

ZONING BOARD OF APPEALS
Ross Township
July 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 January 2, 2008

On motion by Harvey seconded by Lauderdale the minutes of **January 2, 2008** were unanimously approved with the following changes:

1. Page 3, paragraph 2: delete “of”
2. Page 3, paragraph 9, sentence 3: add “proper” to read “The proper consideration...”
3. Page 4, paragraph 7, bullet 2: replace phrase “based...structure” with “based on the replacement of the existing structure”
4. Page 5, paragraph 3, sentence 1: change “hardship” to “practical difficulties”
5. Page 5, paragraph 3, sentence 2: change “hardship” to “practical difficulties”
6. Page 5, paragraph 5, bullet 1: insert “upon” between “based” and “the”

NEW BUSINESS

Jack Steen and Sarah Turner
4028 East Gull Lake Drive
Property Tax ID #3904-06-450-030

Proposed is a 196 square foot addition, which will be to the rear of the existing structure, but completely within the required front (lake) setback. The addition is proposed with a setback of 70 feet, where 147.5 feet is required. The existing residence is non-conforming based on location completely within the required front (lake) setback, and is located on a conforming, waterfront lot, which is located in the R-1 Zoning District.

Mr. Rick King was present to represent the applicants. King described that the intent of the project is to upgrade the mechanical installations in the building. The structure was built in approximately the 1930's, and has no space for modern mechanical equipment. The proposed addition does not increase projection toward the lake or the side lot line. The addition will be approximately 14-feet by 14-feet, match the existing ridge line, not exceed the present height, and is 15 to 20 feet below the vision lines of adjacent residences. The proposed space will contain mechanical and laundry equipment.

Harvey asked about the silt fencing on the site.

King responded that the silt fence has been placed as part of the sea wall project.

There was discussion of the seawall construction, and that the ordinance does not regulate sea walls, rather the Michigan Department of Environmental quality issues permits for sea wall installation and modification.

There was discussion of the prior common ownership of the parcels in connection to the labeling of the parcels on the survey provided, as well as the history of the dwelling and current ordinance requirements.

There was discussion clarifying the information on the drawings. King confirmed that the closes point of the existing building is 30 feet to shoreline, and the proposed additional is approximately 70 feet to shoreline.

Lauderdale restated the issue: based on Section 9.39, with averaging provisions, the absolute minimum setback is 50 feet. Where the average exceeds 50 feet, the average becomes the minimum setback.

Rolfe confirmed that the applicable minimum setback for this site is the average.

Harvey asked about the setbacks to the structures on the adjoining properties.

King verified that dwelling to the north has a setback of 125 feet, and the dwelling to the south has a setback of 170 feet.

Carpenter directed the attention of the members to Section 9.33 (alteration of nonconforming structures), and requested guidance from Rolfe.

Rolfe indicated that a determination regarding this section is required in addition to the consideration of the issues in Section 6.8 and 6.9.

King described that the home has been maintained in near historic condition, the mechanicals and laundry will be replacing equipment that is antiquated, and the kitchen area was originally set up for use by maids and butlers working on the property.

Carpenter asked for input from the members regarding the relationship of the request to Section 6.8:

Lauderdale stated that the extreme setback placements of the adjacent dwellings represent an extraordinary situation in relation to Section 6.8(A)(2);

Carpenter referred the members to Section 6.9, and it was the consensus of the board that:

- The conditions described constitute a practical difficulty based on relative position of adjacent dwellings, creating an extreme setback requirement on the subject property;
- The elevation change is an exceptional circumstance in the form the topography and site is also limited based on the location of utilities, 6.9(A)(1);
- The proposed addition does not impair the intent of the ordinance, as it will not extend or add to the expected life of the structure, but will provide for necessary and functional mechanical systems;
- The changes, as they related to upgrading mechanical systems, would be permitted without the addition of the room, so are permissible in general.

Rolfe stated that the mechanical systems could be replaced without affecting to the useful life of the structure. The addition by itself does not appear to extend the physical life or viability of the structure.

Rolfe summarized that the intent of the averaging, as referred to in the ordinance, is to protect site lines. The proposed addition will be as far from the water as possible and does not appear to impair site lines.

Harvey noted that based on his site visit, trees obstruct the view of the subject site from the adjacent homes, and no other obstruction is created by the addition. He has no concerns regarding the issue of site lines, but rather wants to be sure no extension of the life of the structure in relation to Section 9.33, is being permitted.

Rolfe referred to Section 9.33, noting that the addition does violate the ordinance by itself, and aggravates the nonconformity. The section allows such expansions upon a finding that it will not “substantially extend the otherwise reasonably anticipated useful life of the ...building/structure.”

Carpenter stated that he does not believe the addition will extend the life of the building, and that no structural modifications to the main structure are being proposed. The addition will not materially impair the health safety and welfare, as it is not in close proximity to any public areas, nor side setbacks or emergency access issues.

King stated he has a letter from the adjoining property owners (Turners) expressing that they have no objection to request.

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

Carpenter summarized the findings from the discussion above:

- 6.9 The proposed addition will not be a detriment to the adjoining property, and will not materially impair the intent of the ordinance;
- 6.9(A) The unique, extreme setbacks of adjacent dwellings, and the relationship of the subject structure to the lake, created an exceptional and extraordinary circumstance, which does not apply generally to other properties in the same zone;
- 6.9(B) The variance is necessary to preserve property right similar to other dwellings in the zone, being the installation and use of modern mechanical equipment;
- 6.9(C) The condition is specific to this property is not a general or recurrent within the zone or the Township;
- 9.33 The addition will not extend the anticipated useful life of the existing nonconforming structure.

Harvey moved to grant a variance to permit the addition of a 14-foot by 14-foot addition to the back of the existing building, based on the findings noted above regarding the application of the standards of Sections 6.9 and 9.33. The motion was seconded by Lauderdale and unanimously **APPROVED**.

PUBLIC COMMENT:

Ann Kemppainen requested clarification regarding the applicability of the \$1,000 variance application fee to other types of appeals to the ZBA, and asked whether it is necessary for such a fee in connection with a request for interpretation.

Rolfe stated that fees are set to cover the cost of appeals so that the costs are born by the applicant or appellant, and costs are not passed on to the citizens at large. Notices are sent to the adjoining property owners and published in the newspaper, and the Township utilizes professional review and consultation services for all such requests.

There was discussion of the process and forms for submitting a request for appeals.

Mr. & Mrs. Kemppainen were advised that the appropriate place to discuss the established fees is the Township Board.

There was discussion of regarding special ZBA meetings.

Rolfe described his experience of the operation of the ZBA in other townships. Many operated on an on-call basis, but with an established meeting date for each month should a meeting be required.

Carpenter stated that variances are down quite a bit since the adoption of the sliding scale language (Section 9.39).

Rolfe described that when a ZBA consistently requires that requests meet the standards of the ordinance, requests that do not meet the standards are denied, and the number of requests goes down. The strict application of the standards protects the ordinance in the long run.

There was discussion of extreme situations related to weather conditions, such as unavailability of asphalt late in the fall.

It was the consensus of members that frequent special meetings are not desirable, and that based on the schedules of the members, are sometimes not possible. However, if the Township Board requests that the ZBA schedule a special meeting, it would appear to be appropriate that such meetings be available.

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

Respectfully submitted,

Bruce Dean, Zoning Administrator