

ZONING BOARD OF APPEALS
Ross Township
July 11, 2007

The Ross Township Zoning Board of Appeals held its regular meeting on **July 11, 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. Price
 J. Scott

Absent was:

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

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

APPROVAL OF MINUTES OF May 9, 2007

On motion by Price seconded by Scott the Minutes of **May 9, 2007** were unanimously approved with the following changes:

- Page 1, Paragraph 1: Change “Rolf” to “Rolfe”.
- Page 3, Paragraph 8: Change “pole buildings” to “accessory buildings”
- Page 5, Paragraph 8: Change “uses” to “use”
- Page 7, Paragraph 6: Change “Woodams” to “Woodhams”

NEW BUSINESS

A. Patricia Lawrence/Michael Dunn

Property located at: 291 Franklin Beach Drive
Property tax I.D. #: 3904-20-118-310

Proposed is the removal of an existing nonconforming residential structure and detached accessory building, and the construction of a new residence with attached garage. The property is located in the R-2 Zoning District. The proposed residential structure would be located 50 feet from the lake front property line, where 62 feet is required, and would be approximately 7 feet from the right-of-way of Green Street, where 14.5 feet is required, which is 2/3’s of the required street setback of 21.7 feet (Section 10, footnote 13).

Webster explained the two variance requests as described in the summary review.

Patricia Lawrence was present to explain her request. She gave a brief summary of the history of the property. She believes that the new proposal will decrease non-conformities on the lot. She does not believe that the averaged, lake side setback requirement should apply. She said that Green Street has never been developed and will never be developed.

Price asked about the lot area, and Michael Dunn explained the provisions of Section 9.39 (2) (b).

Carpenter asked what the actual width of the right-of-way of Green Street is and whether it is possible to move forward without that information. After some discussion, it was determined that the information on the lot diagram was accurate.

Michael Dunn doesn't believe that the language of the averaging provisions should apply in this case because of the way the houses are situated.

Rolfe said that the Ordinance anticipates that all houses will not be setback equally at 50', and that there will be variation. The ZBA has the authority to consider extreme deviations that result from the averaging provision.

Carpenter asked about the square footage of the house, and why this house could not be moved further from the lake.

Bill Glass, builder, said that the owner to the north has brought fill in and built a 7-foot retaining wall on the property line. It is not in good repair, and it would place Lawrence's new house in jeopardy if it were built too close to the retaining wall. .

Rolfe and Webster discussed the required setback from the Green Street side and the calculations. Rolfe concluded that regardless of the calculated setback, there is a need for a variance to allow it to be only 7 feet from the property line.

Rolfe asked Dunn why he believes that the unimproved "Green Street" functions as green space.

In response Dunn said that the portion of the street extending to the lake does not serve any other properties, it serves only as an easement.

Rolfe then noted that the applicant is using the street to justify their variance request, but at the same time wants to disclaim it as a street. The street is still under the control of the KCRC, and the street could be improved at sometime in the future, but whether or not that is ever done, the street remains a legal street.

Scott asked why the street was projected to the lakeshore, and in response Rolfe stated that it was put there as public access to the lake.

Dunn remembered another instance when the ZBA treated a similar street as part of the open space for a yard.

In response to Carpenter's questions of size, Dunn said that the Great Room portion of the house would be 38' wide.

Carpenter followed up by saying that the house may be too wide for this lot.

Carpenter also noted the receipt of two letters from interested neighbors, Julia Sanger and Harold Sanger and one signed by several other residents. These letters are included as part of the record. He then opened the meeting to public comment.

Tom Woolworth, nearby-resident, said that Green Street is still a deeded access for the off-lake owners. As long as this remains the case, he has no objection to the request.

Several residents were concerned with the old walnut tree that stands in the right-of-way, and Rolfe said that the tree is not an issue before the ZBA.

Elizabeth Miller, nearby resident, has lived in this area for a long time. She said that cattle originally used the street for water, later it became a fire lane. She does not believe that the house should be moved further away from the lake.

John Dillworth, has only one interest, to preserve Green Street as an access to the lake.

On motion by Price, seconded by Scott the public comment portion of the meeting was closed.

Carpenter then began to lead the ZBA through the requirements of Section 6.9 of the Zoning Ordinance. However, before the ZBA began, Rolfe asked if a house of this size should be built on this property. He noted that the requirements of the Ordinance require a minimum width of at least 20' and at least 24' across the front wall. He believes that there is ample room (approximately 25') of width to be used to meet the setback requirement with a conforming dwelling. He believes that the ZBA has a considerable challenge to determine why this is not a design-based issue rather than one based on a hardship on the land. Rolfe then referred to the intent of the Ordinance regarding the averaging provision. It is to preserve the reasonable sight line to the water.

Scott believes that the exact width required from Green Street should be calculated, and Rolfe suggested contacting the Zoning Administrator to discuss the methodology for calculating the requirement.

Scott observed that the retaining wall on the adjacent property poses a clear practical difficulty to both constructing the house on this property and living in the house.

Price commented that if the house is moved back 12 feet, then it would be located adjacent to the retaining wall. This may provide the hardship necessary to allow the house location as proposed.

Rolfe added that if the house were moved back in its present size, the adjacent tree may present a hazard to it.

Webster and Rolfe asked the ZBA for a recess to determine the required side-street setback. They determined that the special rules applying to non-conforming lots and the 2/3 reduction allowed for side-street setbacks. The recessed meeting was reconvened with Webster and Rolfe concluding for the ZBA that the Zoning Administrator's determination was correct.

Scott asked if the ZBA must rule on the request before it, and Rolfe responded that if there is a basis to grant relief from the water front setback then that should be done, and suggested that the ZBA should make a decision tonight.

Carpenter believes that there is a real problem posed by the design of the house. To table the matter would probably not change the decision of the ZBA.

Rolfe interrupted to recalculate the required side setback to be 11.5 feet, and finally suggested that the side yard issue should be tabled.

Carpenter then returned to Section 6.9. With respect to practical difficulties Scott stated his belief that the retaining wall is a topographical issue. It poses a great hardship, which is a good reason to allow the building at 50' from the lake. He noted that if the ZBA also forced the applicant to push the building further from the lake, it would limit the sight line of the applicant herself.

The ZBA then considered if a variance here would present a substantial detriment to adjoining properties. Scott said that there are no structures whose sight lines would be interrupted. Carpenter said that a new house would be safer. Price added that putting the house nearer the retaining wall would be a detriment to the adjacent property.

The next required finding is whether the intent and purpose would not be materially impaired by granting a variance. Scott said that, to the contrary, the previous reasoning supports the intent and purpose of the Ordinance, and the health, safety, and welfare of the public would also not be impaired. Rolfe suggested that the location is well separated from the sewer, power lines, street access, and the ZBA concurred.

The members concluded that exceptional or extraordinary circumstances pertaining to this specific property would include the retaining wall in its deteriorated condition particularly given its height. The adjacent structure on one side has an extremely large setback, which skews the averaging calculations.

Scott noted that the houses in the area have a substantial property right similar to this house. But forcing the applicant to move excessively far from the lake would deny the owner her property right.

Carpenter added that this lot is so unbelievably unique that this situation would not be recurrent in nature.

Price moved to grant a variance from the water front provision to allow construction as requested in relation to the lake, but to table the issue of the side setback request. The motion was seconded by Scott and unanimously approved. The lake side request was **APPROVED**, but the setback request nearest Green Street was **TABLED** indefinitely.

B. Frank & Diane Guarisco

Property located at: 11669 East D Avenue
Property Tax I.D. #: 3904-19-210-061

Proposed is the removal of an existing nonconforming deck on the front of the home, and the construction a new, covered porch along the front and east sides of the home. The property is located in the R-2 Zoning District. The propose, covered porch would be located approximately 19 feet from the street front property line, where 32.67 feet is required.

Frank and Diane Guarisco were present to explain their request. Mr. Guarisco presented a photograph of the house. He said that the house was built in 1843, and it was too close to the street. A portion of his house is actually within the required front yard. He said that the existing

deck has deteriorated badly, but in repairing it he wants to make substantial repairs to the house including windows, doors, etc. He also presented a supporting petition signed by all of the neighbors.

Scott asked how far the house is from the centerline of the street, and in response Guarisco said it is much further away than what it appears on the drawing. Scott continued by saying that if the street is not centered in the right-of-way there may be an unusually large distance between Guarisco's house and the actual driveable portion of the street.

Rolfe said that the calculation of required front setback may be a foot or so off.

Scott Fisher, D Ave. resident, supports the Guarisco appeal.

Dorne Clark, nearby resident, also supports the request. The Guarisco deck appears to be in line or further back than nearby houses.

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

Carpenter then drew the board's attention to the requirement of Section 6.9. Scott said that he finds it difficult to grant this variance, since he can not find the hardships and difficulties.

Price also said he would find it difficult to find reason to grant a variance in this case.

In response to Scott, Rolfe added that the request is a design issue.

Mr. Guarisco argued that because his house is so deteriorated he needs to do something to repair the front porch. The Township should not be turned into a dump, and that would happen if he were not allowed to repair and maintain this house built in 1843.

Carpenter noted that this situation that the applicant finds himself in is not of his own creation, and the Board has allowed maintenance of a structure so long as the nonconformity does not extend further than the existing structure. The addition to the side may, however, be a problem to grant.

Rolfe suggested looking first at the nonconforming language of the Ordinance, which allows maintenance provided that the nonconformity is not increased and the otherwise anticipated useful life of the structure as a whole would not be extended. The ZBA finds this to be the case.

Carpenter said that he agrees that the maintenance should be allowed under those circumstances, and the practical difficulty is that his house is already within the required setback, and the house must have a porch.

The members agree that no substantial detriment to adjoining properties is anticipated because the house is so isolated, and it does not interfere with traffic.

A variance in this case would not materially impair the intent and purpose of the Ordinance, since there is adequate setback from the road.

The ZBA concluded that the health, safety and welfare is not effected since no utilities, sewers, or traffic would be impaired.

Specific exceptional circumstances include the old house too near the street, a condition outside the control of the property owner.

The ZBA concluded that having a porch is a substantial right, and that this request will not be recurrent in nature, since the location is so unique on the property.

Scott moved to grant a variance to allow the front deck to be replaced, provided that it does not extend beyond the footprint of the existing deck and be of the same or smaller outside dimensions. It can not have a roof. The motion was seconded by Price and unanimously **APPROVED.**

In looking at the request to construct a deck on the side of the house, there was considerable discussion of where construction is permissible on the side of the house. In looking at Section 6.9 the ZBA could not find any practical difficulties on the property which would justify a variance. There are no exceptional topographical circumstances, and no extraordinary circumstances. Such a deck, however, would not be a substantial detriment to adjoining properties.

Price said that the variance would materially impair the intent and purpose of the ordinance because the Ordinance requires that construction be a certain distance from the street for public safety.

Carpenter summarized that a substantial property right would not be denied here by denying a variance, and Rolfe added that this is a self-created hardship. It is based on the desire of the property owner alone.

Based on the findings just made Price moved to deny the variance for additional decks as the applicant has proposed except for that already granted. The motion was seconded by Scott and unanimously approved. Construction of the side deck other than what was previously approved by the ZBA was **DENIED.**

Mr. Guarisco asked why Mr. Wait down the street was allowed to construct only 15 feet from the street, when Guarisco is so much further back, and why so many other houses around the lake are so much closer to the street than what he wants.

Mr. Guarisco believes that Mr. Dean told him that he could build his front smaller without a variance.

OLD BUSINESS - None

PUBLIC COMMENT - None

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

Respectfully submitted, Gary Webster, AGS