

**ZONING BOARD OF APPEALS  
ROSS TOWNSHIP  
February 4, 2009**

The Ross Township Zoning Board of Appeals held its regular meeting on **February 4, 2009 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 5, 2008**

On motion by Harvey, seconded by Lauderdale, the minutes of **November 5, 2008** were unanimously approved with the following changes:

1. Page 2, paragraph 1 (New Business): insert "with two-car garage." following "dwelling" in the 1<sup>st</sup> sentence
2. Page 2, paragraph 2 (New Business): change "Kucera" to "Kuceras"
3. Page 2, paragraph 6 (New Business: insert "was" between "survey" and "completed".
4. Page 3, last paragraph: change "hardship" to "practical difficulty"
5. Page 4, 4<sup>th</sup> bullet: delete "of" between "adjacent" and "road"

**NEW BUSINESS**

- 1)     Colin Phelps / Raymond Kauffman (contractor/agent)  
       14538 East C Avenue  
       Property Tax ID #3904-15-205-15**

Proposed is a 768 square foot detached garage. The building is proposed with location in the front yard area in relationship to the existing dwelling, where garage structures are required to be placed in side or rear yard areas only. The subject property is located in the R-R - Rural Residential District.

Paul & Barbara Ritter were present to represent the applicants.

Harvey asked Rolfe if there were any concerns in regards to representation of the owner. The owner of the property (Phelps) has not signed the application. Rather, the application has been signed by Raymond Kauffman (contractor/agent) and Paul Ritter "for Colin Phelps".

Rolfe stated that the Zoning Ordinance does not require the signature of the owner for a valid application.

Carpenter summarized the request and asked the Ritters to explain the topography of the site.

Ritter stated that the property slopes to the rear, and any location in the rear may require removal of approximately ½-acre of trees. There are two gravel mounds or hills existing on either side of the proposed location, and the building would be placed between these two features, which would be effectively screen the view from the road.

Carpenter asked when the current owners purchased the parcel.

Ritter stated that Phelps purchased the property in August 2008.

Carpenter asked when the house was built, and whether Phelps, or any relatives of Phelps, had owned the property at the time of construction, and if there was an existing garage.

Ritter confirmed that Phelps did not have the home constructed, and that the home has an existing, attached two-car garage.

Carpenter stated that it appeared to him that there is a level area south of the house.

Ritter confirmed that there is approximately a 30-foot area behind the house that is flat.

There was discussion of the general topography of the lot.

Harvey stated his observation that there is an elevation change of approximately 4-½ feet east of the house.

Carpenter added that his observation suggested that the area west of the house could be utilized for the garage with the placement of additional fill.

Lauderdale stated that based on his conversations with the original excavator of the property, the drop to the west is extreme, and the trees were planted there based on the original owners concerns about the drop off.

The pictures supplied with the application were referenced for perspective on the elevation changes, and there was discussion of the adjacent parcel (#3904-15-205-13),

which is vacant and is also owned by Phelps. (Dean made copies from the Township Tax Map of the two parcels, which were distributed for reference.)

There was discussion of the definitions of front, side and rear yards, and the implication of these terms for this parcel in relation to Section 9.4, in particular sub-section (e).

There was discussion of the location of the well, which is off the northeast corner of the house, and the septic system, which is to the rear/south of the house, and the implications of these features for access to, or placement of, additional structures east or south of the house.

Carpenter asked Rolfe about the financial hardship related to placement of fill to accommodate an alternative location.

Rolfe indicated that some excavation is required for most construction, that flat sites may require less excavation/fill, while sites with changes in topography may require more excavation/fill. He added that based on the discussion of the site thus far, the potential use of other areas on this site would not appear to require exceptional amounts of fill. A fundamental change in the configuration of the site might be determined by the ZBA to constitute a practical difficulty.

Mrs. Ritter stated that she believes that filling of the area east of the house would require a retaining wall to hold the grade.

There was further discussion and review of the photos and map supplied with the application, as well as an excerpt from the Township Tax Map.

Mrs. Ritter indicated that the present location was chosen based in part on the existing screening.

Mr. Norm Langshaw, 14625 East C Avenue, was present and stated that he believed that the ordinance is clear on the issue. He added that he was the original owner of the property, and the two parcels owned by Phelps constituted a single parcel when he sold the property. He stated that it is his feeling that the exceptions in the ordinance for location in the front yard on a corner lot are appropriate, but that those exceptions do not apply to this circumstance.

Lauderdale moved that the public hearing be closed, Harvey seconded and the motion was unanimously approved.

Carpenter summarized the findings in relationship to Section 6.9:

- The conditions described do not constitute a practical difficulty related to the shape of the property, nor does it constitute a practical difficulty related to exceptional topography of the property.

Lauderdale stated that the adjacent lot appears to provide a viable alternative for construction of the building, whereas the property to the east and south do present extreme topography.

- The location does represent a detriment to adjoining properties, based on the visibility of the building from the road, where the norm in the neighborhood is to have accessory buildings to the side or rear of residential structures.
- Material impairment of intent of the ordinances: Lauderdale stated that the intent of the ordinance is for garages to be in the side or rear; Harvey stated that two possible alternate locations on the site allow for compliance with this intent.
- There is no impairment to health, safety and welfare presented by the proposal.
- There is no substantial property right affected by the denial of the variance request. 6.9(A)(2).

Harvey moved that the variance not be granted based on the following:

- No exceptional topographic conditions or extraordinary situations were determined to exist;
- Information was not sufficient to establish practical difficulty in relation to the requirements and intent of the ordinance;
- No exceptional circumstances that do not apply to other properties in the same zone were determined to exist;
- Variance is not necessary to preserve enjoyment of a substantial property right.

The motion was seconded by Lauderdale and unanimously approved.

**The variance request was DENIED.**

There was discussion of the information in the application package distributed with an Application for Variance. Rolfe will review content for conformance with present zoning ordinance language.

There was discussion of the use of ZBA training materials and the general role and responsibilities of the ZBA.

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

Respectfully submitted,

Bruce Dean, Zoning Administrator