



Village of South Russell  
5205 Chillicothe Road  
South Russell, Ohio 44022  
440-338-6700

## **BOARD OF ZONING APPEALS MEETING**

### **Record of Proceedings**

**November 18, 2020 7:00 p.m.**

**Members Present:** David Maistros, Chairman, Laura LaChapelle, Andy Hitchcock, Mike Mulloy, Bill Stone

**Other Officials:** Bridey Matheney, Solicitor; Mayor Bill Koons; Dave Hocevar, CBO/Inspector, Ruth Griswold, Board Secretary

**Visitors:** Matt Peters, Chris Bell, Ross Golden, Mr. & Mrs. Alan Fry, Mr. & Mrs. Joe Tenebria, Holly Mihalek, Mary Jo Mc Elyea

David Maistros called the meeting to order at 7:03p.m. Board Secretary Ruth Griswold conducted roll call.

Mr. Maistros asked Ms. LaChapelle if she would like to make a motion to approve the minutes from the meeting on September 16, 2020, since he was not in attendance. Ms. LaChapelle made a motion to table the minutes until the next meeting.

**CASE # 20-BZA-07: 11 KENSINGTON DRIVE – KRISTINE HULL, OWNER/  
APPLICANT-APPEAL OF THE CITATION TO REMOVE A TWO STORY TREEHOUSE  
BUILT, WITHOUT A PERMIT, BEYOND THE ALLOWABLE CODE HEIGHT OF 15'**

Mr. Maistros asked Ms. Matheney to swear in anyone present at the meeting who may like to speak, indicating if they later choose not to speak that is okay as well. Ms. Matheney swore in the members present.

Mr. Maistros asked Dave Hocevar to give a brief rundown of what brought us here tonight. Mr. Hocevar said an accessory structure was put in at 11 Kensington and that it exceeds the height limits. Upon notifying the homeowner, the homeowner took care of the application and that they agree to appear before the Board of Zoning Appeals. They did not realize it was an offense in the Village.

Mr. Maistros clarified with Mr. Hocevar that the variance request would be 10". Mr. Hocevar responded that he did not actually measure the structure, that he was going on what the applicant told him, but he feels that is pretty close. Mr. Maistros noted in the case, as presented, it is

mentioned that the treehouse was built without permit. He asked if the issue of whether or not it was permitted is before them. Mr. Hocevar said that was not the issue, but if the BZA approves it, he would issue them a zoning permit. They were not aware they needed one. Mr. Maistros asked how this was brought to the Village's radar. Mr. Hocevar indicated that there were complaints. Mr. Maistros referred to the submittal of a letter received from a Michael Miller, 20 Kensington Drive. He wanted it known that Mr. Miller's letter has been received and considered a part of the record. The letter indicates that he is requesting that conditions be set prior to granting a variance. He would prefer the color of the structure remain a natural wood color, since the structure is huge, and if painted would be blaring and in direct line of sight from his driveway. Mr. Miller prefers the lower portion of the treehouse not be enclosed, since that would make it a storage facility and would not meet the requirements of the architectural and property standards set forth in Section 5 of Kensington Green Code of Regulations, as amended April 18, 2010. Mr. Maistros indicated Mr. Miller lives across the street from 11 Kensington Drive. Mr. Maistros then referred to correspondence received today from Mr. Brown, speaking in favor of the treehouse.

Mr. Maistros asked the applicant, Ms. Hull, to then speak to the board.

Ms. Hull thanked the board for hearing her case and apologized for not doing this with the required permits, and also apologized for any confusion as to what type of structure it was. She went on to say that they have every intention of painting the treehouse a natural color; they did not want to do it if there was a possibility they would have to remove it. Ms. Hull said she realizes it seems kind of stark right now, with all the leaves gone, but that she is happy to have a discussion with the Village, or the HOA, or anyone who wants to have a conversation.

Mr. Maistros asked Ms. Hull how she determined the height of the structure; a variance of 10" is being requested; did she actually measure it or is the height just an estimate. Ms. Hull responded that she believes somebody from the Village came and measured it and told her it was over the allowable height.

Mr. Maistros asked Andy Hitchcock if he had any questions for the applicant. Mr. Hitchcock asked if the applicants received Homeowner's Association approval for the structure itself. Mr. Matt Peters, homeowner, responded that they had a conversation with the HOA to make sure it was not in violation, and they also spoke to their neighbors on either side of them, who had no objections. Mr. Hitchcock stated he asked some of his friends who also live in that development about the Association's requirements. He was told that accessory structures have to conform to the appearance of one's house. Taking that as face value, that causes a little bit of a challenge. The one neighbor who is directly seeing it does not want it painted white. Mr. Hitchcock asked for the applicant's thoughts on that. Ms. Hull stated that their house was white-ish, and the treehouse will not be, due to the more natural color planned. She said they could plant tall arborvitae which do not lose their leaves, and that would keep people going by on Kensington Drive from seeing it. She said she is open to any suggestions. Mr. Hitchcock asked Bridey and the board, since the treehouse is out of conformance, does the Village ARB need to weigh in. Ms. Matheney asked Mr. Hocevar to weigh in, and Mr. Hocevar stated he would like the ARB to take a look at it due to the uniqueness of it. Ms. Hull said she had been told it would go to ARB, so she is aware of that requirement.

Mr. Maistros confirmed with Ms. Matheny that whatever action the board takes today does not override the HOA, and that the HOA approval does not necessarily give the Village approval; that they are independent, and the board is not acting on behalf of the HOA, the homeowners still have to go through the HOA process and any appeals they need to do have to go through them. Ms. Matheny answered that that is correct.

Mr. Maistros asked Bill Stone for any questions or comments for the applicant. Mr. Stone commented that about five years ago, a friend that lives near him had a treehouse that was required to go before ARB.

Mr. Maistros asked Laura LaChapelle for any questions or comments for the applicant. Ms. LaChapelle referred to the letter from the neighbor asking that the lower portion of the treehouse not be enclosed per regulations. She asked if the applicant had any plans for the lower portion of the treehouse. Ms. Hull and Mr. Peters stated there is a ladder to get up into the treehouse, but no other changes would be made to the lower portion. Mr. Peters said the whole point of this was for the treehouse to look natural, up in the trees. They did not remove any trees, just trimmed back a few, to accommodate the structure. The intent was to hide it up in the trees. Ms. LaChapelle asked for details about providing a natural barrier or planting of trees next to the structure. Ms. Hull said they would only obviously do it if it was suggested or required to do so. She went on to say that when the treehouse went up, it was summer, and while you could see it, it was somewhat hidden by the leaves. Now with all the leaves gone, you can see it, it is stark. They would probably put some tall arborvitae up to hide it. Ms. LaChapelle asked what they had in mind as far as placement of the trees; would they be around the entire structure, or just in one location. Mr. Peters responded it would be wherever it was best to be able to hide the, for lack of a better word, eyesore.

Mr. Maistros asked Mike Mulloy for any questions or comments for the applicant. Mr. Mulloy said he had driven by and saw the treehouse. He feels the board has addressed all the questions he had, from the enclosing of the lower section, to the painting of the structure in a natural color. He said it looks nice and well-built. A good alternative would be a natural barrier. He said it seems very straight forward and he has no other questions.

Mr. Maistros said he noticed a number of other people at the meeting, and he asked for comments starting with Chris Bell. Mr. Bell said he lives at 24 Annandale, and that he is currently the president of the Kensington Green HOA. He said Ms. Hull had reached out to the HOA with a basic idea of what they wanted to do. In the photos he saw, the treehouse did not look quite as tall as it is, which Ms. Hull admitted as well. Other than that, the HOA felt it was a play structure, not different from other large play structures in the neighborhood. He indicated that as far as external structures, the current by-laws in place only talk about distance between property lines, and that things maintain a Western Reserve tone, whatever that means. We advised them to talk to the neighbors, which they did. Mr. Maistros asked from the HOA's perspective, are they giving a thumbs up. Mr. Bell indicated they did receive one complaint, one call with questions, and a lot of others complimenting it. From an HOA standpoint, he said there is nothing they could say no to, leaving it up to the Village. Mr. Maistros asked the HOA's position regarding the color and the issue that Mr.

Hitchcock brought up, that it should be similar to the house. Mr. Bell said traditionally there has been a request that a shed would match the tone of the home, but in checking with the by-laws, he did not actually see that in there. Mr. Maistros asked if it would be his feeling, if this board conditioned the approval to keep the structure in a natural tone, and to make it blend in more with the landscaping, that it would not be in violation with the HOA rights. Mr. Bell said he didn't think it would be. The coloring, together with the addition of shrubs or trees to block it, would be a great middle ground for everybody.

Mr. Maistros asked Ross Golden if he would like to speak. Mr. Golden said Kristy and Matt had approached him mid-summer. His daughter and their children play constantly together, and he obviously had no objection to it. He said quite frankly he would never really object to anybody putting up a play structure on their property. Mr. Maistros asked Mr. Golden where he lives in relation to the applicant. Mr. Golden said he lives next door, at 12 Kensington. Mr. Maistros said he is probably the house closest to it, to which Mr. Golden responded yes.

Mr. Maistros asked Mr. & Mrs. Alan Fry if they would like to speak. Mr. Fry said they live at 13 Kensington Drive, next door to Ross, two houses away from the treehouse. He said they do see the treehouse, and that they do enjoy having the kids in the neighborhood. They are well behaved and have fun. What they would ask is that there be landscaping around the treehouse as Laura mentioned. He went on to say that they have one in their backyard from 30 years ago, and at that time the ARB did ask that they put bushes and trees on all four sides to blend in. He found that to be reasonable. Mrs. Fry said they didn't want it to be an eyesore. Mr. Maistros asked if they felt the screening should be on all four sides, as it seems there is some natural screening on the northeast side. Mr. Fry said that now that the trees have all lost their leaves, he feels the screening should be on all four sides. They had planted white pines and other bushes around theirs on all four sides, even though theirs backed up to a field and was in a more hidden area. He feels that would be good for the neighborhood. Mrs. Fry said they really are like a permanent structure.

Mr. Maistros asked Mr. and Mrs. Joe Tenebria if they would like to speak. Mr. Tenebria said after he got the notice, he wanted to come on and say they cannot see the tree house unless they are in their backyard. He recognizes that kids need a place to play, he had a treehouse as a kid himself. He agrees that some trees are in order, but it doesn't have to be a grove of trees. A little landscaping around the bottom, spruce it up a bit, it'll be fine. He recognizes that they went over on the height a little bit. He said that they added onto their home and last year, and their addition may be an eyesore to Alan and Laurie, because it's a pretty good size, although it's within code. He went on to say it was an innocent mistake, they were doing something for their kids, and it's nice to see the kids in the neighborhood. Mrs. Tenebria said they are a family friendly neighborhood, and the kids have to be kept busy, especially now. She said the treehouse is in a grove of trees; when the trees are out, when you drive by, you have to slow down to even be able to see it. It has trees on three sides. She also said that Ms. Hull has to be able to see the kids from the house to keep an eye on them, and that that is more important than having it where you can't see the front. Mr. Maistros asked their address, as he wanted to picture where their house is located. They responded they reside at 113 Dorset.

Mr. Maistros asked for comments from Holly Mihalek and Mary Jo Mc Elyea, 66 Potomac, and 39 Westover, respectively. Ms. Mihalek said while she does not have visual to the treehouse, her daughter is obsessed with playing in the treehouse, so she definitely lends her support. Ms. Mc Elyea said there has been a lot of nice commentary from others, and that it's very true that kids are looking for places to play more than ever this year. She feels the natural wood treehouse is well built natural wood, and a nice structure. Ms. Mihalek also agrees with the last couple that when the trees are full, it is kind of hard to see.

Maistros asked the board, based on what was heard from the neighbors and everyone else, if there were any questions. Mr. Hitchcock asked Bridey; is the board approving a treehouse, or are we approving an accessory structure that's 10" above the code. In thinking it through, it may change in the future, with this homeowner or someone else, he just wants to be sure they are true to the intent of approving it as a treehouse and not an accessory structure. Ms. Matheney said she thinks a treehouse is an accessory structure; she doesn't know that the code has separate rules for a treehouse. so you are correct, the board would be approving a height variance on an accessory structure. Mr. Hitchcock asked Mr. Bell if it would be a concern of the HOA if the board approved it as a treehouse, that it could become something else in the future, or would the association more than likely weigh in and say no barns, sheds or whatever. Mr. Bell said he would assume that future boards, if they saw a change in the structure, they would approach the homeowner, or any future homeowners. Mr. Hitchcock asked if adding 10' of mulch underneath would change the fact it is 10" over the height. Mr. Hocevar said height is measured from ground level.

Mr. Maistros asked Ms. Hull if she had any questions or anything she'd like to add. Ms. Hull asked if the ARB is where they discuss the painting and trees, as she wants to be respectful of all complaints and suggestions; she wants to know what the next step is. Mayor Koons told her the two meeting dates in December: the 1<sup>st</sup> and the 15<sup>th</sup> at 5:30, in person at Village Hall. Mr. Hocevar said she can contact the Building Department and we would walk her through the procedures to appear before the ARB. Ms. Hull understood.

**Mr. Maistros motioned to approve the height variance, not to exceed 1' for an as-built accessory structure, a treehouse at 11 Kensington Drive, on the following conditions:**

- 1. The finish color of the structure be a natural color designed to blend in with the trees and the shrubbery;**
- 2. With the understanding of winter on its way, this does not have to be done immediately, but include screening of a year-round nature, some sort of evergreen, around the treehouse in order to screen it as much as possible from the neighbors. Screening should be of sufficient nature to preclude the neighbors from being able to see it.**

**Ms. LaChapelle asked if the motion should include not enclosing of the bottom area of the treehouse per the request of the neighbor. After discussion, Mr. Maistros amended the motion to include number three.**

3. **Amend the motion to include that the lower portion of the structure not be enclosed and that it remain in its current as-built condition.**

Ms. LaChapelle seconded the motion.

There being no other discussion based on the motion, Mr. Maistros asked for roll call. On roll call vote, motion carried.

Mr. Maistros thanked the applicants and wished them luck on their next step, and said it was nice that they have the support of so many neighbors.

Ms. Hull thanked everyone for being at the meeting and for their support.

Mr. Maistros asked about the December meeting. Mayor Koons asked if the meeting could be moved up from December 16 to December 9<sup>th</sup>. All members agreed.

**OLD BUSINESS: None**


**NEW BUSINESS: None**

**Mr. Maistros made a Motion to adjourn the meeting at 7:41p.m.**



David Maistros, Chairman

9/15/2021  
Date



Ruth Griswold, Board Secretary

9-15-2021  
Date