

**ZONING BOARD OF APPEALS
ROSS TOWNSHIP
January 4, 2023**

The Ross Township Zoning Board of Appeals held its regular meeting on **January 4, 2023, 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
Frank Guarisco

Absent: Jim DeKruyter

Also present: Bert Gale, AGS – Township Zoning Administrator
Seth Koches – Township Attorney

APPROVAL OF AGENDA: On motion by Chairperson Carpenter, seconded by Guarisco, the agenda was unanimously approved as presented.

APPROVAL OF MINUTES. On motion by Guarisco, seconded by Chairperson Carpenter, the minutes of **October 12, 2022** were unanimously approved as presented.

NEW BUSINESS:

- 1) **Application for Variance**
Carol Vogt
1280 Burlington
Property Tax I.D. #3904-17-201-380

Chairperson Carpenter stated that the next matter to come before the Board was the request by Carol Vogt for variance approval from the front setback requirement established by Article 15 and Section 22.9 for the construction of porch/stairs on the south side of the dwelling. The subject site is located at 1280 Burlington Drive and is within the R-1 Low Density Residential District.

Chairperson Carpenter opened the public hearing.

Gale provided an overview of the request, explaining that the subject site is a corner lot (Burlington Drive/Moonlite Avenue) and, as such, is provided two ‘front yards’. Pursuant to Section 22.9, a 20 ft front setback requirement applies to the nonconforming lot . . . and, pursuant to Article 15, the 20 ft front setback requirement applies to both Burlington Drive and Moonlite Avenue. Gale noted that the porch/steps is proposed to

be located 13 ft from Moonlite Avenue, requiring a variance of 7 ft from the 20 ft setback requirement.

Chairperson Carpenter observed that the porch/steps have already been constructed. Gale confirmed that construction of the porch/steps has occurred as reflected in the application.

Carol Voit was present on behalf of the application. She stated that the project began as a repair to the existing porch/steps, but discovered deterioration of the structure required full removal. She explained that the new porch/steps are similar in size/location as the original porch/steps. Voit noted that she was not aware that replacing them would require a permit, adding that AGS was aware of the construction and did not stop the project.

Voit stated that the porch/steps serve the only ingress/egress to the main floor of the dwelling. In response to Board questions, Voit confirmed that there is an entrance to the dwelling on the ground floor as well.

No public comment was offered and the public comment portion of the public hearing was then 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 In determining if compliance would be unnecessarily burdensome, it was noted that adequate area does not exist on the property to locate the proposed porch/steps in compliance with the 20 ft setback requirement and that reasonable options for compliance do not exist.
- #3 In determining substantial justice, it was noted that providing ingress/egress to the main floor of the dwelling is reasonable and characteristic of arrangements on surrounding properties. Reference was also made to the lack of concern expressed by neighbors of the project site.
- #4 In consideration of unique physical circumstances, it was recognized that the property is a nonconforming lot, but is similar in circumstance to many lots in the area and district.
- #5 The proposal is at the discretion of the applicant and represents a self-created hardship.
- #6 The intent of the front setback requirement was referenced wherein it was noted that the existing situation will remain largely unchanged; building alignment will not be altered; the parking arrangement on the site is adequate and will not be

modified; and, the new porch/steps have a smaller footprint than the previous structure (i.e., reduce an existing nonconformity).

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

Guarisco then moved to grant variance approval from the 20 ft front setback requirement so as to allow a setback of 13 ft from the right-of-way line of Moonlite Avenue for the proposed porch/steps based upon the findings of the Board pursuant to variance criteria 1#, #2, and #6 set forth in Section 23.8 A., Zoning Ordinance. Chairperson Carpenter seconded the motion. The motion carried unanimously.

2) **Application for Variance**
James Marolt
124 East Gull Lake Drive
Property Tax I.D. #3904-20-178-041

Chairperson Carpenter stated that the next matter to come before the Board was the request by James Marolt for variance approval from the waterfront and side setback requirements established by Article 15 and Sections 17.3A. and 22.9 for the replacement of existing retaining walls. The subject site is located at 124 East Gull Lake Drive and is within the R-1 Low Density Residential District.

Chairperson Carpenter opened the public hearing.

Gale provided an overview of the request, explaining that the existing retaining walls located on the west (lake) side of the dwelling are proposed to be reconstructed due to erosion and shifting. He explained that the existing retaining walls are located approximately 3 – 5 ft from the side lot lines (5 ft required) and 25.5 ft from Gull Lake (52.25 ft required).

James Marolt was present on behalf of the application. He stated that he has owned the property since 2003 and built a new house on the lot in 2015. He explained that the retaining walls were also established in 2015 but were not installed correctly and have been deteriorating due to erosion and rodent destruction. Marolt explained his proposal to reconstruct the retaining walls correctly in the same location and with the same setbacks as currently existing. He emphasized that he is not proposing to enlarge the retaining walls or expand them further into the required setbacks.

In response to questions, Gale explained that a retaining wall is considered a ‘structure’ as defined by the Ordinance and so is subject to the setback requirements. He confirmed that the original retaining walls did not receive zoning approval.

Ron Roble, neighbor, stated that he had no objection to the proposal as long as the retaining walls were not moved closer to the property lines. He explained that the tree on

their property that currently shades their deck was compromised when the retaining walls were initially established and that he does not want any further negative impacts to result.

No further public comment was offered and the public comment portion of the public hearing was then 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 In determining if compliance would be unnecessarily burdensome, it was noted that the retaining wall is needed to support the existing dwelling on the site and that a denial of the variance could interfere with reasonable use of the property.
- #3 In determining substantial justice, a review of building arrangements on surrounding property was completed. It was noted that a reconstruction of the retaining walls below grade and at the same setbacks as existing would not negatively impact adjacent property or result in a development pattern largely different than that of other properties in the area/district.
- #4 It was recognized that the existing location of the dwelling is the only circumstance of the property dictating the location of the retaining walls and does not constitute a unique physical limitation of the property preventing compliance.
- #5 The proposal is at the discretion of the applicant and represents a self-created hardship.
- #6 The purposes of the waterfront and side setback requirements were referenced wherein it was noted that the retaining walls are located below grade and will not present viewshed concerns; the existing situation will remain largely unchanged; the reconstruction will not require excavation or grade changes to the site; and, existing waterfront and side lot line separations will not be decreased.

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

Guarisco then moved to grant variance approval from the 52.25 ft waterfront setback requirement and 5 ft side setback requirement so as to allow 25.5 ft and 3 ft setbacks respectively for the reconstructed retaining walls based upon the findings of the Board pursuant to variance criteria 1#, #2, #3 and #6 set forth in Section 23.8 A., Zoning Ordinance. Chairperson Carpenter seconded the motion. The motion carried unanimously.

(Harvey exited the meeting)

3) Application for Variance
Brian Pennings (Pennings & Sons)
2020 Midlake Drive
Property Tax I.D. #3904-08-374-340

The next item on the agenda was the public hearing on the application for a variance of Brian Pennings (applicant) of Pennings & Sons, 2020 Midlake Drive (Parcel ID No. 3904-08-374-340). The applicant is proposing to construct a new residence. The proposed construction will encroach 6'6" into the rear-yard setback and 13' into the front-yard setback. The applicant is requesting a variance from Article 15, Section 17.3 and Section 22.9 of the Township Zoning Ordinance regarding minimum front (lakeside) and rear yard (street-side) setbacks requirements. The subject property is located in the Township's R-1 Low Density Residential District Zoning Classification.

Bert Gale prepared a staff report that was provided to the ZBA members in their agenda packets and summarized it. Gale said that the applicant is making the request for the construction of a new residence. Gale said that the applicant is seeking two variances, 6'6" encroachment into the rear yard setback (20 feet) and a 13' encroachment into the front yard setback (50 feet).

Chairman Carpenter opened the public hearing. The applicant addressed the ZBA and said that he plans to construct a new house on the subject property. The applicant said that the lot is narrow and that compliance with the existing setback standards would leave a difficult and/or unworkable building envelope. The applicant said that other homes were granted similar relief because of the unique lot sizes of the lakefront parcels. The applicant noted that some properties were granted more relief than the request that is before the ZBA.

Chairman Carpenter opened the public comment portion of the public hearing and invited any interested person to speak in support of or in opposition to the applicant's request for a variance. Hearing no public comments, Chairman Carpenter closed the public hearing and the Board members entered into deliberations.

Section 23.8 sets forth variance standards of review, which are as follows:

In determining whether practical difficulties exist, the Zoning Board of Appeals shall consider the following factors:

1. That the variance will not permit the establishment within a zoning district of any use which is not allowed as a permitted or special land use within the district.
2. That compliance with the strict letter of the Zoning Ordinance would unreasonably prevent the owner or occupant of the property from using the property for a permitted purpose, or would render conformity with the Zoning Ordinance unnecessarily burdensome.

3. That a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the surrounding area or, in the alternative, that a lesser relaxation than that applied for would give substantial relief to the owner or occupant of the property involved and be more consistent with justice to other property owners.
4. That the hardship asserted by the applicant by way of justification for a variance is due to unique circumstances of the property.
5. That the hardship asserted by way of justification for the variance is not self-created.
6. That, in granting a variance, the Zoning Board of Appeals is insuring that the spirit of the Zoning Ordinance is observed, public safety secured, and substantial justice done.

The Board members analyzed each standard and concluded that standards 1, 2, 3 and 6 were satisfied.

Guarisco made a motion to approve the request for a variance of Brian Pennings of Pennings & Sons, 2020 Midlake Drive (Parcel ID No. 3904-08-374-340) to encroach 6 feet 6 inches into the rear-yard setback and 13 feet into the front-yard setback because:

- That the variances will not permit the establishment within a zoning district of any use which is not allowed as a permitted or special land use within the district.
- That compliance with the strict letter of the Zoning Ordinance would unreasonably prevent the owner or occupant of the property from using the property for a permitted purpose, or would render conformity with the Zoning Ordinance unnecessarily burdensome.
- That a grant of the variances applied for would do substantial justice to the applicant as well as to other property owners in the surrounding area or, in the alternative, that a lesser relaxation than that applied for would give substantial relief to the owner or occupant of the property involved and be more consistent with justice to other property owners.
- That, in granting the variances, the Zoning Board of Appeals is ensuring that the spirit of the Zoning Ordinance is observed, public safety secured, and substantial justice done.

Carpenter seconded the motion. The motion passed 2-0.

PUBLIC COMMENT 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 7:15 p.m.

Respectfully Submitted,

Rebecca Harvey, AICP, PCP
Township Planning Consultant

Seth Koches
Township Attorney