

**ZONING BOARD OF APPEALS
ROSS TOWNSHIP
December 7, 2016**

The Ross Township Zoning Board of Appeals held its regular meeting on **December 7, 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 DeKruyter
 Jim Lauderdale

Absent: None

Also present: Bert Gale, AGS – Township Zoning Administrator
 Rebecca Harvey – Township Planning Consultant
 Rob Thall – Township Attorney
 One (1) member of the public

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

APPROVAL OF MINUTES: On motion by Lauderdale, seconded by DeKruyter, the minutes of **October 5, 2016** were unanimously approved as presented.

NEW BUSINESS:

- 1) **Application for Variance**
Bret and Jeanne Comar
4866 East Gull Lake Drive
Property Tax I.D. #3904-06-101-040

Chairperson Carpenter stated that the next matter to come before the Board was the request by the Bret and Jeanne Comar for variance approval from the minimum lot frontage/width requirement established by Article 15, Zoning Ordinance and the lot width to depth ratio requirement established by Section 16.7 (3), Zoning Ordinance. Applicant also requests variance approval for the establishment of an accessory building on the proposed lot in the absence of a principal building. The subject site is located at 4866 East Gull Lake Drive (Lots 5, 6 & 7, New Plat of Hickory Point) and is within the R-1 Low Density Residential District.

It was noted that a representative for the application was not present. The Board confirmed that the noticing for the public hearing had been completed as required.

Chairperson Carpenter attempted to contact the applicant by phone to advise of the scheduled public hearing. Following his attempts, the Board determined to proceed with the public hearing as noticed.

Gale (AGS) stated that 4866 East Gull Lake Drive consists of Lots 5, 6 & 7, New Plat of Hickory Point and exists as a single zoning lot (per Section 16.3, Zoning Ordinance). He noted that the existing house is primarily located on Lots 5 and 6 but that the existing driveway extends partially onto Lot 7. Gale explained that the applicant proposes to separate Lot 7 from the existing zoning lot and return it to its status as a separate building site. He stated that the individual platted lots do not meet the minimum lot frontage/width and lot width to depth ratio requirements and that the proposed separation of Lot 7 from the existing zoning lot (Lots 5, 6 & 7) will require variance approval from the applicable dimensional requirements.

Township Attorney Thall confirmed that the desire to establish Lot 7 as a separate lot will require variance approval from the minimum lot width/frontage and lot width to depth ratio requirements applicable within the R-1 District. He advised, however, that the proposed separation will not require Township Board approval of a division of platted lot since the boundaries of Lot 7 are not proposed to be altered.

Gale then noted the 'green line' that extends along the shoreline of Gull Lake as reflected on the parcel map. He stated that said line represents the boundary line between Richland Township and Ross Township.

Board discussion ensued regarding the impact the location of the Township boundary line might have on the status of the subject property as a 'waterfront lot'. Township Attorney Thall referenced the definition of 'waterfront lot' set forth in Section 2.2 and advised that it would be appropriate to apply the waterfront lot dimensional requirements to the property as a whole.

In response to questions posed regarding the applicability of the minimum lot depth to width ratio requirement to platted lots, Township Attorney Thall referenced Section 16.7 and confirmed that the standard, as written, applies to both platted and unplatted property.

Gale explained that there is an existing 'beach house' located on Lot 7. In response to questions, Gale stated that there is no record of a building permit for the existing 'beach house' and setbacks are unknown so locational compliance cannot be confirmed. He advised that he is not aware of the intended use of the building but noted that it met the definition of 'accessory building' and was treated as same.

Township Attorney Thall stated that Section 18.4 establishes an accessory building on a vacant lot as special land use. He advised that any approval of a variance from the lot dimensional requirements to allow for the separation of Lot 7 from the existing zoning lot of Lots 5, 6 & 7 should be conditioned upon removal of the of the 'beach house' or the grant of a special land use permit for an accessory building on a vacant lot.

Gale then noted that a portion of the driveway serving the zoning lot of Lots 5, 6 & 7 extends across Lot 7. DeKruyter added that a stone wall also extends across the frontage of all 3 lots. Township Attorney Thall stated that the Board can require that the portion of the existing driveway that extends onto Lot 7 be closed or an easement be provided as a condition of the dimensional variances. He added that the existing stone wall does not impact the requested variances.

Doug Smith, a neighboring property owner (Lot 8), expressed the following concerns with the proposed lot separation:

- this area of the lakefront is characterized by larger (combined) lots;
- establishment of Lot 7 as a stand-alone lot would be inconsistent with the surrounding pattern of development;
- the area represents a historic pattern of development and is occupied by older, historic homes;
- the proposed lot separation would negatively impact property values in the area;
- an approval would establish an unwelcome precedence for further land divisions in the area.

Smith then inquired if a grant of the requested dimensional variances that allows the existing 'beach house' to remain would authorize the construction of an additional and similarly situated accessory building on the site. Township Attorney Thall responded that a grant of the requested variances would only allow the applicant to seek special land use approval for the existing 'beach house' and would not constitute a blessing of future buildings within the required setback area.

Smith stated that the stone wall referenced in the discussion is 'historic' and that he advocates retention of the wall.

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:

- #1 Residential use of the subject property is proposed to continue and is permitted within the R-1 District.
- #2 Lots 5, 6 & 7 both exist and are currently usable as a lawful undivided 'zoning lot'. A denial of the requested variances will not prevent reasonable use of the property. It was further recognized that the size of the existing 'zoning lot' is not unreasonable given the lot sizes and development pattern in the area.
- #3 In determining substantial justice, a review of the surrounding area was conducted. It was recognized that the resulting lot configuration would be

inconsistent with the larger home sites surrounding the property and contrary to the overall pattern of development in the area.

- #4 The situation preventing compliance is not related to any unique physical circumstances of the property but rather to the land division objectives of the applicant.
- #5 The proposed lot separation is at the discretion of the applicant and is a self-created hardship.
- #6 The proposed lot separation will result in the creation of a nonconforming lot, which will also require approval of a nonconforming accessory building arrangement, which 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 **written** application documents presented ~~and the representations made by the applicant~~ at the meeting.

Lauderdale then moved to deny variance approval from the minimum lot frontage/width requirement set forth in Article 15 and the lot width to depth ratio requirement set forth in Section 16.7 (3) so as to allow the proposed separation of Lot 7 from the zoning lot consisting of Lots 5, 6 & 7, New Plat of Hickory Point. 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. DeKruyter seconded the motion. The motion carried unanimously.

OTHER BUSINESS:

Chairperson Carpenter welcomed Jim DeKruyter as the new member of the Zoning Board of Appeals. He stated that Ed Harvey has resigned from the Board in light of his recent relocation out of the Township. Board members thanked Harvey for his many years of contribution to the Board and service to the Township.

ADJOURNMENT: There being no further business to come before the Board, the meeting was adjourned at 6:23 p.m.

Respectfully Submitted,

Rebecca Harvey, AICP, PCP
Township Planning Consultant