

**ZONING BOARD OF APPEALS
Ross Township
October 4, 2006**

The Ross Township Zoning Board of Appeals held its regular meeting on **October 4, 2006 at 5:30 P.M.** in the Ross Township Hall. Chairman Carpenter called the meeting to order and noted those present.

Present were: D. Carpenter
 J. Scott

Absent was: A. Harmon

Also present was: G. Webster, Building Department
 C. Rolfe, Township Attorney

APPROVAL OF AGENDA On motion by Scott seconded by Carpenter the agenda was unanimously approved.

APPROVAL OF MINUTES OF September 6, 2006

On motion by Carpenter seconded by Scott the Minutes of **September 6, 2006** were unanimously approved with the following changes:

Page 2, Paragraph 4: Correct spelling of “Glas” and change “Charles” Dunn to “Mike”
Page 3, Paragraph 6: Change spelling of “Couture”
Page 4, Paragraph 8: add: “opinion” between “Rolfe’s” and “...that the setbacks...”

OLD BUSINESS - None

NEW BUSINESS

1. Donald and Joann Juberg

**Property located at: 2062 Midlake Dr. Lot #15 Midland Park
Property tax I.D. #: 3904-08-374-270**

Clark 1031, LLC/Jeff and Pam Clark, 2058 Midlake Dr. Lot #14, Midland Park Property Tax I.D. #: 3904-08-374-280

Proposed is the relocation of the lot line between lots #14 and # 15 of Midland Park. An exchange of property is proposed to address encroachments of each dwelling across the existing property line. Each dwelling is non-conforming as to its relationship to the existing lot line, and will remain non-conforming after the change based on non-compliance with the required side setback of 5-feet, minimum lot width of 100 feet and minimum lot area of 15, 000 sq.ft.

Mr. Don and Joann Juberg as well as Brian Pennings, builder, were present to explain that when they first contemplated constructing on this site, they discovered that their home and the neighbor's encroached over a common property line. They have attempted to create a new lot line, which results in each house being on its own parcel. In doing so several things would change.

Rolfe observed that on the original plat map only 47.52 feet is listed as frontage, however on the site plan presented the width is listed as 49.12 feet.

Pennings responded that often when a survey is done there is a discrepancy between the actual measurement and the recorded measurement.

Rolfe advised that ultimately the applicant will be asking the Township Board for a land division within this plat, however, in order for that step to be taken the ZBA must first grant a variance allowing the setbacks that result from the property line change.

Webster summarized the zoning changes were to new: lot widths (from the current to 44.06' on lot 15 and to 43.83' on lot 14), lot areas (from the current to 2,644 on lot 15 and 2,630 on lot 14), lot coverages (from the current to 52.4% on lot 15 and 46% on lot 14), and side setbacks (from the current to 1' on lot 15 and 3.75' on lot 14).

Rolfe suggested that the ZBA need not make all of the usual findings provided that it notes that there are two nonconforming lots, which will still be nonconforming lots after the variance, but it does correct the problem of structures overlapping the property line.

Pennings suggested that any motion take into consideration that no actual survey was performed to create this proposed line. He would like to have some minor latitude in its precise location.

Donald Hescott was present to say that he has no objection, especially since he received a similar some time ago.

Dan Wallace, representing the Bible Conference, also supports the request.

On motion by Scott seconded by Carpenter and unanimously approved, the public hearing portion of the meeting was closed.

Based on the fact that existing encroachments on the both lots would be eliminated Scott made a motion to approve the relocation of the common property line between lots 14 and 15. The motion was seconded by Carpenter and unanimously **APPROVED.**

2. Donald and Joann Juberg

Property located at: 2062 Midlake Dr.
Property tax I.D. #: 3904-08-374-270

Proposed is the construction of an enclosed, roofed porch over an existing non-conforming deck. The property is located in the R-2 Zoning District. The existing deck encroaches across the front property line and into the “promenade” area. The proposed construction will have a zero (-0-) setback as to the front property line, where 35 feet are required; a 38.4-foot setback from the lake, where 50 feet is required, and a 2.6-foot side setback, where 5 feet are required.

Carpenter noted that any variance granted in this case would be contingent upon the Township’s approval of the lot division. He summarized the request is to cover an existing deck, which now encroaches onto the promenade. He asked if the overhangs would extend beyond the existing footprint of the deck.

In response Pennings said that the overhangs would exceed the dimensions of the existing deck, but would not extend further than the overhangs of the existing house.

Scott asked for a description of what the promenade is.

In response Rolfe said the promenade is a strip of property owned by the Bible Camp, which runs between the lake and the homes in the plat. It is controlled by the Bible Camp, but the original deeds allow property owners to use that strip.

Hescott added that the promenade was created to allow back lot owners to access the lake.

Scott asked what authority the ZBA has to grant a variance on someone else’s property, and Rolfe said that it has none.

Scott commented that the Township should not have authority to allow such a variance.

Rolfe explained that because this is a request to expand an existing, nonconforming building, and in consideration of the standards in the Ordinance, this appears to be a very difficult situation to justify. He believes that the request derives from the applicant’s desire to cover the deck.

Carpenter said that he is also troubled by the fact in order to construct, the owners would have to obtain the permission of the Bible Camp.

Pennings asked if an enclosed room is treated differently from a deck when calculating lot coverage. He also asked if the ZBA still needed to grant a variance if the covered portion did not exceed the dimension of the existing deck.

Rolfe explained that any construction within the setback areas requires a variance. He also said that any variance would materially impair the intent and purpose of the Ordinance, since the originators of the Ordinance allowed a sliding scale for lot coverage not to exceed 50%, and this request would exceed 50%.

The Board acknowledged the receipt of an E-mail from Dale DeRidder who supports the request.

Scott noted that even though the neighbors may not object to a given request, the ZBA must make its determination based on the criteria stated in the Ordinance.

Carpenter said that the biggest problem for him is found in Section 9.33, since the request does aggravate the existing nonconforming condition. The ZBA must also find that the construction would not extend the otherwise reasonably anticipated useful life of the nonconforming use or building/structure.

On motion by Scott seconded by Carpenter and unanimously approved, the public hearing portion of the meeting was closed.

Carpenter suggested looking at Section 6.9. The ZBA found that there are unusual conditions on this lot including its smallness and unusual shape.

After considering the home on lot 16 shown on a boundary survey, the ZBA found that a variance in this case would not be to the substantial detriment of adjoining properties. It based this determination on the fact that the house on lot 16, although it is still further back from the lake than the Juberg house, comes as close as it could be to the promenade per the settlement agreement between the Bible Camp and homeowners. However, the patio on lot 16, although it is an at-grade patio, extends closer to the lake than the Juberg's. The ZBA also noted that the lake is curved a bit at this location.

There are practical difficulties on the property that are not a creation of the applicant.

Scott believes that there is a substantial detriment to the intent and purpose of the Ordinance that supercedes the other findings of Section 6.9 A.

Rolfe noted that the waterfront setback requirement includes language to protect the site lines of adjacent properties by averaging setbacks on those properties or by imposing the mandatory 50-foot setback.

Scott believes that this request neither complies with the Ordinance or with the intent and purpose of the Ordinance.

Carpenter agrees and said that the ZBA is prohibited from allowing an encroachment closer than 50 feet to the lake.

Both Scott and Rolfe commented that non-conformities by the Ordinance and by State Law are to be eventually eliminated.

Carpenter and Scott agree that a variance granted in this case would not be to the detriment of the health, safety, and welfare of the public.

With respect to 6.9 A (1), the ZBA found that this specific property has conditions that are specific to it, such as irregular lot and extreme smallness and narrowness.

With respect to 6.9 A (2) and (3) the ZBA agrees that enclosed decks are common in the Zoning District. It also finds that financial return is not sufficient to warrant a variance. It also finds that this condition may be recurrent in the area, but not with these specific conditions.

Rolfe said that in addition to the 50-foot lake setback requirement the lot coverage issue works to impair the intent and purpose of the Ordinance.

Mr. Juberg asked if he would be allowed to roof the deck without a variance.

Rolfe and Scott said that any construction within the setback would require relief from the ZBA, and Scott believes that any proposal by the Jubergs within that setback would be denied.

There was considerable discussion of alternatives and maintenance of the existing deck.

Pennings asked the hypothetical question: “If an existing deck covered X% of property area, could the owner build within that footprint?” “If the owner came back with only a roof over, which was no bigger than the existing deck, would the ZBA consider it?”

Carpenter said if it weren't for the “drop dead”, 50-foot setback requirement, the ZBA might consider it, but the ZBA can not violate that provision. The writers of the Ordinance made clear that certain variances from the setback regulations are within the purview of the ZBA, but the absolute minimum setback from the lake is 50 feet for any new construction. To grant a variance from that provision would substantially impair the intent and purpose of the Ordinance.

Scott reiterated his belief that any construction within 50 feet of the lake would not receive a variance. He does not want to give the applicants a false impression.

Rolfe said that there is a relationship between the absolute standard of 50 feet to the lake and preserving sight lines as the intent is expressed in the Ordinance.

Carpenter still believes that the 50-foot setback trumps preserving the sight lines. That is the intent and purpose of the Ordinance.

However, Scott conceded that if the applicant can find a way to preserve the sight lines of adjacent properties, he may not find that contrary to the intent and purpose of the Ordinance.

Mr. Juberg asked the ZBA to consider a different proposal. The new one would be only a roof over the deck. No screens would be put up, and it would not be constructed beyond the existing deck lines.

The ZBA declined to consider this alternative proposal at this time.

On motion by Scott seconded by Carpenter and unanimously approved, the matter was **TABLED** until the November meeting.

PUBLIC COMMENT - None

OTHER BUSINESS – None

ADJOURNMENT

On motion by Carpenter seconded by Scott and unanimously approved the meeting was adjourned.

Respectfully submitted

Gary Webster, AGS