

**ZONING BOARD OF APPEALS
ROSS TOWNSHIP
August 6, 2008**

The Ross Township Zoning Board of Appeals held its regular meeting on **August 6, 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: July 2, 2008, 2008

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

1. Page 2, paragraph 7: change "closes" to "closest"
2. Page 3, paragraph 2: delete "6.8 and"
3. Page 3, paragraph 3: change "equipment the" to "equipment that"
4. Page 3, paragraph 4: change "6.8" to "6.9"
5. Page 3, paragraph 5: delete "in relation to Section 6.8(A)(2)"
6. Page 3, paragraph 5: insert period after "situation"
7. Page 3, paragraph 6, bullet 2: delete "the form the"
8. Page 3, paragraph 6, bullet 4: change "related" to "relate"
9. Page 3, paragraph 7: delete "to" following "affecting"
10. Page 3, paragraph 8: change both occurrences of "site" to "sight"
11. Page 3, paragraph 9: change "site" to "sight"
12. Page 4, paragraph 3, reference 6.9(B): change "right" to "rights"
13. Page 4, paragraph 3, reference 6.9(C): add "and" following "property"
14. Page 4, paragraph 3, reference 6.9(C): delete "a" preceding "general"
15. Page 5, paragraph 2: change "of" to "with"
16. Page 5, paragraph 3: change "quire" to "quite a"

NEW BUSINESS

- 1) **Ronald & Marjorie Robbe**
116 East Gull Lake Drive
Property Tax ID # 3904-20-130-530

Proposed is a 624 square foot garage (street level), with 338 square foot storage are on the second level. The building is proposed with an average wall height of approximately 13 feet, where 10 feet is the maximum. The building will cover 23% of the backlot, where 10% is the maximum. The subject property is located in the C-4 - Bay Commercial District, and the proposed building will be accessory to the existing single-family dwelling, which is located on a waterfront lot in the R-2 - Residential District.

Mr. Robbe was present to describe the request. He confirmed that there is no garage, and no room for a garage, on the lake lot. The proposed project would establish a two-car garage with storage above. He stated that a number of building designs were considered, and that the structure will be built into the hill.

Carpenter stated that the members will need to identify a hardship associated with the land to support the two parts of the request, and noted that a detached garage is common to residential uses in the R-2 District. He asked the applicant whether a sewer connection would be involved in the project.

Robbe indicated that the building will not require a sewer connection, and that the sewer line runs on the house side of East Gull Lake Drive.

There was discussion of the method of measurement applied to eave and building height, including the terms "natural grade", "unaltered grade" and "mid-point", as applied by the Zoning Administrator.

Robbe stated that the proposed floor level would be approximately 2.5 feet above the street level.

Carpenter asked Robbe for a basis for requesting to exceed the maximum eave height.

Robbe stated that the design is appropriate to their needs, will fit well in the neighborhood, and the height will not obstruct views from any other properties.

Rolfe indicated that the variance will need to be based on a condition related to the land, rather than the design based issues described by the applicant.

Lauderdale asked whether the lot coverage could be justified based on Rolfe comments.

Rolfe noted that the permissible size of a building based on 10% lot coverage (269 s.f.) is not usable for the intended purpose of automobile storage.

Carpenter requested public comment.

Roy Kemppainen, 260 East Gull Lake Drive, suggested that centering the roof peak would reduce the eave height.

Nick Huskins, 106 East Gull Lake Drive, stated he is in favor of this project, based in part on the fact that it will not affect anyone's view.

Being no further public comment, the public hearing was closed on a motion by Harvey, seconded by Lauderdale, and unanimously approved.

Carpenter stated that the building height requested does not appear to be related to the narrowness, shallowness, or topography issues presented by this property, though all are extreme.

Lauderdale concurred that terrain is a challenge, but also questions these conditions as a basis to allow a greater eave height.

Rolfe stated the ZBA does have an obvious basis to determine the lot is small and that it has extreme topographic conditions. The ZBA must find that by reason of those conditions the owner is deprived of the right to make use of the property and is therefore precluded from making reasonable use of the property. The conditions noted do not appear to support a variance related to the eave height. Rather the roof configuration is a design issue.

There was discussion of the common size of a residential garage, the manner of retaining the grade level around the foundation and the integrity of the hill above, when removal of soils constitutes mining, and the intent of the accessory height limitations.

Carpenter requested input in relationship to Section 6.9 as to the request for building height. Following discussion, it was the consensus of the members that the conditions described do not constitute a practical difficulty, as related to the building (eave) height.

Lauderdale moved that the variance request for eave height be denied based on non-compliance with ordinance criteria for variance approval. The motion was seconded by Harvey and unanimously approved. Variance DENIED as to eave height.

Carpenter summarized the findings related to lot coverage, in relationship to Section 6.9:

- There is a practical difficulty related to extreme topography, shallowness and narrowness of the lot;
- The lot coverage will cause no detriment to adjoining properties;
- Will not impair health, safety and welfare, as the proposed use of the lot and location of the building will allow proper access to the street;
- There is no material impairment of the intent of the ordinance, rather the intent to allow safe housing of vehicles is achieved;

- Elevation change is an exceptional circumstance in the form of the topography 6.9(A)(1);
- The back lots in this area are exceptional, in relationship to other lots in the C-4 zone;
- A substantial property right is preserved by grant of the variance: residential garage use in association with residential use (in the R-2). 6.9(A)(2)

Rolfe asked that the applicant be informed that residential occupancy is not permitted in the proposed accessory building.

Lauderdale moved that the variance request as to building coverage of 23 % be approved, consistent with the findings noted from discussion related to Section 6.9. The motion was seconded by Harvey, and unanimously approved. Variance APPROVED as to lot coverage.

2) **Stanley & Lori Kerman**
254 East Gull Lake Drive
Property Tax ID # 3904-20-130-121

Proposed is the removal and complete replacement of a permanent dock. The proposed dock projects 55 feet from the shoreline, where 50 feet is the maximum. The subject property is located in the R-2 - Residential District.

Stanley Kerman was present to explain the request.

Rolfe described that the request is simple in terms of the dock length of 55 feet, where 50 is the maximum based on Section 7.13(B)(4). He advised the board that the consideration of this, or any variance, is to be conducted as if the structure does not exist. Members of the audience may wish to emphasize and discuss enforcement issues; these issues are not appropriate to the ZBA process. The absence of an MDEQ permit also is not an issue for the ZBA to consider as part of this request. Rather the ZBA should properly consider only whether a characteristic of the land is found to support the variance request.

Carpenter reinforced the comments of Attorney Rolfe. He added that the request needs to be evaluated in terms of the requirements for a new dock installation, and that the purpose of the dock is to moor boats and access the water.

Mr. Kerman stated that the depth of the water is beyond his control. The depth of the water at 50 feet from the shoreline is 3 feet (36 inches). On July 31st, 2007, the measurement was 3 feet 1 inch (37 inches). He measured a depth of 40 inches at 55 feet from the shoreline earlier today.

Nick Huskins, stated that MDEQ standards suggest a 4-foot depth (48 inches).

Harvey stated that he made measurements of water depth and found 39 ½ inches at 55 feet, 38 inches at 50 feet, and 36 inches at 40 feet. He inquired at a local marina and was advised that 3 feet (36 inches) is the minimum to service a boat, and added that the lake level does fluctuate.

The definition of "Dock" was read from the ordinance.

Kerman stated that additional depth is necessary for a boat powered by an inboard/outboard motor (I/O).

There was discussion of water depth based on the needs of various boat types, characteristics of I/O boats, and the average size of boats on Gull Lake.

Nick Huskins stated the Mr. Kerman should not be limited to a pontoon boat, and that he should have the ability to accommodate other types of boats.

Mr. Kerman stated that most docks in the area are longer than 50 feet, and this length is necessary based on the need to reach water that is safely navigable.

Carpenter referred to Section 6.9(A)(2) - substantial property right. He noted that the right must pertain to possessing and operating a boat, but does not necessarily provide that all boat types be accommodated.

Kerman stated that the length of the other docks in the neighborhood present a safety issue in relationship to his access to safe water.

Carpenter noted that Section 6.9(A)(3) intends that the use or issue is not so recurrent as to require a change in the ordinance. If this section were deemed applicable, the language would be referred to the Township Board or Planning Commission for modification.

Rolfe stated that the information described does have implications as to a substantial property right, but the right will have to be identified following the closure of the public hearing. He suggested that the substantial property right that is contemplated here is the right to moor a boat, but not all boat types.

Dick Boris, 270 E Gull Lake Drive, stated that he lives a few doors down from Kerman, and noted that the water level varies by about 4 to 6 inches. In the fall, the water level is reduced to preserve and protect property from ice damage. He believes the average boat length on Gull Lake is approximately 22-24 foot. He stated that he has approximately 4.5 feet (54 inches) at the end of his 50-foot dock.

Mr. Kerman stated that almost every dock on the lake is longer than the 50-foot maximum of the ordinance, ranging from 55 feet to 70 feet.

There was discussion of the status of pre-existing docks and the applicability of the 50-foot limitation to existing docks.

Kerman presented a document that was signed by seven of his neighbors, which indicates their agreement that the dock does not interfere with the safety of Gull Lake.

Dick Boris stated that many of the docks in the area are longer than 50 feet, and the length is based on the need to access water of adequate depth.

Roy Kemppainen stated that comments on the issue have centered on depth, he referred to a prior ZBA decision from 1972. He believes that the temporary docks should be treated differently than permanent docks. He is concerned about the size and area of the dock. He considers the additional platform at the end of the dock to exceed the use permitted by the definition of "dock".

Kerman stated that the neighbor to the north has a permanent dock, which is more than 62 feet in length, and he believes that it was substantially replaced in the past few years.

Carpenter stated that existing docks that exceed the dock length are either pre-existing or have been illegally placed. He suggested the possibility that a general clarification as to the depth necessary for different boat types, and an assessment of how the length of a dock and the size of the boat relate to a "substantial property right", may be required to make this decision.

Nick Huskins, Dock and Seawall, asserted that the MDEQ will require that the dock reach a depth of 4 feet (48 inches), and that the length permitted by MDEQ is based on the water depth and similarity to structures in the area.

Bea Fleming, 242 E Gull Lake Drive, stated that she is in favor of granting the variance and that the dock is beautiful.

There was discussion clarifying dock length on adjoining properties. Based on information from the neighbors, the dock to the north is approximately 67 feet, and the dock to the south is more than 58 feet.

Being no further public comment, the public hearing was closed on a motion by Lauderdale, seconded by Harvey, and unanimously approved.

Carpenter requested discussion based on requirements of Section 6.9, the following were the consensus findings of the members :

- Exceptional conditions related to terrain or topography: a normal I/O boat requires a water depth of greater than 36 inches, the water depth adjacent to the Kerman's dock is 39 to 40 inches at 55 feet from the shoreline, the water depth represents a practical difficulty, not created by the applicant, and the practical difficulty exists in relation to the normal use of a dock facility. Harvey added that

water depth fluctuations require that the depth be achieved at minimum, not maximum levels, to avoid damage to boats.

- Detriment to adjoining properties: based on observations during site visits there will be no detriment to adjoining owners related to site lines, and based on consistency with similar structures in the general area in regards to length. Though it may exceed the width of other docks in the neighborhood, the width is not a detriment to adjoining properties.
- Material impairment of the intent of the ordinance: the proposal would not materially impair the intent of the ordinance, to the extent that it is only 10 % above the permitted maximum, and that it will not be a detriment to the adjoining properties.

The meeting was recessed at 8:00 pm, and reconvened at 8:06 pm.

- Public health, safety and welfare: the proposed dock length is consistent with other structures, and current experience on this section of the lake suggests that there is no impairment of safety on that basis.
- Exceptional conditions: conditions at this property are exceptional in that additional length is required to reach adequate water depth to facilitate boat use. 6.9(A)(1)
- Preservation of substantial property right: based on the evidence submitted the water depth at the subject property at 50 feet from the shoreline is insufficient for boat types common to the area, the lake and the zone. 6.9(A)(2)
- Condition general or recurrent in nature: the condition is recurrent in that a number of properties on the lake may have inadequate water depth to park and/or operate a boat at 50 feet from the shoreline. 6.9(A)(3).

Lauderdale moved that the variance request for a 55-foot dock length be approved based on the findings of fact in regards to Sections 6.9, 6.9(A)(1) and 6.9(A)(2). The motion was seconded by Harvey, and unanimously approved. Variance APPROVED as requested.

Public comment

There was additional general discussion of height limitations based on a question from Mrs. Robbe.

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

Respectfully submitted,

Bruce Dean, Zoning Administrator