

ZONING BOARD OF APPEALS
Ross Township
January 2, 2008

The Ross Township Zoning Board of Appeals held its regular meeting on **January 2, 2008 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
 E. Harvey
 J. Lauderdale

Absent was: None

Also present was: B. Dean, Zoning Administrator
 C. Rolfe, Township Attorney

APPROVAL OF AGENDA: On motion by Lauderdale, seconded by Harvey, the agenda was unanimously approved.

APPROVAL OF MINUTES OF November 7, 2007

On motion by Lauderdale seconded by Harvey the minutes of **November 7, 2007** were unanimously approved with the following changes:

1. Page 1, paragraph 3: correct spelling of “Abushmaies” in 1st correction to the September 5, 2005 minutes.
2. Page 2, paragraph 1: change “He also displayed...” to “Atty Maybee also displayed...”
3. Page 3, paragraph 5: change “lease” to “least”
4. Page 4, paragraph 6: insert “grade of the” so sentence reads: “...that the grade of the 71-foot area...”
5. Page 5, paragraph 3: delete “do not” so the sentence reads “The members believe that...”

NEW BUSINESS

Carol A. Jackson Trust / Ronald & Carol Jackson

Property located at: 2208 Midlake Drive
Property tax I.D. #: 3904-08-374-050

Proposed is an approximate 748 square foot (s.f.) main floor addition to an existing dwelling. An existing garage (365 s.f.) and connecting covered walk way (21 s.f.) will be removed. The proposed addition will provide barrier free accessible space on the main floor of the dwelling. The proposed addition will encroach into the required setbacks from the lakeshore, street right-of-way and north lot line, and will also exceed the

maximum lot coverage. The existing residence is located on a non-conforming, waterfront zoning lot, located in the R-2 Zoning District.

Mr. & Mrs. Jackson were present to explain the request.

Dean summarized the request.

Harvey asked that the applicant confirm that the building will be no closer to the sideline than the existing garage.

Mr. Jackson indicated that he believes the addition will be the same distance from the sideline as the existing garage.

Lauderdale attempted to clarify the request utilizing the lot diagram on the overhead.

Mr. Jackson confirmed that the fence does not represent the north lot line, and that he plans to place the well at the southeast corner of the existing dwelling.

Carpenter asked about the relationship of the house to the north to the Jackson's north property line.

Mr. Jackson confirmed that the existing dwelling is located approximately 13 feet north of the property line. There was discussion of the excerpt from the survey included in the application. Mr. Jackson confirmed that the structure shown on the survey straddling the property line no longer exists.

Dean verified for Carpenter that the existing building coverage area is 1,255 square feet, and the proposed area is approximately 1,603 square feet.

There was general discussion of the setback requirements from the promenade property line and the lake shoreline.

Harvey asked, and Mr. Jackson verified, that the setback of the existing dwelling from the south property line is 6 feet. There was general discussion of the dimensions of the existing garage. Dean provided the dimensions of all existing and proposed structures, as calculated from drawings submitted.

Harvey asked whether there is a foundation under the existing garage.

Mr. Jackson indicated that it is his belief that there is no foundation. There was general discussion of the scope of the project, the calculation of the increase in lot coverage, and the relationship of the angled north wall of the existing garage and the north lot line.

Carpenter noted that safety is a primary concern, and the extent of the request in relationship to the "sliding scale" allowances of the Zoning Ordinance (Section 9.39).

Rolfe indicated that the request exceeds the “sliding scale” increases in allowable lot coverage, which are calculated based on the extent of non-conformity.

Harvey stated his concern that the addition would limit of access to the lakeside of this property.

Mr. & Mrs. Jackson indicated that the condition of limited space between adjacent buildings is the general rule in this neighbor.

Lauderdale asked about the angle of the street lot line in relation to the angle of the front plane of the house. As the house, and the proposed construction, moves north, it gets closer to the street lot line.

Rolfe recounted the necessary variances:

Front Yard (Lake)	50 feet	44 feet
Rear Yard (Street)	20 feet	1 foot 10 inches
Side Yard (north)	5 feet 9 inches	1 foot 6 inches
Lot Coverage (maximum)	35.4%	46.9%

Dean confirmed the calculation of the setback from the property line at the promenade, which is 21.2 feet, and that this does not need variance based on the minimum setback requirement of 20 feet.

Rolfe stated that the proposal represents the applicant’s desire and plan, but the ZBA members will need to determine what the minimum variance required is in order to accommodate the applicant’s objectives.

Mr. Jackson stated that the need for this project is based on his physical condition, to accommodate movement in the home on a scooter, and to provide barrier free access to facilities, including bedroom space.

Rolfe advised the ZBA that the determinations of the ZBA are based on the characteristics of the property, rather than the characteristics or preferences of the property owner. The issues being examined fall under the general heading of “self-created hardship”, and this concept has been upheld on appeal in this State. The consideration is the design of the project and its relationship to the property, and the minimum variance necessary.

Mr. Jackson indicated that he is aware that this building could not be built new, but this request will not essentially change the footprint of the building. There was discussion verifying the extent to which the footprint of the building will increase based on the proposed addition.

Lauderdale asked whether an approval of 50 feet from the lake would affect the existing dwelling structure. Rolfe confirmed that the denial or approval of the variance request has no impact on the existing dwelling.

Carpenter opened the meeting to public comment.

Bud Baldwin (2222 Midlake Drive - Lot 40 on the drawings presented for review) stepped to the display screen, and indicated that the addition will not change the effective operation and utilization of the property. He is concerned that, based on the angle of the north wall of the garage, the setback at the northwest corner will actually be less than the 1 foot 6 inches shown. He supports the request, but wants to be sure the information is accurate.

David Siegler (1572 Burlington Drive) asked whether the building could be rebuilt if damaged. Would the reconstruction be treated as a new construction?

Rolfé confirmed that the existing home is nonconforming, and that variance approval would be required to replace it.

Judy Baldwin, (2222 Midlake Drive) stated her support for the request.

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

Carpenter summarized the findings regarding the variance request in relationship to Section 6.9:

- The conditions described constitute a practical difficulty, based on exceptional narrowness and shallowness of the property (6.9(A));
- Carpenter and Lauderdale agreed that there is no substantial detriment to adjoining property owners, based on replacement of an the existing of a structure with a structure with similar setback, including the extension toward the lake and the street, while Harvey indicated that the extensions do appear to present a detriment (6.9(A));
- The request does present a material impairment of the intent of the ordinance as to the **waterfront setback**, which as expressed by Section 9.7(C), is to achieve a minimum 50 foot setback from the lake because the proposed construction would encroach into an area of the lot not currently occupied by structures (6.9(A));
- The request does not present a material impairment of the intent of the ordinance in regards to **rear (street) setback**, based on the relationship of the actual road surface to the proposed structure, which is common for the developments in the general area, and that this particular road is a low traffic/low speed road, and based on these factors it does impair the public health, safety, and welfare (6.9(A));

FRONT SETBACK (lake):

Harvey moved that the request for lake front setback be denied based on the discussion above, seconded by Lauderdale, and the motion was unanimously approved.

VARIANCE DENIED.

There was much discussion of the role of the ZBA related to communication of suggestions for design and the nature of hardship.

Harvey moved to table the request to allow the applicant to explore modifications to the proposal for a future meeting, to be no later than April 2, 2008. There was no support, and after further consideration the motion was withdrawn.

Rolfe restated that hardships supporting variance relief must be related to the property. If the ZBA does not determine that the property presents hardships that support variances in accordance with the ordinance, this fact indicates that the variance cannot be granted. The tabling of the issue will not necessarily clarify the facts involved if the applicant has no new information. If the outcome is denial of the variances, then the applicant can proceed with planning accordingly.

After additional discussion of the dimensions of the existing garage, the angular nature of the north garage wall, the proposed setback from the side and rear lot lines, and the general characteristics of lots and roads in this area, the members continued with evaluation of the requested variances.

REAR SETBACK (street):

It was the consensus of the members that:

- There are exceptional circumstances based the narrowness and shallowness of the lot, in relationship to other properties in the R-2 (6.9(A)(1));
- The enjoyment of a substantial property right is preserved by the grant of variance (6.9(A)(2));

Harvey moved that the request for rear (street) setback be approved at no less than 1 foot 10 inches, based on findings above related to 6.9, seconded by Lauderdale, and the motion was unanimously approved. **VARIANCE GRANTED.**

SIDE YARD (north):

It was the consensus of the members that:

- There are no exceptional circumstances in relationship to other properties in the R-2 (6.9(A)(1));
- A variance is not required to preserve the enjoyment of a substantial property right (6.9(A)(2));

Harvey moved that the variance for the side yard be denied as to the request for a setback of 1 foot 6 inches, based on discussion above, Lauderdale seconded, and the motion was unanimously approved. **VARIANCE DENIED.**

LOT COVERAGE:

It was the consensus of the members that:

- There are exceptional circumstances based the narrowness and shallowness of the lot, in relationship to other properties in the R-2 (6.9(A)(1));
- The enjoyment of a substantial property right is preserved by the grant of variance (6.9(A)(2));

Lauderdale moved that the lot coverage be approved not to exceed 46.9 %, while observing the minimum 50-foot lake setback, and the minimum 5 foot 9 inch side setback, based on findings above, supported by Harvey, and the motion was unanimously approved. **VARIANCE GRANTED.**

Rolfé indicated that the proposal should also be considered in terms of Section 9.33, and that the ZBA should make a determination as to whether the proposal would be anticipated to extend the useful life of the subject structure, which is nonconforming.

It was the consensus of the members that the addition will not extend the otherwise anticipated useful life of the existing structure. And based on this, Lauderdale moved to enter a determination that the expansion of the nonconforming building will not substantially extend the life of the reasonably anticipated useful life of the nonconforming structure, seconded by Harvey, and the motion was unanimously approved.

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

Respectfully submitted,

Bruce Dean, Zoning Administrator