

**ROSS TOWNSHIP
PLANNING COMMISSION
MINUTES
February 22, 2016**

CALL TO ORDER/PLEDGE

Chairperson Lauderdale called the regularly scheduled meeting of the Ross Township Planning Commission to order at 7:00 p.m. at the Ross Township Hall.

ROLL CALL

Present: Jim Lauderdale, Chairperson
Victor Ezbenko
Russell Fry
Sherri Snyder

Absent: Greg Pierce
Jeff Price
Jon Scott

Also present: Bert Gale, AGS – Township Zoning Administrator
Kelly Largent, AGS – Township Zoning Administrator
Rebecca Harvey – Township Planning Consultant

APPROVAL OF AGENDA

The agenda was reviewed and approved as presented.

APPROVAL OF PRIOR MEETING MINUTES

The Commission then proceeded with consideration of the **January 25, 2016** Planning Commission meeting minutes. Snyder moved to approve the minutes as presented. Fry seconded the motion. The motion carried unanimously.

PUBLIC COMMENT ON NON-AGENDA ITEMS

No public comment on non-agenda items was offered.

NEW BUSINESS

1. Nonconforming Uses, Buildings/Structures and Lots

Chairperson Lauderdale referenced the background memo prepared regarding Article 22 (Sections 22.3 and 22.4) and Section 23.8 provided to Commission members. He explained that the ZBA recently considered a variance request involving the proposed alteration of a nonconforming dwelling. As such, Section 22.3 – Expansion of Nonconforming Use or Building/Structure was applied to the request and served as the basis for the Board’s discussion.

Chairperson Lauderdale stated that, when requests such as this are considered, the Board struggles with the language set forth in Section 22.3. He noted that Section 22.3 prohibits the ‘expansion, extension, enlargement or alteration’ of a nonconforming building/structure unless the modification is, by itself, in conformity with the Ordinance and does not ‘aggravate’ the nonconforming condition. However, Section 22.3 then authorizes the ZBA to grant relief from the standard if the variance criteria set forth in Section 23.8 are met . . . and, upon a showing that the modification will not ‘substantially extend the otherwise reasonably anticipated useful life of the nonconforming use or building/structure.’

Chairperson Lauderdale stated that the ZBA continues to have difficulty with Section 22.3 in interpreting what constitutes the ‘aggravation’ of a nonconforming condition . . . such that a variance may be required . . . and, how to conclude that a proposed alteration would not extend the useful life of a building/structure. He noted that the Board would like the Planning Commission to reconsider the merit of such an approach, especially as it applies to a dwelling.

Chairperson Lauderdale further noted that the wording of the variance criteria set forth in Section 23.8 can also be difficult to use, especially the standard that requires that there be a finding that the ‘practical difficulty . . . is not created by the applicant or a predecessor owner in the applicant’s family.’

Harvey provided an overview of the issues related to the existing text referenced by Chairperson Lauderdale. She updated the Commission on a recent consult with the Township Attorney on the subject and detailed suggested changes to the nonconforming use provisions and variance criteria for consideration.

Gale agreed that the existing variance criteria set forth in Section 23.8 pose difficulty in working through Section 22.3. He added that Section 22.3 currently limits many existing situations in the Township.

Snyder expressed concern that limiting work on nonconforming buildings will have an impact on the restoration and/or preservation of historic buildings.

Fry stated that the Ordinance provisions of adjacent communities should be reviewed in that applying a similar approach area-wide would be advantageous.

Ezbenko questioned why these concerns were being raised by the ZBA now. Chairperson Lauderdale responded that the most recent request considered by the Board had been unusually difficult. He added that comments made to the Board at that time by the Township Attorney and Township Planning Consultant provided a new perspective and it was felt that the Township's approach to nonconformities should be revisited.

Ezbenko expressed concern that changes might be made to the Ordinance that will allow for bad decisions. Chairperson Lauderdale opined that revisions to the Ordinance that improve clarity and an understanding of the approach can only result in better decisions.

Harvey was directed to draft suggested revisions to Sections 22.3, 22.4, and 23.8 for Commission review and discussion in March.

2. 2015 Planning Commission Annual Report

The Commission agreed that Chairperson Lauderdale would draft the 2015 Annual Report of the Planning Commission for review and acceptance in March.

3. Gull Harbor Point

Gale provided an overview of the history of the Gull Harbor Point project and the status of the existing site plan violation. He noted that the January deadline for compliance with the approved landscape plan had passed. He referenced the Township's proposal dated February 22, 2016 that agrees to extend the deadline to May, if various conditions are met.

UNFINISHED BUSINESS

1. Horse Boarding Facility

Chairperson Lauderdale noted that the Planning Commission reviewed the existing standards applicable to a 'Horse Boarding or Riding Stable' set forth in Article 20, Items 4., 5.f. and 13, Zoning Ordinance at the January meeting. Reference was also made at that time to ordinance text from Barry, Prairieville and Richland Townships. Using the information provided, the Commission had discussed appropriate/desired setback standards for horse boarding facilities.

Harvey referenced the memo dated February 22, 2016 provided to the Commission wherein the points of consensus from the January meeting were set forth and the resulting revised text presented. She provided an overview of the proposed text amendments.

Snyder inquired if the revised standards would apply to horse boarding facilities that fall under the Right to Farm Act/GAAMPS. It was confirmed that the standards would not apply.

Fry questioned how the revised standards would apply to parcels served by private roads. It was determined that a horse boarding facility is proposed to remain a special land use and that parcels served by private roads would be reviewed according to the special land use criteria. It was again noted that such criteria would not be applicable if the use fell under the Right to Farm Act/GAAMPS.

Fry moved to accept the proposed draft text changes and to forward them to the Township Attorney for review/comment. Snyder seconded the motion. The motion carried unanimously.

2. Dock Rental Issue - Section 17.2 Boathouses and Dock Regulations.

Chairperson Lauderdale referenced draft text provided wherein Section 17.2 B. is proposed to be revised by adding subsections 5. and 6., as follows:

5. Docks located on any lake or waterway being used as an accessory use for dwelling units located on any lake or waterway shall only be used by the present permanent resident(s) of the dwelling unit(s) and the property owner(s) of record of the parcel where the dock is located.
6. Docks located on an access lot shall only be used by an approved Access Lot Beneficiary who has the right of access by fee ownership, easement, or lease.

He noted that during review of the draft text in January, Commission members requested a legal opinion regarding the word 'and' and if that should read 'and/or' in subsection 5. . . and whether or not the words '*directly related to lease of the land*' should be added after the word 'lease' in subsection 6.

Harvey reported that Attorney Thall had responded that subsection 5. could read 'and' or 'or' . . depending on the Township's policy position . . but should not read 'and/or'. She noted that Attorney Thall was unclear as to the proposed modification to subsection 6.

Harvey stated that she had extensive discussion with Attorney Thall regarding the proposed changes to Section 17.2 and the existing provisions applicable to access lots/access lot beneficiaries set forth in Section 17.1. She provided the following summary of the 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 to the Township Attorney for review would be appropriate and, if necessary, the text could be directed to the ZBA for formal interpretation. This would allow any subsequent revision to Section 17.2 to be declared a confirmation or clarification of an already existing standard.

To assist in the discussion, Harvey provided the following overview of Section 17.1:

: 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 requires an access lot to meet the minimum water frontage and lot width requirements of the district (ie. 125 ft in the R-1) for one access lot beneficiary.

: Section 17.1 requires an additional 30 ft of water frontage and lot width for each additional access lot beneficiary. (125 ft + 30 ft = 155 ft for two beneficiaries)

: Section 17.1 requires an access lot meet the minimum lot size requirements of the district (20,000 sq ft in the R-1).

: Section 17.1 requires an access lot to have buffer strips the length of each side of the lot the width of the required side yard setback (10 ft in the R-1)

: Section 17.1 limits the use of the required buffer strips to vegetation.

: Section 17.1 prohibits the use of an access lot for boat launching purposes and allows only one dock per theoretical buildable lot.

Harvey then offered the following conclusions/suggestions:

- 1) As written, Section 17.1 does not allow a nonconforming waterfront lot to serve more than one access lot beneficiary. Many waterfront lots in Ross Township are nonconforming lots and so do not have the ability to provide lawful access to other than the owner/occupant.
- 2) Consider a revision to the current definition of ‘access lot beneficiary’ so as to add ‘Members of the same family as defined by Section 2.2 of this Ordinance shall be collectively considered as one access lot beneficiary.’
- 3) Consider simply amending Section 17.1 A.7. to limit the use of an approved dock by a qualified ‘access lot beneficiary’ . . . to address the potential for access/use of a dock from the waterway instead of the access lot.

Following Board discussion, Harvey was directed to develop draft text pursuant to the suggestions outlined and provide both the new draft text and the proposed subsections 5. and 6. to the Township Attorney for review/comment.

3. Screening Standards

The Planning Commission referenced draft text dated November 23, 2015 (Draft #2). It was noted that lengthy discussion regarding the ‘buffer zone requirements’ had occurred in January, with continued discussion scheduled for February.

Fry reiterated his desire to require a ‘B’ Buffer Zone in the C-1 District when located adjacent to residential zoning. He again explained his concern that the proposed ‘C’ Buffer Zone does not include a ‘wall/berm’ requirement. He added that such a requirement would still be subject to the option of the Planning Commission to waive or reduce such a requirement in consideration of an equivalent design.

In response to questions, Harvey noted that the ‘C’ Buffer Zone was suggested in consideration of the nature of the C-1 District as a mixed-use zone and the landscape standards already set forth in the district.

Continued discussion of the proposed screening standards was scheduled for April when absent Board members would be in attendance.

4. Watershed Protection Strategies

Due to the lateness of the hour, discussion of the matter was postponed to a future meeting.

5. Recreation Plan

Fry reported that DNR has recently advised the Township that the Action Plan set forth in the adopted Recreation Plan is satisfactory. He noted that the work planned to further prioritize the 'action items' (as previously requested by the DNR) is no longer required.

6. Section 2.2 – Definition of 'Permanent Resident' (Rental of Residential Dwellings)

Chairperson Lauderdale noted that in the Planning Commission's November 23, 2015 discussion of the definition of 'permanent resident' and the application of same, AGS had been asked to '*provide an analysis of the complaints received related to this issue, specifically in relation to the number of dwellings in the Township.*' Gale had agreed to report back to the Commission at the February meeting.

Gale stated that Supervisor Dykstra has indicated receipt of 11 complaints involving eight properties on Gull Lake during 2015.

REPORT FROM TOWNSHIP BOARD

In the absence of Scott, a Township Board report was not provided.

REPORT FROM ZONING BOARD OF APPEALS

Chairperson Lauderdale stated that the Zoning Board of Appeals met on February 3, 2016 and considered requests for variance approval from the front yard setback requirement and the nonconforming building alteration requirement as they applied to a proposal to remodel an existing garage. He advised that the requests were granted.

MEMBERS, CONSULTANTS, ADVISORS

No comments were offered.

ADJOURN

There being no further business to come before the Commission, the meeting was adjourned at 9:04 p.m.

Respectfully Submitted,

Rebecca Harvey, AICP, PCP
Township Planning Consultant