

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

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

Present: Jim DeKruyter, Chairperson  
Michael Bekes  
Cheryl Duffy-Geiger, Alternate

Absent: Frank Guarisco

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

APPROVAL OF AGENDA: Bekes moved to approve the agenda with the addition of a discussion of the ZBA's relationship with the Planning Commission under 'Board Member Time'. Duffy-Geiger seconded the motion. The motion carried unanimously.

APPROVAL OF MINUTES: Bekes moved to approve the minutes of **February 4, 2024** as presented. Duffy-Geiger seconded the motion. The motion carried unanimously.

OLD BUSINESS

Chairperson DeKruyter stated that no Old Business is scheduled for consideration.

NEW BUSINESS

- 1) Application for Variance  
Pat and Mary Weitekamp  
361 South Gull Lake Drive  
Property Tax I.D. #3904-20-118-240

Chairperson DeKruyter stated that the next matter to come before the Board was the request by Pat and Mary Weitekamp for variance approval from the front (waterfront) and side setback requirements and the maximum lot coverage requirement so as to alter the north wall of the waterfront home and construct an addition to the house and an

attached garage. The subject site is located at 361 South Gull Lake Drive and is within the R-1 Low Density Residential District.

Chairperson DeKruyter opened the public hearing.

Chairperson DeKruyter requested clarification from the applicant regarding the specific variance requests, specifically, the lot coverage and side setback variance requests.

Jeff Swenarton, attorney representing the Weitekamp's, spoke on behalf of the application. He confirmed that the proposal does not require variance approval from the maximum lot coverage standard in that a maximum lot coverage of 29.1% is allowed and the proposed construction will result in a lot coverage of 23.98%, in conformance with the standard.

He further clarified that the proposed construction on the west side of the house, specifically the 2-story attached garage, has been adjusted to comply with the 5.4 ft side setback requirement, noting that the originally proposed 5 ft setback has been increased to a 6 ft setback.

Gale then provided an overview of the request as adjusted by the applicant, noting the following:

- The subject site exists as a lawful nonconforming lot due to size/frontage/lot width.
- Applicant proposes the construction of a 370 sq ft 1-story addition on the east (waterfront) side of the house.
- Pursuant to Section 17.3, a 50 ft waterfront setback is required; a 44.62 ft waterfront setback is proposed. Variance approval from the 50 ft setback requirement is requested.
- Applicant also proposes the reconstruction of the north building wall (per application – 'remove double fireplace; alter north wall to allow for addition of second story; reconstruct as firewall') and the addition of a second story on the north side of the dwelling.
- Pursuant to Section 22.9, a 5.4 ft side setback is required; a 0 ft setback is proposed. Variance approval from the 5.4 ft side setback requirement is requested.

Harvey referenced the staff report provided and summarized that the request essentially consists of 3 separate considerations by the Board: variance approval from the 50 ft front (waterfront) setback requirement for the proposed 370 sq ft 1-story addition; variance approval from the 5.4 ft side setback requirement for the proposed reconstruction of the north wall currently provided a 0 ft setback from the north property line; and, variance approval from the 5.4 ft side setback requirement for the proposed addition of a second-story on the north side of the dwelling. She noted the staff report provides an analysis of the variance criteria established by Section 23.8, Zoning Ordinance for each of the 3 variance considerations.

Swenarton again addressed the Board on behalf of the application. He confirmed the accuracy of the summary of the setback variances being requested. Referencing the plot plan and photos provided in the application, he reviewed the history of the property. He noted the property was previously owned by siblings where each owned half of a duplex that was centrally located on the common property line of two adjacent lots.

In recent years, the lots and each half of the duplex were sold separately, the south half being purchased by the applicant in 2015. In 2019, the north half of the duplex was removed by the new owner and a new house constructed on the property purchased. Since the construction of the new house, the parties have been in litigation to resolve issues of property ownership and access. These issues have since been resolved.

Swenarton explained that with the resolution of the litigation, the applicant now desires to remodel their half of the duplex left standing to address construction safety, livability and appearance issues. He noted that the proposed additions will not significantly increase the size of the existing dwelling.

In support of the requested side setback variance, Swenarton argued that the situation of the half of the duplex left standing with a 0 ft side setback is a unique circumstance of the property and one that was not self-created. He further noted that the proposed construction will improve the appearance of the dwelling and not alter the existing location of the building.

In support of the requested front (waterfront) setback variance, Swenarton stated that the proposed addition is a modest improvement that will not serve to decrease the existing waterfront setback nor significantly change existing conditions on the site. He further noted that the proposed setback will be greater than the waterfront setbacks found on the adjacent lots and many of the surrounding properties.

Referencing Photo #9 provided in the application, Bekes requested clarification of the location of the north property line. Swenarton explained that the chimney on the north wall of the dwelling currently encroaches over the north property line and that once removed, the north wall of the dwelling will be flush with the north property line or the equivalent of a 0 ft setback. He further referenced the 6 ft access easement on the property adjacent to the north that was part of the settlement agreement and allows for maintenance of the north side of the dwelling.

The Board further requested clarification regarding the proposed 'reconstruction' of the north building wall. It was agreed that the proposed work constitutes 'reconstruction' and not 'repair'. In consideration of the proposed 0 ft setback, the applicant confirmed that the reconstruction will include a 6-inch overhang with gutters/eaves, which is allowed by the agreement to extend into the 6 ft access easement.

Mary Sutton stated that she is the realtor who sold the south half of the duplex to the applicant. She confirmed the history of the property previously presented. She emphasized that the history of the property and the existing 0 ft setback is not the fault of

the applicant and that the variances must be granted in order to allow the proposed property improvements to occur. Sutton further noted that the requested variances are minor and will not make existing circumstances worse.

Chairperson DeKruyter noted the receipt of 4 letters from neighboring property owners (Brookins, Newhouse, Weaver (2)).

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

The Board proceeded first with consideration of the variance request from the 5.4 ft side setback requirement applicable to the reconstruction of the north wall of the dwelling. In 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.  
  
However, the proposed wall reconstruction will result in an expansion of a nonconforming building . . . and an increase in the existing nonconforming side setback. Per Section 22.3 b., a special land use permit will be required for the proposal.
- #2 In determining if compliance would be unnecessarily burdensome, it was noted that the subject site is currently occupied by a dwelling with a detached accessory building and that a denial of the requested side setback variance will not prevent permitted use of the property. However, it was recognized that reconstruction of the north building wall in compliance with the 5.4 ft side setback requirement would require a major reconfiguration/reconstruct of the existing floor plan suggesting that reasonable options for compliance are not available.
- #3 In determining substantial justice, a review of the side setbacks on surrounding properties was conducted. It was noted that the proposed 0 ft side setback is less than the setbacks occurring on most surrounding lots . . . suggesting an overall lack of consistency with the rights enjoyed by other properties in the neighborhood/district.
- #4 In consideration of unique physical circumstances, it was recognized that the plot plan does not reveal the presence of any unique physical limitations on the site preventing compliance that are not generally present on other properties in the area/district.
- #5 The proposal is at the discretion of the applicant and represents a self-created hardship.
- #6 The purpose of the side setback requirement was referenced and the following noted:

- The 10 ft side setback requirement is already reduced to 5.4 ft in consideration of the nonconforming width of the lot.
- The proposed 0 ft side setback is less than the required minimum side setback of 5.4 ft, suggesting building separation, open space, light/air and visibility objectives will not be met.
- However, the proposed reconstruction will remove the existing encroachment and not significantly alter the existing situation; will improve building safety and provide for fire safety through the proposed firewall construction; will achieve access objectives due to the 6 ft access easement that exists on the adjacent lot; and, will meet storm water management objectives through proposed gutters/eaves.

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

Bekes moved to grant variance approval from the 5.4 ft side setback requirement so as to allow the proposed reconstruction of the north wall of the dwelling with a 0 ft side setback based upon the stated findings of the Board on variance criteria #1, #2, and #6 set forth in Section 23.8 A., Zoning Ordinance. Duffy seconded the motion. The motion carried unanimously. Chairperson DeKruyter stated that he does not support 0 ft setbacks and explained that his support of the request was based on its distinction as an existing structure.

Chairperson DeKruyter reminded that a special land use permit will still be required for the proposed expansion of a nonconformity and will require application to the Planning Commission.

The Board then proceeded with consideration of the variance request from the 5.4 ft side setback requirement applicable to the proposed addition of a second-story on the north side of the dwelling.

In response to Board questions, Gale referenced the proposed building elevations and photos included in the application and detailed the extent and location of the proposed second-story addition on the north side of the dwelling.

Attorney Thall referenced the access/easement agreement contained within the settlement, noting that the easement extends "6 inches into air space from the existing roof". He explained that the access easement will not apply to the proposed new second-story addition under the terms of the agreement.

Board discussion ensued regarding how the variance request is to be considered if the easement will restrict the addition. Attorney Thall stated that he drew attention to the limitation of the agreement as a point of information only, noting that the responsibility of the Board is to consider the variance request according only to the variance criteria established by Section 23.8.

In 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.
- However, the proposed second-story addition will result in an expansion of a nonconforming building . . . and an increase in the existing nonconforming side setback. Per Section 22.3 b., a special land use permit will be required for the proposal.
- #2 In determining if compliance would be unnecessarily burdensome, it was recognized that the subject site is currently occupied by a dwelling with a detached accessory building and that a denial of the requested side setback variance will not prevent permitted use of the property. It was further noted that redesign options are available that provide a conforming side setback . . . including reconfiguration and/or reduction in size.
- #3 In determining substantial justice, a review of the side setbacks on surrounding properties was conducted. It was noted that the proposed 0 ft side setback is less than the setbacks occurring on most surrounding lots . . . suggesting an overall lack of consistency with the rights commonly enjoyed by other properties in the neighborhood/district.
- #4 In consideration of unique physical circumstances, it was recognized that the plot plan does not reveal the presence of any unique physical limitations on the site preventing compliance that are not generally present on other properties in the area/district.
- #5 The proposal is at the discretion of the applicant and represents a self-created hardship.
- #6 The purpose of the side setback requirement was referenced and the following noted:
- The 10 ft side setback requirement is already reduced to 5.4 ft in consideration of the nonconforming width of the lot.
  - The proposed 0 ft side setback is less than the required minimum side setback of 5.4 ft, suggesting building separation, open space, light/air and visibility objectives will not be met;
  - Due to restrictions of the access easement that exists on the adjacent lot, access objectives will not be met.
  - The proposed second-story addition will introduce a new encroachment into the required side setback, increasing the existing nonconforming situation.

It was stated that the above findings were based on the application documents presented

and the representations made by the applicant at the meeting.

Duffy-Geiger moved to deny variance approval from the 5.4 ft side setback requirement so as to allow the proposed second-story addition on the north side of the dwelling with a 0 ft side setback based upon the stated findings of the Board on variance criteria #2, #3, #4, #5 and #6 set forth in Section 23.8 A., Zoning Ordinance. Chairperson DeKruyter seconded the motion. The motion carried 2-1, Bekes dissenting.

Chairperson DeKruyter reminded that a special land use permit will still be required for the proposed expansion of a nonconformity and will require application to the Planning Commission.

The Board then proceeded with consideration of the variance request from the 50 ft waterfront setback requirement. In 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.  
  
However, the proposed reconstruction/expansion will result in an expansion of a nonconforming building . . and an increase in the existing nonconforming waterfront setback. Per Section 22.3 b., a special land use permit will be required for the proposal.
- #2 In determining if compliance would be unnecessarily burdensome, it was recognized that the subject site is currently occupied by a dwelling with a detached accessory building and that a denial of the requested waterfront setback variance will not prevent permitted use of the property. It was further noted that redesign options are available that provide a conforming waterfront setback . . including reconfiguration and/or reduction in size.
- #3 In determining substantial justice, a review of the waterfront setbacks on surrounding waterfront properties was conducted. It was noted that the proposed 44.62 ft waterfront setback is greater than the setbacks occurring on both adjacent lots and greater than many properties in the surrounding area . . suggesting a general consistency with the rights commonly enjoyed by other properties in the neighborhood/district.
- #4 In consideration of unique physical circumstances, it was recognized that the Plot Plan does not reveal the presence of any unique physical limitations on the site preventing compliance that are not generally present on other properties in the area/district.
- #5 The proposal is at the discretion of the applicant and represents a self-created hardship.

#6 The purpose of the waterfront setback requirement was referenced and the following noted:

The proposed 44.62 ft waterfront setback is less than the required minimum waterfront setback of 50 ft, suggesting waterfront/building separation and shoreline preservation objectives will not be met;

However, the proposed 44.62 ft setback is greater than the 38 ft and 29 ft waterfront setbacks existing on the adjacent lots, suggesting horizontal sight lines and building alignment objectives will be met.

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

Bekes moved to grant variance approval from the 50 ft waterfront setback requirement so as to allow the proposed 370 sq ft 1-story addition with a 44.62 ft waterfront setback based upon the stated findings of the Board on variance criteria #1, #3 and #6 set forth in Section 23.8 A., Zoning Ordinance. Duffy seconded the motion. The motion carried unanimously.

Chairperson DeKruyter reminded that a special land use permit will still be required for the proposed expansion of a nonconformity and will require application to the Planning Commission.

#### PUBLIC COMMENT ON NON-AGENDA ITEMS

Mary Sutton reiterated the circumstances leading to the Weitekamp application and the merit of the proposed improvements to the existing dwelling.

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

#### BOARD MEMBER TIME

Bekes explained that the Planning Commission was presented with the ZBA's request for a rethink of the process that applies when both variance requests and expansions of nonconforming buildings are involved. He noted that the Planning Commission is currently discussing options for amending the nonconforming building provision but have expressed concern with losing the integrity of the decision-making process applicable to expanding nonconformities.

The ZBA reiterated their desire only to streamline the process. Lengthy discussion ensued with Attorney Thall and Harvey on options available.



ADJOURNMENT: There being no further business to come before the Board, the meeting was adjourned at 7:50 p.m.

Respectfully Submitted,

Rebecca Harvey, AICP, PCP  
Township Planning Consultant