

ZONING BOARD OF APPEALS
Ross Township
May 9, 2007

The Ross Township Zoning Board of Appeals held its regular meeting on **May 9, 2007 at 5:30 P.M.** in the Ross Township Hall. Chairman Carpenter called the meeting to order and noted those present.

Present were: D. Carpenter
 J. Lauderdale
 J. Scott

Absent was:

Also present was: G. Webster, Building Department
 C. Rolfe, Township Attorney

APPROVAL OF AGENDA On motion by Lauderdale seconded by Scott the agenda was unanimously approved.

APPROVAL OF MINUTES OF December 6, 2006

On motion by Scott seconded by Carpenter the Minutes of **December 6, 2006** were unanimously approved with the following change:

Page 3, In the sentence: "Harmon asked who owns the parcels on either size", change "size" to "side"

NEW BUSINESS

A. Lorin C. LeRoy

Property located at: 10830 N. 43rd St.
Property tax I.D. #: 3904-03-130-016

Proposed is a 24' X 12' and 24' X 32' L-shaped addition to an existing garage to be placed in the front yard of property at 10830 N. 43rd St. in the RA-Rural Agricultural Zoning District. The existing garage received a variance in March 3, 1992. He is therefore seeking relief from Section 9.4 E of the Zoning Ordinance to allow placement in the front yard.

Mrs. Marta Leroy was present to explain the request. She noted that in 1993 they received a variance for the existing structure. That approval was based on the lay of the land, the location of the septic system, and some low-lying areas. She noted that two letters had been sent to the Township, one from the Micklatchers and one from the

Gallagers. Neither of these nearby neighbors have an objection to the request, and those letters have been included in and become a part of the record. Pointing to the overhead sketch of her property, she showed that in the rear of the property two septic systems have been installed. There is wetland on the side near the creek. Finally, she noted that the property slopes on the north side of parcel opposite the creek side. She said that considerable earth change would be necessary to accomplish what she wants. She also presented pictures of her property.

Rolf observed that the accessory building occupies far less than the 5% limitation of the rear yard. He also commented that some of the findings from the previous ZBA meeting have actually been included with the pictures presented.

Carpenter opened the meeting to public comment.

Bill Barr, nearby property owner, commented that there has not enough information presented to make an assessment to determine sufficient hardship.

Rolfe responded that the ZBA will be discussing the lack or sufficiency of information provided. He said that Mr. Barr's question is asking whether there is a location further back on the property for the building. But, he said, the ZBA has previously given some credibility to the necessity of having an accessory building at least near enough to the home to be useful.

Mrs. LeRoy said that there are approximately 100 feet behind the home before the woods, and she does not want to lose trees. She said that if a driveway were placed on the side of the house, it would interrupt her patio and lawn area. On the creek side the property slopes dramatically toward the creek, and she has a septic system there.

Carpenter does not necessarily believe that the property is too steep to install a driveway around the north side of the house.

Terry Krueger asked what Mr. Barr's objection really is. If it is because the building would be too visible, why not plant some trees.

In response to Carpenter, Lauderdale said that he appreciates the fact that the previous ZBA, which granted a variance, made specific findings and visited the property. That plays a significant role in his thinking. He believes that sufficient information exists to make a decision, and Scott agrees.

Peter Knieblo believes that the members should visit the property.

Rolfe commented that the Ordinance demands that the applicant present sufficient information to make a decision. That can be determined in many ways. It might involve visiting the property or not.

Barr said that the ZBA members do not have sufficient information to act.

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

Carpenter began a review of Section 6.9. of the Ordinance. In terms of practical difficulties Lauderdale accepts the determination of the previous board's findings as well as the applicant's presentation of the topography issue. There are septic systems that restrict alternative placement, trees, wetlands, etc.

In terms of substantial detriment to adjoining property, Scott noted the positive letters from nearby neighbors. He does not believe that there is a negative impact on the neighborhood.

Scott commented that the ZBA has found in other cases that when buildings have been placed in the front yard, they do not materially impair the intent and purpose of the Ordinance.

Lauderdale said that there is no issue of public safety.

Turning to Section 6.9 A (1), Scott referred to the comments of the previous ZBA member, Vindedahl. He believes that the conditions on this lot are not usually found on every lot.

Lauderdale and Scott noting that because pole buildings are allowed in this zoning district, not to grant a variance here would limit the enjoyment of a substantial property right.

All members agree that this sort of request with these specific conditions will not be recurrent in the Township.

In response to Rolfe, Scott discussed whether accessory buildings are a substantial property right. He believes that the Ordinance has sufficient restrictions and allowances for accessory buildings, and as such they should be considered a substantial property right.

Based on the findings of the ZBA at this meeting and on the calculations of AGS, Lauderdale moved to grant the variance as requested. He also noted specifically that facts have been presented that substantiate the findings of Howard Vindedahl and that ZBA in 1992. The motion was seconded by Scott and unanimously **APPROVED.**

B. Brian and Karla Rice

Property located at: 1126 N. Willow Beach
Property Tax I.D. #: 3904-17-195-020

Proposed is a 26'X 36' detached garage to be placed on the street side of this lake lot in the R-2 Zoning District. The structure would be only 10 feet from the rear property line where 25 feet are required by Section 10 of the Zoning Ordinance. The property is located at 1126 N. Willow Beach

At Carpenter's direction Webster summarized the request.

Both Mr. and Mrs. Rice were present to note that previously, in 2003 a variance was granted for this building on this very location. The variance has since expired, and they are now seeking the same variance again. Mr. Rice pointed out a Consumer's Power easement that runs through the yard limiting alternative locations. The sewer cuts across the property, and there are two driveways crossing his property. In addition there is a steep slope up to Gull Lake Drive.

Carpenter remembers the deliberation on the previous request and believes that this is really the only location of this parcel for an accessory building.

Scott observed that if the building were moved away from the rear lot line such that it would conform, it would be on the drive that crosses the property.

Rice followed up by noting that there is a rock wall at this driveway edge, so that it would be impossible to enter the garage if it were closer to the driveway.

Knieblo, nearby neighbor, said that the private right-of-way has not been used, and was simply the original location for Willow Beach, which was subsequently relocated.

Rolfe asked why Lot 24 could not be used as the location, and Rice responded that a building there would block his view, and this is where the sewer and power line easements are.

Rolfe also asked why the building can not be moved closer to the private drive, and Rice answered as he had before. Because of the rock wall and because numerous trees would have to be removed to accommodate entrance into a garage so close, the suggestion is impractical.

Rice remembered Rolfe's comments from the previous meeting that there would be no traffic hazard posed by this location.

Carpenter opened the meeting to public comment.

Bill Barr believes that the ZBA is being inconsistent.

Mr. Knieblo supports the request, and he said that to move it further from the rear property line would make it impossible to enter the building

Mrs. Knieblo believes that it would be most attractive in this location.

On motion by Lauderdale seconded by Scott and unanimously approved, the Public Hearing portion of the meeting was closed.

Looking at the requirements for practical difficulties, Lauderdale said he believes the evidence that this is the only location on the property to place the building.

Carpenter believes that the discussion is going almost the same as the discussion back in 2003.

Lauderdale and Scott commented that adjacent property owners and the Rice's themselves have indicated that there is no negative impact on adjacent properties.

Lauderdale does not believe that the intent and purpose of the Ordinance is impaired when accessory buildings are a permitted uses, and are at the same time regulated by provisions of the Ordinance. Scott agrees because setbacks are created for safety reasons. In this case the road is much higher than the structure and moves away from it.

The members agree that there also does not appear to be a health and safety issue with this request especially because of the lack of traffic hazard discussed before.

Extraordinary circumstances exist on this parcel because of the sewer line and power easement, because of the restriction of the driveways and roads, and because of the rock wall.

Lauderdale reiterated that since the Ordinance allows accessory buildings, which are then restricted it is a substantial property right within the Township.

Carpenter does not believe that this will be a recurrent request given all of the specific conditions on the property.

Based on the findings just made Scott moved to grant the variance as requested to allow the 26' X 36' building to be constructed 10 feet from the rear property line.. The motion was seconded by Lauderdale and unanimously **APPROVED.**

C) Richard and Lois Hudson

Property located at: 11824 East D. Ave
Property Tax I.D. #: 3904-19-235-051
3904-19-235-041

For the purposes of land division the applicant is proposing to create two, new, nonconforming lots from two, currently existing, nonconforming, unplatted lots. The division would eliminate a U-shaped lot by creating one lot of approximately 1.46 acres (143.23' X 445.5') and a second of approximately 4.64 acres (with a frontage of 174.25' and an overall depth of 911.64'). An interior boundary adjustment would correct a nonconforming side setback on one of the lots, however neither new lot would have the required 200 feet of frontage, and the larger lot would not to meet the 4:1 depth to width requirement.

Mr. and Mrs. Hudson, Bill Clancy, and Mr. Kukor, purchaser of one of the parcels, were present to explain the request.

Carpenter asked why this request is not based on the financial need to split the property.

Mr. Clancy said that the small 34-foot frontage of the U-shaped lot would be eliminated. This would be a positive change, since no one would be trying to make this an entry to the property. He also noted that the interior lot line relocation would eliminate one nonconformity, i.e. both houses would have the legal side setback, which one does not now have.

Kukor noted that he could have created conforming lot width on the smaller parcel, but to eliminate the interior setback issue, his property was narrowed thus making both lots nonconforming by lot width. But in moving the lot line they have remedied a nonconformity.

Carpenter asked if the Hudsons ever owned adjacent properties, and Mr. Hudson said that he bought the property to the west from the Township. He later sold that property, and a house was built.

Helen D'Augustino said that she was in attendance before for a similar request, and she opposed it then.

Clancy said that the terrain dropping off close to the lot line makes the lot unique as well as the hill in the street that makes entry on the 34' portion a hazard.

Kukor added that the drop off is 40 to 60 feet.

Scott noted that Kukor is limiting his ability to park vehicles on his property.

Rolfe explained why the 4:1 depth to width ratio does apply in this case.

Bob Vaccaro presented a paper with a series of questions and concerns, which he summarized to the members. That document is included and becomes a part of the record. He noted that he shares the common boundary on the east of this property.

Responding to Vaccaro, Scott said that if multi-family dwellings are a permitted use in the R-4, and if the property owner wants to build such a complex, he could apply to do that.

Kukor explained the interior lot line change to create conforming setbacks. He noted that there is really only a 10-foot property shift.

Rolfe said that by redrawing the interior lot line a non-conformity is being eliminated. He believes that this is an important issue. He also noted that although there is an existing nonconformity with respect to the 4:1 depth to width on the larger parcel, the new 4:1 nonconformity is less than the existing.

Tammy Woodams is concerned with future development of the property. She does not want to see changes on the property.

Mrs. Hudson also does not want to see change. They will not make changes.

On motion by Lauderdale seconded by Scott and unanimously approved, the public hearing portion of the meeting was adjourned.

Carpenter turned to the provisions of Section 6.9.

With respect to practical difficulties on the property the ZBA made findings that there are exceptional dimensional conditions that will be made better by the proposal. The interior lot line nonconformity will be eliminated and the 4:1 issue will be decreased. The interrupted lot frontage is never an ideal condition. The change would allow for better access.

Scott asked if these changes would not actually create a better possibility for developing the property in the rear. But he agrees with Rolfe that this is not something that the ZBA can address.

The ZBA discussed whether there would be substantial detriment to adjoining properties, and because there are no changes to the outer boundaries of this property, there is no detriment.

Lauderdale does not believe that the intent and purpose of the Ordinance is materially impaired nor that is any detriment to public health, safety, and welfare.

The ZBA agrees that this issue is not recurrent in nature and that there is no evidence that a substantial property right is in question.

Based on compliance with Section 6.9 A and 6.9 A 1,2, &3 of the Ordinance, because the change diminishes the existing nonconformities, and conditioned upon removing the shed from the property line to a fully compliance location on the property within 2 weeks of the recording of the deed, Lauderdale moved to grant the variance as requested to allow a land division. The motion was seconded by Scott and unanimously **APPROVED.**

OLD BUSINESS - None

PUBLIC COMMENT - None

ADJOURNMENT - On motion by Lauderdale seconded by Scott and unanimously approved the meeting was adjourned.

Respectfully submitted,
Gary Webster, AGS