

**ZONING BOARD OF APPEALS  
ROSS TOWNSHIP  
April 6, 2016**

The Ross Township Zoning Board of Appeals held its regular meeting on **April 6, 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  
Ed Harvey  
Jim Lauderdale

Absent: None

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

**APPROVAL OF AGENDA:** Chairperson Carpenter noted that the Township Planning Consultant forwarded draft text proposed by the Planning Commission that will amend Section 23.8 – Variance Standards to the ZBA for consideration. He requested that the matter be added to the agenda as a discussion item. On motion by Lauderdale, seconded by Harvey, the agenda was unanimously approved as amended.

**APPROVAL OF MINUTES:** On motion by Lauderdale, seconded by Carpenter, the minutes of **February 3, 2016** were unanimously approved as presented.

**2016-2017 MEETING SCHEDULE:** On motion by Harvey, seconded by Lauderdale, the proposed **2016-2017 meeting schedule** and related filing deadline schedule of the Zoning Board of Appeals were unanimously approved as presented.

**NEW BUSINESS:**

- 1) **Application for Variance**  
**David Wiedemer**  
**1430 Burlington Drive**  
**Property Tax I.D. #3904-08-390-270**

Chairperson Carpenter stated that the next matter to come before the Board was the request by David Wiedemer for variance approval to make alterations to an existing legal

nonconforming building and reconstruct an existing nonconforming garage which lie within the required setbacks and currently exceed lot coverage requirements. The subject site is located at 1430 Burlington Drive and is within the R-1 Low Density Residential District.

Chairperson Carpenter explained that the proposal to ‘alter’ the existing legal nonconforming building and reconstruct the existing legal nonconforming garage 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 buildings are currently located within the required front, rear and side yard setbacks and exceed the lot coverage requirement . . . so 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 presented a Survey Report for the proposed application. He noted that the Survey shows that the existing house is located within the required front, side and rear yard setbacks. He added that the existing garage is located within the side and rear yard setbacks, and further encroaches into the right-of-way of the abutting roadway (Burlington Drive). Gale stated that the proposed alterations and reconstruction are not proposed to expand the existing buildings nor modify the existing nonconforming setbacks but will constitute an *‘alteration of a nonconforming building that will not by itself be in conformity with the provisions of this ordinance.’*

Evan LaDuc, project architect and David Wiedemer, owner were present on behalf of the application. LaDuc confirmed that the reconstruction of the garage is proposed to be within the footprint of the existing garage and will not constitute an expansion. He added that the reconstruction is proposed in large part due to deterioration of the building caused by flooding problems on the site.

In response to Board questions, LaDuc noted the following:

- the existing garage is attached to the northeast corner of the house;
- a total demolition of the existing 20 ft x 26 ft garage is proposed;
- the garage floor elevation is proposed to be raised to provide adequate drainage;
- a reconstruction of the garage within the existing footprint is proposed . . . including the reconstruction of the existing 520 sq ft upper level;
- renovation of the existing house is proposed to include a restructuring of the existing roof to provide a shed dormer to expand the attic area and allow the addition of two sleeping areas and a full bath;
- the addition of the shed dormer will not increase the height of the building;
- the upper level of the garage will be accessible from the house through an internal stairway proposed with the renovation.

Wiedemer stated that he is a 32-year resident and owner of the subject property and that the existing garage was constructed prior to Burlington Road being elevated. He provided photos of the flooding that has occurred on the site as a result of the change in road drainage patterns. Wiedemer added that many properties along Burlington Road are occupied by homes that encroach into the road right-of-way.

Lauderdale noted that the elements of the proposed renovation/reconstruction project outlined in Items 1.-5. in the review letter provided by AGS all appear to 'speak to' existing situations. Attorney Kaufman agreed that the project is not proposing to 'change' any existing nonconforming situation . . . but the nonconforming provisions set forth in the Ordinance only give credence to such a lack of change when ordinary repair and maintenance to a nonconforming building is proposed. Conversely, nonconforming provisions generally are intended to use a proposed alteration to a nonconforming building as the trigger to achieving compliance with an adopted standard. She referenced Sections 22.3 and 22.4, Zoning Ordinance.

Attorney Kaufman also clarified that the Board should not take action that authorizes encroachment into a road right-of-way. She stated that approval to locate a building within the road right-of-way would require approval from the road agency and is not the authority of the ZBA.

Carpenter questioned if it would be possible to relocate the proposed garage back out of the right-of-way. Wiedemer indicated that there is room to bring the garage back approximately 10 ft and out of the right-of-way but that it would continue to encroach into the required side setback.

Chairperson Carpenter advised the applicant that the upper level of the garage cannot be used as an 'apartment'. Weidemer stated that the space is accessible from the interior of the house and will be used as extra space within the home.

LaDuc inquired if raising the garage and making foundation changes to correct the flooding would still require variance approval. Gale confirmed that such a proposal would still constitute an alteration to a nonconforming building and trigger the application of Section 22.3.

Weidemer submitted letters of support received from five area property owners (Elluru, Baas, O'Boyle, Moon, DeNooyer). Chairperson Carpenter accepted and noted the letters of support for the record.

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

Chairperson Carpenter stated that given Attorney Kaufman's direction regarding encroachment into the road right-of-way, only a proposal to reconstruct the garage out of the right-of-way should be considered in the application of the variance criteria. Board members agreed.

Chairperson Carpenter then led the Board through a review of Section 22.3 and the variance criteria set forth in Section 23.8 A. as they would apply to the proposed renovation of the nonconforming home and a reconstruction of the nonconforming garage out of the road right-of-way. 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 buildings.
- The alterations do not modify (aggravate) the nonconforming conditions nor change the existing building footprint.
- The alterations to the house 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.
- The reconstruction of the garage will modify the structural integrity of the building and so will ‘*substantially extend the otherwise reasonably anticipated useful life*’ of the building. However, it is recognized that the reconstruction is needed to keep the building in sound condition . . . and that the reconstruction will not aggravate the existing nonconforming condition.

***Per Section 23.8A. – Alteration of a Nonconforming Building; Front, Side and Rear Setback Requirements; and Lot Coverage 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 alterations will not change the existing footprints of the house or the garage and do not increase any existing lawful nonconformity.
  - The size of the lot limits the ability to comply with all applicable setback requirements.
  - The location and configuration of the existing house and the narrowness of the lot present limitations in locating a reconstructed garage on the site in compliance with side and rear yard 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 buildings is not a condition created by the applicant.

- The need to reconstruct the garage is due largely to the deterioration caused by flooding that occurs as a result of changes in elevation made to the abutting public roadway.
- No substantial detriment to adjoining property:
  - The alterations do not increase any existing nonconformity nor increase the size of the nonconforming buildings.
  - The alterations will not modify the existing building footprints.
  - The alterations result in aesthetic improvements to the property. Reference was made to the letters of support received from adjacent/surrounding property owners.
  - Allowing a garage on the site is reasonable and consistent with development patterns in the area.
- Not materially impair the intent and purpose of the Zoning Ordinance:
  - The alterations do not increase any existing nonconformity nor increase the size of the nonconforming buildings.
  - The alterations are not contrary to the intent of the setback and lot coverage standards applicable to the site.
  - The alterations will result in a removal of the garage from the road right-of-way which will improve safety.
- Not materially impair the public health, safety and welfare:
  - The alterations do not constitute an increase in the area of the nonconforming building nor modify any existing nonconformity.
  - The alterations will result in a removal of the garage from the right-of-way which will improve safety.
- 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 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 the nonconforming house and the proposed reconstruction of the nonconforming garage out of the abutting road right-of-way and from Article 15 so as to allow the proposed alterations of the nonconforming buildings within the required front, side, and rear yard setbacks and in excess of the maximum lot coverage requirement. 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. Harvey seconded the motion. The motion carried unanimously.

Chairperson Carpenter advised the applicant that the action authorized by the variance must begin within six months from the date the variance is granted and is required to be completed within 12 months. (Section 23.12 A.)

**2) Application for Variance  
Advantage Roofing  
185 South Gull Lake Drive  
Property Tax ID: \$3905-20-118-390**

Chairperson Carpenter stated that the next item of business to come before the Board was the request by Advantage Roofing for variance approval to make alterations to an existing nonconforming building that is located within the required front setback. The subject site is located at 185 South Gull Lake Road and is within the R-1 Low Density Residential District.

Gale explained that the project began as a reroof and has expanded to a remodel and major roof repair due to structural issues discovered during construction. He stated that the subject house is located within the required front setback and exists as a lawful nonconforming building. Further, the area of structural repair involves that portion of the house located within the front setback.

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 proposed alteration is located within the required front yard setback . . . so that variance approval from Article 15 – Schedule of

Lot, Yard and Area Requirements is also necessary. He referenced the ‘Summary Review’ of the request provided by AGS, Township Zoning Administrator.

The applicant stated that the subject house is over 100 years old and actually is a historic structure. He provided an overview of the structural damage discovered in the reroof project and the work required to keep the building in sound condition. He confirmed that the proposed repair will not result in a change to the existing footprint of the building nor serve to decrease the existing building setback.

Kevin Miller, a long-time neighbor of the property, noted his support of the project. He expressed concern that the enforcement of the Ordinance and the applicable variance process has caused serious delay in the construction process which has resulted in increased damage and repair costs to the applicant. Miller noted that he has received similar variances in the past for his property . . . as have many other properties in the Township . . . and that the Township should address this apparent common situation in a less time consuming manner. He stated that the Zoning Ordinance should have recognized this situation as a standard repair and allowed the project to continue.

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 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 alterations do not modify (aggravate) the nonconforming setback nor change the existing building footprint.
- The alterations will modify the structural integrity of the roof and building wall and so will ‘*substantially extend the otherwise reasonably anticipated useful life*’ of the building. However, it is recognized that the repairs are needed to keep the building in sound condition . . . and that the repairs will not aggravate the existing nonconforming condition.

***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 alterations will not change the existing footprint of the house and do not increase any existing lawful nonconformity.
- Self-created hardship: (*practical difficulty not created by the applicant or a predecessor owner in the applicant's family*):
  - The location of the nonconforming house is not a condition created by the applicant.
  - The proposed alterations are needed to keep the house in sound condition and prevent further deterioration.
- No substantial detriment to adjoining property:
  - The alterations do not increase the existing nonconformity nor increase the size of the nonconforming building.
  - The alterations will not modify the existing building footprint.
  - The alterations result in aesthetic improvements to the property by keeping the historic house in sound condition.
- 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 standard applicable to the site.
  - The nonconforming house is similar in size and location to other buildings on adjacent/surrounding lots.
- Not materially impair the public health, safety and welfare:
  - The alterations do not constitute an increase in the area of the nonconforming building nor modify the existing nonconformities.
  - The house is small and is provided setbacks similar to those on adjacent properties.
  - The deterioration of the house is due to its age and the repair to the damaged roof and porch will allow for the preservation of a historic building.
- 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.

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 the nonconforming house and from Article 15 so as to allow the proposed alterations of the nonconforming house within the required front yard setback (42 ft front setback – as shown on the application sketch plan). 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. Harvey seconded the motion. The motion carried unanimously.

### **3) Board Discussion – Draft Text (Section 23.8)**

Lauderdale provided the Board with an overview of proposed changes to Section 23.8 being considered by the Planning Commission that are intended to improve the process and clarify the criteria applicable in the consideration of variance requests. He also referenced two articles submitted for Board review that provide a discussion on the variance criteria and the application of same.

Board members expressed support for the work of the Planning Commission and the draft text that has been developed. It was agreed that the proposed provisions make the criteria easier to understand and apply. Support was also noted for the anticipated changes to the nonconforming building text. Board members agreed that the revisions proposed to both Sections 23.8 and 22.3/22.4 will address many of the concerns expressed today regarding nonconforming buildings.

ADJOURNMENT: There being no further business to come before the Board, the meeting was adjourned at 7:33 p.m.

Respectfully Submitted,

Rebecca Harvey, AICP, PCP  
Township Planning Consultant