

**ZONING BOARD OF APPEALS  
ROSS TOWNSHIP  
January 6, 2021**

The Ross Township Zoning Board of Appeals held its regular meeting on **January 6, 2021, at 5:30 p.m.** The Zoning Board of Appeals meeting was conducted through electronic remote access due to State Agency Rules and Orders.

Present: Dave Carpenter, Chairperson  
Jim Lauderdale  
Jim DeKruyter

Absent: None

Also present: Kelly Largent, AGS – Township Zoning Administrator  
Bert Gale, AGS – Township Zoning Administrator  
Rebecca Harvey, Township Planning Consultant  
Rob Thall – Township Attorney

APPROVAL OF AGENDA: The agenda was unanimously approved as presented.

APPROVAL OF MINUTES: On motion by DeKruyter, seconded by Lauderdale, the minutes of **July 1, 2020** were unanimously approved as presented.

NEW BUSINESS:

- 1) **Application for Variance**  
**James Dally**  
**3056 Oakdale Drive**  
**Property Tax I.D. #3904-07-430-116**

Chairperson Carpenter stated that the next matter to come before the Board was the request by James Dally for variance approval from the maximum fence height standard established by Section 18.6 C., Zoning Ordinance. The subject site is located at 3056 Oakdale Drive and is within the R-1 Low Density Residential District.

Chairperson Carpenter opened the public hearing.

Largent gave an overview of the request. She stated that the applicant's property consists of two parcels: parcel no. 3904-07-430-114 is a waterfront lot and is the site of the applicant's residence; parcel no. 3904-07-430-116 is a non-waterfront lot adjacent to the home site and is occupied by an accessory building and tennis court. Largent explained that the applicant proposes the construction of a 5 ft fence/gate on the properties, with the

gate being located on the waterfront lot and the fence being located on the non-waterfront lot.

Largent advised that Section 18.6 establishes that fences within a side or rear yard may not exceed 6 ft in height, and fences within a required front yard shall not exceed 4 ft in height. She noted that the proposed 5 ft gate will be located within the rear yard of the waterfront lot and will be in compliance with the 6 ft height limitation. The proposed 5 ft fence will be located within the front yard of the non-waterfront lot and will be in violation of the 4 ft height limitation. The applicant requests variance approval from the 4 ft fence height standard so as to allow the proposed 5 ft fence on the non-waterfront lot (along Oakdale Drive).

Referencing the parcel maps and photos provided in the application, Largent confirmed the boundaries of the properties under consideration. She reiterated that the proposed gate on the waterfront lot (#3904-07-430-114) does not require variance approval.

Chairperson Carpenter referenced correspondence received from Gary Granger (3056 Oakdale Drive) and Joseph and Kristine Mauro (3052 Oakdale Drive) in support of the request, and correspondence received from Linda Markham (adjacent property owner) in opposition to the request.

Lori Stafford, neighboring property owner, stated that she opposes the requested variance and agrees with the points made in the letters from Linda Markham and from Dr. David Dvorak (3102 Oakdale Drive). She noted that no reason has been presented as to why the 4 ft height standard cannot be met, adding that many fences in the area, including one recently erected, have been established in compliance with the standard.

Board members noted that the Dvoroak correspondence referenced had not been received. Clerk Walters confirmed that the letter was not currently on file with the Township.

No communication was made/received by or on behalf of the applicant.

Mr. Lauderdale stated that in his visit to the area, he had observed that many of the side yard (between properties) fences appeared to be 6 ft in height, but that fencing along the roadway seemed to generally be in compliance with the 4 ft height limitation.

In response to Board questions, Ms. Harvey confirmed that the ZBA is limited to considering whether the variance criteria (Section 23.8 A.) have been met in review of the 5 ft fence proposal, and not the merit of the 4 ft fence height limitation.

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

Chairperson Carpenter then 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 Limiting the fence height to 4 ft will not unreasonably prevent the owner from using the property; further, conformity with the 4 ft fence height standard is not unnecessarily burdensome.
- #3 In determining substantial justice, a review of the surrounding area was conducted. It was noted that roadside fences in the area, including one recently erected, have been established in compliance with the 4 ft fence height limitation. The objections raised by several neighboring property owners were also referenced.
- #4 No unique physical circumstance of the site exists preventing compliance with the 4 ft fence height limitation.
- #5 The establishment of the fence, including the location and design elements of the fence, is at the discretion of the applicant and is a self-created hardship.
- #6 It was recognized that the intent of the front yard fence height limitation in a residential district is related to safety and general obstruction objectives. A 5 ft fence height, proposed to extend along the roadway the width of the front yard, will not be consistent with the intent of the fence height limitation.

It was stated that the above findings were based on the application documents presented at the meeting.

Lauderdale then moved to deny variance approval from the 4 ft fence height standard applicable within a front yard in a residential district established by Section 18.6, based upon the findings of the Board pursuant to variance criteria #2 through #6 set forth in Section 23.8 A., Zoning Ordinance. Chairperson Carpenter seconded the motion. The motion carried unanimously.

**2) Request for Interpretation**  
**AGS, Ross Township Zoning Administrator**  
**Section 2.2 – Definitions of Terms**

Chairperson Carpenter stated that the next matter to come before the Board was the request by AGS, Ross Township Zoning Administrator, for interpretation of Section 2.2 – Definitions of Terms, specifically as it relates to the definition of ‘fence’ and its application to vegetative barriers.

Chairperson Carpenter opened the public hearing.

Mr. Lauderdale, as Planning Commission representative to the Zoning Board of Appeals, offered background on the requested interpretation. He advised that, in September, 2020, the Township Board requested Planning Commission assistance with an issue regarding property on Gull Lake (in the Township) involving the placement of a barrier/hedge of trees along a property line that had resulted in waterfront viewshed problems for adjacent properties. The question of whether a vegetative barrier constitutes a ‘fence’ was raised.

Mr. Lauderdale explained that the Planning Commission requested additional information regarding fencing for study and agreed to discuss the need for an amendment of the Zoning Ordinance to provide clarity on the question.

In October, 2020, the Planning Commission continued consideration of the matter, including the receipt of public comment from a neighboring property owner impacted by the recently established barrier/hedge of trees. After lengthy discussion, and with input from Township legal counsel, the Planning Commission determined that an amendment of the fencing standards not be considered unless and until a formal interpretation on the question is rendered by the ZBA. The Planning Commission was advised at that time that AGS would proceed to the ZBA with a request for interpretation.

Mr. Lauderdale then offered his perspective on the question of interpretation. He noted the following:

- This question of interpretation has been raised largely as a result of issues related to sight lines;
- Section 6, Master Plan provides foundational support for the concept of viewshed protection; (‘Incorporate measures to protect viewsheds . . . through development regulations.’)
- A complete review and update of the Master Plan was recently conducted and this objective was not modified;
- Section 17.3 C. establishes waterway setback requirements with a stated intent to ‘facilitate reasonable consistency of horizontal sight lines with respect to the development of waterfront lots . . .’;
- Section 17.4 A.1. provides a definition of ‘development’ that supports the protection of sight lines; and
- Section 21.6 B.3. establishes site plan review criteria that speaks to minimizing ‘adverse effects resulting from the locations of buildings and accessory structures’ on adjacent properties.

Mr. Lauderdale summarized that both the Township Master Plan and Zoning Ordinance make clear the Township’s position on the protection of sight lines, with a specific focus on waterfront properties. He opined that a dense vegetative barrier established along a property line is intended to ‘obstruct’ and is not consistent with the Plan or the Zoning Ordinance.

Mr. Gale stated that, in the administration of the Zoning Ordinance, the definition of ‘structure’ was first consulted, wherein it instructs that ‘the word ‘structure’ shall not apply to fences . . .’. Accordingly, it was determined that the provisions of Section 17.3, which are applicable to buildings and structures, could not be applied to the vegetative barrier at issue. In consideration of the definition of ‘fence’, there is no specific reference to a barrier consisting of vegetation. Given the existing definitions of ‘structure’ and ‘fence’, Gale explained that direction (a formal interpretation) from the ZBA has been requested.

Township Attorney Thall advised that the ZBA is authorized to interpret the Zoning Ordinance, but may not create a new Zoning Ordinance standard. Specifically, the question before the ZBA is whether a vegetative barrier falls within the scope/intent of the term ‘fence’. He added that the ZBA may postpone action on the request for interpretation if it desires to seek additional guidance or information from the Township Planning Consultant or Township Attorney.

Stephanie Walbridge, neighbor to the Gull Lake property originally at issue, referenced her letter dated October 23, 2020 that was presented to the Planning Commission in October, her letter to the ZBA dated November 27, 2020, and photos provided of the property and vegetative barrier in question. She highlighted the berm that was created along the property line; the establishment of the line of trees on top of the berm; the waterfront view present before establishment of the vegetative barrier; and the loss of visibility of the waterfront after the barrier was planted. Ms. Walbridge opined that there is no question that the berm/trees were planted to establish a barrier and that the result is inconsistent with the intent of the existing fence standards.

Chairperson Carpenter referenced the correspondence/photos received from Stephanie and Jay Walbridge (2884 Burlington Drive) and Caroline and Bill Ticknor (2858 Burlington Drive) related to the request for interpretation.

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

Chairperson Carpenter then led the Board through a discussion of the question of interpretation regarding whether a vegetative barrier falls within the scope/intent of the term ‘fence’. The following was noted:

- An interpretation must rely on existing text . . . and may not ignore or add to existing text in the formulation of the interpretation.
- The definition of ‘fence’ and the fencing standards established by Section 18.6 represent an implementation of the objectives for sight line and viewshed protection clearly stated in the Master Plan.

- A vegetative barrier established along a property line meets the definition of ‘fence’ to the extent that it ‘acts as an enclosure of an area of land, property boundary identification or visual screen’.
- The fence material options listed in the definition of ‘fence’ raise questions regarding what types of barriers/enclosures qualify as ‘fences’.

At the conclusion of a lengthy discussion, Lauderdale moved to interpret that the Zoning Ordinance definition of ‘fence’ [*Fence: a barrier constructed of either wood, metal, stone, brick or masonry materials that may act as an enclosure of an area of land, property boundary identification or visual screen, which surface may be of either solid or open construction.*] includes vegetative barriers where they are established to serve as a screen or enclosure given that they constitute a barrier of wood material and act as ‘an enclosure of an area of land, property boundary identification or visual screen’. Mr. DeKruyter seconded the motion. The motion carried 2-1, with Chairperson Carpenter dissenting.

Stephanie Walbridge stated that she supports the interpretation of the Board on the matter. She stated that the situation on the Gull Lake property in question highlights the importance of clarification on this issue.

Mr. Walters stated that he does not agree with the interpretation of the Board.

**PUBLIC COMMENTS ON NON-AGENDA ITEMS:** No public comment on non-agenda items was offered.

**OTHER BUSINESS:**

Chairperson Carpenter indicated there was no Other Business scheduled for Board consideration.

**ADJOURNMENT:** There being no further business to come before the Board, the meeting was adjourned at 7:07 p.m.

Respectfully Submitted,  
Rebecca Harvey, AICP, PCP  
Township Planning Consultant