

**ZONING BOARD OF APPEALS
Ross Township
December 7, 2004**

The Ross Township Zoning Board of Appeals held its regular meeting on **December 7, 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 Scott seconded by Harmon the agenda was unanimously approved.

APPROVAL OF MINUTES OF November 9, 2004

On motion by Harmon seconded by Scott the Minutes of **November 9, 2004** were unanimously approved with the following changes:

Page 2 second paragraph 2 add comma after Carpenter.

Page 2, third paragraph from the bottom. Strike the sentence:” This would yield an approximate 600-700 sq.ft. main level living area.”

Page 5, 3rd paragraph from bottom change “facility” to “facilitate” and “site” to “sight”

OLD BUSINESS – None

1. Nick and Barbara Owings, Dean Rock, and Alison Payne

**Property located at: 365 Gull Island
Property Tax I.D.#: 3904-280-342**

Proposed is the construction of an addition to an existing residence on this platted, non-conforming, waterfront lot located in the R-2 Zoning District. Zoning approval has been denied for the proposed addition based on the determination that the proposed structure is a separate building from the existing primary structure, constituting either a second dwelling on the lot, or an accessory building proposed for residential use. The applicant is appealing the determination of the Zoning Administrator. All other applicable zoning requirements are met.

Webster summarized the proposal and the Zoning Administrator's interpretation denying the request. The two buildings would have an open, uncovered deck structure between them. There would be an opening onto the deck from the new building, but no entrance from the existing cottage.

Barbara Owings and her architect, Michael Dunn, were present to explain their request. Owings said that the second floor deck is being constructed to show connection to the primary structure. She offered the following reasons for approving her request. She doesn't believe that this is an accessory building nor a separate dwelling. She believes that the structure is not incidental to the main building, but rather an integral part of the home. The owners need more sleeping room, and this does not constitute a second dwelling on the property. She believes that the connection of sleeping and bathing rooms does not constitute a separate dwelling unit. She also presented the ZBA with pictures of dwellings in other communities with bridges connecting portions of an individual home.

Dunn added that the owners could have simply made an addition onto the home, but they do not want to construct something that overwhelms the community, which is made up of various smaller buildings. There is also an historical type of walkway on the island that connects the homes there, and their proposal is in part sensitive to appearance of the community.

Scott asked what the ZBA's responsibility is in this case, and Rolfe responded that the ZBA is being asked to either uphold or modify the determination of the Zoning Administrator.

Scott asked Webster what the overt issues are that caused the Zoning Administrator to determine that this is an accessory building or second dwelling on the property.

Webster responded by noting the nonexistence of a common wall or roof structure, which the Ordinance would appropriately consider as partially contributing to a determination of one structure. He also noted that the proposed connecting structure is inaccessible from the existing cottage.

Owings sees no definition of "addition" in the Ordinance, and she does not believe that an accessory building can be defined only by not possessing a common wall or common roof structure. She said that the single use on the property is as a single-family dwelling.

Dunn said that the Zoning Administrator is using a double negative to define an accessory building. He observed that this structure does not contain an eating area. He also disputes the interpretation, since the definition contains the statement "any part".

Rolfe offered several observations. He said that the historical appearance of walkways in the neighborhood have no relevance to the ZBA's decision, nor do the photos of homes in other townships provided to the board by the applicant. Finally, he noted that definitions in the Building Code do not take precedence over the local Zoning Ordinance, nor is it relevant to the ZBA's decision.

Owings explained her use of the definition of "dwelling" from the Building Code as being different from the definition in the Ordinance and therefore reinforcing the concept that this is not an accessory building.

Rolfe summarized his opinion that the proposed construction is in fact an accessory building. He said that if this construction is not a part of the main building, then it is either a separate dwelling containing residential use, or it is an accessory building incidental and subordinate to the main structure. He believes that the Zoning Administrator has appropriately concluded that the proposed construction constitutes a separate, accessory building primarily because there is no part of a building connected to a common wall. He said that all buildings are structures, but the converse is not true. All structures are not buildings. He then drew the ZBA's attention to the definition of "story" and "building" in the Ordinance. He believes that these definitions taken collectively connote floors, walls, and a roof, and the portion of the connecting structure does not meet this definition. Therefore, the structures on this lot do not constitute one building. Additionally, he offered that no one is suggesting that the structures would constitute a duplex. He does not believe that the board has a sound legal basis to overturn the Zoning Administrator's determination.

To rebut, Dunn said that the definition of "dwelling" implies a single building.

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

In response to Carpenter's request to hear the board's response, Harmon said he believes the Zoning Administrator's interpretation is correct, since there is no common wall. The decking leads to nowhere and has no access to the primary structure.

Scott believes that this is an example of a well-written Ordinance. Without connection of interior space providing for continuity of one living space to another, there is little reason to conclude that the proposal is anything but two separate buildings. He believes that the Ordinance prohibits the Township from going down the slippery slope of allowing any type of meaningless construction to be considered a connection of portions of one structure.

Carpenter agrees with Harmon and Scott that these are two separate structures. The pictures and design, while creative, do not have relevance to the interpretation of the Ross Township Ordinance. Since it has no common roofs or walls it is not one building.

Harmon moved to affirm the determination of the Zoning Administrator based on the Zoning Administrator's argument presented in the memo. The motion was seconded by Scott and unanimously approved. The request to overturn the Zoning Administrator's interpretation was **DENIED.**

Owings then asked the ZBA to consider granting a variance, but Rolfe suggested not moving forward with such an appeal based on the specific language of the notification.

Owings asked the ZBA why the application only speaks of a variance, and suggests that the ZBA will work with the applicant to find solutions to the applicant's problem.

Dunn questioned Scott's use of the term "interior connection", and Scott explained that the phrase is simply a part of the thought process.

Harmon moved to table the matter until the January meeting to allow the applicant to make a cogent proposal, but he cautioned the applicant that it would be difficult for the ZBA to approve such a request. The motion was seconded by Scott and unanimously approved. The matter was **TABLED.**

NEW BUSINESS - none

PUBLIC COMMENT - none

OTHER BUSINESS

Harmon said that the Planning Commission decided to leave the Ordinance language relative to "raised decked patios and decks" as it is. Anything above the ground on which it is constructed will impact lot coverage and setbacks, etc.

ADJOURNMENT

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

Respectfully submitted,

Gary Webster
AGS