

**ZONING BOARD OF APPEALS
ROSS TOWNSHIP
MEETING MINUTES
October 2, 2024**

The Ross Township Zoning Board of Appeals (ZBA) held its regular meeting on October 2, 2024, at the Ross Township Hall. Chairperson DeKruyter called the meeting to order at 5:30 PM.

Present: Jim DeKruyter, Chairperson
Frank Guarisco ZBA Member
Michael Bekes ZBA Member
Bonnie Sawusch (Alternate ZBA Member)

Absent: None

Also present: Bert Gale, AGS – Township Zoning Administrator
Nick Keck, AGS – Township Zoning Administrator
Catherine Kaufman – Township Attorney

APPROVAL OF AGENDA

Guarisco moved to approve the agenda as presented and Bekes supported. The motion carried unanimously.

APPROVAL OF MINUTES

Guarisco moved to approve the minutes of September 4, 2024, as written and DeKruyter supported. The motion carried unanimously.

Kaufman shared Attorney Robert Thall’s opinion on one of three variance requests up for ZBA consideration concerning the sign at The Bluffs. Specifically, the location of the sign on the property is controlled by the Michigan Department of Transportation (MDOT) and the size of the sign and height of the sign is controlled by the Ross Township ordinances. Kaufman suggested the ZBA consider reversing the decision by Gale regarding location and only consider the variance requests for sign size and height from the appellate.

Bekes moved to accept Thall’s interpretation as presented by Kaufman, reverse Gale’s decision on location of the sign and only consider the variance requests for the sign’s size in terms of square footage being greater than maximum and the height of the sign being taller than maximum when measured per ordinance from the abutting road. Guarisco supported and the motion passed unanimously.

October 2, 2024 ZBA Meeting

OLD BUSINESS

Chairperson DeKruyter stated that no old business is scheduled for consideration.

NEW BUSINESS

- 1) **Request for Variance and Alternatively Appeal of Zoning Administrator Requirements/Determinations, Request for Interpretation of Ordinance, and Request for Issuance of Zoning Approvals and Permits.**
The Bluffs at Gull Lake LLC
Subject Parcel Property Tax Identification Number: 3904-20-155-012

Chairperson DeKruyter stated that the next matter to come before the committee is the request by The Bluffs for the size and height variances for the proposed monument sign on M-89.

Gale stated the proposed sign area of 20 square feet is greater than the 12 square feet by ordinance for residential developments and the height of the sign as measured between the highest point of the sign and the nearest abutting road (M-89) is greater than the six feet by ordinance. The applicant is seeking variances from the 12 square feet sign area and the height of the sign as the sign itself is only five feet tall and it will be installed 55 feet from the road up an incline as the land rises immediately from the road.

Gale notified the ZBA the base of the sign is not to be considered part of the sign area by definition in Section 2.2 as the definition states sign area shall be measured as the area within a single, continuous perimeter composed of any straight line geometric figure which encloses the extreme limits of writing, representation, emblem, logo or any other figure of similar character, together with an frame or other material or color forming an integral part of the display or used to differentiate the sign from the background against which it is placed, excluding only the pedestal, pole, or other structure necessary to support the sign.

Tom Amon and Matt Callendar were present on behalf of the applicant.

Amon shared his thanks on the earlier motion regarding location of the sign. Amon then described the odd spot for the sign location as it is set back from the road up a hillside. He stated the sign will be five feet high when measured from the ground and although six feet is allowed the height measurement is taken from the highest point of the sign to the ground level of the road. The setback from the road is 55 feet from the roadway and up an incline. As the location was directly across the street from the Ross Township Office, he was able to show the ZBA members the approximate location of the sign by pointing out the window. Amon then articulated the sign was originally designed at 12 square feet but was redesigned to extend two feet out on each side to make it more austere in appearance, primarily due to the location distance from the road.

DeKruyter opened Public Comment and noted that no written correspondence on the matter had been received.

With no further public comment offered Bekes motioned to close public comment and Guarisco supported. The motion carried unanimously and the public comment period was closed.

The committee members agreed to address both the signage area and the height of the sign variance requests together when discussing the variance criteria set forth in Section 23.8 A. The following findings were noted:

#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.

The ZBA agreed the proposed sign is permitted within the Rural Residential 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.

In determining if compliance would be unnecessarily burdensome, it was noted that the subject site has a steep hill which complicated sign location choices. Options to cut into the hill for the sign location may require a large retaining wall which would be 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 the 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.

In determining substantial justice, it was noted the proposed sign is consistent with other nearby signs. There are no concerns about a sight line issue with the location of the sign and the sign should provide adequate notice of The Bluffs driveway contributing to road safety for all.

#4 That the hardship asserted by the applicant by way of justification for a variance is due to unique circumstances of the property.

In consideration of unique physical circumstances, it was recognized the location of the sign is not on land owned by developer but rather land within the easement offered by Consumers Energy. In addition, the location of the sign on the land is controlled by MDOT.

#5 That the hardship asserted by way of justification for the variance is not self-created.

The proposal was determined to be at the discretion of the applicant.

#6 That, in granting a variance, the Zoning Board of Appeals is ensuring that the spirit of the Zoning Ordinance is observed, public safety secured, and substantial justice done.

The ZBA members agreed the spirit of the Zoning Ordinance would be observed in granting the variance as traffic safety is paramount to the decision. Proper identification of the driveway entrance should result in fewer drivers having potentially dangerous reactions when it becomes immediately apparent they just drove by the driveway at 55 mph (immediate braking, potential U-turns). The sign lettering size at the proposed maximum of 9.5 inches would only allow a driver going 55 mph on M-89 less than 120 feet of viewability and less than 1.5 seconds of visibility. Allowance for the larger sign area to accommodate the larger letters on a sign that is visually appealing offers substantial justice to the applicant and secures public safety for all drivers on M-89.

Bekes stated the above findings are based on the documentation presented by the applicant and the representations made at the meeting.

Bekes moved to grant variance approval for the applicant to construct a monument sign along M-89 at the entrance to the Bluffs apartment complex per the drawings and dimensions presented to the ZBA. The variance approval is for both the sign height (five feet from the ground level at the location controlled by and determined by MDOT) and the 20 square foot area of the sign. This approval is based upon the stated findings of the ZBA members on variance criteria of #1, #2, #3, #4 and #6 set forth in Section 23.8 of the Zoning Ordinance. The motion also recognizes the contract established between the applicant and MDOT will take precedence regarding potential actions described in said agreement at some points in the future. Guarisco supported and the motion carried unanimously.

2) Application for Variance

Jennifer Doan

15994 E. Augusta, Dr.

Subject Parcel Property Tax Identification Number: 3904-26-285-012

Chairperson DeKruyter stated the next matter to come before the committee is the request by Jennifer Doan for variance approval to construct a fence in the front yard that will exceed the maximum four-foot height requirement.

Gale stated the property is a conforming property. The proposed is a request for a variance to Article 18.6C for a fence in the front yard to exceed the allowed height. The applicant is seeking a variance to measure the fence height from the finished crown of the road rather than the fence location per ordinance to mitigate head lights from shining into their home from N 46th Street. Gale stated the applicant started the fence and the work was stopped by Gale because of the fence height maximum being exceeded. Gale opined the ZBA should consider the variance be approved or denied based on height of the fence from the ground instead of considering a variance to measure fence height from the crown of the road. Kaufman affirmed Gales position and suggested the ZBA zeros in on the fence height from the ground level.

Dan Doan was present on behalf of the application. Doan explained the home had headlight pollution coming in the home after dark as headlights from vehicles turning right off 46th Street onto E. Augusta Drive shine directly into their front facing windows. With children under five, and dogs barking when lights shine into the home the problem is very distracting. The road easement on E. Augusta Drive is 33 feet from the center of the road and this request for the fence is a minimum of 46 feet from the road centerline.

Board questions established the fence height would be approximately eight feet high from ground level, the fence will be constructed in like manner of the other fences on the property, the fence will not include a corner as the fence is only a linear fence along the front yard property line area, the applicant has lived in the home since December 2016 and large pine trees that were growing in that area providing some protection from the light nuisance were removed within the last year due to both their condition and their growing interference with power lines. When asked about road safety concerns when backing out of the driveway if the fence was permitted, Doan responded there should be no issue as the fence location would allow plenty of visibility to the road whether pulling out or backing out of the driveway.

Guarisco moved to open Public Comment. Bekes supported and the motion passed unanimously.

DeKruyter noted one piece of written correspondence on the matter had been received which included 10 neighbors' signatures attesting to their approval of granting a variance to allow the fence construction. Nine neighbors live on E. Augusta Drive and one lives on 46th Street. No correspondence opposing the project was received.

With no further public comment offered, Guarisco moved to close Public Comment. Bekes supported and the motion passed unanimously.

The Board then proceeded with consideration of the variance request from the four-foot fence height maximum at the ground level location of the fence. In review of variance criteria set forth in Section 23.8 A the following findings were noted:

- #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.**

The ZBA members agreed the fence in the front yard is permitted within the Rural Residential 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.**

The ZBA members agreed compliance would not be unnecessarily burdensome as other low-cost alternatives could be considered to resolve the issue of headlights shining in the home as a nuisance.

- #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 the 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.**

The setback from the road is in compliance and an eight foot fence height would not impede traffic or viewsheds of neighbors. Vehicle lights shining in the home is recognized as a nuisance by the ZBA and the ten neighbors citing their desire for an approval of the project is also a consideration. The end result of minimizing light shining into the home from vehicles making a right hand turn on to E. Augusta Drive from 46th Street does provide the applicant substantial justice.

- #4 That the hardship asserted by the applicant by way of justification for a variance is due to unique circumstances of the property.**

The ZBA concluded the property topography and the problems associated with vehicle lights shining in to homes is not a unique circumstance.

- #5 That the hardship asserted by way of justification for the variance is not self-created.**

The proposal is at the discretion of the applicant and represents a self-created hardship.

#6 That, in granting a variance, the Zoning Board of Appeals is ensuring that the spirit of the Zoning Ordinance is observed, public safety secured, and substantial justice done.

The ZBA members agreed the spirit of the Zoning Ordinance would be observed as the fence would appear the same as other fences on the property and viewshed would be the same from a driver's perspective as if the fence were a four-foot fence built on level ground assuming the ground was at the same level as the road. No public safety concerns are apparent. The fence at eight feet height offering the minimization of the light in the home offers substantial justice to the homeowner without any impact on neighboring properties.

Bekes stated the above findings are based on the application documents presented and the representations made by the applicant at the meeting.

Bekes moved to grant variance approval to allow an 8-foot fence be built as described on the drawings at the front yard setbacks submitted to the ZBA. The eight-foot height might be a couple of inches shorter or taller so the motion articulates the height of the fence will not be higher than the posts that were already set in the ground prior to the work stop order from Gale. The approval is based upon the stated findings of the ZBA on variance criteria #1, #3, and #6 set forth in Section 23.8 of the Zoning Ordinance with a higher weight given to points outlined in the criteria #6 discussion. The fence would be subject to compliance with all other applicable dimensional requirements. Guarisco supported and the motion carried unanimously.

3) Application for Variance

Kelly Hall

8839 Camomile Drive, Augusta MI

Subject Parcel Property Tax Identification Number: 3904-15-265-014

Chairperson DeKruyter stated that the next matter to come before the committee is the request by Kelly Hall to build a detached garage resulting in 11.4% of lot coverage where 10% is required. The applicant is requesting variance approval to allow for the 11.4% lot coverage. The property is in the R-R Rural Residential Zoning District.

Gale stated the property is a non-conforming lot in a subdivision. The proposed is a request for a variance to Article 15 for lot coverage to build a detached garage. Gale stated all zoning requirements are met with this application except for the 11.4% lot coverage as the maximum is 10% per the ordinance.

Kelly Hall was present on behalf of the application. Hall stated the ordinance would only allow him to build a garage at 400 square feet and because he maintains a classic car and a boat, he needs a garage at 24 feet by 32 feet, a total of 732 square feet. His proposal is to construct the garage and match the structure, siding and appearance to the existing home.

The lot coverage of 11.4% was further described by Gale as area of the building on only the rear yard of the home and not the area of the entire lot. Board questions also established the property to the east is green space designated by the developer, the Home Owners Association allows for detached garages in the sub-division, there would be no negative sight line impacts on neighbors, there will be no commercial activity at the garage and electrical utility would be run to the garage from the existing home.

Bekes moved to open Public Comment. Guarisco supported and the motion passed unanimously.

Chairperson DeKruyter noted no written correspondence on the matter had been received.

With no further public comment offered, DeKruyter motioned to close public comment. Guarisco supported and the motion passed unanimously.

The Board then proceeded with consideration of the variance request of backyard lot coverage of 11.4% with the construction of the proposed detached garage. In review of variance criteria set forth in Section 23.8 A the following findings were noted:

#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.

The ZBA members agreed the detached garage is permitted within the RR Rural Residential 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.

The ZBA members agreed compliance would not be unnecessarily burdensome to resolve the issue as the garage can be made smaller to meet the 10% lot coverage maximum per ordinance.

#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 the 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.

Detached garages are allowed in the sub-division and no issues of neighbor sight line or stormwater runoff control were apparent. Allowing for the construction of the 24 feet by 32 feet detached garage would do substantial justice to the applicant without negative impact to the neighbors.

#4 That the hardship asserted by the applicant by way of justification for a variance is due to unique circumstances of the property.

No uniqueness in the property was prevalent.

#5 That the hardship asserted by way of justification for the variance is not self-created.

The proposal is at the discretion of the applicant and represents a self-created hardship.

#6 That, in granting a variance, the Zoning Board of Appeals is ensuring that the spirit of the Zoning Ordinance is observed, public safety secured, and substantial justice done.

The ZBA members agreed the spirit of the Zoning Ordinance is observed as a garage is allowed in the Rural Residential district, there would be no impact on public safety with the construction of the garage and the applicant would still have 88.6% open space in the rear yard after construction. No viewshed issues were determined to exist, storm water runoff onto adjoining properties is not a concern and the land abutting the property closest to the construction site is green space.

Bekes stated the above findings are based on the application documents presented and the representations made by the applicant at the meeting.

Bekes moved to grant variance approval to allow a 768 square foot detached accessory building at 8839 Camomile Drive, Augusta Michigan that would result in a rear lot coverage of 11.4% with the following conditions: The building is built as described on the drawings submitted to the ZBA and no commercial activity will exist within the building. The approval is based upon the stated findings of the board on variance criteria #1, #3, and #6 set forth in Section 23.8 of the Zoning Ordinance with a higher weight given to points outlined in the criteria #6 discussion. The detached accessory building would be subject to compliance with all other applicable dimensional requirements and all building codes. Guarisco supported and the motion carried unanimously.

BOARD MEMBER TIME

DeKruyter announced Gull Lake Ministries will be in front of the ZBA at the November 6th meeting and his need to abstain due to his being Vice Chairman of the Board of Directors for Gull Lake Ministries. DeKruyter introduced Lonnie Lombard and Steve Kieth of Gull Lake Ministries, whom were in attendance. Guarisco will chair the November ZBA meeting due to this conflict and Alternate Sawusch will attend as a ZBA member decision maker. No details on the upcoming presentation by Gull Lake Ministries was offered.

DeKruyter then asked Bekes for an update on the initiative to grow the ZBA to five members from the current three. Bekes reported the Kalamazoo County Clerk confirmed Ross Township had over 4500 registered voters and referred him back to Attorney Thall for actual population. Thall opined since the population of Ross Township is nearing, if not already over the 5000-person threshold, it would be in order to bring the initiative in front of the board. Bekes shared he plans on presenting this to the Ross Township board at their October 15th board meeting.

Bekes updated the ZBA on recent board activities highlighting the new Battery Storage and Solar ordinance updates the PC had been working were both approved by the Township Board at their September board meeting. The announcement of the two ordinances was published in the local paper on Sunday, September 29th.

ADJOURNMENT

There being no further business to come before the Board, DeKruyter motioned to adjourn and Guarisco supported. Passing unanimously, the meeting adjourned at 7:17 pm.

Respectfully Submitted,

Michael Bekes
Acting Recording Secretary