

**ZONING BOARD OF APPEALS
ROSS TOWNSHIP
October 22, 2008**

The Ross Township Zoning Board of Appeals held a special meeting on **October 22, 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 were: B. Dean, Zoning Administrator
 C. Rolfe, Township Attorney

APPROVAL OF AGENDA: The agenda was approved by consensus of the members.

APPROVAL OF MINUTES OF: **NONE**
(August 6, 2008 to be considered at 11/05/2008 meeting.)

NEW BUSINESS

- 1) **Kris & Claire Eager**
 1351 W Gull Lake Drive
 Property Tax ID # 3904-18-402-306

Proposed is a new single-family dwelling and detached garage. The property containing the two proposed buildings is a waterfront lot located in the R-1 - Residential District. The proposed dwelling will cover approximately 18.99% of the lot, where 15% is the maximum, and the proposed side setback is 7.6 feet, where 10 feet is the minimum.

The detached garage will cover approximately 15% of the rear yard area, where 10 % is the maximum, and the proposed side setback is 7.6 feet, where 10 feet is the minimum.

Dean summarized the request, indicating that the applicants are seeking relief from lot coverage to remedy to the effect of the adoption of Ordinance #180, which combined the R-1 and R-2 Districts, subject to the requirements of the previous R-1 District requirements.

Rolfe summarized that the intent and effect of Ordinance #180: consolidation of various single family zoning districts, and the addition of the Agricultural Preservation District. The change combined the R-2 with the R-1 Districts, and incorporated all existing R-1 requirements, now making previous R-2 properties subject to the stricter R-1 requirements. The change specifically includes a decrease in allowable lot coverage from

20% to 15%. If the applicant had submitted a permit application prior to 09/02/2008, the application would have met requirements of the ordinance for lot coverage, but would not have met minimum side setback requirement. Rolfe stated that he has had prior communication with Attorney Schmidt (representing applicant), and that there is no immediately evident basis for the variances requested. Normal procedure should be followed.

Lauderdale summarized discussions of the issues by the Township Board:

- Lot width/frontage: 100 feet increased to 125 feet;
- Lot area: 15,000 square feet increased to 20,000 square feet;
- Lot coverage (primary structures): 20% maximum decreased to 15% maximum (at issue this evening)
- Front yard setback: 35 feet increased to 40 feet
- Lot coverage (accessory structures): 15% maximum decreased to 10% maximum (at issue this evening)

Lauderdale stated that the Planning Commission would be considering these issues for potential modification. Township Board has approved waiver of ZBA fees for any applicant affected by these changes.

Rolfe stated that the effects of the recent amendments, and/or any potential amendments, are not the basis for variances: the ordinance in effect at this time is the basis for evaluation. There was discussion of upcoming PC schedules and the time line for potential amendment of the zoning ordinance.

Carpenter stated that the members would need to consider the standard criteria in determining whether the project is eligible for variance relief.

Chris Eager, homeowner, described that their intent was to design a project that would not require a variance. They have built three other houses in Ross Township, and are aware of the regulations of the ordinance and had planned to comply. He feels that due diligence was pursued, and stated that compliance with known requirements had been sought. The information on the side setback is apparently based on a simple mistake. The notice of the amendment of the ordinance, which changed the lot coverage requirements, was received, but no one explained that the intent was anything other than the addition of the AG Preservation District.

Charlie Glas, stated that the applicants want to focus on the lot coverage issues. He stated that the owner may be held responsible based on the public notice, but that no one understood the effect. He stated that the owner sought to design the project to meet all requirements and did not intend to have to apply for variances. Mr. Glas stated that the initial design phase took approximately three months, and that requirements were verified on or about May 23rd. He added that the detached garage is an integral part of the plan, and that if it were known that the plan would not meet ordinance requirements, an alternative property would have been sought. He described that the application for construction was submitted on 09-19-2008, and his company was notified of zoning issues on 09-23-2008. He stated his belief that the Township has some professional

responsibility, and that the applicant should have been advised as to potential effects of the ordinance amendment on the application.

Don Schmidt (Miller Canfield Paddock & Stone) representing the Eagers stated that the Eagers have been snared in this set of events.

Rolfe asked for clarification on the side yard setback.

Charlie Glas, stated that the side setback request is being withdrawn, and the proposal will be modified to comply with the minimum side setback of 10 feet, on both the dwelling and the garage. Based on redesign to comply with setbacks, the lot coverage will be reduced to 18.6% from the original request of 18.99%.

Eager stated that withdrawal is based on desire to comply with ordinance requirements.

There was discussion of the effect of the potential change on the rear yard. The request is for 15% rear yard coverage of the rear yard, which will be defined by modification of the dwelling to comply with the 10-foot side setbacks.

Rolfe clarified that the request has been modified, and is to be limited to 18.6% lot coverage, where 15 % is the maximum, and accessory coverage of 15%, where 10% is the maximum.

Attorney Don Schmidt stated his observations regarding the standards of the Zoning Ordinance from Article 6. He read from Sections 6.9, and described his belief that the situation represents an extraordinary condition related to the property, that there are practical difficulties, granting the variance will not impair the intent of the ordinance, and granting the variance will not materially impair the health, safety and welfare. He stated that these factors should be considered as a "situation" rather than physical condition of the property.

Robert Cowe, 8191 Lake Vista Drive, stated that he lives across the street from the subject property, and he feels that the Township spends considerable expense to develop ordinances, and hopes the issue will not be taken lightly. He stated his concern about the size of the proposed building.

Mike Ambro, 1341 West Gull Lake Drive, stated that he remembers receiving the public notice, and that he understood that the focus of the change was on AG Preservation. He did not perceive that there was an effect on the single family zoning districts.

Ann Couture, 1451 Shoal, stated that she was a member of the Planning Commission when the changes were initiated, and that the changes never anticipated this effect. She stated her that she wished to encourage the ZBA to correct this inadvertent effect.

Steve Ginsburg, 1331 West Gull Lake, stated that he was not aware of the R1/R-2 issues, but he indicated that he is certain that the project will improve neighborhood.

Being that there was no additional comment from the public, the public hearing was closed on motion by Lauderdale, seconded by Harvey, and unanimously approved.

Rolfe stated that he has no reason to believe that the ordinance change is “inadvertent”; the language was studied over a long period of time, and the Planning Commission and Township Board adopted the changes as in intentional act. The scope of ZBA authority does not include “fixing the problem” as perceived to have been created by the recent ordinance changes. The issues related to lot coverage must be justified by a specific condition of the property, noting that the subject property is conforming as to lot area. The size of the building proposed should not be the basis for approval of the request.

Carpenter directed attention to Section 6.9:

- Section 6.9(A), “...by reason of narrowness, shallowness or shape of the property in question, or by reason of exceptional topographic conditions or other extraordinary situation of the property in question, there are practical difficulties in the way of carrying out the strict letter of the ordinance.”

Carpenter stated that he does not observe any conditions related to property that supports request.

Lauderdale stated that the property is narrow, and that the “extraordinary situation” may be observed to be the process, rather than related to the condition of the property. Section 6.9(A)(1) language of “exceptional or extraordinary circumstances” can include the circumstance or situation in which the applicants find themselves.

Harvey stated that if not for the change to the ordinance, the applicants would not be here requesting any relief. The applicants will not gain economically from the grant of a variance in this case.

There was discussion of the permissible lot coverage based on the conforming lot area.

- Section 6.9(A), “...variance will not be of substantial detriment to adjoining property...”

It was the consensus of the members that the requested variance would not be a substantial detriment.

- Section 6.9(A), “...variance will not materially impair intent and purpose of the ordinance...”

Rolfe stated that the intent of ordinance is keep owners from overbuilding the lot. Based on the recent change, the requested lot coverage may be determined to be within the intent of the ordinance, as codified in the previous version of the ordinance.

Carpenter stated that he finds that the variance would materially impair the intent of the current ordinance.

Harvey stated that he believes that the extraordinary circumstance is the change, and the timing of the change is material to this request.

Lauderdale stated that the specific descriptions of the changes did not anticipate this outcome. He stated that he believes that the intent is the protection of property and that the structures proposed do not impair that intent. He stated that the structures proposed fit within the neighborhood and are aesthetically pleasing, and that these outcomes are desirable under the ordinance.

- Section 6.9(A), "...variance will not materially impair the public health, safety and welfare..."

It was the consensus of the members that the requested variance would not materially impair the public health, safety and welfare.

- Section 6.9(A)(1):

Rolfe described that the ordinance is derived from case law that generally establishes that the practical difficulty must be related to the property.

Carpenter stated that the relief requested is based on the applicants desire to build a structure that is larger than permitted by the ordinance. There is no practical difficulty related to property, rather the issue is related to design of the project.

There was discussion of the relationship among the height limitation (25 feet), the narrowness of the lot, and the potential allowance of increased lot coverage.

Rolfe stated that the height restriction is not a basis for relief from another requirement of the ordinance.

- Section 6.9(A)(2):

Carpenter stated that the substantial property right is to have a dwelling on the site, not to have the design desired by the applicant.

Lauderdale stated that the right of other property owners to develop under the previous ordinance provisions suggests a substantial property right possessed by others in the zone or neighborhood.

- Section 6.9(A)(3):

Carpenter stated the condition is not recurrent in nature based on applying to all other properties.

Lauderdale stated that other properties around this property have been developed with coverage rates similar to that of this request.

Rolfe stated that the request appears to be based on the design proposed by the applicants.

Harvey moved to grant a variance for 18.6% lot coverage based on extraordinary circumstances related to narrowness of lot, and that the proposal is appropriate and comparable to other development in the area. The motion was supported by Lauderdale, with a proposed amendment of the motion stating that the granting of the variance:

- Is not a substantial detriment to adjoining properties;
- Is not an impairment of the intent of the ordinance;
- Is not an impairment to the public health, safety and welfare;
- Meets conditions of Section 6.9(A)(2) and 6.9(A)(3).

Harvey accepted the proposed amendment. The amended motion was approved:
2 ayes; 1 nay.

Lauderdale moved to grant a variance for the proposed accessory building of up to 15% coverage of the rear yard, based on modification of the proposal to comply with the prior motion related to the main building, and based on the findings noted in motion above. The motion was supported by Harvey, with a proposed amendment of the motion stating that the accessory building must meet side setbacks and height requirements of the ordinance. Lauderdale accepted the proposed amendment. The amended motion was approved:

2 ayes; 1 nay.

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

Respectfully submitted,

Bruce Dean, Zoning Administrator