

ZONING BOARD OF APPEALS
Ross Township
May 3, 2005

The Ross Township Zoning Board of Appeals held its regular meeting on **May 3, 2005 at 4:45 P.M.** in the Ross Township Hall. Chairman Carpenter called the meeting to order and noted those present.

Present were: D. Carpenter
 A. Harmon

Absent was: J. Scott

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 April 12, 2005

On motion by Harmon seconded by Carpenter the Minutes of **April 12, 2005** were unanimously approved with the following change:

Page 2, Paragraph 10: delete: "...and is not open to traffic."

OLD BUSINESS

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 46 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 8 feet instead of the 20 feet required under Section 9.39.

The rear setback to the street would also be reduced to 13 feet where 20 feet is required based on the calculation in Section 9.39.

The side setbacks would be 7.9 feet on each side where 7.95 feet is the requirement.

Finally, according to the new submittal the structure would exceed the maximum 33% lot coverage as calculated pursuant to Section 9.39 and increase it to 38.5%.

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

Mr. and Mrs. Talmage were present to explain their revised proposal. They indicated that the existing house is nonconforming, and they believe that because the lot is so small, only something the size of a singlewide mobile home could be placed on the property.

However, Harmon noted that since the building envelope is only 17 feet wide by one dimension, and the minimum exterior dimension on any side of a structure in the residential zoning district must be at least 24 feet, no conforming residence could be constructed on this property without variance relief.

Talmage said it was suggested at the previous meeting that the setback from the road should be increased. He wanted the ZBA to know that Midlake Dr. is a County Road with a lot of traffic going to the plat and the Bible Conference. For this reason he wants to maintain as great a setback on the street side as possible. He also said that he is reducing the degree of nonconformity on the lakeside.

Builder Glass noted that all other houses on Midlake Dr. in this area are closer to the lake than this proposal.

Harmon asked if there are construction documents for the proposal, and was told that there are. He asked about the vacant lot #10 and if it is dedicated to public use. He was advised that this is for pedestrian access.

Since this is a buildable lot, Harmon asked if a house could be built on this lot with lesser degrees of nonconformity.

Talmage responded that he did not believe that a functional house could be constructed on this lot with smaller encroachments than those proposed.

Rolfe noted that the applicant said on his application that because the home is to be located on the promenade there is an appearance of a bigger lot. The promenade in this area is generally not used by others but is maintained by the homeowners, whose properties are separated from the lake by it. They consider it a functional part of their lot.

There being no public comment, Harmon moved to close the public hearing portion of the meeting. The motion was seconded by Carpenter and unanimously approved.

Harmon began his discussion of Section 6.9 by saying that the size of the lot is a particular hardship.

There should be no negative impact on adjoining properties because this is a permitted single-family residence, and the applicant has made every attempt to reduce the need for large variances by the scale of the home. The proposed location actually creates more detriment to the applicant with respect to view than to adjacent properties.

A variance would also not appear to impair the intent and purpose of the Ordinance because of the severe size limitations of this lot.

The Public health, safety, and welfare will not be effected, since the applicant is creating as large a street side setback as possible, and Midlake Dr. has slower traffic than other streets in the area. Finally the proposal meets the side setback requirements.

Carpenter then asked what the specific hardships and extraordinary circumstances are on this lot, and Harmon reiterated that the lot area is only approx. 1/3 of the requirement. The dimensions are also small, and the promenade gives the appearance of a larger lot than would be found elsewhere.

Harmon said that the R-2 Zoning District allows for single-family residences, and the variance would allow this to be. Additionally, the size of the house has been kept small.

The members agree that this sort of proposal will not be recurrent in nature because of the very small dimensions of the lot.

Based on record established at this point Harmon moved to grant variances to road, water, promenade, and for building coverage as requested. The motion was seconded by Carpenter and unanimously **APPROVED.**

2. 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.

Because not all members could be present for this meeting the Owings have requested that their issue be tabled. On motion by Harmon seconded by Carpenter, it was tabled until June 7, 2005.

NEW BUSINESS

1. Mr. Art Caball

**Property located at: 7581 N. 42nd St.
Property tax I.D. #: 3904-21-278-030**

Proposed is the construction of a 3,569 sq.ft. detached pole building on this conforming parcel in the rural, Agricultural (R-A) Zoning District. Applicant proposes to place a pole building in the front yard, where a “rear yard only” location is the requirement pursuant to Section 9.4. It should also be noted that the required setback for the primary structure in this area is 50’, and the pole building would only be 36 feet from the front.

Mr. Caball was present to explain that he was attempting to get the building as far into the hillside as possible. He has excavated into the hillside to do that, and he presented the ZBA with a depiction of how the buildings would sit on his lot.

Carpenter said that he agrees that the hillside behind the new structure is 2 to 3 times higher than the proposed building, and at least twice as high as his house. It would be very difficult construct a building on top of the hill.

Caball said he actually could build on top of the hill, but he can not get there with a vehicle. He has also turned the building sideways to get the maximum setback from the street. He will store his tools, vehicles, boat, etc. in the building. He will either use vinyl or aluminum for siding and shingles on the roof.

In response to Carpenter, Caball said that although he owns the property to the north, there is a residential structure on that lot.

There being no public comment, Harmon moved to close the public hearing. The motion was seconded by Carpenter and unanimously approved.

Harmon said that the topography is the prime hardship on this property.

Because the property to the north is also owned by the applicant, and because a tree buffer is maintained on all sides, and because the lot is so large, no detriment to adjacent properties is probable.

A variance would not impair the intent and purpose of the Ordinance, since single-family residences and their accessory structures are permitted in this Zoning District.

The applicant is attempting to maintain the maximum setback possible, and this is the steepest terrain in the township.

The extraordinary hardship on this lot in the RA Zoning District is that the hillside prevents construction without extreme difficulty.

This is apparently the only available location of the lot. There are no other alternate locations.

Harmon moved to grant the variance as requested based on the findings thus far. The motion was seconded by Carpenter and unanimously **APPROVED.**

2. Mr. Dorne Clark

**Property located at: 11680 D Ave.
Property Tax I.D. #: 3904-19-220-022**

Proposed is the construction of an addition to the existing residence and the construction of a new deck on this legal, existing, nonconforming, platted, waterfront lot located in the R-2 Zoning District. The waterfront setback (to the deck) would be 50 feet, where 50 feet or the greater of the average of adjacent properties is required pursuant to Section 9.7 (A). The average waterfront setback is 51.5 feet. All other applicable zoning requirements have been met.

Mr. Clark is proposing to construct an addition and a deck, and in response to Carpenter, Clark said that he wants to put a hot tub on the deck, and he needs the additional 8 feet to access the tub. He said he does not want to reduce the deck by 1.5 feet, which would put him in compliance with the Ordinance, because he would be no closer to the creek than his neighbors.

Rolfe said that he does not see factors in this case, which would lead the ZBA to grant a variance. The parcel is legal and conforming in most respects. There are no width issues, and he has a lot of space on the lot for construction.

Harmon believes that the deck could be constructed without a variance.

Carpenter suggested tabling the matter in case Mr. Clark can not comply with the setback.

There being no public comment, Harmon moved to close the public hearing portion of the meeting and to table the matter until June 7, 2005. The motion was seconded by Carpenter and unanimously approved. The matter was **TABLED.**

PUBLIC COMMENT - none

OTHER BUSINESS - none

ADJOURNMENT

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

Respectfully submitted,

Gary Webster
AGS