

**ZONING BOARD OF APPEALS
ROSS TOWNSHIP
July 7, 2021**

The Ross Township Zoning Board of Appeals held its regular meeting on **July 7, 2021, at 5:30 p.m.** at the Ross Township Hall. Chairperson Carpenter called the meeting to order and noted those present.

Present: Dave Carpenter, Chairperson
Jim Lauderdale
Jim DeKruyter

Absent: None

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

APPROVAL OF AGENDA: The agenda was unanimously approved as presented.

APPROVAL OF MINUTES: On motion by DeKruyter, seconded by Lauderdale, the minutes of **June 2, 2021** were unanimously approved as presented.

NEW BUSINESS:

- 1) **Application for Variance**
Aimee Light/Glas Associates
719 South Gull Lake Drive
Property Tax I.D. #3904-17-354-025

Chairperson Carpenter stated that the next matter to come before the Board was the request by Aimee Light/Glas Associates for variance approval from the 25 ft rear setback requirement established by Article 15 for the construction of a detached garage on a waterfront lot. The subject site is located at 719 South Gull Lake Drive and is within the R-1 Rural Residential District.

Chairperson Carpenter opened the public hearing.

Gale provided an overview of the request, explaining the applicant's proposal to construct a 614 sq ft detached garage on the subject waterfront lot with a rear (streetside) setback of 3 ft.

Aimee Light and Jim Glas, project contractor, were present on behalf of the application. Glas explained that the proposed garage location will be similar to that of the original garage slab. He noted that the proposed location will eliminate the need to remove any trees on the site and is similar to the setback of the garages on the adjacent and surrounding lots.

In response to Board questions, Glas confirmed that the proposed garage will comply with the rear yard lot coverage standard (10% allowed; 9.5% proposed) and the maximum building height standard (18 ft allowed; 17 ft 8.5 in proposed). He further noted that the proposed garage location will be 3 ft from the rear property line but 10 ft from the abutting roadway.

Brook Johnson, neighbor, stated that there has always been a garage in that location and that the proposed construction will not represent a change in conditions. He noted that having a garage there actually helps define the curvature of the road in that location and makes it safer. Johnson added that the proposed 3 ft setback is similar to other garage setbacks in the area.

Roger Schmidt, neighbor, stated that he would prefer the proposed location over a location that complied with the 25 ft setback requirement. He explained that a greater setback would require the removal of trees and place the garage out of alignment with other garages in the area. Schmidt added that the proposed 3 ft setback would allow for a safer garage access/road entry arrangement.

Aimee Light explained that she met with the neighbors to discuss the proposed setback before she ever submitted the application for a variance. She stated that she believes neighbor relations are part of the area's beauty and that the proposed garage location is intended to be respectful of viewsheds and the preservation of trees.

Chairperson Carpenter noted that 4 letters of support had been received and were provided to Board members.

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

Chairperson Carpenter then led the Board through a review of the variance criteria set forth in Section 23.8 A. The following findings were noted:

- #1 The proposed residential use of the property is permitted within the R-1 District.
- #2 Adequate area exists on the property to comply with the 25 ft rear (streetside) setback requirement; compliance would not prevent the applicant from using the property for a permitted use.
- #3 In determining substantial justice, it was recognized that the proposed 3 ft rear setback is similar to the rear setbacks existing on neighboring properties and

therefore will result in building alignment along the roadway; the proposed garage location represents the same location as the previous garage; and, reference was made to the support expressed by neighbors of the project site.

- #4 In consideration of unique physical circumstances of the property, it was noted that the subject site is long and narrow and situated on the curvature of the abutting roadway. This situation of the property, including the presence of an easement on the property, renders the proposed garage location reasonable.
- #5 The proposal is at the discretion of the applicant and represents a self-created hardship.
- #6 The intent of the rear setback requirement was referenced and the following noted: 1) the proposal will enhance safety in the area by locating the garage where visibility of vehicles exiting the site will be improved and visibility by neighboring vehicle movement and the traveling public will not be inhibited; 2) the proposed setback will maintain building alignment in the neighborhood; and 3) the proposed garage location will negate the need for any tree removal.

It was stated that the above findings were based on the application documents presented and the representations made by the applicant at the meeting.

Lauderdale then moved to grant variance approval so as to allow the proposed construction of a detached garage on the site with a 3 ft rear (street side) setback based upon the findings of the Board pursuant to variance criteria #1, #3, #4 and #6 set forth in Section 23.8 A., Zoning Ordinance.

DeKruyter stated that he will be voting against the motion in light of the following safety concerns: the neighbor's garage (adjacent to the east) exits to the west while the applicant's garage will exit to the south . . . creating a conflicting arrangement and blocking the clear line of vision; a 3 ft setback from an abutting street in general creates safety concerns; and, compliance with the 25 ft setback requirement is feasible without blocking views of neighboring properties.

Chairperson Carpenter then seconded the motion. The motion carried 2 to 1, DeKruyter dissenting.

**2) Application for Appeal
John and Teresa Carr
2878 Burlington Drive
Property Tax I.D. #3904-08-315-090**

Chairperson Carpenter stated that the next matter to come before the Board was the request by John and Teresa Carr for an appeal of the determinations made by the Zoning Administrator that the berms with rows of trees along the property side lines are

unlawfully located within the setback and must be removed; and that all fences located on the property not in conformance with Section 18.6 must be removed. The subject site is located at 2878 Burlington Drive and is within the R-1 Rural Residential District.

Chairperson Carpenter opened the public hearing.

Gale identified the documents provided and presented a chronology of events regarding the establishment of the berms/trees and fencing on the site and the enforcement actions to date. He referenced the violation letter dated March 30, 2021 that outlines the identified violations and cites the relevant provisions of the Zoning Ordinance.

Gale stated that enforcement is currently pending in light of the application for appeal to the ZBA filed by the applicant.

John and Teresa Carr and Patrick Lennon, attorney, were present on behalf of the application. Attorney Lennon requested a recitation by the Zoning Administrator of the identified violations on the applicant's property. He stated that the burden is on the Township to demonstrate where the violations exist.

Referencing the photos of the property provided to Board members, Gale noted the following:

Photos 1 & 2 – the chain link fence erected within the front yard (waterfront) exceeds 4 ft in height.

Photo 3 – the fence along the side property line is not in violation of Section 18.6.

Fence Permit Diagram – the fencing established does not comport with the fencing allowed by the fence permit.

Un-numbered Photo – the berms/trees established along the side property line(s) do not meet the setback requirements applicable to a structure.

Attorney Lennon stated that the chain link fence erected in the front (waterfront) yard was a temporary construction fence and has since been removed; no violation exists. He then noted the following regarding the berms/trees:

- The burden is on the Zoning Administrator to demonstrate that a berm/row of trees is a 'structure' as defined in the Zoning Ordinance and that a setback violation exists.
- The definition of 'structure' refers to 'anything constructed, assembled or erected' . . . vegetation is not 'constructed, assembled or erected' so does not qualify as a 'structure' under this definition. Further, the examples of 'structures' identified in the definition do not include any reference to vegetation, plants, or landscaping.

- It is not typical for a zoning ordinance to view vegetation or landscaping as ‘structures’; typically it is addressed elsewhere in the ordinance where screening or landscaping regulations are set forth.
- Ross Township does not have a history of applying the definition of ‘structure’ to vegetation/landscaping. He cited a letter dated November 20, 2013 (Appendix A of Application) where the Ross Township Zoning Administrator clarifies that landscaping (large rocks and dirt) are not ‘structures’ and so are not subject to the setback requirements.
- The subject property has been under a microscope and so the owners worked closely with the Zoning Administrator before any work was done to understand the Ordinance requirements and secure the necessary approvals.
- When Township representatives visited the site in August, 2020 due to neighbor-related issues, no statements were made at that time about the berms/trees. Such silence was a ratification of compliance.

(Picking up where Becky left off) Attorney Lennon indicated that the Carr situation does not violate the Code. The Township has to live with the ordinance; the parts they like and the parts that they don’t like. He indicated that it was not appropriate to contort the definition of structure to reach a result that certain people want. In the end the appropriate thing is to dismiss the citation.

Mr. Carr read a statement. He indicated that: he worked hard to make sure no mistake would occur with Township approvals; they met with Kelly Largent and brought their landscaper with them; they were told that there was no limit on height, number, or location of landscaping; the 4’ fence was in compliance; Bert Gale had issued a letter in 2013 indicating that landscaping was not a structure; Bert Gale approved the installation; Mr. Carr met with Rob Baker, Lynn Harmon and Kelly Largent for four hours at the property and was never told that the trees and berm were not compliant; they relied on the Township’s representatives to assure that there were no violations; people have worked the situation up; and the fencing is complete.

Attorney Lennon indicated that this is an emotional situation and that they trust that the ZBA will analyze the situation. He indicated that never before has a tree been deemed a structure. He indicated that they are entitled to equal enforcement of the Code book and you can’t have unequal enforcement. He indicated that if the Township wants to change the ordinance it would be a proactive determination and not retroactive.

Stephanie Walbridge, the Carrs’ next-door neighbor, appeared along with Ms. Tickner who lives on the other side of the subject property. Walbridge indicated that she understands that the Carrs can appeal and that she respects the process. She indicated that it is their hope that the Zoning Administrator’s decision will be upheld. They want their view shed and sight lines back. They want their views back. She indicated that the berms and trees are a fence and that the ZBA should affirm the decision of AGS.

Connie Lavender indicated that she is a Township resident and concerned about the retroactive effect of determining trees as a structure or fence. She indicated that there are trees on boundary lines between many properties and that she is concerned that old trees would have to be cut down. She indicated that their homeowner's insurance does not consider trees as a structure. She indicated that it would be fine to go forward with such an interpretation as no one wants their view shed blocked. She indicated that the Carrs did everything ok at the time.

Janet Gladstone indicated that everyone craves their private portion of the lake. She was concerned that neighbor's views will get blocked off. Don Gladstone indicated that he took a cruise around the lake and found no evidence of anyone else blocking view of the lake with fences or berms.

Susan Leech indicated that the trees are not within the spirit of the law since they act to block the view shed. She indicated that it will only get worse as the trees get taller and block more view. She further indicated the view is such an important aspect of living on the lake and that she thinks there should be some compromise. The trees could be thinned or moved on the property. She asked that the Zoning Administrator's order stand.

Laura Williams indicated that it does not equate that the trees are a fence. She further stated that if the Township is not satisfied with the ordinance, it can change the ordinance moving forward. She thinks that the Township is going in the wrong direction trying to go retroactive and that doing so is a dangerous path. She indicated that MCL 125.3601(13) is a concern in that the ZBA is hearing something that they already heard. She further indicated that she was threatened at a prior PC meeting and she played a recording to support her assertion.

Vicky Nagle was concerned about changing policy. If the Carrs did work up front to comply with the policy and then followed the existing policy, it should not be changed on them now.

Barb Ritter indicated that removing the trees and berm would be retroactive and that she was very concerned about any retroactive effect. She indicated that precedent should go forward.

Gale indicated that the letter he wrote in 2013 was regarding large rocks and dirt on a property on Idlewild where they built a big patio. He said they used large boulders and dirt and put the patio on top. He indicated the 2013 letter had nothing to do with trees and a berm.

Carr indicated that from the 2013 letter you can take that dirt and boulders cannot be a structure. Attorney Lennon indicated that a close reading of the letter is relevant. He indicated that Gale's statement can be applied to vegetative structures. He further indicated that the answer to this type of situation is simple, amend your ordinance. He further noted that it must be enforced against everyone and at this time trees and berms are not structures. He indicated that the Township is just trying to find something that

will stop it but this is a bad path to go down. He indicated that you must stick to the ordinance. Carr reiterated their April 30 meeting and stated that any interpretation can only go forward and not backward.

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

Lauderdale indicated that he got a substantial packet from the Carrs' attorney yesterday and just got the chance to read it today. Lauderdale moved to have Attorney Thall provide the ZBA with a legal review and opinion to assist with making a determination. Dekruyter seconded the motion and indicated that he would like to have the attorney add numbering to the documents in the packet. Dekruyter inquired of Carr as to Township records regarding the claimed onsite meeting with Township officials. Carr indicated that nothing was archived by the Township regarding the meeting with Supervisor Baker, Trustee Harmon and Kelly Largent. It was indicated that Attorney Thall's legal opinion would be provided for the next regular ZBA meeting in August or sooner. The motion carried unanimously.

PUBLIC COMMENTS ON NON-AGENDA ITEMS:

No public comment on non-agenda items was offered.

OTHER BUSINESS:

Chairperson Carpenter indicated there was no Other Business scheduled for Board consideration.

ADJOURNMENT: There being no further business to come before the Board, the meeting was adjourned at ____ p.m.

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

Respectfully Submitted,
Rob Thall, Bauckham, Sparks, Thall, Seeber
& Kaufman, PC
Township Attorney