

**ZONING BOARD OF APPEALS
ROSS TOWNSHIP
December 1, 2010**

The Ross Township Zoning Board of Appeals held its regular meeting on **December 1, 2010, at 5:40 P.M.** in the Ross Township Hall. ~~Chairman Carpenter called the meeting~~
The meeting was called to order and noted those present.

Present were: E. Harvey
 J. Lauderdale
 J. Price (alternate)

Absent was: D. Carpenter

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

Harvey moved that Lauderdale act as in the chair in the absence of Chairman Carpenter. Price seconded, and the motion was unanimously approved.

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

APPROVAL OF MINUTES: On motion by Harvey, seconded by Price, the minutes of **April 7, 2010**, ~~which were approved by individual review of the members,~~ were unanimously ~~affirmed~~ approved.

NEW BUSINESS

- 1) **Desmond & Marilyn Jones**
 12818 N Sherman Lake Drive
 Property Tax ID #3904-29-330-261

Proposed is the completion of a 1,050 square foot attached deck on this conforming parcel in the Residential (R-1) District. The project received variance approval in 2005, and the owner was unable to complete at that time. The deck is proposed with a 51-foot water front yard setback, where the minimum water front yard setback required is 96.5 feet, pursuant to Section 9.7.

Following discussion regarding the prior approval of the variance, Harvey moved that renewal of the variance granted 08/10/2005 be approved incorporating by reference the previous minutes and findings of fact. Price seconded, and the motion was unanimously approved.

2) **Sean DeVrou**
12337 East D Avenue
Property Tax ID #3904-20-194-071

Proposed is the structural modification of a nonconforming structure. The residential structure is associated with property within the Plat of Bayview, Section 20, Ross Township, and lies east of D Avenue. The subject structure is located in the C-4 Bay Commercial District. Based on the information available, the structure does not meet the minimum setback of 33 from the centerline of D Avenue, and does not comply with the minimum waterfront setback of 50 feet.

Dean summarized the report dated 11-10-2010.

Mr. Sean DeVrou was present to describe the request. He stated that he hopes to modify the structure to make the structure less nonconforming by eliminating the three-unit configuration, and converting to a conforming single-family use. A supporting beam in the east wall requires replacement; he described that he believes flood damage to the beam may have occurred over a period from 6 months to six years. Mr. DeVrou stated that he had proceeded with repairs to protect the home, and that the project began with removal of wood paneling, replacement of windows, and that in the course of these improvements the deteriorated beam was discovered. The balance of the structure is in good structural condition.

Mr. DeVrou continued describing that the building has had new pilings and I-beams in the past, and is in sound condition. The property was purchased with bank financing in 2004, and he has owned the building since that time. He stated that he believes the structure is not at the end of its useful life, that he considers the building to be a historical building and wants to maintain the building, and that he believes the building is an appropriate situation for variance approval.

Harvey asked when the project commenced, the extent of the header, and whether the installation extended the area of the building.

Mr. DeVrou indicated that the project had not expanded the building in anyway.

Lauderdale stated that he has concerns with the use of the term "flood", and asked that Mr. DeVrou justify the use of that term.

Mr. DeVrou indicated that based on communication with insurance agents and his attorney, that damage from in inflow of water into the interior of the home is a flood. He added that wind has moved the flashing allowing the water to enter the space and to damage the beam.

There was discussion among the members, and by a consensus of the members it was established that the damage described was not due to "flood".

There was discussion of the C-4 District requirements related to residential uses. Mr. DeVrou confirmed that he understands the zoning is C-4, and he wants to keep this residential, which he understands is allowed until changed to a commercial use.

Mr. Russell Owen, 12173 East D Avenue, was present and stated his support for the idea that the building is historical and supports the variance request to maintain the building.

Mr. Robert Dahmer, 12305 East D Avenue, stated his support for approval of the variance request.

Mr. Robert Wagner, 12324 East D Avenue, asked what would happen if the request were denied.

Mr. DeVrou stated his understanding that the building would have to be removed if the variance is not approved.

Dick Boris, business owner, presented a photo of the building from the 1920's, and stated his support for allowing the structural repair of the building.

There being no further comments from the audience, the public hearing was closed by consensus of the members at approximately 6:05 pm.

Lauderdale asked for input from the Township Attorney. Mr. Rolfe indicated that there are separate issues related to the proposed change of use from multi-family use to single family use, which will make the use of the building a conforming use in the C-4 District.

Mr. DeVrou asked for permission to comment on this, and he stated that he has no intention to use the structure in its current configuration of multi-family. He intends to convert to single-family to eliminate the nonconforming use.

Rolfe referenced Section 9.46 of the ordinance regarding the termination of the nonconforming use. The modification of the structure is the issue that must be examined by the ZBA this evening. The laws regulating nonconformity intend for the eventual termination of all nonconformities. He indicated that Section 9.44 describes repair and maintenance, and does not apply to this situation based on the fact that a structural change is involved. Rolfe stated that Section 9.43 is the applicable language, and that there has been no information or evidence submitted to show that this was a "calamity". The applicability of Section 9.43 is based on the "alteration" of the structure. Section 9.43 was read for the benefit of the members and the audience in attendance. The key issue is the final phrase: "...upon a showing that the requested...alteration will not substantially extend the otherwise reasonably anticipated useful life of the nonconforming use or building /structure."

Rolfe referred the members to Section 6.9 for consideration of the variance criteria applicable to the request. Lauderdale read the complete text of Section 6.9.

Lauderdale led the members through a review of Section 6.9A:

- Harvey noted that the shape of the property is exceptional, and that in terms of the road right-of-way area, the purposes of the KCRC have not been hampered by the location of the building. The fact of the structure overhanging the lake is an extraordinary topographic condition.
- Price noted that the ordinance is evolutionary, and states a position that such conditions should be eliminated.
- Lauderdale agreed that there are exceptional circumstances specific to the property. Rolfe indicated that following the evaluation of the request under the provisions of Section 6.9, the language of Section 9.43 would also have to be applied, in terms of the extension of the useful life associated with the nonconforming status.
- Price noted that the practical difficulty was not within the control of the owner or former family owners.
- Harvey noted that the continuation of the structure would not appear to be a detriment to the adjoining properties.
- Lauderdale noted that the conversion to single-family dwelling causes the use of the building to conform to the C-4 zone.
- Lauderdale noted that the condition is not recurrent, nor is a general regulation is practical.

Rolfe indicated that in terms of material impairment of the intent and purpose of the ordinance, the purpose of the ordinance in requiring a waterfront setback is to preserve site sight lines, and the preservation of general open space along the shoreline area in the Township. There was discussion of Section 7.13(C) - Waterway Setback Requirements for All Buildings and Structures

Section 9.43 was reviewed, with focus on the final phrase:

"...except as may be authorized by the Zoning Board of Appeals pursuant to Section 6 of this Ordinance and upon a showing that the requested expansion, extension, enlargement or alteration will not substantially extend the otherwise reasonably anticipated useful life or the nonconforming use or building/structure."

Harvey indicated that he had been in the building and confirmed the assertion that 99% of the building is unaffected by the change, and the proposed structural change is limited and the minimum necessary to preserve the structure.

There was discussion of the scope of the construction; neighbors indicated that they were concerned that there had been additional structural work.

Mr. Dahmer disclosed that he has assisted with a portion of the project, and confirmed that temporary supports were removed, and that joist hangers were added to re-support the floor joist and create the required attachment to the new beam.

Harvey confirmed his position that the modifications will not extend the otherwise anticipated useful life of the structure.

Harvey moved that the application for variance be approved based on the fact that the project has been found to comply with the provisions of Section 6.9 and that the provisions of 9.43 do not preclude the proposed modification. Price seconded, and the motion was unanimously approved.

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

Respectfully submitted,

Bruce Dean
Zoning Administrator