

**ZONING BOARD OF APPEALS  
ROSS TOWNSHIP  
February 3, 2016**

The Ross Township Zoning Board of Appeals held its regular meeting on **February 3, 2016, 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  
                    Jim Lauderdale

Absent:         Ed Harvey

Also present:       Bert Gale, AGS – Township Zoning Administrator  
                            Kelly Largent, AGS – Township Zoning Administrator  
                            Rebecca Harvey – Township Planning Consultant  
                            Rob Thall – Township Attorney  
                            Three (3) members of the public

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

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

NEW BUSINESS:

- 1) **Application for Variance**  
**Marguerite and Grover Bozarth**  
**5967 North 39<sup>th</sup> Street**  
**Property Tax I.D. #3904-32-230-022**

Chairperson Carpenter stated that the next matter to come before the Board was the request by Marguerite and Grover Bozarth for variance approval to make alterations to an existing legal nonconforming building which lies within the required 40 ft front yard setback. The subject site is located at 5967 North 39<sup>th</sup> Street and is within the R-1 Low Density Residential District.

Chairperson Carpenter noted that pursuant to the Michigan Zoning Enabling Act (PA 110, as amended), support by a majority of the Board is required for action on a request. Accordingly, action on the requested variance will require support from both Board members present. The applicant stated that he would like the Board to proceed with consideration of the request.

Chairperson Carpenter explained that the proposal to ‘alter’ the existing legal nonconforming building requires variance approval from Section 22.3 – Expansion of a Nonconforming Use or Building/Structure which prohibits the *‘alteration of a nonconforming building/structure that, by itself, is not in conformity with the provisions of this ordinance.’* He further noted that the existing legal nonconforming building is currently located within the required 40 ft front yard setback and that variance approval from Article 15 – Schedule of Lot, Yard and Area Requirements is also necessary to allow the proposed alterations. He referenced the ‘Summary Review’ of the request provided by AGS, Township Zoning Administrator.

Bert Gale of AGS referenced the sketch plan and site photos provided in the application material. He confirmed that the existing building is located 29 ft from the front lot line, within the 40 ft required front yard setback, and is a legal nonconforming building by virtue of setback. Gale stated that the interior of the subject building has been substantially remodeled but that the building has not been expanded nor the front setback reduced. Pursuant to Section 22.3, the existing nonconforming situation has not been *‘aggravated’* but that the alterations may *‘substantially extend the otherwise reasonably anticipated useful life of the nonconforming building.’* He confirmed that a building permit was not issued for the alterations made to the building.

Marguerite and Grover Bozarth were present on behalf of the application. Grover Bozarth confirmed the accuracy of the application material referenced.

In response to Board questions, Bozarth stated that the subject building was constructed long ago and was the ‘original house/attached garage’ on the site. He noted that the current house was constructed approximately 10 years ago as an addition to the ‘original house/attached garage’ and that the subject building was then used solely as a garage. Bozarth confirmed that he recently made alterations to the subject building so that it would ‘match and complement the newer (existing) house’. . but that all renovations were done within the existing building footprint and that no additions or extensions were made.

Mark Rodgers stated that he lives on Sherman Lake and is familiar with the applicant’s property. He commented that the Bozarth’s house is situated near older houses, many of which are located near the road and/or are in disrepair. He stated that the Bozarth’s house ‘stands out as the nicest one in the neighborhood.’ Rodgers noted that the remodeled garage has not been relocated and is actually shorter in length which has reduced the nonconformity. He added that the garage doors on the building previously faced the road but have now been relocated and so no longer require the backing of vehicles directly onto 39<sup>th</sup> Street.

Rodgers further stated that similar variances have been granted to other properties in the immediate area that required greater relief and had fewer facts supporting the decision. He distributed copies of his written statements dated February 2, 2016 to the Board.

In response to Board questions, Bozarth confirmed that he reused the old foundation and left much of the existing building. . but did reduce the footprint of the building slightly which did result in an increased front setback.

Chairperson Carpenter questioned if an alternate location on the site in conformance with the front setback requirement was available for the garage. Bozarth responded that use of the existing foundation was desired and that it allowed for placement of the garage in the correct location relative to the floor plan of the house. He also noted that the topography at the rear of the site and the location of the existing well/septic systems limit the buildable area on the site.

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

General Board discussion ensued regarding the elements of Section 22.3, Zoning Ordinance. Lauderdale noted that the foundation and footprint of the subject building were longstanding and that the alterations did not change the existing building setbacks nor enlarge the size of the building. As such, he felt the criteria for the alteration of a nonconforming building had been met . . and questioned how the Board should apply the standard that the alteration *'not substantially extend the otherwise reasonably anticipated life of the nonconforming building.'*

Township Attorney Thall stated that Section 22.3 establishes that a nonconforming building 'shall not be altered unless such alteration is, by itself, in conformity with the Ordinance and does not aggravate the existing nonconforming situation' as the primary criteria applicable to the alteration of a nonconforming building. He opined that the second element of the provision could be considered less pertinent and is set forth to serve as a guide to the Board in consideration of a proposed alteration that does not meet the first standard.

Chairperson Carpenter led the Board through a review Section 22.3 and the variance criteria set forth in Section 23.8 A. The following findings were noted:

***Per Section 22.3 – Alteration of a Nonconforming Building***

- The alterations do not result in an expansion or extension of the existing nonconforming building.
- The building foundation and footprint are long-standing; the alterations do not modify (aggravate) the nonconforming setback nor change the existing building foundation or footprint.
- The alterations do not modify the structural integrity of the building and so do not constitute *'alterations that substantially extend the otherwise reasonably anticipated useful life'* of the building.

***Per Section 23.8A. – Alteration of a Nonconforming Building; Front Setback Requirement***

- 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 building is located within the required front yard setback and is a lawful nonconforming building. The building is not proposed to be moved.
  - The alterations do not increase the existing lawful nonconformity.
  - The location and configuration of the existing house, the location of the existing well/septic system on the site, and the slope of the property present some limitations in locating a new garage on the site in compliance with setback requirements.
- Self-created hardship: *(practical difficulty not created by the applicant or a predecessor owner in the applicant's family):*
  - The location of the nonconforming building is not a condition created by the applicant.
- No substantial detriment to adjoining property:
  - The alterations do not increase the existing nonconformity nor increase the size of the nonconforming building.
  - The alterations result in aesthetic improvements to the property.
- Not materially impair the intent and purpose of the Zoning Ordinance:
  - The alterations do not increase the existing nonconformity nor increase the size of the nonconforming building.
  - The alterations are not contrary to the intent of the setback and lot coverage standards applicable to the site.
  - The alterations do not modify the structural integrity of the building and so will not constitute *'alterations that substantially extend the otherwise reasonably anticipated useful life'* of the building.
- Not materially impair the public health, safety and welfare:
  - The alterations do not constitute an increase in the area of the nonconforming building nor do they modify the existing nonconforming setbacks.

- The alterations result in aesthetic improvements to the property.
- Exceptional circumstances applying to the specific property that do not apply generally to other properties in the R-1 District:
  - Nonconforming structures are not a general circumstance within the R-1 District.
- Condition/situation of the property not of a general or recurrent nature as to make reasonably practical a general regulation as part of the Zoning Ordinance:
  - Nonconforming structures are not general to the Township as a whole.
  - Accessory structure text has recently been adopted to address general situations applicable to size and location of accessory structures.

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 Section 22.3 so as to allow the proposed alterations of a nonconforming building and from Article 15 so as to allow the proposed alterations of a nonconforming building within the required front yard setback. Variance approval is granted based upon the findings of the Board pursuant to Section 22.3 and the variance 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