

**ZONING BOARD OF APPEALS
ROSS TOWNSHIP
June 3, 2015**

The Ross Township Zoning Board of Appeals held its regular meeting on **June 3, 2015, at 5:30 p.m.** in the Ross Township Hall. Chairperson Carpenter called the meeting to order and noted those present.

Present: Dave Carpenter, Chairperson
 Ed Harvey
 Jim Lauderdale
 Roger Schweitzer, Alternate

Absent: None

Also present: Bert Gale, AGS – Township Zoning Administrator
 Kelly Largent, AGS – Township Zoning Administrator
 Rebecca Harvey – Township Planning Consultant
 Rob Thall – Township Attorney
 Five (5) members of the public

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

APPROVAL OF MINUTES: On motion by Harvey, seconded by Lauderdale, the minutes of **May 6, 2015** were unanimously approved as presented.

NEW BUSINESS:

- 1) **Application for Variance**
James B. Nolin
1802 Idlewild Drive and 1799 & 1805 Wild Drive
Property Tax I.D. #3904-18-145-228, #3904-18-270-030, #3904-18-270-021

Chairperson Carpenter stated that the next matter to come before the Board was the request by James B. Nolin for variance approval from Section 16.3 and Section 22.3, Zoning Ordinance to adjust the existing lot line between two adjacent nonconforming lots (1799/1805 Wild Drive). The proposed lot line adjustment will reduce the nonconforming lot area and lot frontage/width of 1805 Wild Drive and modify the nonconforming lot area and lot area/frontage of 1799 Wild Drive.

The applicant also proposes to add 1617 sq ft of lot area from 1802 Idlewild Drive to 1805 Wild Drive. The additional lot area (1802 Idlewild Drive) is currently occupied by

a lawfully nonconforming garage and is located opposite 1805 Wild Drive. Variance approval from the front yard and side yard setback requirements is requested to permit the proposed land division and the existing nonconforming side yard setback from the northwest lot line and the existing nonconforming front yard setback from Wild Drive for the subject garage.

The subject sites requested for consideration are within the R-1 Low Density Residential District.

Chairperson Carpenter stated that the matter had been considered by the Board at its meeting on April 1, 2015 and was postponed to May 6, 2015 to allow for submission and consideration of the following information:

- Previous variance applications/Board action involving the subject properties.
- The dates of construction of all existing buildings on the subject properties.
- Confirmation of parcel numbers of the subject properties.

He noted that on May 6, 2015, the matter was postponed to June 3, 2015 at the request of the applicant. It was confirmed that the public comment portion of the public hearing had been left open to allow for continued discussion.

Chairperson Carpenter further noted that Alternate Schweitzer will continue to serve in consideration of the Nolan variance request given his service during consideration of the matter in April.

Gale referenced a parcel map and aerial photo of the subject properties. He explained that the Township has recently been made aware that a small portion of the lot located opposite 1811 Wild Drive (and owned by 1811 Wild Drive) was sold/transferred to 1802 Idlewild Drive. Gale stated that the lot split was accomplished without receiving lot split approval from the Township and without receipt of the requisite variances. He noted that the remainder of the variance requests are still required as previously noticed and explained.

James Nolin was present on behalf of the application. He stated that the lot split referenced by Gale was done automatically as a result of the expiration of a life lease on the property and can be 'undone' if necessary. He confirmed that the property sold/transferred was approximately 107 sq ft in area.

Regarding the requested variances, Nolin stated that 1802 Idlewild Drive is 22,412 sq ft in area and is currently a conforming lot. He explained that the proposal to add 1617 sq ft of lot area from 1802 Idlewild Drive to 1805 Wild Drive will still leave 1802 Idlewild Drive a conforming lot with a lot size of 20,785 sq ft. It was further noted that 1802 Idlewild Drive will continue to remain conforming with the addition of the 107 sq ft area from the lot opposite 1811 Wild Drive. (20,892 sq ft)

Nolan confirmed that the 1617 sq ft lot area proposed to be split from 1802 Idlewild Drive and added to 1805 Wild Drive is currently occupied by a lawfully nonconforming garage and is located opposite 1805 Wild Drive.

Following review of the proposed lot splits/combinations, it was noted that the following variances will be required:

- Proposed lot line adjustment between 1799 and 1805 Wild Drive so as to 'transfer' approximately 703 sq ft of lot area from 1805 Wild Drive to 1799 Wild Drive.

Variance approval is required to permit the proposed reduction in lot area and lot frontage/width of 1805 Wild Drive.

- Proposed split of approximately 1617 sq ft of lot area from 1802 Idlewild Drive and combine it with 1805 Wild Drive so as to give ownership of the garage (currently on 1802 Idlewild Drive) to 1805 Wild Drive.

1802 Idlewild Drive will continue to comply with dimensional requirements; no variance is required.

Variance approval is required to permit the proposed establishment of a 1617 sq ft lot opposite 1805 Wild Drive.

Variance approval is required to permit the garage (currently on 1802 Idlewild Drive) to continue to be located within required side and front yard setbacks when added to 1805 Wild Drive.

It was also noted that the actual proposed lot splits/combinations will be subject to Township Board review/approval pursuant to the Subdivision Control Ordinance.

Gale added that consideration of the requested variances was tabled in April to allow for confirmation of the history of variances granted to the subject properties. He stated that research on the matter revealed that no variances have been previously granted to the properties under consideration.

No further public comment was offered on the matter. The public comment portion of the public hearing was closed.

Chairperson Carpenter led the Board through a review of the variance criteria set forth in Section 23.8 A. The following findings were noted:

Proposed lot line adjustment between 1799 and 1805 Wild Drive:

Per Section 23.8A.:

- Practical difficulty in carrying out the strict letter of the Zoning Ordinance: *(exceptional narrowness, shallowness or shape of the property; exceptional topographic conditions; other extraordinary situation of the property)*
 - Both 1799 and 1805 Wild Drive are nonconforming lots and will remain nonconforming.
 - Both 1799 and 1805 Wild Drive are pre-existing lots and represent exceptional narrowness and shape.
- Self-created hardship: *(practical difficulty not created by the applicant or a predecessor owner in the applicant's family):*
 - The substandard size of the lots is not a condition created by the applicant.
- No substantial detriment to adjoining property:
 - The proposed property line adjustment will render 1799 Wild Drive more conforming in lot size and lot frontage/width.
 - The proposed property line adjustment will render an existing nonconforming setback on 1799 Wild Drive conforming.
- Not materially impair the intent and purpose of the Zoning Ordinance:
 - The proposed property line adjustment will reduce nonconformities on 1799 Wild Drive.
 - The proposed property line adjustment will not result in the creation of any new lots/building sites.
 - The proposed property line adjustment will not result in an increase in driveways.
- Not materially impair the public health, safety and welfare:
 - The proposed property line adjustment does not constitute a material change in the density or lot configuration of the area.
- Exceptional circumstances applying to the specific property that do not apply generally to other properties in the R-1 District:
 - Nonconforming lots around Gull Lake are a recurrent situation . . . but they are not a general circumstance within the R-1 District.

- Condition/situation of the property is not of a general or recurrent nature as to make reasonably practical a general regulation as part of the Zoning Ordinance:
 - Nonconforming lots around Gull Lake are a recurrent situation . . . but are not general to the Township as a whole.

It was reiterated that the above findings were based on the application documents presented and the representations made by the applicant at the meeting.

Harvey then moved to grant variance approval so as to allow the proposed property line adjustment. Variance approval is granted based upon the findings of the Board pursuant to the variance criteria set forth in Section 23.8 A., Zoning Ordinance and subject to Township Board approval of the proposed lot split/combination pursuant to the Subdivision Control Ordinance. Schweitzer seconded the motion. The motion carried unanimously.

Proposed lot split/combination between 1802 Idlewild Drive and 1805 Wild Drive:

In response to Board questions, Attorney Thall noted that pursuant to Section 16.1 D., as recently amended, that portion of 1802 Idlewild proposed to be ‘added’ to 1805 Wild Drive will be ‘*treated as a separate lot in the application of lot coverage, setback, and yard area requirements.*’ As such, variance approval will be required for the proposed split.

It was noted that the Section 16.1 D. had not been adopted at such time as the public hearing notice for the requisite variances was prepared and published. As such, the only variance requests noticed for the proposed lot split/combination involved the side yard setback and front yard setback requirements.

Harvey moved to direct the Township to renote the request so as to allow for consideration of all required dimensional variances (ie. lot size, lot frontage/width, lot coverage, side yard setback, and front yard setback) at the next meeting of the Zoning Board of Appeals. Nolin advised of his absence in July and requested the matter be scheduled for the August meeting. The Board concurred. Schweitzer seconded the motion. The motion carried unanimously.

Chairperson Carpenter noted that Lauderdale, as a regular member of the Board, will serve in consideration of the Schau variance request.

- 2) **Application for Variance**
Steve and Gina Schau
1382 Burlington Drive
Property Tax I.D. #3904-17-201-040

Chairperson Carpenter stated that the next matter to come before the Board was the request by Steve and Gina Schau for variance approval to make alterations to the exterior of an existing residence. The subject site is located at 1382 Burlington Drive and is within the R-1 Low Density Residential District.

Chairperson Carpenter explained that the proposed alterations to the existing house will require the following variances:

1. Variance approval from the 50 ft waterway (front) setback requirement so as to allow the construction of a gable roof and Juliette balcony over each of the two (2) upstairs windows facing Gull Lake; a 46 ft setback is proposed.
2. Variance approval from the 50 ft waterway (front) setback requirement so as to allow the construction of an 11 ft x 36 ft pergola over the existing patio; a 38 ft setback is proposed.
3. Variance approval from the 20 ft rear setback requirement so as to allow the construction of a 25 ft x 20 ft attached garage; a 7 ft setback is proposed.
4. Variance approval from the 33.9% maximum lot coverage requirement so as to allow the aforementioned construction, as well as the construction of a gable roof over the front door.

Steve Schau was present on behalf of the application. He stated that they purchased the property in January and desire to make improvements to the existing house to improve its 'curb appeal'. He noted that the house is a modular-constructed house and is very square, adding that much of the proposed construction is aesthetic-driven and will not increase the size of the house.

In response to Board questions, Schau explained that the proposed gable roofs/Juliette balconies will extend out 3 ft from the house (46 ft setback) and over the existing patio, which has an existing setback of 38 ft. He further confirmed that the proposed pergola will not extend beyond the edges of the existing patio.

In review of Section 16.3 D., it was determined that a patio constructed 'above the ground level upon which it is placed' would be subject to the 50 ft waterway (front) setback requirement. It was noted that the patio on the subject site is existing and currently extends above the ground level. However, the patio is located well within the 50 ft waterway (front) setback area. After lengthy Board discussion, it was determined that the date the patio was constructed and whether it was built at grade level at that time cannot be confirmed or denied by the Township Zoning Administrator. To that end, the Board must find that the existing patio is lawfully nonconforming with respect to its location within the required waterway (front) setback.

The Board acknowledged that the requested setback variances for the proposed gable roofs/Juliette balconies and the pergola are still required even though they will not extend further into the 50 ft waterway (front) setback than the existing patio.

Schau then explained that limited options exist for the placement of a garage on the subject site. He stated that locating a detached garage on Lot 57 (also owned by the applicant) which is located opposite the site was considered . . . but that the property experiences severe flooding due to road drainage. He distributed photos demonstrating the drainage problems in the area. Schau noted that the existing house is located approximately 27-28 ft from the rear lot line and that the proposed garage will be setback approximately 7 ft from the rear lot line.

He stated that the proposed construction of a gable roof over the front entrance is also proposed to improve the aesthetics of the house and to provide a rain shelter. He explained that if the proposed gable roofs/Juliette balconies, pergola, and garage are allowed, then the proposed gable roof over the front door will result in a lot coverage of 37.8%, which exceeds the 33.9 % lot coverage allowed. He noted that the proposed gable roof is proposed to comply with applicable setback requirements.

Sid Durham stated that he resides on Burlington Drive and that he does not object to the proposed aesthetic improvements to the house, including the proposed pergola. . . if it does not extend beyond the boundaries of the existing patio. He noted his objection to the proposed garage and its encroachment into the rear setback. Durham opined that an encroachment of 7 ft from the rear property line is not good form; presents a problem for snow removal; does not allow a safe and adequate area for off-street parking; and would not be consistent with decisions applied to other properties in the area. He noted that not all properties in the area have garages and that other options are available to the applicant . . . such as a detached garage on Lot 57 or parking outside as has been done in the past.

Gina Schau noted that many homes/garages along the street are located closer to the rear lot line than the proposed 7 ft. She added that building a garage on a lot that routinely floods is a hardship.

No further public comment was offered on the matter. The public comment portion of the public hearing was closed.

In response to Board questions, Gale confirmed that the existing lot coverage on the site was calculated at 32.6% and did include the existing patio. He stated that the existing lot coverage is in compliance with the 33.9% maximum lot coverage that is allowed. The Board then noted that the proposed gable roofs/Juliette balconies, pergola, and gable roof over the front entrance will extend over existing 'paved' areas and will not serve to add to the existing lot coverage calculation. It was agreed that variance approval from the maximum lot coverage requirement will only be needed for the proposed attached garage.

Chairperson Carpenter led the Board through a review of the variance criteria set forth in Section 23.8 A. The following findings were noted:

50 ft Waterway (Front) Setback Requirement: (gable roofs/Juliette balconies and pergola)

Per Section 23.8A.:

- Practical difficulty in carrying out the strict letter of the Zoning Ordinance: *(exceptional narrowness, shallowness or shape of the property; exceptional topographic conditions; other extraordinary situation of the property)*
 - The existing patio is located within the front setback area and is lawfully nonconforming.
 - The proposed construction will not extend beyond the front setback of the existing patio.
- Self-created hardship: *(practical difficulty not created by the applicant or a predecessor owner in the applicant's family):*
 - The front setback of the existing patio is not a condition created by the applicant.
- No substantial detriment to adjoining property:
 - The proposed construction will not reduce the waterway (front) setback already established by the existing patio.
 - The proposed construction will not encroach into sight lines of adjacent property.
- Not materially impair the intent and purpose of the Zoning Ordinance:
 - The proposed construction will not reduce the waterway (front) setback already established by the existing patio.
 - The proposed construction will not encroach into sight lines of adjacent property.
- Not materially impair the public health, safety and welfare:
 - The proposed construction will not constitute a change in the existing waterway (front) setback that exists on the site.
- Exceptional circumstances applying to the specific property that do not apply generally to other properties in the R-1 District:

- Nonconforming setbacks on lots around Gull Lake are a recurrent situation . . but they are not a general circumstance within the R-1 District.
- Condition/situation of the property is not of a general or recurrent nature as to make reasonably practical a general regulation as part of the Zoning Ordinance:
 - Nonconforming setbacks on lots around Gull Lake are a recurrent situation . . but are not general to the Township as a whole.

It was reiterated that the above findings were based on the application documents presented and the representations made by the applicant at the meeting.

Lauderdale then moved to grant variance approval from 50 ft waterway (front) setback requirement so as to allow 1) the proposed construction of a gable roof and Juliette balcony over each of the two (2) upstairs windows facing Gull Lake with a 46 ft setback; and, 2) the proposed construction of an 11 ft x 36 ft pergola over the existing patio with a 38 ft setback. Variance approval is granted based upon the findings of the Board pursuant to the variance criteria set forth in Section 23.8 A., Zoning Ordinance. Harvey seconded the motion. The motion carried unanimously.

20 ft Rear Setback Requirement: (attached garage)

Per Section 23.8A.:

- Practical difficulty in carrying out the strict letter of the Zoning Ordinance: *(exceptional narrowness, shallowness or shape of the property; exceptional topographic conditions; other extraordinary situation of the property)*
 - The subject site is a pre-existing lot and represents exceptional narrowness and shape.
 - Optional building locations on the site are limited.
- Self-created hardship: *(practical difficulty not created by the applicant or a predecessor owner in the applicant's family):*
 - The substandard size of the lot and the location/size of the existing house are not conditions created by the applicant.
- No substantial detriment to adjoining property:
 - Similar rear setbacks exist on many of the lots along Burlingon Drive.
 - The proposed construction will comply with applicable side setback requirements.

- Not materially impair the intent and purpose of the Zoning Ordinance:
 - The area proposed for the garage is currently used for parking; a change in the use of the area will not result with the construction of the garage.
- Not materially impair the public health, safety and welfare:
 - The subject area currently experiences limitations . . . such as minimal road width, flooding, limited area for parking, traffic, and setback encroachment; the proposed 7 ft setback for the garage will not significantly alter the existing situation.
- Exceptional circumstances applying to the specific property that do not apply generally to other properties in the R-1 District:
 - Nonconforming lots around Gull Lake are a recurrent situation . . . but they are not a general circumstance within the R-1 District.
- Condition/situation of the property is not of a general or recurrent nature as to make reasonably practical a general regulation as part of the Zoning Ordinance:
 - Nonconforming lots around Gull Lake are a recurrent situation . . . but are not general to the Township as a whole.

It was reiterated that the above findings were based on the application documents presented and the representations made by the applicant at the meeting.

Lauderdale then moved to grant variance approval from 20 ft rear setback requirement so as to allow the proposed attached garage. ~~Variance approval is granted~~ based upon the findings of the Board pursuant to the variance criteria set forth in Section 23.8 A., Zoning Ordinance. Harvey seconded the motion. The motion failed 1-2, Harvey and Carpenter dissenting.

Harvey stated that there are additional findings with respect to Section 23.8 A.3. and that they do not support a grant of the requested variance. He noted the following:

- The proposed location of the garage (7 ft rear setback) does not provide adequate room for off-street parking and will result in roadway encroachment in an already congested area.
- A 7 ft rear setback does not provide adequate room for snow storage.
- The aerial photo provided demonstrates that a 7 ft rear setback will result in an encroachment into the sight lines of adjacent lots.
- The site is not unique in any way.
- A grant of the variance will establish a direction for building within the 20 ft rear setback instead of moving existing nonconformities toward compliance.

In response to Board questions, Attorney Thall stated that the flooding in the area should not be a factor. He explained that a resolution to the flooding of the roadway is the appropriate avenue rather than using the condition as a basis for variances.

Attorney Thall also warned against using the presence of other properties in the area that are nonconforming as support for variances in that the nonconforming situations, by definition, are intended to be replaced with conforming situations.

R. Harvey further noted that the 20 ft rear setback standard is a reduced standard developed to apply to nonconforming lots. She stated that the 50 ft rear setback standard applicable to waterfront lots was reduced to respond to the recognized limitations of smaller lots.

Harvey then moved to deny variance approval from the 20 ft rear setback requirement so as to allow the proposed attached garage. Variance approval is denied based upon the inability of the request to meet Section 23.8 A.3. and therefore failing to meet all of the criteria set forth in Section 23.8 A., Zoning Ordinance. Carpenter seconded the motion. The motion carried 2-1, Lauderdale dissenting.

The Board noted that with a denial of the rear setback variance for the proposed attached garage, a variance from the maximum lot coverage requirement is not necessary.

ADJOURNMENT: There being no further business to come before the Board, the meeting was adjourned at 8:20 p.m.

Respectfully Submitted,

Rebecca Harvey, AICP, PCP
Township Planning Consultant