

Ross Township
Zoning Board of Appeals -
Minutes -
May 6, 2015 -

Chairman Carpenter called the Ross Township Zoning Board of Appeals meeting to order at 5:30 P.M. on May 6, 2015 at the Township Hall.

PRESENT: David Carpenter, Jim Lauderdale, Ed Harvey, Roger Schweitzer.

ABSENT: None.

ALSO PRESENT: Robert Thall (Township Attorney), Shelia Jeske, Ralph and Barbara Ledesma, Bert Gale (Zoning Administrator), and Kelly Largent (Zoning Administrator)

APPROVAL OF THE AGENDA:

Motion by Lauderdale, supported by Harvey to approve the agenda. The motion was unanimously approved.

APPROVAL OF MINUTES:

April 1, 2015: Finding no errors in the presented minutes. Motion by Harvey, supported by Schweitzer to approve the minutes as submitted. The motion was unanimously approved.

PUBLIC COMMENT: None

OLD BUSINESS:

Nolin/Phillipps Trust Variance Request: The Chairman presented Mr. Nolin's May 1, 2015 letter requesting a delay in the Board's decision until the June 3, 2015 meeting. Further research into the question of other variances granted for the three parcels in question revealed a boundary adjustment was granted for an adjacent property owned by the Byrd's in 1986. Motion by Schweitzer, supported by Harvey to table further discussion and leave open the hearing until such time as Mr. Nolin can attend and comment at the June 3, 2015 meeting. The motion was unanimously approved.

NEW BUSINESS:

Mr. Schweitzer has been excused.

1. A variance requested by Shelia Jeske – for property located at 1445 West Gull Lake Drive. The proposed variance request is for the construction of a new residence located within the R-1 Low Density Residential Zoning District of Ross Township where the minimum lake setback requirement at this location is 50 feet from the water line. The request is to be located approximately 22 feet from the water line.

Chairman Carpenter reviewed the application for the proposed demolition of the existing house and construction of a new residence for all present. The existing house is a lawful nonconforming structure which was built in 1964. A discussion as to how to proceed for the variance and guidance from Mr. Thall was requested. The discussion centered around: is the lot to be viewed as vacant since the existing home is to be demolished and address Section 17.3 Waterway Setback Requirements for All Buildings and Structures; or, view the lot under Section 22.3 Expansion of Nonconforming Use or Building/Structure since there is an existing house. Ms. Jeske states that she will conform to all other setback requirements for the R-1 Zoning District, with the exception that the retaining wall/foundation for the garage will remain. Ms. Jeske stated that removal of the retaining wall/foundation for the garage would destabilize the neighbor's existing garage according to the engineer she had hired. Chairman Carpenter pointed out that leaving part of the existing building is an alteration but the submitted application indicates the concept of total removal of the existing house. So, in his opinion the issue is really the lake setback. Ms. Jeske described the steps she has taken to construct a new house and that she has been working with Mr. Gale and Ms. Largent for several months. She received a copy of Section 23.8 Variance Standards and Conditions to ensure and verify conformance to the standards. Mr. Gale stated that with Ms. Jeske's intentions to build a new residence and demolish the existing residence that the Chairman is correct in his concept of the parcel being viewed as a vacant lot. Mr. Thall stated that the existing home is not a consideration as presented on the submitted application. After further discussion, the Board determined the vacant lot concept was applicable.

Chairman Carpenter opened the hearing for public comment. Ms. Jeske presented her case regarding topography of her parcel. She is requesting the variance for the lake setback but will maintain Section 17.3 (A) (2) average setback distance. The Board asked Ms. Jeske the square footage of the existing house and garage. Ms. Jeske stated the house is currently 1,850 square feet and 700 square feet for the garage located above the home.

Mr. Ralph Ledesma addressed the Board and stated that they have submitted a letter but they decided this matter was important and decided to attend the meeting. He stated he resides at 1421 West Gull Lake Drive which is the property to the South of Ms. Jeske's. Mr. Ledesma stated that they have very little information as to the impact to their property and surrounding property values as well as aesthetics of Ms. Jeske's proposed new residence. No documentation was sent with the notice. He has questions as to what the new residence look like; height, size, etc. They also have a hill and this has some effect on them. Mr. Ledesma has the following 3 requests:

1. They would like an idea of what the new residence will look like, elevations, layout for example.
2. They have concerns about the closeness of the entry
3. They can't make a judgement at this time with the limited information they have and would request the right to comment at a later date.

Mrs. Barbara Ledesma stated she has concerns regarding the square footage of the ground floor level and second story along with the pitch of the new roof. She also stated that the submitted site plan only depicts the front deck of their house. There are no other indications of the remaining house and the building above.

Mr. Lauderdale addressed Mr. and Mrs. Ledesma concerns and requests. He informed Mr. and Mrs. Ledesma that the Board would not be able to comply with their requests as the Guidelines for the Zoning Board of Appeals (ZBA) are stated in the Ross Township Zoning Ordinance. He stated that both the ZBA and Planning Commission have no authority to change or alter this.

Mr. Ledesma had a question about imposing a mandate to ensure compliance. Mr. Thall stated that if this were a conforming lot the Board would not be able to alter the requirements of the Zoning Ordinance, however in this case restrictions may be included in/attached to the granted variance should the Board decide to do so.

Mr. Ledesma stated the Board needs to consider the effect on surrounding properties. Mr. Thall stated the Board will weigh the impact on neighboring properties. Mr. Ledesma asked the Board what criteria the Board uses for their decision. Mr. Harvey stated he uses common sense as to what the impact would be to surrounding neighbors if a variance were to be granted.

Ms. Jeske brought with her a sketch of the proposed new residence per Mr. Lauderdale's request. Mr. Lauderdale and the board reviewed the sketch. The height of the building was discussed and Mr. and Mrs. Ledesma stated they have concerns about the appearance of the new residence

from their property since they have not seen an elevation. Mr. Lauderdale stated the Board couldn't give guidance in respect to their concerns.

Chairman Carpenter noted that a diagram of the proposed new residence was provided in the packet for the Board but he had questions about the size of the proposed building, since it was not indicated. Ms. Jeske stated the new residence is 2040 square feet which includes the house and screened in porch/sunroom. Article 15 Schedule Lot, Yard and Area Requirements minimum floor area requirements were discussed. Ms. Jeske stated that the 2040 square feet mentioned earlier was the size of the main floor. This did not include the garage which is a standard two car garage. The Board noted that the minimum standards have to be met. Mr. Gale stated the entire review has been completed and the lake setback is the only issue. The Board had a question about the sea wall. Mr. Gale stated he is comfortable with the depiction and that the sea wall is accurate.

Motion by Lauderdale, supported by Harvey to close the hearing. The motion was unanimously approved.

Findings: Section 23.8 Variance Standards and Conditions

- A. 1. Mr. Lauderdale stated that an exceptional topographical condition is affirmed based on the packet survey and slope at the back of the retaining wall. He also believes that if Ms. Jeske were charged to move back 50 feet, there is an increased probability of serious damage to the drainage to the lake and the property at the top of the hill. Chairman Carpenter finds that it may be possible to build a smaller house. Mr. Lauderdale stated in his estimation the house would be very close to or less than the minimum required square footage stipulated in Article 15 of the Ross Township Zoning Ordinance. Mr. Thall stated that, if the Board required Ms. Jeske to meet the lake setback based on the topography of the lot, how would this impact this land; and what is a reasonable encroachment. And the reason for affirming this criteria can't be the size of the home, it would have to be topographical in nature. Mr. Thall stated that Mr. Lauderdale feels topography is an issue so what kind of variance would the Board be granting. Mr. Harvey stated that he is familiar with the property and in his opinion there are practical difficulties not caused by the present owner. When Mr. Harvey compares the present residence to the proposed residence, it is his opinion that the proposed residence is for the betterment of the neighbors and the present owner. Chairman Carpenter stated he has taken into consideration the property sight lines as relating to the neighbors. The Board, after concluding its discussion, finds in the affirmative there to be practical difficulties in the way of carrying out the strict

letter of the Zoning Ordinance that were not created by the applicant, specifically the topographical nature of the property.

2. Mr. Lauderdale stated that this item is Mr. Ledesma's question and Mr. Ledesma may not like the findings of the Board. Mr. Lauderdale stated he visited the subject property but did not view the subject property from Mr. Ledesma's side. Mr. Lauderdale stated that as he views the submitted drawing for lake setbacks his opinion is that the proposed new residence is not detrimental to adjoining property. The height of the new building is 25 feet according to Note 8 for Article 15 Minimum Building or Structure (Roof) Height and there are no detriments to adjoining property. Chairman Carpenter agrees with Mr. Lauderdale. Mr. Harvey's thoughts are the same as Mr. Lauderdale's. Mr. Harvey did go along some of Mr. Ledesma's property line and observed where the new residence would move further back from Mr. Ledesma's property line than the existing house. Mr. Harvey stated he looked for something to block the view. Mr. Harvey stated they may not see the first 4-5 feet of the lake which they can't see currently. The Board, after concluding its discussion, finds in the affirmative that such a variance will not be of substantial detriment to adjoining property.
3. Mr. Harvey stated it is his opinion that if granted this variance would not materially impair the intent of the Ross Township Zoning Ordinance. Mr. Lauderdale stated that the Zoning Ordinance reflects the Master Plan, which is to have as much open space as possible, protect the lake, and surrounding property. Mr. Lauderdale cannot identify a concern with respect to the granting of this variance impairing the intent of the Ordinance. Chairman Carpenter agrees and noted that part of the intent of the Ordinance is to provide enough space between neighboring properties. The Board, after concluding its discussion, finds in the affirmative that such a variance will not materially impair the intent and purpose of the Ordinance.
4. Chairman Carpenter stated that Ms. Jeske is pulling back from the adjacent property line and giving more open space. Mr. Thall stated that Section 17.3 points out the standard and why (for sight lines).
 - Mr. Lauderdale stated the Planning Commission wrestles with this regularly. Gull Lake is unique and the Planning Commission has no initiative to rewrite the R-1 Zoning District for Gull Lake. This area surrounding Gull Lake consists mainly of small lots. Mr. Harvey stated the steepness of the hill hinders expansion. Chairman Carpenter asked where the public sewer line was located. Ms. Jeske stated it runs down the side property line.

- Chairman Carpenter had no comment. Mr. Lauderdale suggested skipping this condition since only 2 of the three bullet statements need to be met.
- Mr. Lauderdale stated that no this variance is not general or recurrent in nature. Mr. Lauderdale stated the Planning Commission recently rewrote Section 18.4 in an effort to address issues around Gull Lake as an example of something that is general and recurrent in nature. Mr. Lauderdale stated this one is specific to the property and does not require the Zoning Ordinance to be rewritten.

The Board, after concluding its discussion, finds in the affirmative that such a variance will not materially impair the public health, safety and welfare; and further that bullets 1 and 3 exist for the subject property.

Mr. Lauderdale suggested the addition of a condition as part of the motion to grant the variance. If constructed the new residence must meet the standard in Article 15 for maximum building (roof) height, in order to address concerns regarding overall total height. Mr. Gale recommended, based on the building height concern that adequate topographical drawings, delineating the building height, be submitted and a benchmark be placed on the property for the average natural grade. Mr. Harvey noted an elevation difference from the lake to the top of the hill to be 34.5 feet. The Board discussed building height and average natural grade. Mr. Gale provided an explanation of elevation and average natural grade and how they relate to the building height.

Motion by Mr. Lauderdale, supported by Mr. Harvey that the Zoning Board of Appeals grant the variance to Section 17.3 Waterway Setback Requirements for All Buildings and Structures as submitted on the drawings to the Zoning Board of Appeals and Associated Government Services, and based on the finds of Section 23.8A above; if a new structure is constructed it is contingent upon the remaining requirements of Article 15 Schedule Lot, Yard and Area Requirements, drawings adequately depicting topographic elevations for the average natural grade and building height, removal of the existing building, and the placement of a benchmark on the property for the average natural grade.

Mr. Harvey asked if the motion could be modified since the survey shows 23.5 feet from the sea wall and the submitted site plan shows 22 feet. The motion was modified to include setback from the lake to be no closer than 22 feet and contingent on the submitted proposed footprint of the house.

Modified motion carried. Yea – 2 Nay -1.

OTHER:

Next meeting June 3, 2015 at 5:30 PM.

ADDITIONAL PUBLIC COMMENT:

Mrs. Ledesma commented who is the “someone” providing that information and who decides if it is adequate. Mr. Gale stated the job site property will be visited and variance requirements will be verified once a building permit application is submitted and during job site visits.

ADJOURNMENT:

Motion by Lauderdale supported by Harvey to adjourn the meeting at 7:24 pm. The motion was unanimously approved.

Respectfully submitted,

Bert Gale
Zoning Administrator