

ZONING BOARD OF APPEALS
Ross Township
September 5, 2007

The Ross Township Zoning Board of Appeals held its regular meeting on **September 5, 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 Lauderdale seconded by Price the agenda was unanimously approved.

APPROVAL OF MINUTES OF July 11, 2007

On motion by Price seconded by Lauderdale the Minutes of **July 11, 2007** were unanimously approved with the following changes:

Page 2, paragraph 5: change "Bill Glass" to "Mr. Glass"
Page 4, change "propose" to "proposed"

NEW BUSINESS

A. Karim Abushmaies and Alexandra Bedford

Property located at: 6291 North 37th St.
Property tax I.D. #: 3904-30-415-030

This request is to maintain the location of an existing pen/paddock within the minimum required side setback. The pen/paddock is located approximately 16 feet from the north property line, where 50 feet is required. The subject property is located in the R-A rural and Agricultural District.

Bill Maybee, representing Mr. Abushmaies, and Ms. Bedford were present to explain their request. Maybee said that the property was rezoned in 2006 in order to allow horses to be kept at this location. This rezone was done without a survey. He also said that because of a survey done without a survey. He also said that because of a survey done by the neighbor, it became known that the fenced-in paddock and a shed had been mistakenly built too close to the property line. He commented that Abushmaies and Bedford thought that they were building the paddock 55 feet from the property line.

Moving the fence to be in compliance with the ordinance, would be a practical and physical impossibility. There is a 30-foot vertical rise to the rear of the property, and the horses can not be up in the upper area during the winter months because of snow and mud. Additionally, no equipment can go up the hill to feed the animals. The barn and fence have been placed in the only location that still allows the paddock to be usable.

Maybe discussed the practical difficulties and hardships. The paddock is only 75 feet wide. It would be used in the winter months. He does not believe that the location presents a detriment to adjoining properties. Because of the rural area, no odors are anticipated, and manure is removed by dumpster. The exceptional and extraordinary circumstance is presented by the hill, which can not be traversed in the winter by either animals or humans. As to whether denying the variance would deprive the owner of a substantial property right, he believes that this is a rural area where housing horses and animals are permitted uses in the zoning district.

Lauderdale discussed the smallness of the paddock. He observed that the shed is closer to the property line than the fence.

Webster clarified that the required side setback for buildings on a lot in this zoning district is 5 feet, so the building at 7.5 feet complies with the requirement.

Carpenter opened the meeting to public comment. Steve Asbel, adjacent property owner to the north, said that what the applicant has said up until now is deceptive and wrong. He said that the first barn was built in 2003 and the second in 2004. When Abushmaies and Bedford constructed the barns they did not own the property where the paddock is today. Because of the setback problem, the previous neighbor complained about the barns, and that is the reason that the current owners bought the property. He said that the survey stake showing the actual boundary of the property was in the ground when they built the barn. He said that they had just got the property surveyed when they bought the property, and the stake was still in the ground, so this was not an innocent matter. He said that when the fence was constructed the owners said that this area was to be a pasture not a paddock. No grass grows in this area to graze on. He also said that, contrary to the owner's contention, the horses are in this area at all times, not just the winter. He also said that the supposed hardship of the hill as a constraint to moving the paddock area back on the property is a ruse. It will not get it further from the property line. He also pointed out that save to the back of the property, all of the surrounding parcels area residential. He said that the upper floor of one of the buildings appears to be used as a residence, and the barns were constructed when the property was still residentially zoned. He enumerated the various violations of the ordinance, trespass and misuse of his property by the applicants, including constructing two pathways, and removing a walkway, stockpiling manure on the property line, making threats to him, and generally attempting to coerce him into selling his property to them. He does not believe that the necessary findings support a variance in this case. And finally, he can not sell his property for a fair market value as a residence. He wants the fence moved as well as the barn, and all possible sanctions imposed on the applicants.

He also alleges that there is a clinic being operated on the property. He provided a written summary of his argument to the ZBA.

Rolfe counseled the ZBA that it has no enforcement authority over the alleged violations of the applicants or civil offenses against the Asbels. Where there is an existing condition such a structure, which occurred or was built unlawfully under a current or previous ordinance, the ZBA must look at the request as if those structures did not exist. Finally, he suggested tabling the matter, since there was no adequate drawing showing the applicant's property.

Lauderdale moved to table the matter until the next meeting to allow the applicant to provide adequate information, specifically a complete plot plan of the subject property showing all structures and setbacks to all structures. The motion was seconded by Price and unanimously approved. The matter was **TABLED**.

B. Paul and Joanne Gregory

Property located at: 1365 W. Gull Lake Dr.
Property Tax I.D. #: 3904-18-402-171

Proposed are two separate, second-story structures, with egress stairways. The deck addition on the north is proposed with a side setback of 4 feet (within the minimum side setback area) and approximately 41.5 feet from the lake front property line where 54 feet is required. The deck addition on the south, which includes a trellis structure above, is located approximately 34 feet from the water front property line, where 54 feet is required. The existing residence is on a non-conforming, waterfront lot, which is located in the R-2 Zoning District.

Webster summarized the request for the ZBA, and then the Gregorlys explained that they had bought the property two years ago. There are no bedrooms on the first floor, and only two bedrooms in the house. After showing an interior layout of the house, they said that they were concerned with being able to escape the house in an emergency, since the route is becoming more difficult as they age. They are also concerned with getting their grandchildren out in the event of fire. Therefore, they want to built the decks off of the second floor so that they can go directly outside. He said that the Township stopped work on the decks, when it was discovered that a permit was needed.

In response to Lauderdale, who had observed construction on the house only recently, Gregory said that the workers were only working on siding, windows, fixtures, etc., which work was legal.

Phil Bonine, home designer, explained what parts of the house are existing and which are proposed.

Rolfe advised that thus far no reason has been given to support granting a variance. It is basically the desire of the applicant. There have been no suggestions that there are practical difficulties that prevent the owner from complying with the ordinance.

Mrs. Gregory asked if the Township would be liable if a variance were not granted, or whether it would be permissible to construct over anything that is existing.

Carpenter summarized that anything added to this house would be aggravating the existing non-conformity, and the request appears to be based on the desire of the applicant only. He sees no rational whereby a variance can be granted.

Carpenter opened the meeting to public comment. There being none Lauderdale moved to close the public comment portion of the meeting. The motion was seconded by Price and unanimously approved.

Moving to the standards of Section 6.9, Carpenter asked what the practical difficulties on the property are. Lauderdale noted that the cliff prevents alternatives to the proposal, but the ZBA concluded that there were no difficulties. Price believes that a variance in this case would not be a substantial detriment to adjoining properties, however, Price believes that a variance here would materially impair the intent and purpose of the Ordinance, since the request has nothing to do with a condition of the land. Lauderdale summarized for the ZBA that a variance here would not impair the public health, safety and welfare.

The ZBA made the specific finding that there is no exceptional or extraordinary circumstance on this property justifying a variance.

No substantial property right is being denied by not granting a variance.

The ZBA also found that this situation would be recurrent in nature.

Based on the findings Lauderdale moved to deny the variance. The motion was seconded by Price and unanimously approved. The variance was **DENIED**.

In response to a question by Phil Bonine, Webster explained construction that would require variance relief.

OLD BUSINESS – None

PUBLIC COMMENT - None

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

Respectfully submitted, Gary Webster, AGS