

**ROSS TOWNSHIP
PLANNING COMMISSION
MINUTES
January 25, 2021**

CALL TO ORDER/PLEDGE

Chairperson Lauderdale called the regular meeting of the Ross Township Planning Commission to order at 6:00 p.m. The Planning Commission meeting was conducted through electronic remote access.

ROLL CALL

Present: Chairperson Lauderdale
Michael Bekes
Mark Markillie
Steve Maslin
Michael Moore
Pam Sager
Sherri Snyder

Absent: None

Also Present: Bert Gale, AGS – Township Zoning Administrator
Kelly Largent, AGS – Township Zoning Administrator
Rebecca Harvey – Township Planning Consultant
Rob Thall – Township Attorney

Chairperson Lauderdale welcomed new member Steve Maslin to the Planning Commission, and congratulated Michael Bekes on his election to the Township Board and assignment to the Planning Commission as the new Township Board liaison.

APPROVAL OF AGENDA

Dave Scott questioned if the Planning Commission was scheduled to continue the review of the special land use permit/site plan review for Gene's Marine. Chairperson Lauderdale advised that the matter was not on the agenda.

The agenda was then approved as presented.

APPROVAL OF PRIOR MEETING MINUTES

The Commission proceeded with consideration of the **November 23, 2020** regular Planning Commission meeting minutes. Bekes noted that he was no longer on the Planning Commission on November 23, 2020 so should not be listed as ‘absent’ in the meeting minutes. Moore moved to approve the minutes as corrected. Sager seconded the motion. The motion carried 5 -2, with Bekes and Maslin abstaining.

NEW BUSINESS

1. Public Hearing – SLU/SPR for Expansion of a Nonconforming Building (Dingman)

The next matter to come before the Planning Commission was consideration of the request by Brent Dingman for special land use permit/site plan review for the proposed alteration of a nonconforming building. The subject property is located at 371 South Gull Lake Drive and is within the R-1 District.

Chairperson Lauderdale opened the public hearing.

Largent provided an overview of the request, explaining the proposal to replace a shed dormer on an existing single-family dwelling with a gable dormer. She noted that the dwelling is located within the 50 ft required waterfront setback and exists as a lawful nonconforming building due to setback. Largent confirmed that the proposed construction (replacement of a shed dormer with a gable dormer), located on the waterfront elevation of the dwelling, will represent an expansion of a nonconforming building, but will not serve to increase the building footprint nor the setback nonconformity.

Tim Nagelkirk, project contractor, explained that the existing shed dormer is leaking and in need of repair. The gable dormer will allow more usable interior space but will not alter the basic size of the dwelling.

No further public comment was offered on the matter and the public comment portion of the public hearing was closed.

In response to a question, Attorney Thall confirmed that the proposed alteration will not represent an ‘increase’ in the nonconformity in that the nonconforming waterfront setback will not be reduced. The special land use approach addresses the alteration/expansion of the nonconforming building. He added that this is consistent with past application of this provision.

In consideration of the Special Land Use Criteria set forth in Section 19.3, the Commission concluded the following: the proposed new gable dormer will alter the nonconforming building but will not increase the setback nonconformity; the

proposed modified dormer will not require any disturbance to the grade of the site or removal of trees; no change to the existing utility connections are proposed; the proposed modified dormer will not cause traffic congestion or alter existing access/parking arrangements; the proposed gable dormer is compatible with the character of the dwelling, as well as other residential buildings in the area; the footprint and location of the dwelling, as well as the nonconforming element of the building, will remain unchanged; and, there were no concerns offered by surrounding property owners.

It was noted that the site plan presented was acceptable (per Section 21.4) and that the proposal meets the Site Plan Review Criteria set forth in Section 21.6.B.

It was reiterated that the above findings were based on the application documents presented at the meeting.

Markillie moved to grant Special Land Use Permit/Site Plan Approval for the proposed expansion of a nonconforming building such to allow the replacement of an existing shed dormer with a new gable dormer, based upon the review findings of Section 19.3 – Special Land Use Criteria and Section 21.6 – Site Plan Review Criteria, noting that the site plan presented is acceptable, with the information required by Section 21.4 C. and I. waived per Section 21.4 T. Snyder seconded the motion. The motion carried unanimously.

2. Public Hearing – SLU/SPR for Guest House (Fillar)

The next matter to come before the Planning Commission was consideration of the request by Patrick and Kristen Fillar for special land use permit/site plan review for the proposed construction of an accessory building with a guest house. The subject property is located at 11 Labelle Terrace and is within the R-1 District.

Chairperson Lauderdale opened the public hearing.

Largent provided an overview of the request, explaining the proposal to remove the existing garage on the site that is in disrepair and situated close to the abutting road, and the construction of a new two-car garage with an upper-level guest house. She noted that a steep bank exists on the site behind the existing garage and that the new garage is proposed to ‘fit’ into the grade. This design will serve to limit the ability to provide access to the upper level from inside the garage, instead access will be provided only from the outside. Largent stated that the ‘guest house’ element complies with Section 18.4, but that the proposed garage will not meet applicable setback requirements.

In response to questions, Largent clarified that the proposed garage location will not meet the minimum 5 ft setback required by Section 18.4 D.1. Variance

approval by the ZBA instead of deviation through the special land use process will be required.

Patrick Fillar was present on behalf of the application. He stated that the existing garage is 19.6 ft x 23 ft (448 sq ft) in area, and the new garage is proposed to be 20 ft x 23 ft (460 sq ft) in area, essentially representing the same footprint. Fillar noted that the location of the garage on the site is proposed to be adjusted slightly to center the building. The slightly wider and centered garage with 12 in overhangs will reduce the side setbacks from 2 ft to 8.5 in.

Fillar stated that the upper level is proposed to be used partially for storage, with the remainder (3 rooms) to serve as a 'guest house'. He noted that several of the neighboring accessory buildings are similar in size and setback, and are provided 'guest house' space. He further noted that given the steep slope and the situation of adjacent properties, the height of the garage will not present viewshed limitations.

Markillie requested clarification of the situation of the garage in relation to the steep grade and of proposed building dimensions. Fillar confirmed that the garage service door opens toward/into the 'hill' and the stairs lead to the upper-level parking area. He further explained that the 27 ft building dimension shown on the schematic is only on the second floor where the building can extend into the 'hill'. Fillar restated that the ground floor dimension (footprint) is 23 ft, as noted.

No further public comment was offered on the matter and the public comment portion of the public hearing was closed.

In consideration of the use standards specific to a 'guest house' set forth in Section 18.4 A.5.b., the following was noted:

- Given the 1985 ZBA interpretation of 'contiguous', the 'guest house' is determined to be located on a lot contiguous to a lot with an occupied single-family dwelling, to which the 'guest house' is accessory. It was further noted the lots in question constitute a 'zoning lot' as defined by the Zoning Ordinance.
- The proposed 'guest house' meets the use standards of subsections (2), (4) and (6).
- The applicant confirms compliance with subsections (3) and (4)d.
- The proposed accessory building does not comply with front/side building setback, building height, and lot coverage requirements. Variance approval by the ZBA is required.

In consideration of the Special Land Use Criteria set forth in Section 19.3, the Commission concluded the following: the proposed 'guest house'/accessory building does not meet all applicable dimensional requirements; the

size/configuration/location of the ‘guest house/accessory building’ will not differ significantly from that of the existing garage or the arrangement on the adjacent property; a ‘guest house’ is a common use in the immediate/surrounding area; utility connections, with the exception of sewer, are existing; the proposed ‘guest house’/accessory building will not alter the existing narrow road or the access/parking arrangement; the proposed ‘guest house’/accessory building will be compatible in character with the principal dwelling on the site (zoning lot) and other residential accessory buildings in the area; and, there were no concerns offered by surrounding property owners.

It was noted that the site plan presented was acceptable (per Section 21.4) and that the proposal meets the Site Plan Review Criteria set forth in Section 21.6.B.

Discussion continued regarding the approval of a special land use permit for a proposal that is unable to meet several applicable dimensional requirements. The following was acknowledged:

- The subject site is a lawful nonconforming lot due to size;
- The proposal supports reasonable continued use of the property; and
- The proposal is similar in design and intensity to adjacent/surrounding properties.

It was reiterated that the above findings were based on the application documents presented at the meeting.

Chairperson Lauderdale then moved to grant Special Land Use Permit/Site Plan Approval for the establishment of a ‘guest house’ in the upper level of the proposed accessory building on the subject site, based upon the review findings of Section 18.4 A.5.b. – Guest Houses, Section 19.3 – Special Land Use Criteria and Section 21.6 – Site Plan Review Criteria, noting that the site plan presented is acceptable, with the information required by Section 21.4 B. and I. waived per Section 21.4 T., and contingent upon receiving the requisite variance approvals from the ZBA. The situation of the site and the limited ability for compliance was again acknowledged. Markillie seconded the motion. The motion carried 6 to 1, with Moore dissenting.

UNFINISHED BUSINESS

1. Section 18.6 – Fences

Chairperson Lauderdale referenced the issues raised in September regarding property on Gull Lake (in the Township) involving the placement of a barrier/hedge of trees along a property line that resulted in waterfront viewshed problems for adjacent properties.

He reminded that the question of whether a vegetative barrier constitutes a ‘fence’ was raised and the Planning Commission had requested additional information regarding fencing for study and agreed to discuss the need for an amendment of the Zoning Ordinance to provide clarity on the question.

In October, 2020, the Planning Commission continued consideration of the matter, including the receipt of public comment from a neighboring property owner impacted by the recently established barrier/hedge of trees. After lengthy discussion, and with input from Township legal counsel, it was determined that an amendment of the fencing standards would not be considered unless and until a formal interpretation on the question was rendered by the ZBA. The Planning Commission was advised at that time that AGS would proceed to the ZBA with a request for interpretation.

In January, 2021, AGS requested ZBA interpretation on the question regarding whether a vegetative barrier falls within the scope/intent of the ‘term ‘fence’’. Following lengthy discussion of the question of interpretation, the ZBA noted the following:

- An interpretation must rely on existing text . . . and may not ignore or add to existing text in the formulation of the interpretation.
- The definition of ‘fence’ and the fencing standards established by Section 18.6 represent an implementation of the objectives for sight line and viewshed protection clearly stated in the Master Plan.
- A vegetative barrier established along a property line meets the definition of ‘fence’ to the extent that it ‘acts as an enclosure of an area of land, property boundary identification or visual screen’.
- The fence material options listed in the definition of ‘fence’ raise questions regarding what types of barriers/enclosures qualify as ‘fences’.

The following formal interpretation was then rendered:

The Zoning Ordinance definition of ‘fence’ [*Fence: a barrier constructed of either wood, metal, stone, brick or masonry materials that may act as an enclosure of an area of land, property boundary identification or visual screen, which surface may be of either solid or open construction.*] includes vegetative barriers where they are established to serve as a screen or enclosure given that they constitute a barrier of wood material and act as ‘an enclosure of an area of land, property boundary identification or visual screen’.

Attorney Thall explained that the interpretation of the ZBA stands until/unless the Zoning Ordinance is amended to establish a different definition or application of

the standard. Accordingly, the question before the Planning Commission at this time is whether they are satisfied with how the standard has been interpreted by the ZBA or if it is felt that an amendment to the Zoning Ordinance is in order so as to deviate from and/or expand upon that interpretation.

Chairperson Lauderdale acknowledged that there are many members of the public in attendance at this meeting and that it may be helpful for the Planning Commission if they could receive feedback on this subject prior to making a decision on the best way to proceed. He suggested opening up the public comment portion of the meeting at this time rather than at the end of the meeting as indicated on the agenda. Planning Commission members agreed.

Chairperson Lauderdale advised that the public comment portion of the meeting would be opened up at this time, and requested that all persons present wishing to provide comment indicate their name for the record. He further noted that each person would be given a 3-minute comment period.

Chairperson Lauderdale then added that he would like to correct statements that are currently being circulated on social media. He stated that, as a member of the ZBA, he did not in any way commit to, suggest, or support ‘cutting down all the trees in the Township to 6 ft in height’ during the January ZBA meeting,

Attorney Pat Lennon, representing the Carr’s, stated that he respects the work of the Township’s ZBA but disagrees with their interpretation on this question. He offered the following points for consideration:

- the definition of fence contemplates a barrier that is ‘constructed’, whereas the screening/landscape standards speak to trees and vegetation;
- tree lines are historical and acceptable ways of screening and providing privacy; why would the Township want to prohibit this?
- tree lines as screens/buffers exist throughout the Township; such an interpretation represents an extreme shift in Township land use patterns;
- the Township Master Plan is a guide and does not represent regulations – viewshed protection objectives do not equate to standards;
- the Planning Commission has the opportunity to address this question in a comprehensive way – more time and thought on the subject is required.

Stephanie Walbridge, referencing the memo/photos provided to the Planning Commission that detail the issue at hand, stated that she supports the interpretation of the ZBA. She agreed that trees do not always serve to create a barrier, but they can be established/planted to do just that. Walbridge offered that the Township’s Master Plan was developed based on extensive public participation and input . . . and that the issue of ‘viewshed’ was a big deal. She explained that viewshed parameters in the (Gull Lake) bay can be dramatically affected by the use of trees as barriers . . . referencing the current situation where

trees placed on a berm have established what is essentially a 10-15 ft tall ‘spite fence’.

Barbara (?) added that sometimes neighbors do not get along . . . but the use of ‘spite fences’ can have a terrible impact on an entire neighborhood.

Laura Williams stated that she likes the rural character of the Township, and that character includes trees/vegetation along property lines. She noted that this is common throughout the Township, including on public lands.

Linda Walters stated that she does not support the interpretation of the ZBA.

Tim Walters offered that this has become a contentious and complicated issue that may turn out to cause legal problems in the Township. He suggested that the ZBA responded to an existing conflict between neighbors that should not result in regulations that get played out across the Township. Walters encouraged the Commission to engage in thoughtful debate on the best way to support viewshed protection.

No further public comment was offered.

Snyder commented that the virtual meeting format makes communication difficult and requested that in the receipt of public comment it would be helpful to know the name and location of the person speaking. She then inquired regarding the protocol for a Township Board member to speak out against another Township board. Attorney Thall advised that it is not often done, but that occasionally a board member will choose to offer statements as ‘public comment’. He explained that it should never be done by a supervisor given their role in board appointments, and generally speaking, not typical for a township board member.

Bekes summarized that the ZBA has rendered an interpretation and it is clear that the Master Plan and existing provisions in the Zoning Ordinance provide foundational support for viewshed protection. He questioned the legal position of the Township.

Attorney Thall explained that the interpretation by the ZBA is the official ruling on the matter and the direction provided is currently in effect. The Planning Commission is free to ‘agree’ with the interpretation and do nothing . . . or they can ‘agree’ with the reasoning of the interpretation but opt to pursue an amendment to the Zoning Ordinance to better clarify or establish a new approach to the use of vegetative barriers.

Markillie stated that the concept of a ‘living fence’ is a legitimate land use issue that is present in many communities. He inquired as to the idea of ‘living fence’ standards. Harvey agreed that the question is not unique to Ross Township and that there are many ways communities address vegetative barriers and viewshed

protection. Markillie expressed support for the Planning Commission taking time to consider this issue more broadly. Planning Commission members agreed.

Snyder then moved that the Planning Commission commit to moving forward on this issue at the February meeting. Specifically, to first determine if the ZBA's interpretation is acceptable; and then, if necessary, begin study, and possible amendment to the Zoning Ordinance, regarding the use/regulation of vegetative barriers ('living fences') in the Township. Bekes seconded the motion. The motion carried unanimously.

Snyder stated that she is uncomfortable with the fact that the Planning Commission has been put in-between neighbors . . . and at the same time apologizes if the delay of the Planning Commission's involvement causes any additional pain.

Due to the lateness of the hour, it was agreed that the remainder of the agenda would be postponed to the February meeting.

PUBLIC COMMENT

Chairperson Lauderdale reminded that the Public Comment portion of the meeting was held during the Planning Commission's discussion of Section 18.6 – Fences. (Unfinished Business)

MEMBERS, CONSULTANTS, ADVISORS

Snyder congratulated Bekes (former Planning Commission member) on his appointment as the new Township Board liaison to the Planning Commission. She stated that Bekes' commitment to the Township and attention to detail are a welcome contribution to the Commission.

ADJOURN

There being no further business to come before the Commission, the meeting was adjourned at 8:07 p.m.

Respectfully Submitted,
Rebecca Harvey, AICP, PCP
Township Planning Consultant