

**ZONING BOARD OF APPEALS
Ross Township
October 4, 2005**

The Ross Township Zoning Board of Appeals held its regular meeting on **October 4, 2005 at 4:15 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

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 **August 10, 2005**

On motion by Scott seconded by Harmon the Minutes of **August 10, 2005** were unanimously approved.

OLD BUSINESS - None

NEW BUSINESS

**1. Applicants: Ron & Rhoda Massanari
 John & Catherine Tucci**

**Property located at: 5970 Forrest Beach (3904-31-245-211)
 5996 Craig Lane (3904-31-245-182)**

The proposed split of this lot located in the R-2 Residential District was heard and tabled by the Ross Twp. ZBA in 1997.

Proposed is lot frontage/width of approximately 82.5 feet for the area described as parcel #1 and approximately 82.5 feet for parcel #2, where 100 feet is the required minimum lot frontage/width for a platted lot, pursuant to Schedule 10.

The proposed easement does not provide road frontage for parcel #2 as defined by Section 4 and Section 7.12 as abutting a dedicated public street.

David Ryan, attorney for the applicants, and Kathy Tucci, and Mr. and Mrs. Massanari were present to explain their request. Ryan explained that as his handout indicates, Lot 5 was created in 1953, and the lot was owned by three different people. There does not seem to be an explanation for the lumping of all three ownerships into one lot. Emersons finally owned the entirety of lot 5 only in the 1970s. He also presented a 1993 survey showing two different parcels. It also shows a gravel drive on the west end of the property to access what is proposed to be “parcel #2”.

Rolfe explained the history of the property. The current owners found themselves in a position not of their doing. As of 1995 Kathy Buck believed that the property was already divided into two parts as depicted here, but such a division has never been consummated. There are not two buildable lots available on this property. He provided the ZBA with a diagram showing how the property had been divided previously.

Rolfe continued by saying that Section 9.38 of the Zoning Ordinance defines the situation creating a lawful lot. It needs to be lawfully created and then recorded. One of his sketches shows how the property existed in 1986. Parcel A was the northerly 66’ of the lot, and parcel C contained the cottage. Parcel B was the remainder of the property, and Emerson owned all of the parcels.

As of 1955 parcel A and parcel C existed as they are shown in 1986, but the remainder (parcel B 1986) was made up of 3 separate lots. Rolfe believes that there are various lots of record. However, the Ross Township Ordinance also stipulates that when two or more undeveloped lots in common ownership share a common boundary, they must be considered as one lot.

Rolfe concluded that if parcel A and parcel B as depicted in 1986 were undeveloped, they must have been combined into one zoning lot. This resulted in two lawful parcels – parcel C with the cottage and the remainder of the parcel. The applicant is therefore not creating two nonconforming lots out of one buildable lot; rather they are attempting to create two buildable lots out of two lawful lots.

Scott asked how a platted lot came to be subdivided.

In response Rolfe noted that any platted lot can be split according to the laws in effect at the time. The owners continued to describe their properties according to earlier deeds even after the plat was created in 1953.

John Bishop, said that Parcel A has no access roads and no frontage on a public road, and the access in 1955 was for parcel 5 only.

Rolfe responded that the nonconformity here is that Parcel 5 has no frontage at all. He noted that there may also be a private issue involving access between the owners and adjacent property owners.

Harmon summarized that if Tucci only owned Parcel C and Massanari owned only Parcel B, there would be no issue. The ZBA is being asked, however, to enlarge B to include A and grant it buildable status. For purposes of access the owners are proposing to use the easement at the west side of the parcel 1 to access parcel 2.

Bishop also raised the issue that the driveway accessing Parcel C is a 25-foot, one way street. People attempting to access the proposed parcel 2 travel the wrong direction on the one way street creating a traffic hazard.

Rolfe said that another possible outcome of this hearing is that the Township could take action to void the Buck/Tucci transaction and the Buck/Massanari transaction. He also concluded that in terms of the 1986 configuration parcel A/B has an area of 35,000 + sq.ft. and had 115 feet of frontage on the lake and 160 feet on the rear. Lot C had 6500 sq.ft. of area and 49 feet of lot width. The request is to cause the lot area requirement to be satisfied for both lots, but the frontage requirement would not be met.

Harmon asked the applicant what the factual information is that would allow the ZBA to grant a variance to create lots that should be in compliance with the Ordinance today but will not be. If the north property owner bought parcel A as described in 1986 and the other owner bought parcel C and B, a building permit could be issued. He asked, "What ability does the ZBA have to change that lawful status?"

Bishop is not in favor of granting the variance, since he does not believe that a variance would have been granted in 1999. He asked why the variance should be granted now.

Carpenter opened the meeting to public comment.

Bishop announced that he had written a letter to Linda Armintraut in 2000 asking how the property was able to be divided without a variance and without notification. She did not answer his request. He is also concerned with greater traffic.

Cathy Buck said that she had spoken th Linda Armintraut in 1999, who told her that she could move the property line, provided she created an easement, and have both portions perked in order to gain buildable status.

Ryan summarized that the proposal would actually create lots with greater area and frontage than now exist. He believes that this is the best solution.

The record consists of all of the applicant's submittals, the diagram that Rolfe provided on this day, the "Attachment to Application for Variance" provided by the applicant today, and a copy of the survey provided today. In addition the verbal remarks made today are of course a part of the record. He is not aware of any other information that would be part of the record.

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

Carpenter then lead the ZBA through the Ordinance requirements, noting that there is certainly the allegation of hardship. With respect to Section 6.9 the practical difficulties were summarized by Harmon. He said the question is whether the ZBA allows the property line to be moved 16 feet to the south. He believes that the need for future variances is being reduced. There may be the opportunity for 3 residences to be built on this property, and that would be a good reason to grant the variance.

Scott agrees with Harmon. At least one owner has the right to build. Moving the existing line do no harm.

Carpenter took a different position. He said that if the lot lines were left where they are, a house could still be built upon the property, and there are other ways to construct, perhaps with a different sort of variance. Therefore, he is having a hard time finding reason to grant the variance.

Rolfe reminded the ZBA that the difficulties must derive from the lot itself. Lot C has an exceptionally narrow frontage, and if the cottage is torn down, a future owner might well come to the ZBA to ask for a variance to build on that lawful, nonconforming lot. It may be better to grant the variance to create two bigger lots.

Harmon said that by moving the lot line 16 feet to the south the ZBA is granting no new property rights.

Harmon continued by saying the intent and purpose of the Ordinance is not impaired because Lot C would become less nonconforming. This approval might prevent the opportunity for future variances on Lot C.

Harmon further noted that the public health, safety, and welfare would not be impaired, since 3 lots would be reduced to 2, which would in turn reduce the potential for 3 houses to be built. Three house would be more dense and create more traffic.

Rolfe offered that the exceptional circumstances on this property are more than on nearly any other request looked at by the ZBA

As to uniqueness, Harmon believes that because the lots were created prior to the adoption of the original Ordinance, it would be rare to find this situation elsewhere.

Rolfe reiterated that while the ZBA has the responsibility to deal with the public issues, there may also be private issues that must be resolved among the interested parties.

Based on the findings and all of the record as outlined by attorney Rolfe, Harmon moved to grant the request to reconfigure the property into Parcel 1 and 2 as proposed, provided that no variances be granted on either parcel for the construction of homes. An additional requirement is that an easement be established and granted across Parcel 1 to access Parcel 2. The motion was seconded by Scott.

Scott added that this is a very difficult issue, since a house can be built on this property without a variance, but he nevertheless supports it as the best solution.

The motion was unanimously **APPROVED.**

PUBLIC COMMENT - none

OTHER BUSINESS – none

ADJOURNMENT

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

Respectfully submitted,

Gary Webster
AGS