

**ZONING BOARD OF APPEALS
Ross Township
November 9, 2004**

The Ross Township Zoning Board of Appeals held its regular meeting on **November 9, 2004 at 4:15 P.M.** at the Ross Township Hall. Chairman Carpenter called the meeting to order and noted those present.

Present were: D. Carpenter
 A. Harmon
 J. Scott

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

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

APPROVAL OF MINUTES OF October 5, 2004

On motion by Scott seconded by Harmon the Minutes of **October 5, 2004** were unanimously approved.

OLD BUSINESS – None

1. Jerold & Maxine Orum

**Property located at: 1388 Burlington Dr.
Property Tax I.D.#: 3904-17-201-020**

Proposed is the demolition of an existing residence and the construction of a new home on this legal, existing, nonconforming, platted, waterfront lot located in the R-2 Zoning District. The new residence would be 38'2" from the water where 50 feet is required pursuant to Section 9.7 (A) of the Ordinance. Lot coverage, side setbacks, and street setback all comply with the allowable reductions provided in Section 9.39, and all other applicable zoning requirements are met.

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

Jack Gesmundo was present to explain the revised request. He displayed a proposed house plan and a revised site plan. The home would have 1,200 sq.ft. on the main level and 1,445 sq.ft. on the second floor. It is over 200 sq.ft. smaller than the existing

structure and is further away from the lake than the home that will be demolished. It has a 22' X 22', two car garage. He noted that the adjacent home, which AVB also built was given a lake setback variance based on the same conditions as noted here.

In response to Carpenter Webster summarized the calculations made in determining the appropriate setbacks and other conditions for this house and lot.

Harmon asked why it is not possible to construct a house without variance relief on this site. He asked if it is possible to build a smaller house.

Gesmundo responded that the lot is very irregular in shape, and they are not able to utilize all of the area on the lot. He also said that the elderly homeowners needed a ground level bedroom area, and he explained that the other grade level spaces are essential in his view.

Carpenter commented that the hardship seems to be based on a design issue. He said that the ZBA needs to consider whether a house could be built on this property that conforms to all of the Ordinance restrictions. In that he agrees with Harmon.

Gesmundo said that the owners need a home larger than the minimum 1040 sq.ft. He said that they could probably get by with 2100 sq.ft., both floors.

Scott asked how large the house would be if it were squared off to comply with the lakeside setback. He believes that doing so would leave a pretty small floor plan. He also asked what the typical square footage for a house in this neighborhood is and what the average value of homes is in this area.

Gesmundo answered that the nearby houses would be comparable in area with the one proposed. He also commented that the houses in this area would sell for over \$700,000.

Harmon believes that an approximately 1,300 sq.ft. building envelope would exist if all setbacks were complied with. This would yield an approximate 600-700 sq.ft. main level living area.

Rolfe suggested that the ZBA review its limited authority. The problem that motivates the request must arise from the land not from a design preference. He did acknowledge that the lot area and width are quite small, but it is possible to construct a home on this property that would meet all the minimum standards including compliance with setbacks. He believes the preferences of the owner are personal hardships, which the ZBA can not consider. He then read from the waterfront section of the Ordinance, emphasizing that the mandatory minimum lakeside setback is to be 50 feet.

Noting that he agrees with these comments, Carpenter opened the meeting to public comment

Richard Geib, adjacent property owner, was present to remind the ZBA that he had sent a letter stating the concern that his view of the lake not be blocked. The north corner, although it will be moved back to 38 feet from the water, will still block his view. He wants the ZBA to consider allowing the house to be pulled back enough to improve the view shed of the adjacent properties. He said that his house is over 46 feet from the lake, and any variance would block his view. He is willing to see some sort of variance but not the one requested. He also wanted the ZBA to know that the fence shown on the drawing is not over onto the Orum property.

There being no other comment from the public, Harmon moved to close the public portion of the meeting. It was seconded by Scott and unanimously approved.

Carpenter then drew the board's attention to Section 6.8 A saying that there is an allegation that a hardship exists. This took him to Section 6.9 and the requirements necessary to grant a variance. First, he asked what the hardship is that does not allow a house to be built in compliance with the Ordinance.

Harmon said that a fully compliant house actually could be built on this property without variance relief.

Rolfe offered his calculation verifying that about 1300 sq.ft. are available on this lot for completely compliant construction.

Scott pointed out that if the house were compelled to utilize all of the available area, it would be an unusually shaped structure without square corners.

Harmon said that he is most concerned with looking at the mandatory 50' lakeside setback, and that granting relief in that regard would impair the Ordinance.

Scott does not believe that a variance granted here would cause detriment to adjacent properties.

As to the intent of the Ordinance, Carpenter referred to Harmon's previous comments about granting a lakeside variance.

However, Carpenter does not believe that a variance here would negatively impact health, safety, and welfare. He then summarized that the findings in this case are that the hardships appear to arise from the applicant's design rather than a hardship connected with the lot.

Harmon summarized that a house in excess of 1040 sq.ft. could be built on this lot without the need for variance relief, but the request is based solely on the applicant's design preference. He then moved to deny the request.

Scott believes that a house that could be built here in compliance with the Ordinance would not be compatible with the neighborhood. He therefore believes there is some merit in the request. He believes that if the Township has promoted Ordinances to develop a better community, then it made a mistake with respect to this property.

Harmon observed that the Planning Commission recognized there were no good guidelines for nonconforming lots, and therefore, they and the Township Board made allowances with respect to side setbacks and lot coverage. But they held fast on the mandatory lakeside setback. He believes that these are hard guidelines that should be held to.

The motion was seconded by Carpenter and carried 2 to 1. The request was **DENIED.**

NEW BUSINESS

1. Mr. & Mrs. Alfred Gemrich

**Property located at: 604 E. Gull Lake Dr.
Property Tax I.D. #: 3904-17-380-17**

Proposed is the demolition of an existing residence and the construction of a new home on this legal, existing, nonconforming, platted, waterfront lot located in the R-2 Zoning District. Also proposed is the demolition of one of two existing accessory structures. The new structure will have two exterior walls of only 20 feet in length where Section 7.16 requires a minimum of 24 continuous feet. Additionally, the height of the building will be 26'6", where 25' is the limitation.

Mr. and Mrs. Gemrich were present along with Phil Bonine, their designer.

Webster summarized the request to reduce the minimum exterior wall length from 24' to 20' on the front and rear. With overhangs of 16" they would not violate the side setback requirements. The lot is only 34' wide.

Gemrich said that along with the house they are proposing to tear down an old building on the property that is attached to the neighbor's garage.

Carpenter opened the meeting to public comment.

Harmon said that he believes that some variance relief is required on this lot due to ability to access the rear of the property and for safety. He is however concerned with the overall height of the building.

Gemrich commented that when the house is so narrow, it is necessary to construct upward, and Bonine said that the height is to be measured from the existing grade, but they want to raise the grade to allow proper run off. He believes that the height then would comply with the Ordinance, although it would not comply with height as measured from existing grade.

Mrs. Gemrich followed up by saying that they have already lowered the grade on one side of the home so that the water would flow toward the lake rather than flood their basement and the basement of their neighbor.

Rolfe asked when the grade alteration occurred, and he was told about 4 years ago. Rolfe concluded that if the grade is restored there might not be a height issue.

Carpenter asked why the roof pitch could not be altered to solve the height problem.

Since a home with a compliant 24' wall width could be constructed on this site, Rolfe asked if there is a problem with having no overhang.

Webster summarized that although homes were certainly constructed without overhangs years ago, they generally leaked. Scott concurred that it would never be advisable to construct without an overhang.

Gemrich wanted the ZBA to know that the neighbor has built a structure right on the property line, which limits the clear space between that structure and their proposed house on that side.

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

Carpenter then asked what the hardship on this property is, and Harmon responded that today's construction standards include some overhang, and because of the extreme narrowness of the lot some variance relief is necessary.

Scott said that since the side setbacks are being reduced from the existing condition, there is an obvious benefit to the Township and to the neighborhood.

Harmon observed that one of the intents of the Ordinance is to maintain setbacks in order to facilitate site lines.

Carpenter does not believe that a variance here would impair the health, safety, and welfare of the public. It would actually improve it, since there would be more space between buildings. He then concluded that the ZBA has met all four of the conditions needed to move forward.

Harmon said that unique to this property is its 34 foot width.

With respect to property rights enjoyed by others in the zoning district, Harmon said that with the combination of required 24' wall width and 5' side setback, something has to give.

Carpenter does not believe that the conditions present on this lot will be recurrent in nature.

Scott moved to grant a variance to reduce the required wall length from 24' to 20'. The motion was seconded by Harmon and unanimously **APPROVED.**

With respect to height Harmon said that if the restored grade along with a reduced roof pitch would allow height compliance, the applicant may like to withdraw his appeal.

Mrs. Gemrich said that she wants a 7-foot basement, which would still require the additional height.

Harmon said that if the applicant still wants to raise the height, there is no justification for a variance.

Scott agrees, and the Gemrichs withdrew the request.

PUBLIC COMMENT

During public comment Phil Bonine asked why the width required was originally established, and Rolfe responded that it was originally in response to governments' attempts to prohibit mobile homes.

OTHER BUSINESS – none

ADJOURNMENT

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

Respectfully submitted,

Gary Webster
AGS