

**ROSS TOWNSHIP
PLANNING COMMISSION MEETING
OCTOBER 25, 2006**

1. The meeting was called to order at 7:02 PM by Chairman Allen Harmon with the Pledge of Allegiance.
2. ROLL CALL OF MEMBERS:
PRESENT: Allen Harmon Rusty Fry Jeff Price
 Bob Cox Jim Lauderdale
ABSENT: Diana Langshaw Garry Lane

Also present was Gary Webster, Associated Governmental Services and Rebecca Harvey, Planning Commission Consultant.

3. AGENDA:
Motion was made by Commissioner Lauderdale, seconded by Commissioner Cox to accept the agenda as presented. Motion passed unanimously.
4. MINUTES AUGUST 23 & SEPTEMBER 27, 2006:
Motion was made by Commissioner Cox, seconded by Commissioner Fry to approve the minutes of August 23, 2006 as presented. Motion passed unanimously.

Motion was made by Commissioner Price, seconded by Commissioner Fry to approve the minutes of September 27, 2006 as presented. Motion passed unanimously.

5. PUBLIC COMMENTS – NON-AGENDA ITEMS: None

6. MOCHIZUKI PLAT:
Attorney Chojnowski was in attendance to present this plat to the Planning Commission for the property owners, the Mochizuki's. Mr. Chojnowski gave the background on the property. He stated there was considerable width but not enough to divide into two parcels under the zoning ordinance. There was a ZBA variance request from the lot width requirement in 2004, which was denied. They are now looking for approval for a two-lot plat.

There was a prior submittal for this plat that did not get to the PC. This design included East Gull Lake Drive as part of the plat. As a consequence, this kicked in the provisions of the KCRC's rules as well as the township's subdivision development ordinance. This would now require the half width of East Gull Lake Drive to increase from 33 ft. to 50 ft., carving 17 ft. off the road side of the Mochizuki's property. This requirement would then make the garage 17 ft. closer to the road. It also made the tennis court 17 ft. closer to the road but this isn't as significant as the garage because the tennis court would probably be removed anyway. The garage then became more nonconforming than it already is and it was the opinion of AGS that the plat couldn't be approved because the nonconforming setback issue was aggravated by the fact that the road was being moved 17 ft. closer to the garage. It was AGS's finding that the garage would have to be either moved or removed.

Mr. Chojnowski said he researched the issue and in his Sept. 18, 2006, letter to Bruce Dean, AGS, he referenced Sections #134 and #136 of the Land Division Act. Mr. Chojnowski included copies of these sections in his hand out tonight along with his letter dated October 25, 2006. He read the marked sections to the PC (see attached).

Commissioner Harmon asked Mr. Chojnowski if this plat had been reviewed by Attorney Rolfe. Mr. Chojnowski said that he and Attorney Rolfe have talked at length regarding this property. He also said that Attorney Rolfe stated that there was a section in the subdivision development ordinance that also picks up this requirement of giving the 50 ft. half width, but that there is a section in the ordinance that allows for a variance from the requirement. He said Attorney Rolfe suggested the applicant ask for a this variance, which is what Mr. Chojnowski did in his letter to Supervisor Bither.

Mr. Chojnowski stated that what they now have done, in accordance with the subdivision development ordinance, is not to include East Gull Lake Drive as part of the plat. Consequently, they are also not showing the 17 ft. half width, and their justification for that is the case of Boone v. Antwerp County Board of Road Commissioners (see attached). Mr. Chojnowski reviewed the six points of his October 25, 2006, letter to the PC.

Commissioner Harmon asked how long the Mochizuki's have owned this property. Mr. Chojnowski said they have owned the property for a couple of years, purchasing it from the VanderPloeg estate. Commissioner Harmon said that at the time this variance request came before the ZBA requesting the land division, there was a sales agreement in place for the sale of this property, subject to the division of this land. Commissioner Harmon asked if this sales agreement was still in place? Mr. Chojnowski said that no, it is not in place now. Commissioner Harmon asked what the Mochizuki's intentions were regarding this property, to live on it or sell it? Mr. Chojnowski said he believed they wanted to live in the house on the north parcel and would like to have the ability to sell the parcel on the south side. He wasn't sure if they have absolutely made up their minds, but wanted the ability to do so if they so desired.

Gary Webster went over their review dated October 18, 2006, with the PC (see attached). In AGS's review they state that the PC may wish to recommend waiver of showing the location of all dwellings within 100 feet of the plat, which have not yet been shown on their drawings.

Mr. Webster stated the removal of the tennis court seems to be in the cards and that the PC may want to require a time table for this removal. Mr. Webster said that the setbacks shown on the drawing is not correct, but may be approved subject to corrected information being provided. Mr. Webster said that the ordinance requires drawings to bear surveyor's seal, which also could be subject to approval.

The Township Board may require marginal access streets or such other treatment as is deemed necessary. The applicant had requested waiver of this requirement and also the requirement of the 50 ft. half width.

Mr. Chojnowski said they had a preliminary meeting with the County Plat Board, present were representatives from the Drain Commission, KCRC, Health Dept. and the Township. There is a similar provision in the Road Commission rules to be able to ask for a variance, but it is a matter of timing. Usually the preliminary approval comes from the Township first and then goes to the County offices for approval. Mr. Chojnowski said he didn't hold out a lot of hope that the Road Commission would grant this variance. He said that when he has made similar requests in the past to the KCRC, they were denied, but that he hadn't referenced the Boone case so he didn't know where this would go now.

Commissioner Harmon asked that when the Mochizuki's bought this lot a couple of years ago, how the applicant's were being denied value now if they were not able to split this lot?

Mr. Chojnowski stated that he thinks when the Mochizuki's purchased the property they contemplated dividing it. He also said he was not involved at the time the applicant's purchased the property but thinks that when they were denied the variance request, they were under the impression that they could accomplish this land division if they came back requesting a two-lot plat. Mr. Chojnowski said that at the value per foot of lake front property on Gull Lake, the applicant could have a lot of value there if they were able to create another buildable lot.

Commissioner Harmon said he thinks they need input from Attorney Rolfe before moving forward on this plat. The PC will table this request until they have a written response from Attorney Rolfe.

The PC is asking the applicant for the sizes of the lots. Attorney Chojnowski said they would be happy to do this and address the issues on AGS's review. The PC would like to see the dwellings within 100 ft. of the plat included on the drawing. Mr. Chojnowski said the removal of the tennis court could be made a condition of the final approval and recording of the plat. The applicants don't want to remove the tennis court unless they know the plat will be approved.

Regarding the garage, Commissioner Harmon said if we allow for this type of platting we should really try to bring these types of things into compliance and have the least amount of noncompliance possible. It would appear that if this plat is approved, in order to bring it into compliance it would require the removal of the garage. Mr. Chojnowski said the owners don't want to remove the garage, it has been there for a long, long time. They believe it should be a legal nonconforming use because it has been there forever and they are not changing the boundary line, which is critical to this. Under those circumstances it is unreasonable and a waste to require the garage to be removed.

Mr. Webster said that is true if the boundary line does not change, but if the 50 ft. ½ width is required, the boundary line will change and this will become a different issue. He also said the correct setbacks needs to be shown on the drawings, along with the setbacks of the primary structures on the two adjacent properties. The PC agreed with this and requests the drawing be sealed by a surveyor as required in the ordinance.

Mr. Chojnowski said what he would prefer to see happen is to first get a variance from the township on the 50 ft. ½ width issue. He said this variance approval would improve their position before the Road Commission on this issue. He also said that it is their intention that if they can get through all the other provisions, and the Road Commission won't also grant a variance on this issue, they plan on suing the Road Commission. The PC is requesting Attorney Rolfe review the road request.

Commissioner Harmon said that since it is a two-lot plat off of East Gull Lake Dr., it doesn't make much sense to have an access road/driveway to the lots and this requirement could be waived. There was some discussion on the actual lot sizes and the building envelope for each lot.

Commissioner Harmon suggested the Mr. Chojnowski bring some photos of the property back to the PC, including the tennis court, garage, and the stone retaining wall near the road. Also the lot lines of the two proposed lots need to be shown with more clarity on the new drawings.

Commissioner Harmon said that if the plat is approved, one of the conditions would be that no relief would be granted in the future from the applicable building, setbacks, and lot coverage requirements, since this would be a self-created hardship.

Mr. Chojnowski will check with the Gull Lake Sewer & Water Authority to see if the existing sewer line will allow for the additional capacity.

Motion was made by Commissioner Harmon, seconded by Commissioner Price, to table this issue to the November 29th meeting. Motion passed unanimously.

7. OLD BUSINESS – RESIDENTIAL ZONE REVIEW:

Ms. Harvey went over the updated text, dated October 12, 2006, and the PC discussed the proposed text. Commissioner Harmon proposed to table this until the November meeting. This proposed text amendment and map of the proposed Ag-Preservation District will be forwarded to the Township Board for their insight and direction. A public hearing could then be scheduled.

8. OLD BUSINESS: SECTION 9.34 UPDATE:

It was the consensus of the Commission that since Attorney Rolfe and AGS struggle with proposed wording for this section, they propose to keep the wording as it is.

9. REPORTS:

ZBA: None

TOWNSHIP BOARD: None

WORKSHOPS: None

10. COMMISSION COMMENTS:

Commissioner Cox stated he believes the Mochizuki plat is located in an area where a lot of the properties are large one and two acre estates and these two proposed lots really would not fit in the area. Commissioner Harmon said they need to take a careful look at this plat.

11. ADJOURNMENT:

Motion was made by Commissioner Cox, seconded by Commissioner Lauderdale to adjourn at 8:40 PM. Motion passed unanimously.

Respectfully submitted,

Jackie Whitney
Recording Secretary