

The **Board of Zoning Appeals** of the City of North Royalton met on **September 26, 2012** to hold a Public Hearing in the Council Chambers at 13834 Ridge Road. The meeting was called to order by Dan Kasaris at 7:32 p.m.

Present: Chairman Dan Kasaris, Vice-Chairman Robert Jankovsky, Victor Bull, Anthony Rohloff, Dale Gauman, Prosecutor Donna Vozar, Director of Community Development Thomas Jordan, Secretary Lynn Brinkman.

(BZA12-11) Rick and Sue Kozimor request a variance to **Chapter 1480 "Sidewalk Construction", Section 1480.01 "Construction Required; Wavier", paragraph (a)(1) and (b)**, of the City of North Royalton Codified Code, for relief from the **concrete sidewalk requirement relative to all new construction**, for a home that they had constructed in 2003 located at **3605 Sprague Road, PPN: 489-26-001**.

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 recognized anyone wishing to be heard.

Mr. Kasaris: (Directed at Ms. Vozar) Before we get started with regards to BZA12-11, since we have not had one of these in a while, could you educate the Board on what the standards are that the Board must consider when deciding whether or not to grant a waiver for the construction of the sidewalk.

Donna Vozar: Yes. The variance for a sidewalk is going to fall under Section 1264.08 – the typical practical difficulties standards that you would apply in subsection (a)(1). You will still be applying the practical difficulties standard. The one thing that has previously been required is that a waiver be signed by the applicant agreeing that in the event that any sidewalk was to be installed in the future abutting their property they would agree then to install a sidewalk.

Mr. Kasaris: Are the applicants here? If you could please approach the microphone. Would you raise your right hand please. Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God? Please state your name.

Mr. Kozimor: Yes. My name is Rick Kozimor and I live at 3605 Sprague Road.

Mr. Kasaris: We have your packet. Please tell us why you are asking this Board to grant you this sidewalk variance.

Mr. Kozimor: My house is located on Sprague Road between State Road and Broadview Road. The layout of the land is such that we do not have storm sewers but instead ditches which are in front of the properties. Our storm sewer from the house discharges into the back and takes the water away to two creeks which are on either side of my home. There are no sidewalks from our home going east to Broadview Heights. Going west to State Road, which is about a mile and a half area, also does not allow for the construction of sidewalks due to the layout of the land. There is zero pedestrian traffic in that area. There is one sidewalk in front of the house next to mine which is owned by my sister. She bought that home about 15 years ago. I think that at that time it had been a spec home built by the contractor for the development behind me. I do not know why they decided to install a sidewalk there. There are no other sidewalks in that mile and a half stretch. Again, there is no pedestrian traffic at all, so my request is to grant me relief from the ordinance which requires that I install a sidewalk there. The reasons that I am requesting this variance is due to the layout of the land, the ditches and that construction of a sidewalk would be difficult in that area. My area is flat but it would not make any logical sense to install a sidewalk in an area where it would not be used. I would be glad to sign any type of agreement that should sidewalks be mandated to go down the road I would be more than glad to do so.

Mr. Kasaris: Thank you. Can I have a motion to move BZA12-11 from the public hearing portion of the meeting to the open meeting.

Moved by Mr. Jankovsky, seconded by Mr. Bull to **move BZA12-11 to the Open Meeting**.

Mr. Kasaris: Please call the roll.

Mr. Jankovsky: Yes.
Mr. Bull: Yes.
Mr. Rohloff: Yes.
Mr. Gauman: Yes.
Mr. Kasaris: Yes.

Ayes – five. Nays – none.

Motion carried (5-0).

(BZA12-12) Nicholas and Michelle Schmitz request a variance to Chapter 1270 “Residential Districts”, Section 1270.27 “Swimming Pools”, paragraph (b)(1)E, of the City of North Royalton Zoning Code, for relief from the **minimum rear yard setback** requirement for an **above ground pool** they wish to construct on their property located at **8940 Elmwood Oval, also known as PPN: 481-12-084.**

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 recognized anyone wishing to be heard.

Mr. Kasaris: Is the applicant here? Please approach the microphone. Would you raise your right hand please. Do you solemnly swear that the testimony that you are about to offer here tonight is the truth, the whole truth and nothing but the truth, so help you God?

Mr. Schmitz: Yes. My name is Nicholas Schmitz and I live at 8940 Elmwood Oval. We are requesting a 3 foot variance from the required 15 foot rear yard setback. We feel that the property would basically remain unchanged. We have a temporary 18 foot round pool there now which is at the same distance from the rear property line. We are proposing to install a 21 foot round pool which would be about 12 inches lower and at the same distance from the line as our temporary pool is. I hope that this is the last variance we will ever have to request. We had to get a variance for our deck and for the height of our fence around the pool. The pool is about all that we have planned for yard construction in the foreseeable future. You should not see me here again.

Mr. Kasaris: Is there anybody else who would like to speak on this issue? Can I have a motion then to remove BZA12-12 from the public hearing portion of tonight’s meeting to the open meeting.

Moved by Mr. Jankovsky, seconded by Mr. Bull to **move BZA12-12 to the Open Meeting.**

Mr. Kasaris: Please call the roll.

Mr. Bull: Yes.
Mr. Rohloff: Yes.
Mr. Gauman: Yes.
Mr. Kasaris: Yes.
Mr. Jankovsky: Yes.

Ayes – five. Nays – none.

Motion carried (5-0).

(BZA12-13) Mark Pheneger requests a variance to Chapter 1270 “Residential Districts”, Section 1270.12 “Yards for Accessory Buildings and Uses”, paragraph (b) and Section 1270.05 “Schedule of Area, Yard and Height Regulations”, of the City of North Royalton Zoning Code, for relief from the **rear yard setback** and **side yard setback** requirements for an **accessory building** he wishes to construct on his property located at **8980 Ivy Oval, PPN: 481-12-071.**

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 recognized anyone wishing to be heard.

Mr. Kasaris: Is the applicant here? Would you raise your right hand please. Do you solemnly swear that the testimony that you are about to offer here tonight will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. Pheneger: Yes. My name is Mark Pheneger. We are looking for a 5 foot variance due to the shape of our lot which runs into a point in the back. If we would go with the required 10 foot setback the shed would basically be in the middle of our yard.

Mr. Kasaris: Does anyone else have any testimony to offer with regard to this variance request? Can I then have a motion to move BZA12-13 from the public hearing portion of tonight's meeting to the open meeting.

Moved by Mr. Jankovsky, seconded by Mr. Bull to move BZA12-13 to the Open Meeting.

Mr. Kasaris: Please call the roll.

Mr. Rohloff: Yes.

Mr. Gauman: Yes.

Mr. Kasaris: Yes.

Mr. Jankovsky: Yes.

Mr. Bull: Yes.

Ayes – five. Nays – none.

Motion carried (5-0).

(BZA12-14) Chickie Investments, LLC request a variance to Chapter 1492 “Controlling Riparian Setbacks and Wetlands Setbacks”, Section 1492.06 “Establishment of Riparian Setbacks and Wetland Setbacks”, paragraph (f)(2), of the City of North Royalton Codified Code, for relief from the maximum wetland setback required for this proposed new building and parking lot facility, to be contingent upon the consolidation of these two General Industrial properties located on York Beta Drive known as PPN: 483-06-018 and PPN: 483-06-019.

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 recognized anyone wishing to be heard.

Mr. Kasaris: (Addressing Ms. Vozar): We have never had such an item come before this Board before and I have been on this Board since 2008. I am sure that we have a different standard that we have to consider because this is not our typical building code or zoning code issue. What standard does the Board have to consider when it decides whether or not to grant this requested variance?

Ms. Vozar: This is governed by Chapter 1492 “Controlling Riparian Setbacks and Wetlands Setbacks”. The criteria that the Board will look to and the factors that they will consider are found in Section 1492.11, subsection (f). Those are the factors that the Board should consider. The Board should consider the following factors – there are 16 criteria that the Board needs to consider. The applicant will present testimony on this.

Mr. Kasaris: What is the burden that the applicant has?

Ms. Vozar: This is also a practical difficulty standard.

Mr. Kasaris: So it ranges from soil type all the way down to cultivation of water and the water courses that should be avoided.

Ms. Vozar: Correct.

Mr. Kasaris: Thank you. Is the applicant here tonight?

Mr. Jordan: I have a brief presentation.

Mr. Kasaris: Sure.

Mr. Jordan: (Referring to a large topographical map) The applicant proposes to construct an approximately 5,000 square foot facility. The Industrial Park was developed nearly a decade ago out of some residential parcels that primarily had a frontage on York Road. The City, as part of the construction of the improvements of the cul-de-sac in that area, dug a drainage ditch to absorb the water that was flowing from the east to the west. This ditch was dug on what ultimately became a City owned property. That is one of the parcels that we are considering. This area directly to the north of the two original parcels is owned by the City and it has that ditch on it which is to absorb the water that is flowing from east to west. The second part of the development of that parcel was the creation of a Drainage Channel Easement, again on the City owned parcel. There is the actual dedicated street and there is the Drainage Channel Easement. Subsequent to the development of those two parcels the City, in 2005, passed an ordinance relative to riparian and wetland setbacks. These riparian and wetland setbacks are in addition to the state and federally mandated wetland and riparian requirements and the management of them. They require in some cases, such as a Category 2 Wetlands, which is what you are here about today, about a 75 foot setback in the area. In your packet you have a final layout showing both the building and the riparian setbacks. There are two parcels that were located at the end of the cul-de-sac. The building, which is again about 5,000 square feet with a detention basin, is up against two wetland setbacks. This dotted area is the wetland area. On that side they are up against the wetland setbacks.

Ms. Vozar: Mr. Chairman. I apologize for interrupting Mr. Jordan but are you referring to Map 2 on our exhibits?

Mr. Jordan: It should be dated September 12, 2012.

Mr. Kasaris: Excuse me Mr. Jordan but as far as you know are these true and accurate maps?

Mr. Jordan: Yes. The Engineering Department has supplied to the Board a memo that reviewed all of those map representations, especially that one. Working with the City's Engineering Department we did confirm the wetland status of the two parcels.

Mr. Kasaris: So what map are you looking at?

Mr. Jordan: These are really the most important ones -- there are two pages, one showing the wetlands and the other showing the building.

Mr. Kasaris: For the record we are going to mark this as Exhibit A -- it is a two page exhibit.

Mr. Jordan: That literally shows the setbacks that they are asking the variances on. The amount of area that is included in the motion before you this evening, the 0.57 acres, that is the area of the building that is within the 75 foot setback. Not all of the building is within that area. In addition, the Engineering Department has agreed with the applicant that the detention basin area, because of the natural elements of the detention basin area and for the specifics outlined in their application, has met the criteria that those areas shall be excluded from the impact area.

Mr. Kasaris: What does that mean?

Mr. Jordan: It means that the wetland area is not counted in the impacted area for the setback.

Mr. Kasaris: "Impacted area" -- what does that mean?

Mr. Jordan: It means that literally the detention basin would fall within the 75 foot setback. It indeed does but because of the nature of that detention basin - it is not considered like a parking lot or the building.

Mr. Kasaris: I got it. Thank you.

Mr. Jordan: The last thing that I did want to mention, and the applicant will talk about it, is that the City owns a landlocked parcel that is just due to the north of it. The applicant is proposing to consolidate the City owned parcel that has that Channel Easement that I mentioned at the beginning. That parcel apparently was developed -- frankly the prior owners, from my understanding and the limited information that exists in the written record that survives today, did not want to have the maintenance responsibility of it so they gave it back to the City and the City took it. Somehow or other the City was able to record that landlocked parcel with the County. (Continued on next page...)

Mr. Jordan: The applicants want to consolidate that parcel. Their agreement is to preserve that entire 2-plus acres of land as part of a conservation easement. In so doing they are mitigating the .57 area of land that they are impacting. This means that the .57 area of their property that falls within the 75 foot area, as part of Section 1492.11, requires them in some way to make up for that impact. They are doing that by conserving over 2 acres of property which is well in excess of the requirement.

Mr. Kasaris: You are referring to the City property.

Mr. Jordan: Yes. It is approximately 2.249 acres. I do want to mention one last thing. The original proposal to the City is that they actually had acquired the first parcel. They could have proceeded and eventually receive a permit to fill in the wetlands area. This means that instead of just impacting a setback area, being 75 foot away from the edge of the wetland, they actually could have built within the wetland area with some considerable time and approval. That would have had a more negative impact on the actual wetland area. Instead they went to the expense and time of acquiring the neighboring parcel. Again, they are only building a 5,000 square foot building on what now is accumulating up to a 7 or 8 acre parcel. To give you a perspective on that the City developed an approximate 50,000 square foot YMCA on approximately 9 acres. It would be a small building on this wetland parcel. They kept it out of the wetland area. They are only impacting the setback here. They acquired the neighboring parcel and are agreeing to conserve the current City owned parcel to the north. That ends my presentation. Does anyone have any questions before I sit down?

Mr. Rohloff: When you refer to the acquired 2 acre landlocked piece of land – they bought it from the City?

Mr. Jordan: Not at this time. Dependent upon their approval this evening it is then their intention to move forward.

Mr. Rohloff: The plan would be, should they receive approval tonight, that they would then purchase this parcel from the City. The agreement upon purchase would be that they would then preserve that land as wetland.

Mr. Kasaris: Anyone else? Is the applicant present? Would you please come to the microphone and raise your right hand. Do you solemnly swear that the testimony that you are about to give is the truth, the whole truth and nothing but the truth, so help you God?

Mr. Moorhead: Yes. My name is David Moorhead.

Mr. Kasaris: Did you have the opportunity to hear what Mr. Jordan had stated?

Mr. Moorhead: Yes. I am done.

Mr. Kasaris: Would you say that the information provided was accurate?

Mr. Moorhead: Yes. I will hopefully elaborate on some of that. I have also with me tonight Todd Crandall from Davey Resource Group, who did the wetland delineation for us, and Kim Kerber from MacKay Engineering, who did the actual site work development for us. If you should have any other questions they are also here to answer them. I also have with me my son, Joe Moorhead.

Mr. Kasaris: If you could all come to the microphone – anyone who may want to speak on this topic. We are going to do like we would downtown – we will do one mass swearing in. Would you all raise your right hand please. Do you solemnly swear that the testimony that you will give tonight will be the truth, the whole truth and nothing but the truth, so help you God?

Ms. Kerber: I do. My name is Kim Kerber.

Mr. Crandall: I do. Todd Crandall.

Mr. Moorhead: I do. Joe Moorhead.

Mr. Moorhead: My name is David Moorhead. I am the president and the owner, along with my son, of Chickie Investments. We are proposing to develop a music studio – a state of the art recording studio on this property.

Mr. Kasaris: If you could approach. Are these pictures of what your studio is going to look like?

Mr. Moorhead: That is correct. I wanted to walk you through, just briefly, the history of what has happened with the property and walk you through the 16 steps; as we see it, from the riparian setback. I think that I am probably now one of the most educated guys when it comes to setbacks after all of this. This is our first parcel of land (referring to PPN: 483-06-018). After we bought the property we found that there were wetlands on it. We looked at the maps, went through the process of a Phase 1, and never realized that there were wetlands. There is a final step in going through Planning Commission, where we did receive approval, but we were required to go to the Cuyahoga Soil & Water Conservation District. We did. We met Todd Houser who asked us to have someone official walk the property and tell us if we had wetlands. I called Todd Crandall, who I had never met prior to our meeting at the site, and I swore that we did not have wetlands but that he needed to go through the formality of walking the property. This is the end result and what is considered wetlands. This area is the wetland area (the darkened area depicted on the map provided). This is a 3.37 acre parcel. We have a little over one acre of wetlands on the property. Unfortunately, because of the way that they finger through the property, there is just no way to place a building on there. We are proposing a 4,800 square foot building and 20 parking spaces are required by the Code. When we overlay the building this is the location of the building and the parking (referring to one of the maps provided). There was no way to place the building on the site without doing one of two things – either try to purchase a piece of property next to us or apply for a nationwide permit. Quite honestly, from a time standpoint, we would like to start to build this year if we could and we knew that the second option would be a long process. During the process, when we looked at it, it seemed to make a lot more sense to not impact the wetlands and if we could impact the setbacks versus the wetlands. So we went to the owners of the parcel next door which is PPN: 483-06-019. We learned our lesson the first time so before we purchase this property we want to make sure that we can accomplish what we want. This is actually the layout of the wetlands on the second property which on a percentage basis is even larger than what we had on the first property. This is a 1.86 acre parcel where we have roughly .9 acres of wetland. This is the cul-de-sac on York Beta Drive. This is the first and second parcel and this is the City parcel that Mr. Jordan had referred to earlier. This parcel is totally landlocked. In conversations with Tom Jordan and the Engineering Department we talked about what some of our options were on this as we relate it to the property. We could fit the building in here but we would then be very close to all of the wetlands and we would violate the wetland setbacks. The required setback is 75 feet. We would actually sit 73 feet, at the closest point, into the wetland setback. The Ohio E.P.A. and the Army Corp of Engineers actually allow you to build right up to the wetlands. So as it relates to the Ohio E.P.A. and the Army Corp we still have 2 feet before we would then impact the wetlands, which is what we are trying not to do here. So this is the final layout which you all have in your packet. This is the building and the dark lines around the outside are actually the grading limits. So it is not necessarily the parking lot or the building itself but it is the actual grading limits of where we would grade. So Kim Kerber (from MacKay Engineering) designed two water detention basins, one up here and one down below. The one will collect all of the water that comes off the parking lot and the building which will then feed into this detention basin down below. From there it will be processed into the City sewer system. On this whole piece of property, over 7 acres, this attached area is actually the area that we could construct a building if we complied with the 75 foot setback requirement. That small area is actually the only area that you could build on that site. We have a relatively small building, commercially speaking. It is 4,800 square feet. There are only 20 parking spaces required. Without violating some setback requirements you basically have 7 acres of land in the City which is non-developable. That is the bottom line here. We have a 3 acre parcel that we own that could not be developed unless we apply for a nationwide permit. So we received approval through Planning Commission and we have made some changes where, should it be approved here tonight, we will go back to Planning Commission again. We moved some of the parking from one side to the other. We put the location of the building so that we could move closer to the actual setbacks. These two areas are Category 2 Wetlands. Those are what require the 75 foot setback. These wetlands, which are shown as Wetland D and Wetland C on your map, are Category 1 Wetlands which do not require a setback – you could build right up to them per City Code. So after working on the plan with Todd Crandall and Kim Kerber we then took the plan to Todd Hauser, who represents Cuyahoga County Soil & Water District, and we asked him to look at it and tell us whether it was a workable situation and whether he would endorse it. He has done so. You should all have a letter in your packet. They have looked at it and said that it is workable. We have actually done some things to help enhance the wetlands situation on the property. We are going to be putting wetland-type plantings in these retention ponds to help create a better environment for the processing of water. It will help maintain the wetland feel of the property. Our intention is to try to keep it as a park-like setting. It is a music recording studio. That is our goal. We have no problem with taking this piece of property and creating a conservation easement. (Continued on next page...)

Mr. Moorhead: Again, you have to mitigate one to one as it relates to the setbacks. So we have roughly ½ acre, .57 acres, of property that needs to be mitigated because of the location and the setbacks. We have 2.25 acres so it is almost 4 to 1 – it is 3.94 to 1 that we are going to mitigate. I would just like to quickly address the 16 points found under Section 1492.11 of the Zoning Code. I would like to start with Section 1492.11, paragraph (b) which states the following. *“The Board of Zoning Appeals may consult with representatives from the Cuyahoga SWCD; the Ohio Department of Natural Resources, Division of Natural Area; the Ohio Environmental Protection Agency, Division of Surface Water; the Army Corps of Engineers...”* We have already done that. We have already gone to the County which I think that the City relies upon for their direction. We have the approval from Todd Houser and Cuyahoga County Soil & Water. That is an important point to me. I am going to walk through each one of the steps which are to be reviewed so as to determine whether or not to grant variances. These are the things that the Board of Zoning Appeals shall consider.

Paragraph (f)(1): *“The extent to which the requested variance impairs the flood control, soil erosion control, sediment control, water quality protection or other functions of the riparian and/or wetland area. This determination shall be based on sufficient technical and scientific evidence as provided by the applicant and the agencies, at the applicant’s expense, listed in subsections (a) through (e) thereof”.* The maps that we have provided show that we are not in any type of flood zone. In addition we are putting in wetland enhanced detention basins at the request of Todd Houser who represents Cuyahoga County Soil & Water. That is to help solidify the wetlands on the property. That basically helps to filter out the sediment before it is put into the City sewer system. One of the biggest things to me is that we are going to the extent of purchasing the second piece of property so as to not violate the wetlands. We are just going to violate the one wetland setback. When you have wetland setbacks you have to mitigate upstream. We are doing that. This piece of property is upstream from the other parcel.

Paragraph (f)(2): *“The soil type and natural vegetation of the parcel as well as the percentage of the parcel that is in the 100-year floodplain...”* Again, we are not.

Paragraph (f)(3): *“Varying the front, rear and side yard setbacks before the riparian and wetland setbacks are varied.”* I think that you can see from the drawing that there was just nowhere else to go. There are no options in any direction as far as moving the building or the parking.

Paragraph (f)(4): *“Variances should not be granted for asphalt or concrete paving in the riparian and wetland setbacks in any situation where gravel or porous pavement (i.e., porous pavers and similar products) will do the job.”* We could put in a gravel parking lot and a gravel driveway but when you look at the long term impact, especially in an environment where we have snow and snowplowing, there would be more potential violation to the wetland setbacks. By using asphalt we can curb it, contain the water, and close the detention basins so that we do not have the contaminated soil.

Paragraph (f)(5): *“Soil-disturbing activities permitted in a riparian and/or wetland setback through variances should be implemented in order to minimize clearing to the extent possible, and to include best management practices necessary to minimize soil erosion and maximize sediment control.”*

Again, we have submitted our plan to the County and have been given the approval. We have a letter from the Cuyahoga County Soil & Water Conservation District as well as stamped drawing approvals, which we have submitted to you.

Paragraph (f)(6): *“The presence of significant impervious cover, or smooth vegetation such as maintained lawns in riparian setback areas compromises their benefits to the City.”*

Again, we had the option of applying for a nationwide permit but we chose not to. Our mitigation is 4 times what is required by the City itself. We are trying to maintain a park-like setting. We are going to maintain the wetlands. We are really going to maintain the property as it is with the exception of where we build.

Paragraph (f)(7): *“A reduction in storm water infiltration into the soil on wetland areas will occur.”* We are in no way impeding any of the flow into the wetlands themselves. We are collecting all of the water from the building and the parking lot which will go to the detention basin.

Paragraph (f)(8): *“The degree of hardship these regulations place on the applicant and the availability of alternatives to the proposed activity.”* We have a parcel where the 75 foot setback requirement in place would not allow us to build on the parcel without a variance. I emphasize that it is a beautiful Industrial Park which is what drew us to the City. (Continued on next page...)

Mr. Moorhead: We were looking at properties in other cities but when we saw this property we were drawn to it. It is a beautiful 7 acres. I would build my house on this property. There are so many trees. It is a shame, in my opinion, for the City to have these 7 acres sit there and not be developed.

Paragraph (f)(9): *“A parcel existing at the time of passage of this section is made substantially unbuildable.”* I think that Tom (Mr. Jordan) eluded to that earlier. This is something that happened after the property was there.

Paragraph (f)(10): *“A requested above-ground fence does not increase the existing area of mowed grass or lawn.”* We will not have a fence on the property.

Paragraph (f)(11): *“Modifying parking requirements before varying the riparian setback.”* We have actually done that. When we came through Planning Commission the first time we had the parking in a different location. We have explored different ways to position the building and parking to provide no impact to the wetlands and the least impact to the setbacks. We have placed the parking in a different area as was originally proposed and we have placed the building as close as we could to this area which is a Category 1, which allows us to go right up to the setback.

Paragraph (f)(12): *“Modifying building shape, size or design to avoid or minimize intrusion into the riparian setback.”* We have already modified our original building plan to make our building and parking conform to the existing site, inclusive of all wetlands.

Paragraph (f)(13): *“In the case of a lot made substantially unbuildable by this regulation, consider the minimum variance needed to make it buildable for an appropriately sized and compatibly designed structure, while following the guidance provided in this section.”*

Again, we have 3 lots that are unbuildable by this regulation. We have spent many hours exploring ways that would least impact the wetlands and associated setbacks. We have ½ acre that actually violates the setbacks on a 7- plus acre parcel which amounts to about 7.6 percent of the total parcel is going to be violated.

Paragraph (f)(14): *“Whether the variance will increase the likelihood for flood or erosion damage to either the applicant’s property or to other properties.”* There is no likelihood that the setback variance will create any flood erosion or damage to neighboring properties. We will be collecting all storm water and directing it to wetland enhanced detention basins.

Paragraph (f)(15): *“Culverting of watercourses should be avoided.”* We are not culverting any watercourses.

Paragraph (f)(16): *“Whether the variance will result in the need for artificial slope or bank stabilization measures that could interfere with the function of the riparian zone.”*

There is no need for artificial slope or bank stabilization measures that will interfere with the function of the riparian zone. There are no streams or anything going through the property. I think that I have covered most of it. Are there any questions?

Mr. Kasaris: Are there any questions at this time?

Mr. Rohloff: On the 2 acre parcel to the north – was an impact survey done there? Does it have a wetland?

Mr. Moorhead: I do not know. That is the City parcel.

Mr. Crandall: I am the one who originally did the wetlands delineation on these parcels. I have not actually done a wetland delineation of this parcel to the north.

Mr. Kasaris: You are referring to the parcel owned by the City.

Mr. Crandall: That is correct. I can say that there are wetlands on this parcel. Based on what I saw when I was out there I would estimate anywhere from 50 – 75% of this parcel owned by the City is currently wetland.

Mr. Rohloff: I guess that if you were to go on the high end of that 75% you would still have ½ acre left over. Is that correct? It would still mitigate the ½ acre that you need – is that right?

Mr. Crandall: Correct.

Mr. Rohloff: You would still be meeting the intent of the Code.

Mr. Kasaris: Does anyone else have any questions for the applicant? Will you be taking these exhibits with you? We would like to refer to all of these exhibits / boards as Exhibit D. Thank you.

Ms. Vozar: Mr. Chairman. Just so the applicant knows, the Board of Zoning Appeals will have these exhibits / displays for you should you need them for any future meetings.

Mr. Kasaris: If you should need them for Planning Commission or any City Council meeting they will be located at the Building Department. We need to keep them because we are a quasi-judicial board and they are evidence that was used so we need to maintain them as evidence. Could I have a motion to move BZA12-14 from the public hearing portion of the meeting to the open meeting.

Moved by Mr. Jankovsky, seconded by Mr. Bull to **move BZA12-14 to the Open Meeting.**

Mr. Kasaris: Please call the roll.

Mr. Gauman: Yes.

Mr. Kasaris: Yes.

Mr. Jankovsky: Yes.

Mr. Bull: Yes.

Mr. Rohloff: Yes.

Ayes – five. Nays – none.

Motion carried (5-0).

Mr. Kasaris: Can I have a motion to adjourn the Public Hearing?

Moved by Mr. Jankovsky, seconded by Mr. Bull to **adjourn the Public Hearing.**

Mr. Kasaris: Call the roll.

Mr. Kasaris: Yes.

Mr. Jankovsky: Yes.

Mr. Bull: Yes.

Mr. Rohloff: Yes.

Mr. Gauman: Yes.

Ayes – five. Nays – none.

Motion carried (5-0).

Public Hearing adjourned at 8:21 p.m.

The **Board of Zoning Appeals** of the City of North Royalton met on **September 26, 2012** to hold an **Open Meeting** in the Council Chambers at City Hall, 13834 Ridge Road. The meeting was called to order by Chairman Dan Kasaris at 8:22 p.m.

Present: Chairman Dan Kasaris, Vice-Chairman Robert Jankovsky, Victor Bull Anthony Rohloff, Dale Gauman, Prosecutor Donna Vozar, Director of Community Development Thomas Jordan, Secretary Lynn Brinkman.

Mr. Kasaris: The approval of the Minutes for July 18, 2012 will be held off until the next meeting in October because several members of the Board did not receive a copy of these Minutes.

OPEN MEETING

New Business:

(BZA12-11) Rick and Sue Kozimor request a variance to Chapter 1480 “**Sidewalk Construction**”, Section 1480.01 “**Construction Required; Waiver**”, paragraph (a)(1) and (b), for relief from the **concrete sidewalk requirement relative to all new construction**, for a home that they had constructed in 2003 located at **3605 Sprague Road, PPN: 489-26-001**.

Moved by Mr. Jankovsky, seconded by Mr. Rohloff to **grant a variance for relief from the installation of a public sidewalk at this time as prescribed in Section 1480.01 (a)(1) and (b). This variance to be approved with the stipulation that when and if sidewalks are mandated for that particular area of the City the applicants would then comply at that time.**

Mr. Kasaris: I drove the area and I counted 13 – 14 homes between the Broadview Heights line and this particular property where there are no sidewalks. There is a sidewalk directly next to this property. Based on the testimony that we have heard and the pictures that were provided to us I find that we would not be altering the character of the neighborhood as it exists. It would not affect the delivery of any governmental services. There is no pedestrian traffic on Sprague Road in part due to the condition of the road. I feel that practical difficulty has been established and I would support this variance.

Mr. Jankovsky: I would concur. I agree that it meets the criteria that this Board is looking for. I would like to add that in the late 1990’s and later, at a time when there was a lot more building going on, including some main roads such as Albion and Abbey, and many of those main roads did not have sidewalks so the granting of this kind of variance was a common practice. This type of variance was granted until such time that a sidewalk program would be initiated by the City. I think that the granting of this variance would be the right thing to do at this time.

Mr. Bull: I concur.

Mr. Rohloff: I concur.

Mr. Gauman: I concur.

Mr. Kasaris: Anyone else wish to speak on this? Based on the packet of information provided to us and the sworn testimony of the applicant I believe that the Board has found that the character of the neighborhood would not be altered. There would be no adverse effect on governmental services. The pedestrian traffic is minimal in this area. The homeowner has agreed that in the event that the City of North Royalton mandates sidewalks to be installed in this area that the applicant would, at that point and time, install a sidewalk. Anything else? Will the clerk please call the roll.

Mr. Jankovsky: Yes.

Mr. Bull: Yes.

Mr. Rohloff: Yes.

Mr. Gauman: Yes.

Mr. Kasaris: Yes.

Ayes – five. Nays – none.

Variance granted, with stipulation (5-0).

Ms. Brinkman: Mr. Kozimor, I will contact you once I find a copy of that Sidewalk Waiver for you to sign.

(BZA12-12) Nicholas and Michelle Schmitz request a variance to Chapter 1270 “Residential Districts”, Section 1270.27 “Swimming Pools”, paragraph (b)(1)E, for relief from the minimum rear yard setback requirement for an above ground pool they wish to construct on their property located at 8940 Elmwood Oval, also known as PPN: 481-12-084.

Moved by Mr. Jankovsky, seconded by Mr. Bull to **grant a variance of 3 feet less than the minimum rear yard setback requirement as prescribed in Section 1270.27 (b)(1)E of the Zoning Code with regard to the location of this proposed above ground pool.**

Mr. Kasaris: Any discussion?

Mr. Jankovsky: When I first saw this request my first reaction was that perhaps the City needs to do a better job in instructing applicants as to exactly what a variance request is designed for. My opinion, in having a lot of experience with the B.Z.A., is that the Zoning Code should be a blueprint of what a particular property needs to conform with so as to fit in with the designs of those who formulated the Zoning Code and to keep the neighborhoods in conformance with each other. I think that we also need to impress upon applicants that a variance should be more of a “need” than merely just a “want”. A 3 foot variance such as this for a pool is not such a big deal and I am probably going to vote for it. My concern is that we are going to go from an 18 ft. pool to a 21 ft. pool and I am not sure that that will make such a difference outside of requiring this variance. The original pool meets our Code. The existing pool did not require a variance. The proposed pool does require a variance. You kind of converted me when you said that you would not be back again because my thoughts were what if you decided next year to have a 24 ft. pool or whatever. I think that we need to give our applicants a little better idea of what a variance is all about. I do not see any problem though with it meeting the criteria. There have been no objections by any of the adjoining properties. I will be voting for this variance.

Mr. Kasaris: I do have a question for the applicant. Could you please state your name.

Mr. Schmitz: Nicholas Schmitz.

Mr. Kasaris: I would remind you that you are still under oath. Is there a Homeowner’s Association for your development?

Mr. Schmitz: No.

Mr. Kasaris: Thank you. I find that the variance request is minimal. It does not affect governmental services. I have not heard any evidence that it is out of character with the neighborhood. I do echo the thoughts of Mr. Jankovsky however – a variance is something that should be needed and not created. You have an 18 foot pool and want a 21 foot pool. I will probably vote for it but one factor against this request is that you are creating the need for the variance because you do actually have a pool at the current time. I will most likely support it.

Mr. Bull: (Addressing the applicant) There is a difference in the pools though, besides the size, is there not?

Mr. Schmitz: Yes. It is going to be permanent as opposed to what we have now. It will contain more water at this size and you can get a deeper pool at this size. The temporary pool that we currently have is 48 inches. We are actually moving it 3 foot closer to the house. The temporary pool that we have is about 6 foot away from the house. The setback will be about the same.

Mr. Bull: Thank you.

Mr. Kasaris: Anyone else have any questions or comments? The statements that have been made by the Board indicate that the variance being requested is not substantial. There would be no effect on governmental services. The applicant, however, is creating the need for the variance. Will the clerk please call the roll.

Mr. Bull: Yes.
Mr. Rohloff: Yes.
Mr. Gauman: Yes.
Mr. Kasaris: Yes.
Mr. Jankovsky: Yes.

Ayes – five. Nays – none.
Variance granted (5-0).

Ms. Brinkman: I have your application so I will turn it in for review.

(BZA12-13) Mark Pheneger requests a variance to Chapter 1270 “Residential Districts”, Section 1270.12 “Yards for Accessory Buildings and Uses”, paragraph (b) and Section 1270.05 “Schedule of Area, Yard and Height Regulations”, for relief from the rear yard setback and side yard setback requirements for an accessory building he wishes to construct on his property located at 8980 Ivy Oval, PPN: 481-12-071.

Variance #1:

Moved by Mr. Jankovsky, seconded by Mr. Bull to grant a variance of 5 feet less than the required rear yard setback as prescribed in Section 1270.12 (b) of the Zoning Code with regard to the location of this proposed accessory structure.

Mr. Kasaris: Any discussion?

Mr. Bull: I have a question for the applicant

Mr. Kasaris: Could the applicant approach the microphone. Just to remind you that you are still under oath. Could you please state your name for the record.

Mr. Pheneger: Mark Pheneger.

Mr. Bull: Have any of your neighbors complained about this?

Mr. Pheneger: No.

Mr. Bull: Thank you.

Mr. Jankovsky: I believe that this request meets all of the criteria. Mr. Pheneger’s prior comments made sense in that he wants to preserve the most usable part of his property. I will be voting in favor of this variance.

Mr. Kasaris: Anybody else? I will be supporting this request for a variance. For one reason, as you just indicated Mr. Jankovsky, it will preserve the property. There will be no substantial effect on governmental services. The character of the neighborhood will not be altered or changed. I do not think that the variance is substantial. I have indicated that those are the findings of the Board. Will the clerk please call the roll for Variance #1.

Mr. Rohloff: Yes.
Mr. Gauman: Yes.
Mr. Kasaris: Yes.
Mr. Jankovsky: Yes.
Mr. Bull: Yes.

Ayes – five. Nays – none.
Variance #1 granted (5-0).

Variance #2:

Moved by Mr. Jankovsky, seconded by Mr. Bull to grant a variance of 5 feet less than the required side yard setback as prescribed in Section 1270.12 (b) / 1270.05 of the Zoning Code with regard to the location of this proposed accessory structure.

Mr. Kasaris: Any discussion?

Mr. Jankovsky: My comments would mirror those that I made with regard to the first variance.

Mr. Kasaris: Anybody else have anything to add? I will issue the same findings and comments that I made with respect to Variance #1. Will the clerk please call the roll.

Mr. Rohloff: Yes.

Mr. Gauman: Yes.

Mr. Kasaris: Yes.

Mr. Jankovsky: Yes.

Mr. Bull: Yes.

Ayes – five. Nays – none.

Variance #2 granted (5-0).

(BZA12-14) Chickie Investments, LLC request a variance to Chapter 1492 “Controlling Riparian Setbacks and Wetlands Setbacks”, Section 1492.06 “Establishment of Riparian Setbacks and Wetland Setbacks”, paragraph (f)(2), for relief from the maximum wetland setback required for this proposed new building and parking lot facility, to be contingent upon the consolidation of these two General Industrial properties located on York Beta Drive known as PPN: 483-06-018 and PPN: 483-06-019.

Mr. Kasaris: Before I entertain a motion I have just one question for you. I have in front of me a plat of the area that indicates Parcel 2A, Parcel C and Parcel D. Will those be the parcels that you will be consolidating?

Mr. Moorhead: David Moorhead.

Mr. Kasaris: What parcels will you be seeking to consolidate?

Mr. Moorhead: Parcel C, Parcel D and Parcel B.

Mr. Kasaris: So you will be consolidating Parcel B, Parcel C and Parcel D – not Parcel 2A. Thank you.

Moved by Mr. Kasaris, seconded by Mr. Jankovsky to grant a variance of 73.9 feet with regard to the maximum wetland setback for this proposed building and parking lot facility as prescribed in Section 1492.06 (f)(2) of the Codified Ordinances. To be granted based on the following four conditions: 1. The applicant must secure a lot consolidation for Parcels D, C and B as set forth in Exhibit C that will be made part of the record; 2. The variance approval be contingent upon Planning Commission approval of their revised plan; 3. The variance approval requires the execution of a Variance Release and Waiver form by the applicant as set forth in Section 1492.11 (g); 4. The applicant’s submission of a statement as set forth in Section 1492.11 (h)(7) and (h)(8).

Mr. Kasaris: Any discussion or any further questions?

Mr. Rohloff: In plain English, just for the record, what was that last condition?

Mr. Kasaris: It requires the applicant’s submission of a statement as set forth in Section 1492.11 (h)(7) and (h)(8). Donna ...

Ms. Vozar: Yes. Prior to granting any variance that results in a loss of riparian or wetland function or setback area the applicant must submit a statement that identifies all requested losses and evaluation of mitigation needs and documentation of the plan mitigation to offset the losses. This statement will be submitted to the Ohio E.P.A. as part of the community’s Annual Storm Water Program Report. That is according to paragraph (h), subparagraph (7). Section 1492.11, paragraph (h)(8) states as follows: *“Prior to granting any variance that results in a loss of riparian or wetland functions or wetland setback area, the applicant must submit a statement that legally binds the applicant to complete, at his or her personal expense, any future mitigation, and to pay any penalties or fines that may be assessed or assigned to the community by any regulatory authority relative to the granting of any of the applicants requested variances under this section.”* (Continued on next page...)

Ms. Vozar: Also, according to our Ordinance, before variances can be granted it does require the execution of a Variance Release and Waiver form by the applicant. I believe that Chairman Kasaris's first condition actually spoke to the consolidation – you cannot consolidate unless you own it. The condition specifically addresses the requirement that the applicants acquire ownership of those parcels and then consolidate them. This would all happen when they go to Planning Commission. Does that clarify it?

Mr. Rohloff: Yes. Thank you.

Mr. Kasaris: Anybody else?

Mr. Jankovsky: Mr. Chairman, I believe that Mr. Moorhead's presentation was probably the most thorough that I have heard since I have been on this Board now or previously. His presentation was also brought down to a level in which a layperson in these matters could actually understand it. I will be voting for this.

Mr. Kasaris: I agree. Your presentation was pretty thorough – good job. You have to establish practical difficulties and, in my mind, you have shown that this is not a flood zone and you are actually enhancing the wetland area. There is no other place to locate this building. You are not going to be contaminating the wetlands with any gravel or anything like that. You are mitigating 4 times more than is required by law. As you indicated this parcel is really not buildable without this variance request being granted. There is no actual reduction of the wetland – you are touching the setback and not going into the wetland area. You are not going to install an above ground fence. You will be constructing a relatively small building compared to this large parcel of land. You are not creating any artificial slopes or banks. Based on all of those reasons I will be supporting this variance request.

Ms. Vozar: Mr. Chairman, if I could. I would request at this time, as we usually do when we have contingencies and before the Board moves forward to vote, that the applicant come forward and give his consent to these conditions.

Mr. David Moorhead came to the microphone.

Ms. Vozar: As you heard the Chairman state, as part of this variance that will be voted on, the Board will be imposing various conditions. I need to ask if you are willing to agree to those conditions. The first condition is if you would agree to the purchase and consolidation of all 3 parcels noted on Exhibit C. Do you agree to that?

Mr. Moorhead: Yes.

Ms. Vozar: Do you agree to the condition that the variance approval be contingent upon Planning Commission approval of your revised plan?

Mr. Moorhead: Yes.

Ms. Vozar: Do you also agree to the condition that was imposed that you will sign the Variance Release and Waiver form set forth in Section 1492 which will be provided to you by the City?

Mr. Moorhead: Yes.

Ms. Vozar: We also have the statements that are required under subsections (7) and (8) of the Code – do you agree to that?

Mr. Moorhead: Yes.

Ms. Vozar: That is all that I have Mr. Chairman.

Mr. Kasaris: Anyone have anything else? With respect to the Board's findings I would incorporate my reasons and Mr. Jankovsky's reasons for supporting this application. Will the clerk please call the roll.

Mr. Gauman: Yes.
Mr. Kasaris: Yes.
Mr. Jankovsky: Yes.
Mr. Bull: Yes.
Mr. Rohloff: Yes.

Ayes – five. Nays – none.
Variance granted (5-0).

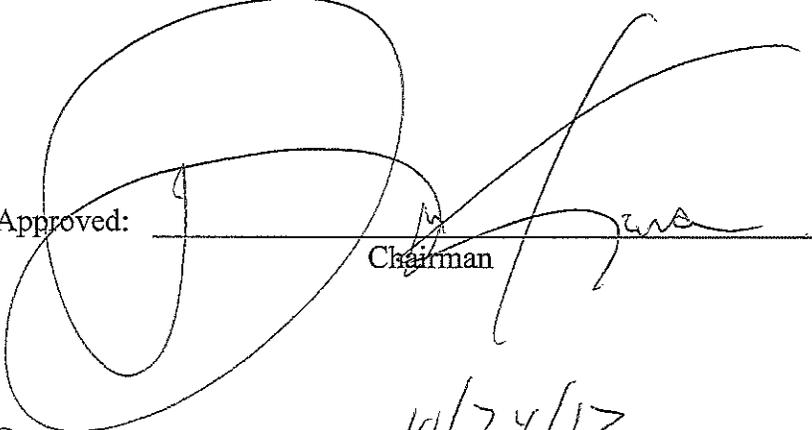
Mr. Kasaris: Anything else? May I have a motion to adjourn?

Moved by Mr. Bull, seconded by Mr. Jankovsky to **adjourn the B.Z.A. meeting of September 26, 2012.**

Mr. Kasaris: Clerk please call the roll.

Mr. Kasaris: Yes.
Mr. Jankovsky: Yes.
Mr. Bull: Yes.
Mr. Rohloff: Yes.
Mr. Gauman: Yes.

Ayes – five. Nays – none.
Motion carried.
The Board of Zoning Appeals Meeting adjourned at 8:50 p.m.

Approved:  _____
Chairman

Date: 10/24/12

Attest:  _____
B.Z.A. Secretary