

ZONING BOARD OF APPEALS
Ross Township
March 1, 2005

The Ross Township Zoning Board of Appeals held its regular meeting on **March 1, 2005 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
 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 February 1, 2005

On motion by Scott seconded by Carpenter the Minutes of **February 1, 2005** were unanimously approved with the following change:

Page 3, paragraph 4: change “Stoney Lake” to Stoney Lake Hills”

OLD BUSINESS

Carpenter described to the ZBA the memo from the Owings, which asks for the ZBA to table their matter and asks for a formal denial. Rolfe suggested leaving the matter tabled until the next regular meeting.

NEW BUSINESS

2. Mr. Steve Waite

Property located at: 1259 W. Gull Lake Dr.
Property Tax: I.D. #: 3904-18-402-381

Proposed is the demolition of an existing residence and the construction of a new home and attached garage on this legal, nonconforming, platted, waterfront lot located in the R-2 Zoning District.

The new structure would be 45 feet from the water where 50 feet is the minimum required waterfront setback pursuant to Section 9.7 A.

The side yard setback would be reduced to 5 feet where 6 feet is required by Section 9.39.

The rear yard would also be reduced to 10 feet where 21 feet is required as calculated under Section 9.39

Finally, the proposed height of the building is 30 feet to the midpoint, instead of the 25-foot limitation under Section 10.

Mr. and Mrs. Waite were present to explain their request. Before they began Carpenter asked Webster to go over the issues which he did.

Carpenter then asked if all of the measurements were made from the eave as opposed to the wall line, and he was told that they were.

Carpenter also asked exactly where the high water line is, and Webster responded that the Zoning Administrator has taken the good faith representation of the applicant on his drawings, but this can be verified by a site inspection.

In response to Carpenter, Waite said that the reason he can not move the building further back from the lake is because the building envelope (the buildable area observing all of the setbacks) is very small and triangular. He also noted that the road itself is not centered in the right-of-way, rather it is farther from his lot line than at other locations in the area. His house would actually be 33 feet from the pavement.

Carpenter noted that the lot is a very irregularly shaped lot, but asked if there is any way to place a conforming house on this lot even if it had to be a different design.

The applicant believes that he has made every attempt to fit his house onto the lot with a minimum of variance requests. His garage is only approximately 20' X 20'.

The applicant said that he plans to fill the lot approximately 5' overall. His measurements would be taken from the new grade.

In response Carpenter asked Webster to explain the way the height of a building is measured. Webster said that the height of a structure on such a nonconforming lot must not exceed 25' measured at the foundation from unaltered grade to the midpoint between eave and peak of the highest roof slope. The measurement could not be made from newly filled area.

In response to Carpenter asking again about a redesign that may comply, Waite said that he has to deal with the sewer line, the converging lakeside and front setbacks, water run off from the neighbors, and he has a well on the lot.

Rolfe asked the applicant to clarify his drawing. He also noted that the applicant has shown a hypothetical area in the shape of a triangle, which limits his ability to construct a home larger than approximately 500 sq. ft. He said that the ZBA may decide that this is a hardship. He also noted that the house is setback further than other houses in the area. He also said that the side setback request of 5' may be purely a design issue.

Waite described how he would reduce from the existing condition the lakeside setback encroachment, the rear encroachment, and the side encroachment. Waite said that a cemetery is situated across the street, so nobody's view will be blocked. A neighbor on one side of his property is over 500 feet away. If he moves the house further north, there is a drop off to deal with. He wouldn't be able to get into his garage.

Carpenter asked Webster if a 20' X 20' garage is typical, and Webster said that a common depth for a residential garage is 24', it is sometimes reduced to 22', but 20' is almost too narrow.

Waite noted also that there is a manhole only 8' from his proposed house wall on the lakeside.

Rolfe commented further that the proposed house width is more than the minimum mandatory width, but not by much, and certainly would not be considered excessive by today's standards. He said that if the width and the length of the house were reduced the required lakeside setback could be maintained. The curvature of the front lot line adds to his difficulty in designing a compliant house. He also noted that the lot area is approximately 1/3 of the minimum lot area required in the zoning district.

There was general discussion of alternative designs for the house that would maintain the lakeside setback as well as the 6' side setback.

Carpenter opened the meeting to public comment. There being none, the public hearing portion of the meeting was closed on motion by Scott, seconded by Carpenter and unanimously approved.

Carpenter then drew the ZBA's attention to the requirements of Section 6.8 and 6.9. He noted that there clearly is the allegation of hardship. He also said that the practical hardship is first of all the unique shape and smallness of the lot. Scott does not believe that moving the house closer to the street would be detrimental to the neighborhood. Scott also believes that it is the strange shape of the lot that is driving the variance appeal. He believes this condition implies such a variance would not materially impair the Zoning Ordinance. Scott also does not believe that the health, safety, and welfare of the community would be impaired.

Scott summarized that the extraordinary circumstance in this case is that the strange shape of the lot makes it practically impossible to construct a house on it without variance relief.

Since the applicant has withdrawn his requests for lakeside and side setback relief and based on the findings thus far described by the ZBA, Scott moved to allow a variance to allow construction no closer than 5 feet to the right-of-way. The motion was seconded by Carpenter and unanimously **APPROVED.**

The next issue to be discussed was the height of the building. Scott believes that because of the storm water run-off, the building height limitation does present a hardship.

Waite added that even by moving the house closer to the street he still needs to add fill so that he can enter his garage. Additionally, moving the house further toward the street raises it further out of the ground at the lakeside.

The ZBA does not believe that there is any detriment to adjacent property owners by granting the extra 5 feet of height, since a cemetery occupies the ground across the street, and one adjacent neighbor is approximately 500 feet away. The ZBA also does not believe that the intent and purpose of the Ordinance would be impaired in this unique situation.

Rolfe offered that the height limitation was added to the Ordinance primarily to keep from blocking the view of other property owners.

Scott added that the health, safety, and welfare of the public would not be impaired based on the narrowness of the lot and its topography. He again noted that the lot shape and topography are singularly unique, and he believes that this variance allows the applicant to enjoy the same property rights as others in the neighborhood.

Based on the findings just made Scott moved to grant a variance to allow the building to have a height of 30'. The motion was seconded by Carpenter and unanimously **APPROVED.**

1. Mr. and Mrs. Talmage

Property located at:	1894 Midlake Dr.
Property tax I.D. #:	3904-08-377-200

Proposed is the demolition of an existing residence and the construction of a new residence and attached garage on this legal, nonconforming, platted, waterfront lot located in the R-2 Zoning District.

The new structure would be 35 feet from the water where 50 feet or the average setback of adjacent homes (if greater) is the required waterfront setback pursuant to Section 9.7 A. The required setback based on this calculation would then be 53'6" minimum from the water.

The front setback from the promenade is requested at less than the 20' required under Section 9.39.

The rear setback would also be reduced to 16 feet where 20 feet is required based on the calculation in Section 9.39.

Finally, the structure would exceed the maximum 33% lot coverage as calculated pursuant to Section 9.39 and increase it to 47%.

Charles Glass, Builder, and John Talmage were present to explain their request. They are proposing to demolish the existing structure and construct a new home. Since it is a nonconforming lot, they are faced with having to construct within a 19-foot width front to back if all setback requirements are met. They will only be building a single stall garage. He also noted that if the promenade were factored into the lot, he would not need a front yard variance or lot coverage variance. He said that this is a two-story house, and the lot is essentially flat.

In response to Rolfe, Glass said that the average depth of the promenade is approximately 27 feet.

Scott asked why the applicant pays taxes on the promenade if he doesn't own it. Rolfe responded that the property owners do not own the promenade, but they may have to pay taxes on it as common property.

Scott said that he is having trouble deciding whether to grant a variance in this case or not.

There was general discussion of having an approximately 20-foot building width if both lake-side and rear setbacks are observed.

In response to Scott, Glass said that the total living area of this house is approximately 3100 sq.ft.

Rolfe commented that based on the fact that a house can not be built on this lot in total compliance with the setbacks, some variance relief is probably in order. He believes that this particular design may be in trouble however. The matter may have to be tabled to allow the applicant to redesign.

Scott said that the ZBA is without adequate guidance as to how to apply the rules when they are faced with conditions such as the Waite issue and this. If the Ordinance says 50 feet are required, and if the ZBA has the responsibility to grant a variance where no one could otherwise build, then how much variance is necessary? The design of the building is not the responsibility of the ZBA.

Carpenter suggested that the applicant reconsider the design and come back at a later meeting. He would have a hard time tonight granting a variance.

Talmage asked for more direction and Scott described what he believes is reasonable. He wants to know what the spaces are and how they are to be used, because he believes that a 3100 sq.ft. house may be too large for this lot.

On motion by Scott seconded by Carpenter and unanimously approved, the matter was **TABLED** until April to allow the applicant to redesign the house.

PUBLIC COMMENT - none

OTHER BUSINESS

ADJOURNMENT

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

Respectfully submitted,

Gary Webster
AGS