

**ZONING BOARD OF APPEALS
ROSS TOWNSHIP
October 5, 2016**

The Ross Township Zoning Board of Appeals held its regular meeting on **October 5, 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
 Rebecca Harvey – Township Planning Consultant
 Rob Thall – Township Attorney
 Five (5) members of the public

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

APPROVAL OF MINUTES: It was noted that the term ‘viewshed’ found on page 5, bullet 1, third statement should be changed to ‘view of the lake’. On motion by E. Harvey, seconded by Lauderdale, the minutes of **June 1, 2016** were unanimously approved as amended.

NEW BUSINESS:

- 1) **Application for Variance**
Anthony Slevats Trust
845 Fairview Drive (4 Labelle Terrace)
Property Tax I.D. #3904-18-475-010 and #3904-18-475-020

Chairperson Carpenter stated that the next matter to come before the Board was the request by the Anthony Slevats Trust for variance approval from the minimum lot area and minimum lot frontage/width requirements established by Article 15, Zoning Ordinance. The subject site is located at 845 Fairview Drive (4 Labelle Terrace) and is within the R-1 Low Density Residential District.

Gale (AGS) stated that 845 Fairview Drive consists of Lots 1 and 2, La Belle Gardens (plat). He noted that the existing house is primarily located on Lot 1 but extends approximately 5 ft onto Lot 2. Gale explained that the applicant proposes to deed the

south 10 ft of Lot 2 to Lot 1 to correct the existing building encroachment. He stated that the existing lots do not meet applicable dimensional requirements and exist as lawful nonconforming lots. He noted that the proposed lot line adjustment will serve to reduce the size and width of Lot 2 (or increase a nonconforming situation).

Kim Slevats was present on behalf of the application and noted that the building encroachment onto Lot 2 has existed for some time. He explained that he can only afford to keep one of the lots and does not want the encroachment problem. Dennis Slevats added that the remainder of the family property has been sold but that they would each like to retain a Gull Lake lot.

Jodi Seaburt, a neighboring property owner, stated that she understands the desire to create a conforming setback arrangement on the property but is concerned with the potential future of Lot 2 having only 25 ft of frontage.

Township Attorney Thall stated that pursuant to Section 22.8 C., the subject lots are 'nonconforming contiguous lots in common ownership' and are required to be considered as an undivided 'zoning lot' to create a conforming or less nonconforming lot. As such, the existing house on Lot 1 is not actually encroaching onto Lot 2 since Lots 1 and 2 are technically considered a single lot.

He noted that the desire to establish the lots under separate ownership will require variance approval from the lot size and lot width/frontage requirements applicable within the R-1 District. Attorney Thall further advised that the proposed lot line adjustment will also require Township Board approval as a division of platted lots.

Kim Slevats stated that Lots 1 and 2 represent approximately 80 ft of frontage on Gull Lake and that it has become too expensive to sell as a single unit. He reiterated that the lot division proposal is intended to allow two family members the ability to share the remainder of the family property without legal problems.

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

Attorney Thall summarized that Lots 1 and 2 currently represent a single lawful nonconforming (and buildable) site and that the lot division proposal will result in the creation of two nonconforming lots, one of which will likely be too small to be buildable. He advised that it will be appropriate for the Board to consider whether any legal options exist (i.e. joint ownership) in applying the variance criteria.

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

- #1 Residential use of the subject property is proposed to continue and is permitted within the R-1 District.

- #2 Lots 1 and 2 exist and are currently usable as a lawful undivided ‘zoning lot’ that is less nonconforming (pursuant to Section 22.8 C.). A denial of the requested variances will not prevent use of the property. It was further recognized that reasonable options for compliance exist through joint ownership or a shared use arrangement.
- #3 In determining substantial justice, a review of the surrounding area was conducted. It was recognized that the resulting lot configurations would be inconsistent with the existing lot dimensions in the area and would be contrary to the pattern of establishing only buildable waterfront lots.
- #4 The situations preventing compliance are not related to any unique physical circumstances of the property but rather to the location of the house and ownership objectives.
- #5 The proposed lot division is at the discretion of the applicant and is a self-created hardship.
- #6 The creation of two nonconforming lots, one of which will be unbuildable and/or require future variances, is not in keeping with the intent of the Ordinance to render nonconforming situations more conforming.

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 deny variance approval from the lot size and lot frontage/width requirements set forth in Article 15 so as to allow the proposed division of Lots 1 and 2, La Belle Gardens. Variance approval is denied based upon the findings of the Board pursuant to the variance criteria set forth in Section 23.8 A., Zoning Ordinance. E. Harvey seconded the motion. The motion carried unanimously.

1) **Application for Variance**
Adriano Vatta & L. Ruey Stocking
6291 North 37th Street
Property Tax I.D. #3904-30-415-030, #3904-30-415-010, and #3904-30-415-020

Chairperson Carpenter stated that the next matter to come before the Board was the request by the Adriano Vatta and L. Ruey Stocking for variance approval from the sign setback requirements established by Section 18.2 B. 1., Zoning Ordinance. The subject site is located at 6291 North 37th Street (Red Barn Cat Clinic) and is within the R-R Rural Residential District.

Stocking referenced the variance application material provided, highlighting the application letter outlining the details of the request and the sign proposal illustrations/schematic. The following was noted:

- The Special Land Use Permit issued by the Township for the cat clinic requires the establishment of a sign to address traffic concerns.
- The business will clearly benefit from an identification sign.
- Section 18.2 B.1. establishes a setback requirement of 25 ft from the road right-of-way and a maximum height limitation of 6 ft for a freestanding sign on the site.
- The 25 ft setback requirement will place the freestanding sign within the existing parking lot or behind the existing berm (which will obscure a sign of 6 ft in height).
- The wall sign reflected in the sign illustrations is preferred but not allowed within the R-R District.

Lauderdale confirmed the sign condition attached to the Special Land Use Permit granted by the Planning Commission for the Red Barn Cat Clinic. He explained that the sign was required to respond to traffic concerns expressed by a neighboring property owner without attention to the limitations of the R-R District sign standards.

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

E. Harvey referenced various wall signs that exist in the Township. He inquired if the noted signs are existing nonconformities or illegal signs and questioned if this indicates that the sign ordinance needs to be reviewed. R. Harvey provided an overview of the sign standards, noting that the wall sign limitation is specific to the R-R District and not applicable to the existing signs referenced.

Board members confirmed visual inspection of the subject site and agreed that the proposed sign location (0 ft setback from the road right-of-way) does not present any safety concerns and will meet the conditions of the Special Land Use Permit. Board discussion then ensued regarding sign location options on the site.

Gale advised that the proposed sign location does not present any line-of-sight issues for vehicles exiting the site. He added that the proposed sign would present limited safety issues given the location of the tree and fence in that area.

Attorney Thall stated that the sign was required as a condition of the Special Land Use Permit to provide direction to the clinic and improve traffic safety in the area. He noted that the sign will only serve the intended purpose if it is visible.

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

- #1 The proposed freestanding sign is an allowed use within the R-R District.

- #2 It was recognized that no reasonable options for compliance exist that will provide the sign visibility and allow the direction required by the Special Land Use Permit.
- #3 In determining substantial justice, it was noted that the purpose of the freestanding sign is to provide direction and address traffic and safety concerns, both of which are intended to serve surrounding property owners and the traveling public.
- #4 The situations preventing compliance, namely the topography of the site, the location of the tree, and the built environment (berm, parking lot) are unique physical circumstances of the property.
- #5 The proposal does not represent a ‘self-created hardship’ given the establishment of a sign on the site has been required as a condition of the Special Land Use Permit and the R-R District prevents the use of a wall sign to meet the condition.
- #6 A grant of the variance is in keeping with the intent of the Ordinance given that the proposed sign location will adequately provide direction to the site as required; address traffic concerns; and not block views or present a safety hazard.

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

E. Harvey then moved to grant variance approval from the sign setback requirement set forth in Section 18.2 B.1. so as to allow the proposed freestanding sign location. 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. Chairperson Carpenter seconded the motion. The motion carried unanimously.

Lauderdale thanked the applicant for their efforts to comply with sign requirements and for the completeness of the application material provided.

OTHER BUSINESS:

Gale stated that he recently discovered that the Township Board voted in 2008 not to approve the scheduling of any special meetings of the Zoning Board of Appeals. He explained that the required 30-day noticing period for public hearings could represent a two-month delay for an applicant if there is no special meeting option. Board discussion ensued wherein the following comments were provided:

- ZBA members are willing to attend a special meeting if available;
- An applicant’s option for a special meeting would have to depend on the availability of Board members and staff;

- The establishment of a special meeting fee may be appropriate to allow the Township to be responsive to applicants without incurring extra costs.

Gale thanked the Board for their thoughts on the matter.

ADJOURNMENT: There being no further business to come before the Board, the meeting was adjourned at 6:57 p.m.

Respectfully Submitted,

Rebecca Harvey, AICP, PCP
Township Planning Consultant