

The Board of Zoning Appeals of the City of North Royalton met on **January 26, 2009**, to hold a Public Hearing, in the Council Chambers at 13834 Ridge Road. The meeting was called to order by Chairman Neil Price **at 7:30 pm**

Present: Chairman Neil Price, John Ranucci, Paula Recker, Tony Caraballo,
Councilman Dan Kasaris, Prosecutor Donna Voza,
Zoning Inspector Joe Hartman,
City Engineer Mark Schmitzer, Secretary Julie Broestl.

(BZ09-01) Champion Windows and John and Therese Misenko request a variance to Chapter 1270 "Residential Districts", Section 1270.05 "Schedule of Area, Yard and Height Regulations", of the City of North Royalton Codified Code, for relief from the rear yard setback requirement for a patio room addition that they wish to construct onto the back of their home which is located at **6609 Willow Lake Drive, PPN: 487-17-038**.

Frank Richard Voss approached the microphone.

Chairman Price: Raise your right hand please. Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. Voss: So help me God.

Chairman Price: State your name and address.

Mr. Voss: My name is Frank Richard Voss. My address is 144 Hawthorne Drive, North Benton, Ohio, 44449. I am a representative for Champion and also representing the homeowners. I think the Board has apparently most of the application. Apparently, we are missing, and I am a little confused about this, possibly something from the homeowners association. Although in reading the question number 8, I am a little confused of what exactly we should be looking for. First of all it says copies all any Homeowners Association requirements. I don't know if there is suppose to be a dash there or if they are missing of. But it is certainly poor English to begin with. Copies of all or any Homeowners Association requirements related to the requested variance, such as covenants, deed restrictions, and the like. As far as I know, you have had no response from any of the letters you sent out to the 500-foot area surrounding this home, which indicates to me that there are no such things that we are looking for as far as the homeowners association is concerned. Number 8 does not in any way or matter of fact say anything as far as homeowner's approval. Homeowners Association approval is missing from question number 8.

Chairman Price: If I could just read question number 8. It says copies of all

Mr. Voss: I'm sorry, it says copies all, there is no of in there.

Chairman Price: Of all.

Mr. Voss: I have it say copies all any homeowners association.

Chairman Price: I have of all.

Mr. Voss: Well this is what we were given.

Julie Broestl: That is new and was typed up about two months ago. What is left out of there that is so important?

Mr. Voss: I'm sorry?

Julie Broestl: What's missing out of there?

Chairman Price: The word is of all is transposed.

Julie Broestl: Of all?

Chairman Price: Transposed.

Mr. Voss: It's not transposed, it's missing.

Dan Kasaris: Can you hand that to me please?

Mr. Voss approached the bench and gave the application to Dan Kasaris.

Chairman Price: Would you agree that no matter how it is written that you were suppose to supply information from the homeowners association?

Mr. Voss: I don't know how to answer that because it says requirements related. I don't know what is related? Apparently, there is nothing related to it.

Chairman Price: Do you have a homeowner association bi-laws, or requirements, or restrictions, any documents that the homeowners association provides?

Mr. Voss: I don't have any of that, no.

Chairman Price: Does the homeowner?

Mr. Voss: I don't believe they do.

Chairman Price: Does the people you work for?

Mr. Voss: I don't believe so.

Chairman Price: Is there a homeowner association?

Mr. Voss: Yes.

Chairman Price: And you have no documents, bi-laws or covenants, any information what-so-ever regarding this?

Mrs. Misenko said from the audience that she had it at home and that she didn't think that she had to bring it.

Donna Vozar: Mr. Chairman, if I could. On the front sheet of the application at the very bottom it has a line where it says 'Homeowners Association letter granting the request'.

Chairman Price: Yes on the first page.

Donna Vozar: I think that this Board has always taken the position that when there is a Homeowners Association the Board has always requested, as part of the application, and even if it is not submitted initially with the application, the Board gives the applicant the opportunity to go to their Homeowners Association and get a letter and then come back before the Board and submit to them and they proceed. The reason why the Board does that is because, again, granting a variance is disfavored in the law. It goes against the spirit and content of our Ordinances. So, granting of the variance is to be guarded cautiously, and to be granted when needed and when the conditions of the Code have been met. If by some chance the Homeowners Association, for whatever reason, would not give their approval, because this variance would be in violation of a deed restriction, or some agreement that the parties have, then obviously the Board would not go forward and grant a variance in violation of that, or certainly the Board would take it consideration. That is why the Board has always requested the letter from the Homeowners Association prior to them granting a variance.

Mr. Voss: I do not have the paper that says anything about the Homeowners Association granting a variance. I don't know if that was part of the original packet or not? What I would like to ask the Board to do is to approve the variance, if they feel that they would approve the variance, with the stipulation that we get the letter from the Homeowners Association stating that the association has no problem with this the variance that this variance would be granted.

Chairman Price: Do you have more?

Mr. Voss: Does the Board wish that we go through with the variance or are you not aware of what the variance is?

Chairman Price: If you have any more to add.

Mr. Voss: I don't have any more to add other than that we when are talking of the spirit of zoning, I don't believe the spirit of zoning is set up to punish the homeowner, but rather to have the homeowner perform to what the spirit of zoning actually is, and that is certainly what we intend to do.

Dan Kasaris: Mr. Chairman, may I?

Chairman Price: Yes.

Dan Kasaris: So we can state the reasons for the variance, the reasons the variance is requested?

Mr. Voss: The backyard is situated in such a matter that there are transmission lines in the rear of the property and the turnpike runs through the rear of the property. The further you go back in the yard there really isn't any useful space. There are no neighbors that are going to be disturbed from the rear of the property. If you look north of that particular property, there is actually a house that sits back into that encroachment quite a bit. Again, I don't have a picture of that unfortunately. I have a picture on my phone and I can pass it around if the Board would like to see it? I don't know if the Board has had the opportunity to visit the site or not. I believe that the house is two houses north of the customer's house. It does stand back fairly substantially; I would guess probably at least a ten foot area going closer back. That is primarily the reason why we are looking for this variance. Again, going along with the spirit of the Code, not to prohibit the homeowners from enjoying their backyard. In our opinion, there would be no disruption as far as the neighborhood is concerned. There is nobody in the backyard and nothing would be seen from the front yard. I believe that is all we have at this point.

Chairman Price: Okay. We may have some questions in the open meeting. Thank you. Anyone else? Motion for adjournment.

Moved by Paula Recker, seconded by Dan Kasaris, to adjourn the Public Hearing.

Chairman Price: I have a motion and a second, call the roll.

Tony Caraballo: Yes.
Dan Kasaris: Yes.
Paula Recker: Yes.
John Ranucci: Yes.
Chairman Price: Yes.

**Ayes – All. Nays – none.
Motion carried. (5-0)**

Meeting adjourned at 7:47 pm

The Board of Zoning Appeals of the City of North Royalton met on **January 26, 2009**, to hold an Open Meeting, in the Council Chambers at 13834 Ridge Road. The meeting was called to order by Chairman Neil Price **at 7:44 pm**

Present: Chairman Neil Price, John Ranucci, Paula Recker, Tony Caraballo, Councilman Dan Kasaris, Prosecutor Donna Vozar, Zoning Inspector Joe Hartman, City Engineer Mark Schmitzer, Secretary Julie Broestl.

Chairman Price: I will entertain a movement for the approval of minutes of November 24, 2008 and December 15, 2008.

Moved by Dan Kasaris, seconded by John Ranucci to approve the minutes of both meetings.

Chairman Price: I have a motion and a second to approve the minutes. Call the roll.

Dan Kasaris: Yes.
Tony Caraballo: Yes.
John Ranucci: Yes.
Chairman Price: Yes.
Paula Recker: Yes.

**Ayes – all. Nays – none.
Minutes approved. (5-0)**

Old Business:

(BZ08-35) Verizon Wireless, Schnellz Wells, and SBC Tower Holdings request a variance to Chapter 1290 “Wireless Telecommunications Facilities”, Section 1290.05 “Other Districts”, paragraph (b)(4), for relief from the maximum square footage allowed for an equipment shelter that they wish to construct on this property located at **10922 State Road, PPN: 489-11-001.**

Chairman Price: Julie would you please read the notice from the applicant.

Letter was read to the Board and audience which is attached to the back of these minutes stating that the applicants wish to be tabled until the March Board of Zoning Appeals meeting.

Paula Recker: Mr. Chairman.

Chairman Price: Paula.

Paula Recker: With the applicant requesting to be tabled, I would have no problem with doing that at this time. I would rather have the applicant present and fully produce evidence for us to consider rather than to rush through with the application as presented so far.

Chairman Price: Is there a consensus to table this for two months, until the March meeting?

Dan Kasaris: It's fine with me Mr. Chairman.

John Ranucci: Mr. Chairman, I'm okay with it also.

Tony Caraballo: I don't have a problem with it also Mr. Chairman.

Donna Vozar: Mr. Chairman, if I could state just for the record. Pursuant to Section 1264.05(b), the Board shall act within 60-days after an appeal has been presented. Favor to act within such period shall be considered approval of the appeal unless an extension of time is mutually agreed upon. Based upon the request from the applicant and upon the Board consensus, I would like to make sure it is clear for the record that the extension is mutually agreed upon for the additional meeting until the next meeting which will be in March, correct?

Julie Broestl: March.

Chairman Price: Just to make sure that everyone is on board let's call the roll on granting the extension and leaving it tabled until the March BZA meeting. Call the roll.

Paula Recker: Yes.
Tony Caraballo: Yes.
Dan Kasaris: Yes.
Chairman Price: Yes.
John Ranucci: Yes.

Ayes – all. Nays – none. (5-0)

Applicants tabled until March BZA meeting.

(BZ08-36) Asphalt Recycling Systems / Angelo Benedetti and Sunshine Diversified / Tom Unik request a variance to Chapter 1276 “Business Districts”, Section 1276.03 “Use Regulations for Local Business Districts”, to allow manufacturing in a Local Business Zoned District which is located at **8868 Ridge Road, PPN: 482-12-017 & 018.**

Paula Recker: Mr. Chairman. I will be voting no against this. The applicant has not been here to present any evidence and I would be very uncomfortable if we have to vote on this this month. So, with no evidence there is nothing to look at.

John Ranucci: Mr. Chairman. I would have to agree with Paula. With the applicant not being here to put forth his case, I will be voting no for the request of this variance.

Dan Kasaris: Mr. Chairman. It's the applicant's burden.

Chairman Price: Excuse me. Could we remove this from the table before we discuss it?

Moved by Dan Kasaris, seconded by Paula Recker, to remove BZ08-36 from the table.

Paula Recker: Sorry Mr. Chairman.

Chairman Price: Call the roll.

Paula Recker: Yes.
Tony Caraballo: Yes.
John Ranucci: Yes.
Chairman Price: Yes.
Dan Kasaris: Yes.

Ayes – all. Nays – none.

Motion carried. (5-0)

Dan Kasaris: Mr. Chairman. It's the applicant's burden to establish the need for the use variance. They have failed to appear and failed to satisfy their burden, therefore, I will be voting no.

Tony Caraballo: Mr. Chairman. I will have to concur. It is up to the applicant to be here and they have failed to do so again. I will therefore concur with the other Board members.

Chairman Price: I also. Donna?

Donna Vojar: Mr. Chairman. Findings of fact and conclusion of law. The applicant did have a conversation with both Tom Jordan and our secretary Julie outside of our hearing, in which he indicated that he did intend on withdrawing. Nevertheless, nothing in writing has been received therefore the Board has determined to go forward on this application. The only information that was presented was the initial application that was filled out by the applicant. Based on the review and as stated in 1264.08(e), the Board shall review the request to make it complies with the purpose and intent of the Zoning Code, and this is a Use variance, and as such, unnecessary hardship would have to be established. Unnecessary hardship requires clear and convincing evidence. The Board has determined that the applicant has failed to satisfy that burden and as such they have found that the undo hardship has not been established. Anything else the Board wishes to add?

Chairman Price: Any additions? Call the roll.

John Ranucci: No.
Dan Kasaris: No.
Chairman Price: No.
Tony Caraballo: No.
Paula Recker: No.

**Ayes – none. Nays – all.
Variance denied. (0-5)**

(BZ09-01) Champion Windows and John and Therese Misenko request a variance to Chapter 1270 “Residential Districts”, Section 1270.05 “Schedule of Area, Yard and Height Regulations”, of the for relief from the rear yard setback requirement for a patio room addition that they wish to construct onto the back of their home which is located at **6609 Willow Lake Drive, PPN: 487-17-038.**

Moved by Paula Recker, seconded by Dan Kasaris to **approve a variance of 10-feet less than the minimum rear yard setback requirement as prescribed in Section 1270.05 of the Zoning Code with regards to this proposed patio room addition with the condition that should the variance be approved that a letter of approval from the Willow Lake Homeowners Association be presented to the Building Department should the variance be approved.**

Chairman Price: Motion and a second. Discussion?

Paula Recker: Mr. Chairman. With the weather conditions as it was last week, viewing this yard was very difficult. From what I could see and knowing the Willow Lake Subdivision, I have no problem with approving this variance as long as a letter of approval is submitted. I find that it is the only way that they can have beneficial use of their yard. It will not change character of the neighborhood. It will not interfere with the neighbors. In my opinion, it will improve the aesthetics of the neighborhood.

Dan Kasaris: Mr. Chairman. Just one question for Mr. Voss. The patio that is currently there, is the deck going on top where the patio is?

Mr. Voss: It is.

Dan Kasaris: We have this survey that has a square that is just north of the sanitary easement, that square represents the area that the patio will be built on, is that correct?

Mr. Voss: That is correct.

Dan Kasaris: Mr. Chairman. I too will be supporting the variance request. I went out to the property today and spoke with the homeowners. I actually went in the house and looked at where the patio is going to be constructed. I concur with Board Member Recker that the property here backs up to the turnpike. I think that there are practical difficulties in enforcing this Ordinance upon these homeowners and I will be voting in favor of the request. Thank you.

Joe Hartman: Mr. Chairman. I have a question for our Legal Department. If you look at the topo there was a variance granted to have the house built 2.5 feet. Now, the addition is going to be 10-foot back from the rear of the house. The new variance would be 10-foot or 7.5-foot? I just want a clarification on that so that we know exactly what it will be.

Donna Vojar: So, there was already a variance granted on this property.

Joe Hartman: 2.5-feet.

Donna Vojar: So, the variance is actually going to be 9-feet. What you are saying is that the house would be how close to the property line?

Joe Hartman: No. I'm still going to the rear property line.

Donna Vozar: Okay. Their rear yard setback has to be 50-feet. They are requesting 10-feet less. You are telling me that the property is already closer to the rear property line. That there was a variance.

Joe Hartman: There was a variance granted when the home was built of 2.5 feet.

Donna Vozar: For the rear yard setback?

Joe Hartman: For the rear yard setback, correct. So, we will be looking for a variance of 7.5 right?

Donna Vozar: Correct. They have already been granted a variance.

Joe Hartman: I just wanted clarity on it.

Donna Vozar: Well then the way it has been stated is incorrect.

Joe Hartman: Correct.

Donna Vozar: When was the variance granted?

Joe Hartman: When the home was built.

Donna Vozar: I don't know when that was. I'm assuming we would have it in our records somewhere?

Dan Kasaris: Donna, it is on the plans. The plan indicates a variance of 2.5 rear yard variance was approved.

Chairman Price: Question for the Champion Windows representative. What is the dimension of the glassed in area, the patio room?

Mr. Voss: The projection into the backyard?

Chairman Price: No, just the size of the room.

Mr. Voss: 10 x 14.

Chairman Price: 10-feet deep.

Mr. Voss: Yes. 10-feet projection into the backyard.

John Ranucci: Mr. Chairman. I was going to bring it up before Joe did. Wouldn't the variance be 12.5-feet from the rear yard? Even though they have 2.5 we are adding 10-feet to it.

Joe Hartman: That is why I asked for a legal opinion. But if you figure it that way you would be looking for a 12-foot.

John Ranucci: 12.5-foot.

Joe Hartman: And one variance was already granted so I don't think that you can consider that.

John Ranucci: But if is all from the rear yard, the 50-feet is the starting point, they are going to be 12-feet out now, so wouldn't the variance from the 50-foot line be a variance of 12.5-feet?

Joe Hartman: That is why I asked for a legal opinion.

Paula Recker: He has already gotten 2.5 feet.

Donna Vozar: Once the variance is granted that is where he is permitted to have it. You measure from that point back, that is where you would start and go back to the end of his property line. So, whatever that number is.

John Ranucci: Section 1270.05 should state Code states that 47.5-foot rear yard setback is required since they have been given 2.5-feet already.

Paula Recker: Code is 50-feet. He has already 2.5-feet.

Donna Vozar: They are seeking an additional variance. They are already permitted to be out that 2.5. They are trying to go beyond that 2.5. So, they are seeking a second rear yard setback. So, whatever that difference is between the 2.5 and the 10.

Joe Hartman: The way I am looking at it right now is 7.5 feet.

Donna Vozar: Okay.

Paula Recker: Mrs. Vozar are you happy with that?

Chairman Price: Wait one minute. How did you get 7.5?

Donna Vozar: It is the Building Commissioner who actually comes up with the variance request and the applicant. But if what you are asking me, once the variance is granted the variance stays with the land and they are requesting to go beyond that point. They could right now build out the 2.5. If they want to go beyond that variance should request however far they want to go beyond that. Obviously, if it is 7.5 the applicant is going to have to come up and amend their application to the 7.5. They need to be in agreement and understand it. We might want to have a break.

The Board converses amongst themselves.

Paula Recker: Gentlemen, gentlemen, slow your engines down. They are out 2.5 feet already with a variance granted at the time the house was built. Now, the question is and it will solve this problem, the representative from Champion.

Donna Vozar: Actually the homeowner would need to amend it.

Paula Recker: Either one. My question is, you are starting already at the original variance which was 2.5-feet from the rear yard which is 50. Now you want to build this patio enclosure 10 more feet towards the south of the property, toward the rear yard, correct?

Mr. Voss: It is my understanding that you are correct.

Paula Recker: So, you still want a 10-foot variance?

Mr. Voss: Yes.

Paula Recker: Correct. Which thus then would make the rear yard setback at this point then 37.5, is that correct?

Mr. Voss: That is correct.

Chairman Price: Which is 12.5-feet.

Paula Recker: No. You already have, they are getting confused and I'm not even the math person, they already have 2.5-feet granted in 2001, the homeowner is telling me when the house was built. So, that makes the rear yard setback at 47.5-feet. So, now he wants to go another 10-feet to the rear yard which would make the rear yard setback 37.5-feet. So, the request for the variance stays at 10-feet. I still go back to my point, it is going to give them beneficial use of the property. When I went I was looking for drainage problems back there and I never heard of any problems in Willow Lake with drainage problems. So, I am very comfortable with all the reason that I stated before for granting this variance. From all of this discussion and all you gentlemen that understand how much 2 and 2 is, that the variance request is still 10-feet period. We don't need it to be 7.5 or 12.5, the man wants 10-feet and that is that.

Donna Vozar: In addition to the 2.5 that already exists.

Paula Recker: Correct.

Donna Vozar: So for that property there will be 12.5-foot variance for the rear yard setback.

Paula Recker: So, the property would then have two variances. One for 2.5-feet and the second for 10-feet, for a total of 12.5-feet.

Chairman Price: Now do we all agree that the original motion is accurate?

Dan Kasaris: Yes.

John Ranucci: Yes.

Donna Vozar: Mr. Chairman if I could just add something for the record. Again, variances should only be granted when they are absolutely needed and when all the requirements have been met. In this case, and I understand that Mrs. Recker has put a condition regarding the Homeowners Association, again you will be granting a variance on a property without having the approval letter. So, I still recommend tabling this to give them the opportunity to make sure that you will actually have that approval prior to granting a variance.

Paula Recker: Mrs. Vozar, in regards to your comment that is well put because I am an association member, but being on the Board and dealing with Willow Lake before they have never not approved this. In my own personal experience as a Board member and dealing with architectural reviews in my development, my ARB guys would not have a problem with this. It doesn't interfere with the neighbors and improve the aesthetics and add to the property values to the entire neighborhood. I am comfortable going forward without the letter of approval.

Tony Caraballo: Mr. Chairman. Again, on viewing this property, with the new neighbors to the rear of the property is high tension wires and then further on back is the turnpike, which will never have houses back there. I believe with what they are asking for, the 10-feet, is viable. There is no undo hardship with any of the neighbors and the community over there. I do believe that it will enhance the value of the properties. I will be voting for this upon the condition that we set forth before, the letter from the association granting this variance that they are looking for, also that it meets their standards that they may have set with their association.

Chairman Price: Thank you. In effort to clear the agenda, I will be for this with the condition. It is not a variance that is substantial. No neighbors have any concerns. The area to the back is not going to be built on because of the turnpike. Anybody else have anything?

Dan Kasaris: Yes, briefly Mr. Chairman. Two pine trees on each side of the deck. The neighbors are not going to even be able to see much of the room because of these trees.

Paula Recker: Also, in regards to that, I don't think that the neighbors would object anyways because patio enclosures are part of America.

Donna Vozar: Mr. Chairman. The findings of facts and conclusions of law are as follows; the homeowner did not testify and on their behalf a representative from Champion Windows did appear and was sworn in and testified. The Board as a condition of granting the variance has required that the Homeowners Association approval be rendered forthwith prior to any permit or any granting of the variance. It is a condition of it. There were no neighbors here objecting here tonight. The Board felt that it would not be detrimental to any property. The Board found special conditions existed regarding the area and yard as it backs up to tension lines and the turnpike. After the Board members viewed the site they believed that practical difficulty was established and based on the following they found that pursuant to Section 1264.08(e), that practical difficulty has been established pursuant to the Code. That is all I have unless that Board has anything to add.

Chairman Price: Any additions? Call the roll.

John Ranucci: Yes.
Paula Recker: Yes.
Tony Caraballo: Yes.
Dan Kasaris: Yes.
Chairman Price: Yes.

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

Mr. Voss: Mr. Chairperson may I address the Board?

Chairman Price: Sure.

Mr. Voss: I would just like to first of all thank the Board and then apologize for any confusion that Champion may have caused in this situation. And I also would like to assure the Board that if Champion ever finds themselves before this Board again that the paperwork will be in order. Thank you.

Chairman Price: I would just like to say that if you appear before the Board again that you won't have that problem because I'm going to make it clear that things will be changed.

Moved by Paula Recker, seconded by Dan Kasaris to **adjourn the Board of Zoning Appeals meeting of January 26, 2009.**

Chairman Price: Call the roll.

Paula Recker: Yes.
John Ranucci: Yes.
Tony Caraballo: Yes.
Dan Kasaris: Yes.
Chairman Price: Yes.

**Ayes – all. Nays – none.
Motion carried. (5-0)**

Meeting adjourned at 8:14 pm.

Chairman Neil Price - Approved

Date

Secretary Julie Broestl - Attest