

**ZONING BOARD OF APPEALS  
ROSS TOWNSHIP  
May 4, 2016**

The Ross Township Zoning Board of Appeals held its regular meeting on **May 4, 2016, at 5:30 p.m.** in the Ross Township Hall. Acting Chairperson Lauderdale called the meeting to order and noted those present.

Present:           Acting Chairperson, Jim Lauderdale  
                  Ed Harvey  
                  Roger Schweitzer, Alternate

Absent:            Dave Carpenter, Chairperson

Also present:       Bert Gale, AGS – Township Zoning Administrator  
                  Rebecca Harvey – Township Planning Consultant  
                  Rob Thall – Township Attorney  
                  Two (2) members of the public

APPROVAL OF AGENDA: On motion by E. Harvey, seconded by Schweitzer, the agenda was unanimously approved as presented.

APPOINTMENT OF CHAIRPERSON: On motion by E. Harvey, seconded by Schweitzer, Lauderdale was unanimously approved for appointment as Acting Chairperson.

APPROVAL OF MINUTES: The following corrections were noted: page 2, 5<sup>th</sup> paragraph, 5<sup>th</sup> dash – change ‘twp’ to read ‘**two**’; page 4, second dash under *Per Section* 22.3, last word – change ‘footprints’ to read ‘**footprint**’. On motion by Schweitzer, seconded by E. Harvey, the minutes of **April 6, 2016** were unanimously approved as amended.

NEW BUSINESS:

- 1) **Application for Variance**  
**Peter Smith and Diane Czuk Smith**  
**501/507 South Gull Lake Drive**  
**Property Tax I.D. #3904-17-354-160 and #3904-17-354-151**

Acting Chairperson Lauderdale stated that the next matter to come before the Board was the request by Peter Smith and Diane Czuk Smith for variance approval from the front (lake), side, and rear (streetside) setback requirements and lot coverage requirement

established by Article 15, Zoning Ordinance. The subject site is located at 501/507 South Gull Lake Drive and is within the R-1 Low Density Residential District.

Acting Chairperson Lauderdale stated that a letter had been received from the applicant's representative requesting that the matter be 'removed from the agenda of the May 4, 2016 ZBA meeting' . . . 'due to a change in circumstances'. He referenced the letter dated April 27, 2016 submitted/signed by Jeff Visser of J. Visser Design.

Acting Chairperson Lauderdale further noted receipt of a letter from David Krouse dated April 28, 2016. He stated that Mr. Krouse is a neighbor of the subject property and has expressed support for the variance requests from the rear setback requirement and lot coverage requirement but objects to the requested front setback requirement.

Attorney Thall stated that the letter from the applicant does not state a request for the matter to be 'withdrawn' . . . but rather to 'remove the request from the agenda' . . . which suggests that a postponement of the matter may instead be requested.

Schweitzer moved to postpone consideration of the matter to the June 1, 2016 regular Zoning Board of Appeals meeting pursuant to the applicant's request dated April 27, 2016. E. Harvey seconded the motion. The motion carried unanimously.

## **2) Interpretation** **Sections 17.1/17.2 – Dock Rental**

Acting Chairperson Lauderdale provided the Board with an overview of the dock rental issue presented to the Planning Commission. He explained that the Zoning Administrator had requested amendment of Section 17.2 to clarify the prohibition of dock rental in the Township. In consideration of the proposed amendment, the Planning Commission had requested legal review of the proposed changes to Section 17.2 and the existing provisions applicable to access lots/access lot beneficiaries set forth in Section 17.1.

Acting Chairperson Lauderdale noted that Attorney Thall provided the following consult:

- Adopting new text implies that the existing text (Sections 17.1 or 17.2) does not address the matter of dock rental. This has the potential impact of creating claims of lawful nonconformity upon the adoption of the 'new' standard.
- If the Planning Commission concludes that Section 17.1 requires clarity in its regulation of dock rental . . . a request should be directed to the ZBA for formal interpretation. This would allow any subsequent revision to Section 17.1 or 17.2 to be declared a confirmation or clarification of an already existing standard.

Attorney Thall confirmed his direction to the Planning Commission, adding that a formal interpretation on the matter by the Zoning Board of Appeals will establish the bench line standard from which amendments can then be made.

E. Harvey stated that Sections 17.1/17.2 clearly define authorized dock users. That is,

- an *'access lot'* is defined by Ordinance as *'a type of waterfront lot providing for private or common access to a waterway for one or more access lot beneficiaries.'*
- an *'access lot beneficiary'* is defined by Ordinance as *'the owner/occupant of a waterfront lot and any other person with right of access to a waterway and/or use of a waterway through a waterfront lot, in whole or in part, by fee ownership, easement, lease . . .'* This defines who is allowed to lawfully access/use the waterfront through a specific waterfront lot.
- Section 17.1 establishes minimum standards for access lots.
- Section 17.1 prohibits the use of an access lot for boat launching purposes and allows only one dock per theoretical buildable lot.

He noted support for the Planning Commission's interest in clarifying the existing Ordinance text as it relates to dock rental but reiterated his position that Section 17.1 already prohibits dock rental by virtue of limiting the use of a waterfront lot to a lawful access lot beneficiary.

In continued Board discussion, it was noted that the proposed revision to the definition of *'access lot beneficiary'* to clarify that *'members of the same family as defined by Section 2.2 of this Ordinance shall be collectively considered as one access lot beneficiary'* may be appropriate for the Planning Commission to consider.

Attorney Thall confirmed that without the proposed change to the definition of *'access lot beneficiary'*, authorized use of the access lot, and therefore the dock, would not automatically extend to a family member that was not an owner/occupant of the lot.

Board members agreed that such use does not seem to be the problem but rather the rental of dock space to non-qualified access lot beneficiaries . . but recognize that the task of the ZBA is to interpret the existing text and not to offer opinion on any proposed text.

E. Harvey then moved to interpret that the current standards set forth in Section 2.2 – Definitions and Section 17.1 – Waterfront Lot Access and Use Regulations prohibits dock rental. Schweitzer seconded the motion. The motion carried unanimously.

ADJOURNMENT: There being no further business to come before the Board, the meeting was adjourned at 6:07 p.m.

Respectfully Submitted,

Rebecca Harvey, AICP, PCP  
Township Planning Consultant