutes?

Moved by Mr. Bull, seconded by Mr. Jankovsky to **approve the Minutes from February 27, 2013.**

Mr. Kasaris: Any discussion? Will the clerk please call the roll.

Mr. Rohloff: Yes.

Mr. Jankovsky: Yes.

Mr. Bull: Yes.

Mr. Gauman: Yes.

Mr. Kasaris: Yes.

Ayes – five. Nays – none.

**Motion carried (5-0). Minutes are approved.**

**Public Hearing / Open Meeting**

**Old Business:**

**(BZA13-03) Archer Corporation / Ohio Catholic Federal Credit Union** request a variance to **Chapter 1284 “Signs”, Section 1284.04 “Measurement Standards”, paragraph (f)(1) & (f)(2),** for relief from the **signage** requirement relative to a **building unit which does not have a secondary street.** They are also seeking relief from the signage requirement relative to a **building which does not have direct frontage and a customer entrance from the secondary street.** They are also seeking relief from the signage requirement **permitting no more than two building signs per building / unit and for signage that exceeds the square footage allowed,** for this property located at **5600 Wallings Road,** zoned for Local Business, **also known as PPN: 489-11-015.**

Ms. Brinkman: Public Hearing Notices were sent to property owners within 500 feet of the property in question and posted for the required period of time. The Chairman will recognize anyone wishing to be heard.

Mr. Kasaris: Is the applicant here? I would like to have one moment before we move forward. I would like the Building Commissioner to offer some testimony. Would you please raise your right hand. Do you solemnly swear that what you are about to testify to is the truth, the whole truth and nothing but the truth, so help you God?

Mr. Kulchytsky: I do.

Mr. Kasaris: Last month we had some questions regarding the prior tenant at this location, namely Charter One. The questions concerned the number of signs that they had and how the signs ended up there. We also had questions about some similar type of situations within the City. What were you able to find out.

Mr. Kulchytsky: As to the previous tenant who occupied that space - Charter One had two signs, one facing directly towards Wallings Road and a secondary sign on the facade facing Drug Mart. In our review of the records to see what variances had been granted, what applications had been made for permits and what applications had been made for the Architectural Review Board, we found that there appeared to be no application for permit, no application for Architectural Review Board and no application for a B.Z.A. variance for having an additional sign on the side of the facility facing Drug Mart.

Mr. Kasaris: When you say no application for permit and no application for Architectural Review Board had been requested, what does that mean?

Mr. Kulchytsky: No application had been made to secure a permit to erect the sign. The City of North Royalton requires that you do three things before you can erect a sign. The first item is that you make an application for a permit which is issued by the Building Department upon successfully having been reviewed. The applicant then appears before the Architectural Review Board. They review the design and must approve the design. Should you need a variance or variances, such as in this instance, the applicant would also have to appear before the B.Z.A.

Mr. Kasaris: Do we have any record of any type of variances having been granted for that particular location?

Mr. Kulchytsky: We do have records for a variance having been granted for a color change; however, that variance does not speak to the presence of additional signs on the facade facing Drug Mart which is to the east of the building.

Mr. Kasaris: So based upon the City records we had a sign that was erected that should not have been there.

Mr. Kulchytsky: That is correct.

Mr. Kasaris: Thank you. Does anyone else have any questions for the Building Commissioner? Would the applicant then please come up to the microphone. Were you here last month?

Mr. Kiko: Yes.

Mr. Kasaris: Then I would remind you that you are still under oath. Would you please state your name for the record.

Mr. Kiko: My name is Pete Kiko and I am with Archer Corporation. We were originally told that we would need to apply for a variance to help Ohio Catholic Federal Credit Union to gain more visibility from the intersection. It is very difficult when driving down Wallings Road to see the business until you are right on top of it. Since the unit is at the corner of the building we found that we would need a variance. During that time we discovered that Charter One had signage at this location – on the side of the building that we are proposing to erect a sign. I was told by the property owner that Charter One did get permits and had applied for a variance for a color change. I am questioning what type of information you have with regard to that application for a variance. I am asking this because in many of the situations such as this the signage requests are grouped together as one. I was wondering if this sign in question had been grouped together with the main storefront signage and perhaps overlooked.

Mr. Kasaris: So that the record is clear I would request that the Building Commissioner respond to that.

Mr. Kulchytsky: The variance at that meeting was exclusively for the color change. A variance for the second facade should have been a separate issue altogether.

Mr. Kiko: When reviewing a variance do you usually look to see if they had had a permit in the first place?

Ms. Vozar: Mr. Chairman, I object to the applicant questioning the Building Commissioner on the normal process. I am sure that the Building Commissioner would be happy to respond to the Board on this matter. So that you are clear we would be happy to give you a copy of the variance that had been previously granted for that property. The variance clearly states that it was granted as to color. The Board heard that testimony. The variance does run with the land. The fact that there were a number of signs that were perhaps put up improperly does not change the fact that the variance was only granted for color.

Mr. Kiko: We originally were going through this process to help Ohio Catholic Federal Credit Union, at this location in North Royalton, so that they could gain visibility for their business within the community and help promote that business. (Continued on next page...)

Mr. Kiko: I believe that we had passed out pictures which included pictures from Google Maps which showed a view from the intersection to help illustrate that point. I do not have any other questions or concerns.

Mr. Kasaris: When we met last you thought that there may have been a variance granted. Did you look through your records? Were you able to find anything?

Mr. Kiko: We did not deal with Charter One. They had dealt with a different sign company on that matter. We did not have any success in trying to contact Charter One.

Mr. Kasaris: Does anyone have any questions of the applicant? (No response.) In looking at the record from a month ago I do not see that we had a motion to approve the applicant's request. Due to the fact that it is so convoluted I think that I will make the motion myself. To clarify the first variances being requested I would like to break it down as follows.

Moved by Mr. Kasaris, seconded by Mr. Rohloff to grant relief from **Section 1284.04, paragraph (f)(1) which refers to "buildings, building units or lots with frontage on two public streets may be permitted additional signage along a secondary street"**. **The variance here is being requested because there is no secondary street so they are seeking a variance from that particular requirement. They are also seeking a variance pertaining to corner lots and with regard to the square footage of the sign. The Code states that "additional signage shall not exceed 20% of the area of the signage permitted along the main facade"**. **The last of the variance requests under Section 1284.04 (f)(1) deals with the Code that states that "there shall be no greater than one building sign per street face and a maximum of two building signs per building"**.

Mr. Kasaris: We have a motion and a second. Any discussion? (No response.) My view is, and I have discussed this with the Law Director, that this is a matter for City Council to decide and not for the Board of Zoning Appeals. I am very pro-business since I have been on the Board and as a member of City Council. In looking at our Code though, and in following the Code as I see it under Section 1264.08 (e)(1), we have to look at whether or not a practical difficulty has been established. We have several factors which we then have to consider. First of all, I think that there is a beneficial use of the property without granting the variance. Secondly, the Code requires that there be a secondary street and there is no secondary street here. The delivery of governmental services would not be adversely affected but the applicant is causing the need for the variance by wanting a second sign. We have a sign that is already there and in place that can be seen from the street. I just feel that if we, the City, want these types of signs to be allowed that it should be something that City Council and the Master Plan should decide and, in my opinion, not the Board. I will therefore be voting against this variance request.

Ms. Vozar: Mr. Chairman, may I add something for the record before we proceed. Just so the applicant and the Board are clear – I am actually looking at the variance request that had come before this Board by Charter One Bank. It shows that the variance requested was a variance from Section 1284.05 (n) of the Zoning Code and clearly not the same variance which is being requested today. It was to grant a variance so as to allow the applicants relief from the requirement that states that the colors of signs shall be compatible with the color of the building facade and other existing and proposed signs. It was to allow Charter One Bank signage, and the number "three" is there but again, three signs do not have a variance. The only variance was to allow the sign to be green. That was the variance request that was heard and granted to Charter One Bank.

Mr. Kasaris: I might add that this Board has the authority to grant area variances and use variances. I do not really see this request as being either one. We are not granting a variance as to height, width or to a setback. We are not being asked to grant a variance as to "use". Instead we are being asked to deviate from the Code and I do not feel that this Board has the authority to do that because I do not think that City Council has given us that authority in that I do not see this as either an "area" or a "use" variance. Having said all of that, I will be voting against the variance request. Anyone else? (No response.) I will then make the following findings of fact and conclusions of law. There were no neighbors or adjoining property owners who had appeared this month or last month with regard to this particular item. I find that the powers of the Board of Zoning Appeals pertain to "area" variances and "use" variances and this is not either one. So I do not feel that this Board has the authority to even grant this variance. Even if the Board has the authority to grant this variance I still feel that the applicant has the ability to erect a sign in the front of the building unit which can advertise his business and can be seen from the street. I find that practical difficulties have not been met. Anybody else have anything to add?

Ms. Vozar: Mr. Chairman, if I could just add for the record that while I do understand your objection and City Council's authority and granting of authority to the Board of Zoning Appeals, I do believe that B.Z.A., as the appellate provision of the City, does have the authority to hear this. I do believe that it falls under the first criteria of practical difficulties that the Board would look at and it is your decision to determine whether or not practical difficulties have been established by this applicant because they are seeking to vary from the Code.

Mr. Kasaris: Clerk, please call the roll.

Mr. Jankovsky: Yes.

Mr. Bull: No.

Mr. Gauman: Yes.

Mr. Kasaris: No.

Mr. Rohloff: No.

Ayes – two. Nays – three.

**Variance denied.**

#### **New Business:**

**(BZA13-04) Duane E. Frederick** requests a variance to **Chapter 1270 “Residential Districts”, Section 1270.12 “Yards for Accessory Buildings and Uses”, paragraph (a)(1)B** and **Section 1270.04 “Area, Yard and Height Regulations”, paragraph (g)**, of the City of North Royalton Zoning Code, for relief from the **maximum square footage** requirement and relief from the **maximum height** requirement for an **accessory structure** he wishes to construct on his property located at **4939 Akins Road, also known as PPN: 487-24-012.**

Ms. Brinkman: Public Hearing Notices were sent to property owners within 500 feet of the property in question and posted for the required period of time. The Chairman will recognize anyone wishing to be heard.

Mr. Kasaris: Is the applicant here? Please approach the microphone. Would you raise your right hand. Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. Frederick: I do.

Mr. Kasaris: Please state your name and address for the record.

Mr. Frederick: My name is Duane E. Frederick and I live at 4939 Akins Road. I have basically provided all of the information to you. I want to build an accessory building in my backyard and I need variances for the square footage and the height of the building as well as a variance to allow two accessory structures on my property. I want to keep a second accessory building that I already have which is a 10' x 14' shed.

Mr. Kasaris: How many accessory buildings do you have on the property?

Mr. Frederick: Two.

Mr. Kasaris: How did they get on the property?

Mr. Frederick: They were there when I moved in.

Mr. Kasaris: How long have you lived there?

Mr. Frederick: Twelve years.

Mr. Kasaris: What would be your intent with regards to the current accessory structures that you have on the property?

Mr. Frederick: The smaller of the two, the 10' x 10' shed, I would remove should these variances be granted. I was planning on moving the 10' x 14' shed to the rear of the lot behind the proposed new building.

Mr. Kasaris: So you would be moving one of the structures that is currently there behind the new structure.

Mr. Frederick: To the rear of the lot behind the new building.

Mr. Kasaris: Where is it located now?

Mr. Frederick: At about the middle of the yard. I have a layout in my application.

Mr. Kasaris: If the clerk could just mark the application as Exhibit A for the record. Why do you need such a large accessory building?

Mr. Frederick: I have a RV that I would like to store inside to protect it from the weather and when I am not using it.

Mr. Kasaris: Where do you store your RV at right now?

Mr. Frederick: It is in the backyard. I have a driveway that I had cut in two years ago. It is just a gravel driveway. It basically runs back about 300 feet from the road. I would like to construct a building to store it in as well as for my truck.

Mr. Kasaris: Are there any other reasons why you want this structure?

Mr. Frederick: I also have a classic car that is currently sitting outside. It is a 1967 Impala.

Mr. Kasaris: Where is the 1967 Impala currently being stored?

Mr. Frederick: Behind the 10' x 14' shed. It is under a roof that was built off of the back of the shed.

Mr. Kasaris: What other reasons do you have for wanting this large structure?

Mr. Frederick: It would be basically for storage. My family has grown since I have moved here. We have really outgrown the house. I have a lot of tools in my attached garage which take up a lot of space so that I cannot even park my cars in this garage. I have not been able to for years.

Mr. Kasaris: What would be the difference in height between the top of the RV and the top of this proposed building?

Mr. Frederick: The top of the air conditioning unit of the RV is probably about 12 feet. I did not really measure it but it is easily that high.

Mr. Kasaris: You are proposing to have the building 20 feet high.

Mr. Frederick: Correct.

Mr. Kasaris: Why do you need that extra 8 feet?

Mr. Frederick: It has a second floor loft for storage.

Mr. Kasaris: Mr. Building Commissioner, what is the zoning for this area? Is it Rural Residential or is it R1-A?

Ms. Brinkman: If you would not mind – it is zoned R1-A.

Mr. Kasaris: Does anyone else have any questions for the applicant?

Mr. Jankovsky: Yes. Mr. Frederick, you said that you have lived there for about 12 years. How long have you owned the RV and the classic car?

Mr. Frederick: I have had the classic car since I moved there. This is our second RV. The first one we had for about five years and this will be our third season with this new one which we bought new.

Mr. Jankovsky: So you acquired those after you had purchased the property.

Mr. Frederick: Yes. The RV that we have now – this is our third season with it. We bought it new and I would like to protect it from the UV rays and the critters.

Mr. Jankovsky: Okay.

Mr. Rohloff: What is the proposed square footage for this building?

Mr. Frederick: It is 1,400 sq. ft.

Mr. Rohloff: What is the square footage of the other building that you are requesting to keep?

Mr. Frederick: It is 140 square feet.

Mr. Rohloff: So it is about ten percent of that size. You could not store what you will be storing in that smaller shed within the new building?

Mr. Frederick: I did not really want to. The shed has all of my yard tools, garden tools, snow blower and stuff like that. I am planning on keeping the new building with a cleaner set up. My kids also have a kind of workshop in the smaller shed and they were hoping to keep that kind of clubhouse sort of thing.

Mr. Rohloff: But if necessary you could keep everything in that larger building.

Mr. Frederick: I could but I would rather not.

Mr. Kasaris: Have you received any complaints from your neighbors regarding the current condition of your property?

Mr. Frederick: No. My neighbor next door has a large outbuilding. I think that it is roughly about 24' x 40'. He also has another shed that is roughly 10' x 14'.

Mr. Kasaris: Is that your next door neighbor?

Mr. Frederick: Yes. Two doors down from me they have about a 30' x 40' building as well as another shed which is about 10' x 15'.

Mr. Kasaris: So what you are proposing is not very different from what is already there?

Mr. Frederick: As far as my neighbors – it is not like it would be out of place.

Mr. Rohloff: How many neighbors did you say?

Mr. Frederick: Next door has two accessory structures and the property next to them has two accessory structures. I believe that the property next to them also has two accessory structures.

Mr. Rohloff: So there are three examples in the vicinity of your property.

Mr. Frederick: Exactly.

Mr. Kasaris: (To the Building Commissioner) Will this building need to have a concrete slab?

Mr. Kulchytsky: This barn would be required to have deeper footers. I would have to check with the Ohio Building Code as far as the slab. The second story will also throw some unique circumstances into it. Without having the Code before me I would say that it would need to have a concrete slab. To the applicant, if I may, was that your intention?

Mr. Frederick: Yes. I planned on a full foundation with a concrete floor. The small shed would also require a concrete pad.

Mr. Kasaris: Is the shed currently on a concrete pad?

Mr. Frederick: No. It was built without a concrete pad.

Mr. Rohloff: Your proposed building is basically the size of a house. It would be 1,400 square feet. Would there be requirements as far as the storm sewer system and such? How would that work?

Mr. Frederick: There are no storm sewers.

Mr. Rohloff: Could that cause drainage problems?

Mr. Kulchytsky: All of the actual construction detailing and its relationship with any engineering requirements will be reviewed by the Engineering Department and the Building Department. If full footers of a certain depth and size are required by the Ohio Building Code they will then be required as part of the issuance of the permit. Any engineering that would require storm water management will be reviewed by the Engineering Department and handled accordingly. A permit will not be issued until the two departments are satisfied.

Mr. Rohloff: Thank you.

Mr. Jankovsky: From the road it appeared that the back part of your property is lower than the front part. Is that correct?

Mr. Frederick: That is correct.

Mr. Jankovsky: Where it goes down – is that actually your property or is that the property behind you?

Mr. Frederick: It goes down continually from the road at a gradual rate. Where it stops at the back of my property it is roughly 7-8 feet lower than the road. It kind of levels out there.

Mr. Jankovsky: What I was getting at is that the extra height on this proposed building would be somewhat offset by the way that the property goes down.

Mr. Frederick: That is correct.

Mr. Kasaris: So you would not be able to see the top of the building from the road.

Mr. Frederick: I am proposing it to be located about 300 feet from the road. If anyone came to the property they would have noticed where the RV is parked. The front of the building is to be located to the rear of the RV so it is a distance from the road. The building will appear to be level with the roof of the house due to that gradual drop.

Mr. Kasaris: Anyone else have any questions?

Mr. Bull: To the Secretary, do you know if any variances had been granted to those properties that currently have two buildings located on them?

Ms. Brinkman: I did not look into that.

Mr. Frederick: Those buildings have probably been there since 1980 - based on what the neighbors have said. They might have been there before the present Code. The one neighbor had purchased his property in 1980 and they had been there already. That is pretty much why he purchased the property. I do not know if there had been any variances issued.

Mr. Kasaris: Any additional comments? Can I have a motion then regarding the first variance being requested?

**Variance #1:**

Moved by Mr. Jankovsky, seconded by Mr. Rohloff to **grant relief from Section 1270.12 (a) of the Zoning Code so as to allow two accessory structures to be located on this property.**

Mr. Kasaris: Any discussion?

Ms. Vozar: Mr. Chairman, could there perhaps be some clarification for both the applicant and the members of the Board as to what this variance request will actually do. Specifically, if this first variance is granted the applicant will be permitted to keep the two structures up that he currently has on his property. This is in violation of our Code. If, for whatever reason, the Board were to deny this then one of those structures would need to be taken down. If the Board permits it then we would move on to Variance #2. Do we all understand what we are voting on with regard to this first variance request? Is that correct?

Mr. Frederick: I do not think that that is correct. I currently have two small sheds on the property now.

Ms. Vozar: Our Code only permits one.

Mr. Frederick: Okay.

Mr. Kasaris: After listening to the evidence and after reviewing the application, and since there are no neighbors here objecting to these requests, I find that this would not be out of character for the neighborhood. The evidence is that there are other people in the neighborhood who have similar situations. It will not adversely affect government services. I believe that the applicant has met his burden of establishing practical difficulties. I will be supporting this variance request. Anyone else?

Mr. Jankovsky: In regard to some of those same questions that had been addressed by the applicant I do not totally agree with the responses. As far as a beneficial use of the property – I think that the property can still be beneficially used. As far as Item E (relative to the granting of “area variances”), the applicant states that the variance would be for relief from a zoning provision which was enacted after the creation of an existing condition or circumstances to the property in question. If he had the property twelve years ago and acquired the RV three years ago the circumstances were then created by the applicant himself. With that in mind I can still understand that people want to change their lifestyle and they may need some changes to the provisions. With all of that in mind I will be voting in favor of this variance.

Mr. Rohloff: I agree with Mr. Jankovsky in that the wants and needs of people often change over time. They may even need a building to house a RV. I do see the second building as more of a convenience variance than a variance out of necessity because I think that that building is large enough to house everything that you would need to store. There were two buildings though on the property when you purchased the property so I will be voting in favor of this request to allow two accessory structures on this property.

Mr. Kasaris: I will make the following findings of fact and conclusions of law. There were no neighbors here tonight in opposition to any of these requests. I find that while the land can be beneficially used and while the applicant may have created the need for the variance there still would not be an adverse effect on governmental services. The character of the neighborhood will not be substantially altered. The adjoining properties would not suffer substantial detriment as a result of the granting of this variance. Anything else? Will the clerk please call the roll for Variance #1.

Mr. Bull: Yes.

Mr. Gauman: No.

Mr. Kasaris: Yes.

Mr. Rohloff: Yes.

Mr. Jankovsky: Yes.

Ayes – four. Nays – one.

**Variance #1 granted (4-1).**

**Variance #2:**

Moved by Mr. Jankovsky, seconded by Mr. Bull to **grant a variance of 680 square feet more than the maximum square footage allowed as prescribed in Section 1270.12 (a)(1)B of the Zoning Code with regard to the size of this proposed accessory structure and shed.**

Mr. Kasaris: Any discussion? Is there any way that you could reduce the size of this structure – does it have to be as large as it is?

Mr. Frederick: Due to all of the items that I want to store in the building – it is not like I am going to have extra space. I have a boat on a trailer that would also be stored in this building.

Mr. Kasaris: How large is the boat?

Mr. Frederick: It is just a rowboat but it is on a trailer and it is sitting outside at this time. This way it would be under cover and people would not have to look at it.

Mr. Kasaris: So you are basically taking personal property, three motor vehicles, and storing them in this structure.

Mr. Frederick: That is correct.

Mr. Kasaris: What do your neighbors use their large structures for? Do you know?

Mr. Frederick: I am not sure.

Mr. Kasaris: Anyone else have any questions? Mr. Building Commissioner, what concerns do you have with regards to the loft?

Mr. Kulchytsky: If it is built to code I have no concerns with the loft.

Mr. Kasaris: You had previously suggested that you had some issues with the loft.

Mr. Kulchytsky: I do not have any issues with the loft. It does add additional square footage to the structure. Egress issues and other code requirements come into play but if it is built to code I see no reason why a partial loft should not be permitted.

Mr. Kasaris: Thank you. After reviewing the testimony and the applicant's paperwork I will be supporting this variance request. Other people in the neighborhood have this same type of large facility. This is a large piece of land. It has a depth of 500 feet. It will not affect the delivery of governmental services. I think that it will help clean up the neighborhood a little bit by allowing for the storage of these motor vehicles within an enclosed structure. It will remove these items from sight and will protect them from the weather. So although you could utilize the property without the variance, balancing all of these factors, I will be supporting this variance request. Anybody else? Since there are no further comments I will make the following findings of fact for the Board. While there may be beneficial use of the property without the variance the variance being requested is not out of character for the neighborhood. We have had testimony that there are at least three other properties in the neighborhood that have large structures. It will not affect the delivery of governmental services. There is no one here offering any objections to this variance request. Does anyone have anything to add or subtract from what was just stated? Will the clerk then please call the roll.

Mr. Gauman: Yes.

Mr. Kasaris: Yes.

Mr. Rohloff: Yes.

Mr. Jankovsky: Yes.

Mr. Bull: Yes.

Ayes – five. Nays – none.

**Variance #2 granted (5-0).**

**Variance #3:**

Moved by Mr. Jankovsky, seconded by Mr. Bull to **grant a variance of 5 feet more than the maximum height allowed for an accessory structure and to allow this structure to exceed the height of the main building (residence) which is contrary to Section 1270.04 (g) of the Zoning Code.**

Mr. Rohloff: The reason that you need that 5 feet?

