

**ZONING BOARD OF APPEALS
ROSS TOWNSHIP
January 3, 2024**

The Ross Township Zoning Board of Appeals held its regular meeting on **January 3, 2024, at 5:30 p.m.** at the Ross Township Hall. Acting Chairperson DeKruyter called the meeting to order and noted those present.

Present: Jim DeKruyter, Chairperson
Michael Bekes
Frank Guarisco

Absent: None

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

APPROVAL OF AGENDA: It was noted that Election of Chairperson should be added to the agenda immediately following ‘Approval of Agenda’. Guarisco moved to approve the agenda as modified. Bekes seconded the motion. The motion carried unanimously.

ELECTION OF CHAIRPERSON: Bekes moved to nominate/elect Jim DeKruyter as 2024 Zoning Board of Appeals Chairperson. Guarisco seconded the motion. The motion carried unanimously.

APPROVAL OF MINUTES: Guarisco moved to approve the minutes of **December 6, 2023** as presented. Bekes seconded the motion. The motion carried unanimously.

OLD BUSINESS:

- 1) Application for Appeal/Interpretation
The Bluffs at Gull Lake LLC
12135 M-89
Property Tax I.D. #3904-20-155-012

Chairperson DeKruyter stated that the next matter to come before the Board was the continuation of the public hearing on the Notice of Appeal and Request for Interpretation by The Bluffs at Gull Lake, LLC regarding property located at 12135 M-89 and situated in the R-3 High Density Residential Zoning District.

Chairperson DeKruyter stated the public hearing on the requested appeal/interpretation was opened at the December 6, 2023 Zoning Board of Appeals meeting whereat the Township Planner provided an overview of the application; the applicant's representatives presented the application; the Township Planner, Township Zoning Administrator, and Township Attorney provided comment on the requested appeal/interpretation; and, public comment on the requested appeal/interpretation was received.

Hearing no further public comment at that time, the public comment portion of the public hearing was closed. After general discussion, the Board then acted to postpone consideration of the request to the January meeting to allow adequate opportunity for Board members to read and consider all documents and arguments presented.

Chairperson DeKruyter reintroduced the request for appeal/interpretation and opened the matter up for continued Board discussion.

Bekes stated that he had considered the material and comment provided at the December meeting and had compiled his thoughts on the request in a written statement. He provided copies of the written statement to Board members and then read the statement into the record.

The written statement detailed the following and is incorporated herein by reference:

- Factual findings based upon the record;
- A review/application of relevant zoning provisions (including the purpose and allowed uses of the R-1, R-3 and C-1 Districts; Section 3.4 – Permissive Zoning Concept; and, page ii – Introduction and User Guide to Zoning Ordinance);
- A determination per Section 3.4 that there is no permitted use within the R-1 District 'substantially similar' to a pedestrian pathway associated with a multiple-family development intended to funnel foot traffic to an abutting road.
- A determination per Section 3.4 that there is no special land use within the R-1 District 'substantially similar' to a pedestrian pathway associated with a multiple-family development intended to funnel foot traffic to an abutting road . . noting that the allowed special land use 'public owned and operated buildings and uses, including community buildings and public parks, playgrounds and other recreational uses' would not be 'substantially similar' given the proposed pedestrian pathway will be a private ownership endeavor, not a public endeavor.

Bekes then moved to interpret the Zoning Ordinance as not allowing the applicant as part of its multiple family development on the R-3-zoned area of the parcel to build a pedestrian walkway/trail to D Avenue through a portion of the parcel that is zoned R-1 as such private walkway/trail is not a permissible use within the R-1 District, based upon the findings and conclusions detailed in the written statement. Further, based upon the foregoing interpretation, the decision of the Township Zoning Administrator and Township Attorney on the matter is upheld. Guarisco seconded the motion.

Board discussion on the motion ensued. Township Attorney Thall offered requested clarification on how a private pedestrian pathway would not be ‘substantially similar’ to a public trail. He noted that a public trail (use) would be approved, owned and operated by the Township, wherein the Township Board would be responsible for the decision as to its location and operation. As such, the public would be afforded recourse if there was not support for the decision. This would not be the case for a private pathway.

Reference was then made to the ‘accessory use’ discussion outlined in the staff report that further clarifies that the Ordinance does not allow the funneling of R-3 District uses over the R-1-zoned property. Specifically, the R-3 District allows a ‘multiple family dwelling’ (Section 8.2 C.) and a use accessory to a ‘multiple family dwelling’ (Section 8.2 I.) as permitted uses. However, the R-1 District does not allow a ‘multiple family dwelling’. Accordingly, a use ‘accessory’ (i.e. pedestrian pathway) to a principal use not allowed within the R-1 District (i.e. multiple family dwelling) would not qualify as an ‘accessory use’ allowed by Section 6.2 E.

Bekes then moved to amend his motion to also reference the finding that the proposed ‘pedestrian pathway’ does not qualify as an ‘accessory use’ allowed by Section 6.2 E. and so does not constitute an allowed use within the R-1 District, as well as the clarified distinction of a ‘private pathway’ vs. a ‘public trail’ offered by the Township Attorney that further supports the finding that the proposed pedestrian pathway is not ‘substantially similar’ to an allowed use within the R-1 District. Guarisco seconded the amendment to the motion.

The motion carried unanimously, with a roll call showing Chairperson DeKruyter – voting aye; Bekes – voting aye; and Gaurisco – voting aye.

NEW BUSINESS

- 2) **Application for Approval**
James Nolin
1805 Wild Avenue
Property Tax I.D. #3904-18-270-021

Chairperson DeKruyter stated that the next matter to come before the Board was the request by James Nolin for Board approval of the establishment of a cupola on a new single-family dwelling that will extend 6 ft 2 in above the 25 ft maximum building height allowed by Article 15. Pursuant to Section 16.2, Zoning Ordinance, a cupola is not subject to the 25 ft maximum building height standard, but ‘shall not exceed a reasonable height, as determined by the Zoning Board of Appeals.’ The subject site is located at 1805 Wild Drive and is within the R-1 Low Density Residential District.

Chairperson DeKruyter opened the public hearing.

Gale provided an overview of the request, noting the following:

- Article 15 establishes a maximum building height of 25 ft on a nonconforming lot in the R-1 District, as measured from the average natural grade at the building foundation to the average height between the eave and ridge of the highest roof slope.
- A proposed building height of 24 ft 6 in from the midpoint of the grade to the midpoint of the main gable is proposed.
- Section 16.2 notes that the height limitations ‘shall not apply to cupolas . . however, a cupola shall not exceed 20% of the total roof area and shall not exceed a reasonable height . . to be determined by the ZBA.’
- A 9 ft x 12 ft cupola is proposed to be located on the main gable.
- The cupola will cover 10.7% of the roof area and extend 6 ft 2 in above the allowable roof height.

Jim Nolan was present on behalf of the application. Referencing the proposed building elevations, he explained that the cupola will measure 6 ft 8 in from the midpoint of the main gable to the midpoint of the cupola roof, which will exceed the 25 ft allowed by 6 ft 2 in.

In response to Board questions, Nolan stated that the proposed cupola will extend 2 ft 8 in above the main roof of the house. He explained that the cupola and its roof are designed for energy efficiency and to complement the aesthetics/symmetry of the house.

He further confirmed that the guest house located on the lot opposite the subject site was part of his property and could/would not be sold/used separate from the portion of the lot occupied by the single-family dwelling.

Chairperson DeKruyter noted the receipt of seven (7) letters of support from neighboring property owners. No further public comment was offered and the public comment portion of the public hearing was then closed.

Bekes observed that viewed from the abutting roadway the proposed 31 ft 2 in building height was similar to the building heights on the adjacent properties. The Board agreed that given the maximum building height standard for a conforming lot in the R-1 District is 35 ft, the proposed 31 ft 2 in building would not be out of character.

After further discussion, Bekes moved to approve the proposed cupola with a resulting height of 31 ft 2, noting the following findings:

- The proposed overall building height is similar to building heights on surrounding properties . . and lower than the allowed maximum building height on a conforming lot of 35 ft.
- The coverage of the proposed cupola will not exceed 20% of the total roof area.
- The proposal does not represent a safety or accessibility issue.
- The proposal will not result in blocked views.
- The proposal received support from neighboring property owners.

Gaurisco seconded the motion. The motion carried unanimously.

PUBLIC COMMENT ON NON-AGENDA ITEMS

A Township resident stated that he would like The Bluffs to establish fencing along the east boundary to address animal trespassing.

No further public comment on non-agenda items was offered.

BOARD MEMBER COMMENT

Board members noted that reference was made to the ZBA's bylaws in the recent training session but that it does not appear the ZBA has ever adopted bylaws.

Discussion ensued as to whether the Board was interested in developing/approving bylaws. It was determined that Harvey would provide the Board with sample ZBA bylaws for their review to assist in the decision.

No further Board member comment was offered.

ADJOURNMENT: There being no further business to come before the Board, the meeting was adjourned at 6:40 p.m.

Respectfully Submitted,

Rebecca Harvey, AICP, PCP
Township Planning Consultant