

**ZONING BOARD OF APPEALS**  
**Ross Township**  
**June 7, 2005**

The Ross Township Zoning Board of Appeals held its regular meeting on **June 7, 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  
                              J. Scott, arrived late

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 May 3, 2005**

On motion by Harmon seconded by Scott the Minutes of **May 3, 2005** were unanimously approved with the following changes:

Page 2, second paragraph from the bottom: Change the first sentence to read: "Rolfe noted that the applicant said on his application that because the home *fronts on* the promenade there is an appearance of a bigger lot."

Page 3, eighth paragraph, Add "the" before "record"

Page 4, 3<sup>rd</sup> paragraph, last sentence: delete "s" from "buildings"

Page 4, 4<sup>th</sup> paragraph, first sentence: add "to" before "construct"

**OLD BUSINESS**

**1. 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 revised proposal shows the**

**waterfront setback (to the deck) of 51.5 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 92.75 feet. All other applicable zoning requirements have been met.**

This matter was tabled at the May 3, 2005 meeting, and on motion by Harmon seconded by Scott and unanimously approved, the issue was removed from the table for discussion.

Mr. Clark was present to explain that he has reconfigured his structure, but it was discovered that the adjacent property to the west is actually set back 132 feet from the lake. This puts his entire home within the averaged setback.

Harmon suggested that public comment be solicited.

Scott believes that this situation was not contemplated by the Ordinance.

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

Carpenter said that Section 6.8 requirements of the Ordinance are fulfilled, and he looked immediately to Section 6.9 requirements.

Harmon commented that if the property with the 132' setback is ignored and the next house to the west is averaged together with the house to the east, the construction would comply. The practical difficulty posed by a house 132 feet off of the lake is not reasonable.

Scott said that the adjacent house has no view shed to protect, and he believes that the house setback 132 feet should be disregarded in the averaging.

Harmon said that no detriment to the adjacent properties would be created by this addition because of the extremely odd-shaped lot to the west.

The ZBA agreed that health, safety and welfare is not impaired, since other than the oddly-drawn lot, there is no adverse impact on any other properties.

Harmon does not believe that this situation is recurrent in the zoning district. The narrow lot next door is unique to the area.

Harmon said that it would be impossible to build anything on this lot if the averaging rule were used in its strictest sense.

Based on the findings just made, Scott moved to grant a variance as requested. The motion was seconded by Harmon 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.**

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

Webster summarized the Zoning Administrator’s determination letter of March 4, 2005

Mrs. Owings, her attorney, Ann Fries, and Michael Dunn, designer, were present to explain that they are appealing the Zoning Administrator’s determination.

Fries presented site plans of the new proposal, and said the house is primarily used in the summer months. They are proposing a corridor to connect the existing cottage with the proposed addition. It would be a two-story addition with a bathroom, bedrooms, and a hearth room. She said further that this proposal is significantly different from the original proposal. It is now a fully integrated structure. The roof line is consistent with the existing structure. The corridor opens into both structures. She referred to the corridor as a “gallery”, which will contain artworks, tables, lamps, etc. She read from Section 7.2 A of the Ordinance emphasizing that a permitted use in this zone is residential and that there can be no more than one single-family dwelling on a parcel. She does not believe that the Ordinance defines a structure of this type. She said that the emphasis on “accessory building” formed the basis of the Zoning Administrator’s determination. In fact, it hinged entirely on “accessory building”.

Fries does not believe that the addition constitutes a separate building, and there is a “common wall” in the revised design. She also noted that the language includes: “part of a common wall” or “common roof”. She also noted that when an addition is constructed onto existing construction, the common wall is often removed entirely. She believes that this causes the Zoning Administrator’s determination to fail. She believes that there is a portion of a common wall connecting the structures and in fact continuous walls connect the structures. There is continuity and flow from one portion of the house to another and integration of design. The gallery bumps out the kitchen and would be used for entertaining overflow. The construction constitutes a uniform structural design.

Fries then summarized her conversation with Mr. Dean, who told her he thought the Ordinance was vague. She cited several court cases to support her contention that the addition is an integral part of the home. She believes that the Owings home is consistent with these court decisions. Each found that an integrated and complete architectural design was adequate to determine that only one structure exists. She concluded by noting that under Michigan law, doubt must be decided in favor of the property owner.

In response to Carpenter, Dunn said that the width of the gallery is 6 feet, and it has a 4'6" wide porch on one side. It is 12' long. Carpenter asked if the gallery could be called a "hallway"

Fries said that the term "gallery" is used to imply a portion of the home.

Rolfe said the factual situation should be on the record that the others whose names are on the application are all members of the Owings family.

Carpenter opened the meeting to public comment.

Michael Dunn said that this is a more contemporary approach to design, and the owners wanted to retain the windows that are in the existing house for light and ventilation. It also allows the view of the lake to be maintained.

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

Rolfe asked to address the board prior to further deliberations. He indicated that the Zoning Administrator's office gave a lot of consideration to this proposal and the interpretation of the Ordinance. The proposal is not typical, and it is innovative. He further believes that the Township Board in adopting this language did not contemplate this kind of innovative architectural design. He also believes that Zoning Administrator, Dean, wanted the ZBA to actually make the determination in this case. Having said that, Rolfe observed that the applicant had made a compelling argument for reversal of the Zoning Administrator's decision. Regardless of what it is called, a corridor, hallway or gallery, he believes that the addition is fully integrated with the existing house. Further, there is at least a "part of a common wall" connecting the new addition to the existing.

Carpenter commented that he agrees with Rolfe. The buildings have a common wall, and the corridor is enclosed. There is no kitchen in the other part of the building. It will consist of only bedrooms, bath, and living area. He believes that this is one structure.

Scott disagreed. He believes that building a hallway between two houses is neither contemporary or innovative, or even different. He believes that there are really two separate structures with a connector hallway.

Carpenter moved to reverse the decision of the Zoning Administrator. The motion was seconded by Harmon. The motion carried 2 to 1. The Zoning Administrator's determination was **REVERSED.**

Rolfe said that Township Board and Planning Commission can change the language of the Ordinance. The Planning Commission or the Township Board may decide that this is not the kind of design that it would support.

## NEW BUSINESS

### 1. Robert Maitland and Linda Trimble

**Property located at:           1839 Idlewile**  
**Property tax I.D. #:           3904-18-145-111**

**Proposed is the demolition of an existing residence (existing garage to remain) and the construction of a new residence on this legal, existing, nonconforming, platted, waterfront lot located in the R-2 Zoning District. Proposed is a total lot coverage of 32.6% where 25.6 % is the maximum allowable lot coverage pursuant to Section 9.39 (B).**

**Note: Proposed is a waterfront setback of 50 feet +, which is in compliance with Section 9.7 (A). This section specifies that the minimum front yard setback be 50 feet or the greater of the average setback of the nearest existing dwelling on each side of the lot. The average waterfront setback is 34.5 feet. All other applicable zoning requirements have been met.**

Mr. Maitland and Mrs. Trimble were present to explain their proposal. Trimble has a copy of the court order that vacated the promenade. They are proposing to construct a new building, since the last repair on the building was in the 1960s. The house will be behind the required 50' setback from the lake. The existing structure is only 2 feet from the side line, and the new setback would be compliant. She said that the topography is a problem. The property drops off 10 feet from the street, and she noted that the homes to either side of hers are of a ranch style like her proposal. The new structure would not interfere with the neighbor's view. Finally, she said that there are electrical and structural problems with the existing house, and it should be replaced.

Harmon asked if the applicants own any adjacent property, and was told that they do not. He noted that the request for the variance comes from the design, and it is possible to construct a home in compliance with the Ordinance on this lot without variance relief. He asked what it is about the lot that demands a variance. He believes that this is a self-created hardship.

In response Trimble said that when the house was build, it probably conformed to lot coverage, since there was some 60 feet of lot frontage at that time. That has now been lost through adverse possession. She said that they could not build a two-story house without a variance for height.

In response to Scott, Michael Dunn said that the topography on the rear portion of the lot is 10' higher that it is at the lake. These applicants can not use a two-level house, since one of its occupants is disabled.

Rolfe advised the ZBA that there is no basis to grant a variance. In fact, there is a bonus granted to lot coverage on this type of nonconforming lot due to the recent Ordinance language change, and it would allow in excess of a 2000 sq.ft. home on the property. The variance must be predicated on a hardship stemming from the land.

Trimbel asked if there is some compromise that could be reached, and lacking that, if the matter could be tabled.

On motion by Harmon seconded by Scott and unanimously approved, the matter was tabled until the next meeting.

## 2. Mr. Carl M. Waldorf

Property located at:	11240 East D Ave.
Property tax I.D. #:	3904-19-130-011

**Proposed is the construction of a 54' X 60' detached garage on this conforming parcel in the R-1 Zoning District. Construction is within the boundaries of the parcel #-011. Also proposed is a total wall height of 13 feet where the maximum accessory building wall height is 10 feet pursuant to Section 10. All other applicable zoning requirements have been met.**

Scott said that he wanted to recuse himself from the discussion based on his long-standing relationship with the applicant, and he wants to avoid even the appearance of conflict of interest.

After Webster summarized the issue, Mr. Waldorf and his son Clayton Waldorf and Steve Olson with Morton Buildings said that the wall height is a function of the storage requirement for the building. They have a motor home that requires an oversized door.

Harmon observed that Morton Buildings could design a truss that could accommodate an oversized door.

In response, Olson said that they have already designed a low truss to get only 13 feet of wall height.

Harmon asked if the ZBA even has the authority to grant a variance when the need stems from the desire of the applicant only.

Rolfe advised that there does not appear to be any kind of difficulty or hardship on which to base a variance.

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

Harmon moved to deny the request based on a self-created hardship. The motion was seconded by Carpenter and unanimously approved. The request was **DENIED**.

### **3. Mr. Rex and Connie Shepard**

**Property located at:                   6289 N. 39<sup>th</sup> St.  
Property tax I.D. #:                   3904-29-412-100**

**Constructed is a 12' X 16' detached accessory structure on this legal, existing, nonconforming, waterfront lot in the R-1 Zoning District. The applicant is seeking variance relief for the placement of the detached accessory structure in the front yard where pursuant to Section 9.4 (E), accessory buildings, other than farm buildings and private garages shall be located only in the rear yard. The building height was not available at the time of the review. Section 10 specifies a maximum roof height of 18 feet and a maximum eave height of 10 feet. Applicant should verify compliance. All other applicable zoning requirements have been met.**

Mr. Shepard was present to explain that he bought the property in 2003, and at that time the property already had a shed on the lakeside. It was old, so they tore it down and constructed a new one. They had observed other such structures on the lakeside in their neighborhood. It is a bit larger than the old one, which they tore down which was 12' X 12'.

Mr. Ransom, neighbor to the south, was also present to say that he has no objections to the proposal.

Carpenter asked why the shed could not be placed on the other side of the house.

David Ryan, attorney for Shepard, said that some of the equipment kept in the shed is related to safe use of the lake. Life preservers, fire extinguishers, etc. are stored in the building as well as a lawn mower.

Shepard said that there are 32 feet from the lake to the cliff, which rises 50 feet to the house. He can not carry all of the equipment necessary to use the lake down the stairs every time he wants to go out onto it.

Sheppard provided the ZBA with photos of the adjacent properties and their sheds near the lake.

Carpenter noted that a hardship has been alleged, but the central question for him is why granting this request would not impair the intent and purpose of the Ordinance.

Scott said the responsibility of the Township is to protect the interests of its residents and property owners, and to do that it must enforce its ordinances. However, he believes that there may be a need for such sheds near the lake.

Rolfe observed that all accessory buildings must be in the rear yard. That requirement did not contemplate that on a lake the front is flipped to the lake side rather than the street side. He said that having such sheds on the lakeside could reasonably protect sight lines. He also advised that the extreme topography of having the house 50 feet higher than the lake may constitute a special circumstance and practical hardship.

Carpenter ruminated about the difficulty posed by having the lakeside the front on lake lots and the severe cliff dropping off toward the lake.

Shepard said that this effectively prevents him from use of the lake portion of his property.

After opening the meeting to public comment, Shepard's neighbor, Mr. Ransom said that it is absolutely necessary to have a shed on the lakeside of these properties.

Carpenter moved to close the public hearing. It was seconded by Harmon and unanimously approved.

Carpenter observed that there certainly has been the allegation of practical difficulty, so he moved from the requirements of Section 6.8 of the Ordinance to Section 6.9.

With respect to practical difficulty and unnecessary hardship Scott considers the cliff as presenting a practical difficulty. He would not approve a shed on a lake lot, which was flat.

Rolfe pointed out that the shed is exclusively related to the use of the lake, and there is a practical hardship in carrying out the strict letter of the Ordinance, since that would require placing the building in a location on the lot, which would not make it useful for lake purposes.

Harmon does not believe that granting a variance would be a detriment to adjacent properties, since similar structures on adjacent properties pose no greater detriment. He also does not believe that a variance would impair the intent and purpose of the Ordinance.

Scott believes that storing life safety material in the shed would protect the health, safety, and welfare with respect to lake use.

Scott and Harmon agree that the property is unique by way of the cliff.

Harmon believes that the use that flows from such a shed located on the lake side is necessary to preserve enjoyment of the substantial property right of using the lake.

Scott does not believe that this will be recurrent in nature.

Based on the findings just made Scott moved to grant a variance to allow placement of the shed at 14' from the water in the front yard. Carpenter seconded the motion, which carried 2 to 1. The request was **APPROVED.**

Harmon clarified his “no” vote as demonstrating the difficulty the ZBA had in reaching a decision.

PUBLIC COMMENT - none

OTHER BUSINESS – none

ADJOURNMENT

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

Respectfully submitted,

Gary Webster  
AGS