

**ZONING BOARD OF APPEALS  
Ross Township  
November 1, 2006**

The Ross Township Zoning Board of Appeals held its regular meeting on **November 1, 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  
                              A. Harmon

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

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

**APPROVAL OF MINUTES OF October 4, 2006**

On motion by Scott seconded by Carpenter the Minutes of **October 4, 2006** were unanimously approved with the following changes:

Page 2, paragraph 4: between "...variance allowing the..." and "...the setbacks..." add "lot dimensions"

Page 2, paragraph 8: between "...similar..." and "...some time ago." Add "variance"

Page 4, paragraph 1: change "intend" to "intent"

Page 4, paragraph 7: change "homeowners" to "Township"

Page 4, paragraph 9: change "substantial detriment" to "material impairment of"

Page 4 paragraph 11: change "site" to "sight"

Page 4, paragraph 3: add "shape" after "...irregular lot..."

OLD BUSINESS -

**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.**

On motion by Scott seconded by Harmon and unanimously approved, this matter was removed from the table for discussion.

Carpenter summarized the discussion from last month. He noted that the primary issue at the previous meeting was the inability of the construction to adhere to the 50-foot setback requirement from the lake.

Brian Pennings, builder, and Mr. and Mrs. Juberg were present to explain their amended request. Pennings said he believes that the 50-foot setback requirement springs from the desire to protect the sight view of neighbors. Therefore, he presented a new drawing showing the adjacent homes and attempted to demonstrate the minimal visual impact of the proposed construction. He said that at this time there is a retractable awning over the deck. They are proposing to replace it with a permanent roof. In doing so they will reduce the size of the deck on both sides so that there can be an overhang on the roof, which would protrude no further than the existing structure. They will put a planter on the deck instead of a railing to help facilitate the neighbor's view of the lake. He wants the new roof over the deck to be considered no different than the lot coverage of the existing deck.

Mr. Juberg presented the ZBA with pictures of the existing home and homes of the adjacent neighbors.

Rolfe summarized that this proposal would not increase lot coverage. There would be a swap in areas, one being decreased and one area being increased to an equal extent.

Harmon reviewed the area, width, and setback requirements of the Ordinance and the conditions of the existing structure. He also commented that the proposed construction would not extend the otherwise anticipated useful life of the structure. He does not find fault with a zero setback at the promenade, since the lot is so small, narrow, and shallow.

Scott and Rolfe discussed the ZBA being asked to grant a variance to allow construction on property not under control of the owner.

In response to Carpenter, Harmon said that this issue is not an matter of a "drop dead", 50-foot provision of the Ordinance, since when you require a homeowner to comply with all the setbacks on this buildable lot, there is simply not adequate room to build a home that would meet other provisions of the Ordinance most notably the minimum, 24' width requirement. Something has to give, and it is probably the lake setback.

Scott asked if someone using the promenade would have access to the use of the Juberg deck.

Webster asked how a Zoning Board of Appeals can ever grant the variance request of a property owner for construction on property over which that owner has no control or interest.

Rolfe said that the legal reality is different from the practical situation. For instance, the Jubergs mow the promenade, but they have no legal right to build on it without the promenade owner's consent. He asked if the ZBA would find the Bible Conference's agreement to allow construction sufficient, or whether there should be a joint application by both the Bible Conference and the Jubergs.

Scott asked if the Bible Conference or the Township has any liability for the Conference, in its capacity as trustee of the promenade, not protecting the promenade for use by others in the plat.

Pennings pointed out that covering the existing deck does not impede people from strolling along the promenade. He believes that the signed letter from the Bible Conference should be adequate for the ZBA to move forward.

Rolfe suggested imposing a condition on the variance to require the Bible Conference to become a co-applicant. He went on to suggest that the ZBA make a formal policy requiring the Bible Conference to make application simultaneously with any applicant of adjoining property wanting to construct anything that encroaches into the promenade.

Scott agreed to the concept, but added that there should be a formal application by the Bible Conference.

Carpenter suggested adjusting the property line between the lot and the promenade.

Mr. Juberg said that there has never been any negative feedback regarding the deck by the Bible Conference or from others.

Scott believes it is inappropriate to make the argument that there is still enough space for people to walk along the promenade with a deck protruding into it. One person's idea of adequate width may not be another's.

Rolfe asked if the top of the planter is above the deck walking surface, and Pennings said that the planter would be 13 inches higher than the deck, but the railing would be lowered.

Carpenter opened the meeting for public comment. There being no one present other than the applicants, Harmon moved to close the public hearing portion of the meeting. The motion was seconded by Scott and unanimously approved.

Harmon addressing Section 9.33 of the Ordinance said that the proposed construction would not increase the lot coverage and nothing would increase the degree of nonconformity. He concludes that this construction would not extend the otherwise anticipated useful life of the structure, and the other members agree.

Turning to Section 6.9 Carpenter said that there is an extraordinary circumstance on this property based on the existing deck at and beyond the property line. It having been granted a variance in the past, and the lots small dimensions. He said that this is not a condition created by the owners. A variance granted in this case would not materially impair the intent and purpose of the Ordinance, especially since the lot line was adjusted with an adjacent owner. He added that there is a reasonable consistency of sightlines with the proposed construction, so the intent and purpose of this portion of the Ordinance is upheld. Scott agrees.

Harmon asked that the record reflect that the depth of this lot is only 59'. After applying the front, rear, and lake setbacks as well as the 24-foot minimum building width requirement, nothing usable can be built. The intent and purpose of the Ordinance to allow reasonable construction is adhered to.

Carpenter reiterated his earlier comments regarding the uniqueness of this lot.

The members agreed that there is no economic gain from a variance being granted here.

Harmon believes that one of the rights of a lake property owner is a deck. Because they are not extending the footprint of the nonconformity, this is in keeping with the rights of others.

However, Rolfe said that a roof over a deck is not a substantial property right. Scott agrees.

Carpenter, speaking for the board, said that this request is not recurrent in nature, since the conditions on this lot are quite unique.

Based on the fact that the sight line is preserved and because the need exists to grant some variance relief in order to construct a home on this lot at all, Harmon moved to allow construction as proposed with a zero setback from the lake-side property line. This also allows the construction to encroach into the otherwise, required, 50-foot lake setback. The variance would also grant relief to the side line setbacks as proposed. The motion was conditioned on there being no expansion of lot coverage.

Scott said that he could not support the motion because that is not the owner's application.

Carpenter supported the motion, which carried 2 to 1. A variance was **APPROVED**, but not the variance that the applicant had proposed.

Afterward there was discussion to clarify the motion. Webster said that under this motion a permit could be issued for construction up to, but not beyond the property line as it abuts the promenade. Additionally, new construction can extend toward the side property lines consistent with the applicant's proposal.

The ZBA agreed that this summary is correct.

#### PUBLIC COMMENT

#### OTHER BUSINESS

Harmon moved to require all parties to apply for a variance when there is construction contemplated which effects multiple properties. The motion was supported by Scott and unanimously **APPROVED.**

Juberg asked if the outcome of this request would have been different if the Bible Conference had been present as a co-applicant, and Carpenter said that it would depend on the set of facts presented.

Harmon said he doesn't believe that the outcome would have been different.

#### ADJOURNMENT

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

Respectfully submitted

Gary Webster, AGS