

**ZONING BOARD OF APPEALS
ROSS TOWNSHIP
August 5, 2015**

The Ross Township Zoning Board of Appeals held its regular meeting on **August 5, 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
 Eight (8) members of the public

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

APPROVAL OF MINUTES: It was noted that the motion set forth on Page 10 should be modified to read ‘Lauderdale then moved to grant variance approval from the 20 ft rear setback requirement so as to allow the proposed attached garage 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.’ On motion by Harvey, seconded by Lauderdale, the minutes of **June 3, 2015** were unanimously approved as amended.

NEW BUSINESS:

- 1) **Application for Variance**
James B. Nolin
1802 Idlewild Drive and 1805 Wild Drive
Property Tax I.D. #3904-18-145-228, #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 all applicable dimensional requirements to allow for the addition of 1617 sq ft of lot area from 1802 Idlewild Drive to 1805 Wild Drive, with such addition containing an existing lawfully nonconforming

garage located across the street from 1805 Wild Drive. The subject property requested for consideration is within the R-1 Low Density Residential District.

Chairperson Carpenter stated that the matter had been considered by the Board at its meeting on June 3, 2015 and was rescheduled for the August meeting to allow the Township to renotice the request to consider all required dimensional variances.

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 and June.

James Nolin was present on behalf of the application. He noted that the sale/transfer of 107 sq ft of land area from 1811 Wild Drive to 1802 Idlewild Drive referenced by Bert Gale at the previous Board meeting has been addressed. Nolin referenced a quit claim deed provided to the Board that demonstrates the transfer of the subject 107 sq ft of property back to 1811 Idlewild Drive.

Nolin then referenced the updated survey of 1802 Idlewild Drive and 1799/1805 Wild Drive provided to the Board. He noted that the updated survey provides parcel area information that reveals the following:

- 1802 Idlewild Drive is 21,596 sq ft in area and is currently a conforming lot
- 1805 Wild Drive was 6550 sq ft in area and a lawful nonconforming lot
- The transfer of 703 sq ft of lot area from 1805 Wild Drive to 1799 Wild Drive (approved by the ZBA on June 3, 2015) resulted in a lot area of 5847 sq ft for 1805 Wild Drive
- The current proposal to add 1604 sq ft of lot area from 1802 Idlewild Drive to 1805 Wild Drive will render 1802 Idlewild Drive a nonconforming lot with a lot size of 19,992 sq ft and decrease the nonconformity of 1805 Wild Drive by increasing the size of the lot from 5847 sq ft to 7451 sq ft.

Nolin confirmed that the lot area proposed to be split from 1802 Idlewild Drive and added to 1805 Wild Drive is actually 1604 sq ft in size (not 1617 sq ft). He reiterated that the proposed 1604 sq ft area is currently occupied by a lawfully nonconforming garage and is located opposite 1805 Wild Drive.

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

Variance approval is required to permit the proposed reduction in lot area of 1802 Idlewild Drive;

Variance approval is required to permit the proposed establishment of a 1604 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 and to exceed the lot coverage standard when added to 1805 Wild Drive.

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

In response to questions from Attorney Thall, Nolin noted that the subject garage is approximately 70-80 years old and has always been used in conjunction with the residential use of 1805 Wild Drive.

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

General Board discussion ensued wherein it was noted that a reduction of the proposed transfer of 1604 sq ft by 8 sq ft would result in a lot area of 20,000 sq ft for 1802 Idlewild Drive and allow it to remain a conforming lot. It was further noted that the proposed transfer area could be reduced by 8 sq ft simply by relocating the proposed rear lot line of 1805 Wild Drive 1 ft to the northeast and changing the proposed rear setback for the garage from 5 ft to 4 ft.

E. Harvey stated that a variance from the rear setback requirement will also then be required for 1805 Wild Drive but that the reconfiguration was a reasonable approach given that the slope in that **area** already limits building opportunities on that portion of 1802 Idlewild Drive.

Nolin agreed to reconfigure the proposed lot split/combination as suggested.

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 split/combination between 1802 Idlewild Drive and 1805 Wild Drive, as adjusted:

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)*
 - 1802 Idlewild Drive will continue to comply with all applicable dimensional requirements.

- The proposed lot split/combination will render 1805 Wild Drive more conforming in lot size.
- The existing garage has been in its current location for 70-80 years and the proposed lot split/combination will not alter the existing nonconforming side and front setbacks.
- The slope that exists on 1802 Idlewild in the area of the proposed rear lot line of 1805 Wild Drive limits building opportunities in that area.
- Self-created hardship: (*practical difficulty not created by the applicant or a predecessor owner in the applicant's family*):
 - The location and historic use of the garage in conjunction with 1805 Wild Drive is not a condition created by the applicant.
- No substantial detriment to adjoining property:
 - The proposed lot split/combination will render 1805 Wild Drive more conforming in lot size.
 - The proposed lot split/combination will not alter the existing nonconforming side and front setbacks or change the existing building coverage on the subject properties.
 - The slope that exists on 1802 Idlewild in the area of the proposed rear lot line of 1805 Wild Drive limits building opportunities on that portion of 1802 Idlewild Drive thereby reducing the impact of a 4 ft rear setback for the existing garage.
- Not materially impair the intent and purpose of the Zoning Ordinance:
 - The proposed lot split/combination will render 1805 Wild Drive more conforming in lot size.
 - The proposed lot split/combination will not result in the creation of any new lots/building sites.
 - The proposed lot split/combination will not result in an increase in driveways.
 - The proposed lot split/combination will not alter the existing nonconforming side and front setbacks or change the existing building coverage on the subject properties.

- Not materially impair the public health, safety and welfare:
 - The proposed lot split/combination does not constitute a material change in the density, use, building coverage, 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.

Schweitzer then moved to grant variance approval so as to allow the proposed lot split/combination 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. Harvey 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 Dumont variance request.

2) Application for Variance
Douglas Dumont
12258 North Sherman Lake Drive
Property Tax I.D. #3904-29-330-031

Chairperson Carpenter stated that the next matter to come before the Board was the request by Douglas Dumont for variance approval from the 50 ft front (waterfront) setback requirement to allow for a proposed addition to an existing deck. The subject site is located at 12258 North Sherman Lake Drive and is within the R-1 Low Density Residential District.

Douglas Dumont was present on behalf of the application. He stated that the proposed addition to the deck is in the vicinity of the kitchen and is desired to accommodate the placement of a table/chairs on the deck. He noted that the proposed addition will extend over an existing lower deck and will be provided a similar front setback.

Dumont stated that he obtained a building permit for the deck addition and that a footing inspection was conducted and approved. He noted that the deck addition was then completed, with the exception of the installation of the railings, until work on the project was stopped by the Township. He referenced photos of the property.

Bert Gale confirmed that a building permit had been issued for the proposed deck addition based upon the lot diagram provided with the building permit application that indicated a 55 ft setback from the high water line of Sherman Lake. He noted that the footing inspection was conducted by the building inspector, not the zoning administrator, and did not include an inspection of the setbacks. Upon a visit to the site by the zoning administrator, a setback inspection was conducted and the front setback violation discovered. Gale advised that work on the project was stopped at the discovery of the setback violation. He referenced the building permit application documents submitted by the applicant.

Lauderdale clarified that the 'existing lower deck' referenced by the applicant is a 'patio' as defined by the Zoning Ordinance.

E. Harvey questioned if the patio is at ground level or is raised. He referenced the Schau variance request recently considered by the Board. Gale confirmed that the patio is at ground level and not subject to the setback standards.

In response to Board questions, Dumont confirmed that the deck addition is located 43.5 ft from the seawall. Gale agreed that the high water line for the property would be considered the seawall, pursuant to the definition of 'high water line' set forth in the Ordinance and historic application of the standard. Dumont further confirmed that the existing deck extends 6 ft from the house. He noted that the house and patio were constructed in 1988.

Tom Boyd stated that he resides on property adjacent to the subject site. He noted that he constructed a new home on his property and developed the site in compliance with all setback requirements. He opined that the subject site should be held to the same standards. Boyd stated that the 'existing deck' being referenced was actually recently replaced and provided with an awning that also extends into the setback. He added that the deck addition extends out another 8 ft from the recently replaced deck. Boyd further questioned if the proposal will result in a violation of the lot coverage standard.

Kelly Largent stated that the lot is lawfully nonconforming and permitted 30.5% lot coverage pursuant to the Zoning Ordinance. Based on the dimensions provided on the lot diagram, she advised that a 29% lot coverage is proposed.

Daniel Mann stated that he also resides on property adjacent to the subject site and that he feels the deck addition is more accurately located 39 ft from the seawall. He noted that the garage and outbuildings on the site are also located within the setback and demonstrate further the inaccuracies of the lot diagram and the erroneous construction on the property.

Mann referenced correspondence dated August 4, 2015 that he submitted to the Board and reiterated that the deck serves as a platform for the applicant to disrupt the peace and harmony of the adjacent property owners and that the requested variance should be denied.

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

Chairperson Carpenter initiated Board consideration of the variance criteria set forth in Section 23.8 A. The following findings were noted:

- 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 shape and topography of the property are not exceptional.
 - There is not an extraordinary situation present on the property.
 - No practical difficulty exists in complying with the 50 ft setback requirement.

It was noted 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 deny variance approval from the 50 ft front (waterfront) setback requirement so as to allow the proposed deck addition based upon the inability of the request to meet Section 23.8 A.1. 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 unanimously.

ADJOURNMENT: There being no further business to come before the Board, the meeting was adjourned at 6:27 p.m.

Respectfully Submitted,

Rebecca Harvey, AICP, PCP
Township Planning Consultant