

**ZONING BOARD OF APPEALS**  
**Ross Township**  
**May 11, 2006**

The Ross Township Zoning Board of Appeals held its regular meeting on **May 11, 2006 at 5:30 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 were:    C. Rolfe, Township Attorney  
                              B. Dean, Zoning Administrator

**APPROVAL OF AGENDA:** On motion by Scott seconded by Carpenter, the agenda was unanimously approved.

**APPROVAL OF MINUTES OF April 4, 2006:** On motion by Scott seconded by Carpenter, the Minutes of **April 04, 2006** were unanimously approved with the following changes:

1. Page 1, paragraph 3: **APPROVAL MINUTES OF November 01, 2005**, motion by Scott.
2. Page 1, paragraph 5: add “as defined in Section 4 of the Zoning Ordinance” to the phrase proceeding the list of terms;
3. Page 1, paragraph 6: remove underline and add quotation marks to terms “Waterfront Lot”, “Lot line, Front” and “Lake Lot”, and modify the second sentence to read: There was discussion of the term “Lake Lot” and it was the consensus of the members that a “Waterfront Lot” which is not a “Lake Lot” does not have a front lot line at the waterfront.
4. Page 2, paragraph 3: delete “that a refund of the fee would be appropriate, and suggested” and add “regarding a refund of the fee.” to the end of the sentence.
5. Page 2, paragraph 6: add the word “to”, so that the second phrase of the sentence will read “and Scott moved to the audience seating.”
6. Page 2, paragraph 10: change “Craig” to “Rolfe”.

## NEW BUSINESS

### 1. **Mark & Lesley Baynes**

Property located at: 623 S Gull Lake Drive  
Property Tax ID #: 3904-17-354-060

Dean described the request for the placement of a pergola structure over an existing patio area. The supports for the structure are proposed at approximately 2.6 feet from the side lot line where 8 feet is required. The pergola does not include a solid roof or walls, and is therefore not a building, however, it is a structure based on the definition in the ordinance and prior determinations by the ZBA.

Dean stated that the lot coverage had been estimated at 28.2 percent, where 28.8% is the permitted maximum, based on estimated size of the structure at 340 square feet.

Mr. Jason Bull was present, along with Mr. & Mrs. Baynes, to describe the request. Mr. Bull stated that the area of the pergola as shown on the drawing labeled “Proposed Pergola Positioning – Needs Variance” is approximately 456 square feet.

Dean recalculated the lot coverage based on the new information, and indicated that the total lot coverage proposed is 29.5%, where 28.8% is the maximum permitted, and therefore, the request would also require a variance for lot coverage, in addition to the side setback.

Mr. Baynes explained that there are presently six foot tall trees on the lot line, which would be removed. Also, the angle of garage relative to the side lot line makes compliance with setback difficult in designing the proposed improvement.

Mr. Baynes added that the neighbor’s house is closer to the lake the Baynes’ home, and that the owner has indicated to him (Mr. Baynes) that he has no problem with the plan to remove the trees, nor any objection to the pergola as proposed.

Mr. Baynes described that a single support will be placed within the setback area, and that the pergola and screening at the property line will replace the existing fir trees; the existing trees are taller and have a much greater affect on visibility than the proposed screening.

Carpenter asked whether the ZBA members had any questions or input.

The definition of structure was read and there was discussion as to applicability of the term, the definition and prior interpretations

Mr. Baynes described his understanding of the meaning of “structure” in opposition to a “building”.

Mr. Bull discussed the difference between the proposed structure and a fence type structure, and that the applicants believe that the replacement of the trees will be an improvement to the property.

Scott asked how far the edge of sliding glass door is from the northeast corner of the existing garage.

Mr. Bull estimated that it is 6 feet from the east corner of the building to the sliding glass door. The post of proposed structure would be in the middle of the door opening, if placed in compliance with the 8 foot setback.

Harmon stated that while the proposal structure may be very attractive, the situation appears to be a self created hardship, and that he believes the issue is based on design. There has been no information presented that allows any other determination, and therefore the ordinance would not allow this project.

Mrs. Baynes expressed that the shape of the lot makes the use of these areas very difficult, and that the existing patio is the same shape as the proposed pergola.

Mr. Bull asked whether the ordinance allows for any consideration of design, and indicated that many factors have influenced the present design. He asked whether present placement of the garage, and the angular relationship between the garage and the lot line, present an existing condition that would support the approval of the request. Mr. Bull also indicated that the definition of structure is harsh as to this proposal, and that it should not include this structure or a trellis.

Rolfe asked about the existing improvements shown on the lot diagram and Mr. and Mrs. Baynes confirmed that the outline northeast of the garage is a concrete patio. The discussion was a clarification of an illustration presented by Mr. Bull.

Rolfe asked about the drawing labeled "Recommended Adjustment Per Ordinance". He asked if his understanding was correct, that the post at the 8 foot setback would be at the center of the view from the sliding glass door in the garage, and inquired as to the size of the opening for the sliding glass door.

Mr. Bull confirmed that the placement would be in the middle of the door, and stated that the door opening is approximately 9 - ½ feet wide.

Rolfe indicated that he has the same concerns that Harmon stated earlier in the discussion, and that there is no information in the record to support at hardship based on the facts presented.

Scott summarized the role of the ZBA in interpreting and applying the ordinance as provided by the Planning Commission. The ZBA is limited, and though the members may be sympathetic, it is the job of the ZBA to apply the ordinance to the situation presented. In this situation personal preference drives the design, and the design does not fit inside the “box” as defined by the ordinance. It appears that the project can be designed to minimize the obstruction of the post when placed in a compliant position, and therefore the hardship is based on design.

Carpenter asked for any public comment. There was none.

Scott moved to close the public hearing. Seconded by Harmon and unanimously approved, the public hearing was closed.

Carpenter reviewed the facts in relationship to Section 6.8:

- There is an allegation of hardship, 6.8(A)(3);

Carpenter summarized the findings in relationship to Section 6.9:

- No practical difficulty is evident. Harmon stated that though the house is reasonable in size (2036 square feet), and exceeds the minimum of 1040 square feet, the lot coverage and the encroachment are design issues;
- The proposal represents a detriment to adjoining property owners in that minimum spacing (side setbacks) is required to allow access by emergency equipment and pedestrian access. This condition also represents impairment of the intent of the zoning ordinance and of the public health, safety, and welfare for the same reasons.

Mr. Bull stated that the access is actually improved based on the removal of the trees.

Scott indicated that the purpose of the ordinance is to define how things get done. The existing improvements do not have to be removed, but the new proposal must meet the provisions of the current ordinance.

Mr. Baynes asked for explanation of the term hardship.

Rolfé stated that “hardship” has been used generically in this discussion, but that the ordinance provides that practical difficulty and unnecessary hardship are to be considered. Practical difficulty is the concept that applies to this request, and the difficulties described are not based on the land.

Harmon moved that the variance request be denied based on the prior discussion and findings that no practical difficulty exists. The motion was seconded by Scott and unanimously APPROVED. **VARIANCE REQUEST DENIED.**

PUBLIC COMMENT –

Harmon reported that a change has been proposed to the ordinance which would allow the reductions to the 10 foot side setback to apply only to lots with a width of 70 feet or less.

There was general discussion of development around the lake, awnings and plantings.

Rolfe indicated that several amendments to the ordinance a pending which are related to the Zoning Enabling Act (PA 110 of 2006), highlights include:

- Townships do not have “use variance” authority;
- Practical Difficulty applies to dimensional variance, and unnecessary hardship applies to uses (Section 6.8 will likely be removed from the ordinance, and 6.9(A) will be modified to clarify practical difficulty, and that the condition must apply by reason of the characteristics listed being applicable to the land or property.)
- Notification procedures for all municipality types (County/City/Village/Township) are clarified.

Text changes are needed to reconcile ordinance to the new Act, which is effective 07/01/2006.

Dean described a concern regarding the limitation, contained in Section 10 of the ordinance, related to “Accessory Buildings or Structures: Max. Building Coverage (% of Rear Yard)”. Harmon asked that Dean submit a report for consideration by the Planning Commission.

ADJOURNMENT

On motion by Scott, seconded by Harmon, and unanimously approved the meeting was adjourned at 6:40 pm.

Respectfully submitted,

Bruce Dean  
Zoning Administrator