

**ZONING BOARD OF APPEALS
ROSS TOWNSHIP
MEETING MINUTES
November 6, 2024**

The Ross Township Zoning Board of Appeals (ZBA) held its regular meeting on November 6, 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)
Cheryl Duffy-Geiger - (Alternate ZBA Member)

Absent: None

Also present: Bert Gale, AGS – Township Zoning Administrator
Nick Keck, AGS – Township Zoning Administrator
Robert Thall – Township Attorney

APPROVAL OF AGENDA

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

APPROVAL OF MINUTES

Guarisco moved to approve the minutes of October 2, 2024, with the correction of two names originally within the text that were misspelled and corrected footers to reflect the correct meeting date. DeKruyter supported and the motion was carried unanimously.

OLD BUSINESS

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

NEW BUSINESS

Chairperson DeKruyter recused himself of the first order of new business as he is directly involved in the request by Gull Lake Ministries (GLM). The chair position was handed over to Guarisco and the voting body was assigned to alternate Sawusch.

Acting Chair Guarisco stated that the next matter to come before the committee is the Public Hearing on Application for Variance from GLM. Subject Parcel Property Tax Identification Numbers: 3904-08-377-250, 3904-08-377-260, and 3904-08-377-270, located at 1930 Midlake Drive in the R-1 Low-Density Residential Zoning District within Ross Township. The Applicant is proposing to replace the existing lake front building with a building having a 20-foot lakeside setback where a 32-foot setback is required pursuant to Guidelines and Regulations for operation

of a Religious Bible Conference Center per court order with the Township. A variance is required for the proposed location of the new building.

Gale stated the subject property is a group of non-conforming lots located in the R-1 Low-Density Residential Zoning District regulated by a March 20, 1997, court order. A variance is being requested to construct the building with a 20-foot front yard setback as the requirement is a setback of 32 feet. The court order was established in 1997, and the setback requirements are different than other properties in the R-1 District.

Gale read Section 5C paragraph 2 from the court order (section 5-Permits and Ordinance Enforcement and Section C-Setback, Area and Coverage of Existing Lots) for reference which states 'Shall be setback from the normal high-water line of Gull Lake a distance equal to at least the average setback of the nearest existing dwellings or other principal buildings/structures on each side of the use at the time of application for a building permit. For the purposes of this provision, the term "normal high-water Line" shall mean the mark or line that is ascertainable by a visible inspection to identify the highest line where the water/normal wave action and beach type soils/vegetation are distinct from the soils and vegetation of the shore of the lake.'

Bekes inquired about one corner of the proposed building being subject to both a 20-foot and a 35-foot front yard setback per the drawing. Gale explained both setback measurements are considered front yard setbacks as the water direction changes at the reference point as there is a 90-degree point of land at that spot, due to a man-made inlet.

Steve Keith and Lonny Lombard were present on behalf of the aggrieved. Keith explained the current structure is not sound and it is time for something new. The proposed building will replace the current structure along with the two sheds currently used to house canoes and kayaks. The proposed would improve functionality, improve noise control for nearby neighbors, improve appeal and improve safety of children on the beach as moving the new building corner north of where the like corner is on the old building would increase the viewshed from the grass areas for those responsible to watch the young on the beach. The new building would include six rooms versus the existing eight rooms, with each being larger.

Keith explained it would be difficult to move the building 12 feet back and meet setback requirements due to underground wires (stating a quote from Consumers Energy of \$55,000 to move that line) and attempting a smaller building than proposed would not allow for the proper amount of storage of beach equipment, some of which is being stored in the two sheds destined for removal.

Board questions resulted in Kieth explaining the longer building would help abate noise to neighbors as the building would reside between the area of heavy activity and neighbor homes, Thall explaining lighting is covered in the court order, and Kieth explaining the new building's size would allow ample storage room to allow beach areas seen by neighboring properties to appear less cluttered.

Acting Chair Guarisco opened Public Comment and noted that one piece written correspondence on the matter had been received from Daniel Buzz who resides at 1612 Burlington Drive, Hickory Corners MI.

Additional public Comment included:

Terry Berryman – her family has been in the area 100 years. Asked if a study on the lake impact has been performed, shared her experience where their house has been flooded before by GLM actions (GLM took care of the problem), stated concern about the new building being a condominium with heavier guest use, more people and it being more dangerous.

Discussion post Berryman feedback resulted in understanding the 650 person capacity at GLM is established by the court order, the overall lot coverage of the building is less than the 30% maximum requirement, there is no lake impact study needed for a building permit, soil erosion control is expected by the developer, the building will not have the appearance of a multi-family building and Gale will assess the building rendering during the building permitting process.

Mary Carol Wilkins – Worked for GLM for 35 years and would not like to see historical buildings come down, but understands this one needs to come down. She shared concern the current relationship between GLM and private neighbors is not as relational as it could be. She stated she is not against approving the variance request, but the setback should stay at 32 feet, as going to 20 feet when the court order is at 32 feet is overboard. She suggested GLM help neighbors with their leaf pick ups as an example of what can be done to improve the relationship with them.

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

Section 23.8 – ‘Variance Standards and Conditions’ gives the Zoning Board of Appeals the authority to grant nonuse variances related to dimensional requirements of the Zoning Ordinance or to any other nonuse-related standard in the Ordinance where there are practical difficulties in the way of carrying out the strict letter of the Ordinance so that the spirit of the Ordinance shall be observed, public health and safety secured and substantial justice done.

In determining whether practical difficulties exist, the Zoning Board of Appeals considered 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.

The board found the application for the new building for storage and guest rooms is allowed as a permitted use within the R-1 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.

Guarisco found compliance with the strict letter of the Zoning Ordinance would be unnecessarily burdensome because of the need to dig up and relocate the buried electrical service in the adjacent yard to move the building 12 feet to meet setback

requirements. Sawusch and Bekes found compliance would not unnecessarily prevent the owner from using the property for the permitted purpose as the building could be made smaller to meet the 32-foot setback requirement.

- #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.**

Guarisco found the grant of the variance applied for would do substantial justice to the applicant and other property owners as the area would look less cluttered with the opportunity for more inside storage for equipment and the removal of the two sheds currently on the property. Sawusch and Bekes found variance approval would not offer substantial justice to other property owners in the surrounding area because those property owners are subject to fifty feet front yard setbacks whereas GLM can have a 32-foot setback by court order and the request for a 20-foot setback is excessive.

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

The board found there are no unique circumstances regarding the property that justified a variance approval.

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

The board found the hardship asserted by the applicant is self-created.

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

Guarisco and Bekes found granting a variance would be within the spirit of the Zoning Ordinance with public safety and health secured. Removing the old building, construction of the new building, reducing occupancy from eight rooms to six rooms, construction of the new building per the proposed building location plan would minimize noise for neighbors as the activity area where noise is generated would be on the opposite side of the building from the line of sight of neighbors, and expected fire control systems within the new building were points discussed. Sawusch found granting a variance of less than the court ordered 32-foot front yard setback is excessive and is not in the spirit of the Zoning Ordinance.

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

Sawusch moved to deny the variance request for the applicant to construct a new building with a 20-foot front yard setback as proposed. This denial is based upon the stated findings of the ZBA

members on variance criteria of #1, #2, #3, #4, #5 and #6 set forth in Section 23.8 of the Zoning Ordinance, with each carrying an equal weight. Bekes supported. The motion passed with Sawusch and Bekes voting aye and Guarisco voting nay.

DeKruyter returned to the meeting as Chairperson to manage the next order of business with Guarisco and Bekes as voting members. Sawusch remained as a non-voting alternate for the balance of the meeting.

Chair DeKruyter stated the next matter to come before the committee is a request by Christopher Tracy, 1703 Idlewild Drive, the neighboring property to 1681 Idlewild Drive, Tax Identification Number 3904-18-270-130, located in the R-1, Low Density Residential Zoning District within Ross Township. The applicant is aggrieved by the Township Zoning Administrator's decision and interpretation permitting a raised patio project within the lakeside setback areas of the subject property, owned by John and Lynne Chipman. This matter involves the Zoning Administrator's prior interpretation letter of 11/20/13 to neighbor King and its application to this project in question. The Applicant is requesting an appeal of the Zoning Administrator's decision and requests interpretation of the applicable zoning ordinance provisions.

Applicant Chris Tracy presented the board with pictures of the neighbor's patio construction, referred to the 2013 letter and stated the language of the Zoning Ordinance in 2013 does not exist in today's Zoning Ordinance. Section 17.3 states 'shall' be 50 feet from the lake, it does not say 'may' be 50 feet from the lake. Tracy stated his position that manufactured rock used in this manner as landscape is illegal as these manufactured stones were used with dirt put around them to cover up a structure that was already determined to be non-compliant with the Zoning Ordinance.

When asked about his desired outcome, Tracy shared it is not his decision, and pointed out it is bad when neighbors report other neighbors. He shared an opinion on landscaper Wayne McBain as one who does not follow the rules and/or requirements and his concern if Ross Township does not address this situation, precedent setting would be at play and like issues could also prevail in the Richland, Barry and Prairieville areas of the lake. His concern is a structure deemed illegal can be built and then covered up with the application of Gale's interpretation of the 2013 letter. If Ross Township allows this to happen, it would contribute to a reputation that Ross Township does not enforce anything. He stated he was not looking for 'a pound of flesh' as he would rather have these types of projects come forward to the ZBA for consideration versus getting an interpretation from the Zoning Administrator based on the letter from 2013. He stated the patio must come down and a replacement patio be done according to the Ordinance requirements.

Gale began by sharing the provisions being discussed were renumbered with the newer Zoning Ordinance. The section of the prior ordinance referred to in the letter was 7.13 (c)(1) and the same language exists in today's Zoning Ordinance in 16.3(D) and Article 2 Section 2.2 (Definition of Terms).

Gale read portions of the 2013 letter stating the Ross Township Zoning Ordinance regulates where a building or a structure may be placed on a lot and what types of uses may be created in each Zoning District. Large rocks are not buildings or structures pursuant to the definitions found in the Zoning Ordinance and therefore are not subject to the lot, yard and area requirements. The

Zoning Ordinance only addresses fill dirt in the context of how to determine building or structure roof height pursuant to the definitions in Section 2.2 of the Zoning Ordinance. Dirt used for raising the grade level between the large rocks is not subject to the 50 foot setback requirements of the Zoning Ordinance because dirt is not a building or a structure. Gale continued to explain the Zoning Ordinance states that any patio slab, raised deck, porch, steps, or any other similar portion of, or extension to a building or structure above the ground level upon which it is placed, shall comply with the lot, yard and area requirements. Gale opined that the placement of a concrete patio is subject to the 50-foot setback requirements from the normal high-water line if it placed above ground level. If the concrete patio is not placed above the ground level, it is not subject to the 50-foot setback requirements of the Zoning Ordinance. He noted that ground level is not defined as being the natural ground level but ground level is the level of the finished grade at the completion of the project. Gale stated the patio is not built above the ground level nor is it attached to the home. His job is to read the words, interpret them and apply them as written. Gale shared he did so in this case very carefully and has used the context of said 2013 letter since 2013 in his interpretations on like projects. Gale also stated there are no side yard setback issues.

Bekes asked for clarification of the timeline of the project. The project was initially stopped by Gale on June 12, 2024, due to Zoning Ordinance non-compliance. The letter cited non-compliance with Sections 16.3 (Limitations on Area) and 17.3 (Waterway Setback Requirements for All Buildings and Structures). Between June 12th and August 30, 2024, the project plan was addressed, changed multiple times, and assessed by Gale before approval to proceed was given. The completion date of the project was not immediately available and Gale stated final inspection has not happened as of the date of this Zoning Board of Appeals meeting.

Pat Lennon, Attorney representing John and Lynne Chipman began a presentation by asking the board 'why are we here?' implying the neighbor has no standing. Lennon agreed with Gale's interpretation on the June 12th letter and the resolution by the Chipmans. If resolution was not made, the Township would then give a citation and if that infraction was not resolved, the Township could move to the prosecutor's office. This should be a private matter between the Township and the Chipmans. The neighbors may have an opinion, but it remains a private matter between the Chipmans and Ross Township. The Township has the discretion to resolve the issue however they want. If the Township gives a variance or if it was a zoning case, the law says the neighbors do have some rights. The law also says the neighbor must have a legally protective interest or protected property right and has to provide evidence of special damages and/or specific harm. In this case there are no special damages to the neighbor, no legal interest or property right and therefore the neighbor would not qualify as an aggrieved party. Lennon suggested if there was a basis for complaint, the neighbor to the south would feel more impacted. Lennon then shared a letter written by the Chipman's direct neighbor to the south and read excerpts of the letter to the board including a statement of 'full support of the current patio build by the Chipmans' and the stated 'belief that John and Lynne have made the neighborhood much better as excellent, considerate neighbor's, along with their beautiful new home and landscaping and their hope the appeal is denied'.

Lennon concluded by stating the heart of the issue is interpretation. The Chipmans worked with the Township and Associated Government Services to develop the final plan to comply with the interpretation of the Ordinance that has been in place for over a decade (referring to the 2013 letter). Lennon shared the interpretation has been commonly cited and consistently applied. He

shared 26 photos of similar examples of patios built around Gull Lake with the same variables considered in this build, specifically citing the front yard setback and ground level attributes. The rules are clear, they were correctly applied, and the matter should be put to rest as that is within the Township's authority to do. At worst, it should be designated as a legal non-conforming use and if the Township moves forward with changing the Zoning Ordinance text to encourage landscapers to comply to a different standard the update will only apply to projects going forward.

Tracy opined in terms of the aggrieved party aspect they are impacted by the impervious nature of the project, the storm water runoff to the lake impact and the new lights shining into their home. He agreed only them and the neighbors to the south are the only ones impacted. He suggested he did not know if the neighbors to the south were being objective in their letter of support as they are in the middle of a like landscape project with landscaper McBane, the same person who did Chipman's project.

Bekes asked about artificially changing the ground level by adding rock, stones and dirt and how that might be considered when the Zoning Ordinance refers to natural grade in certain circumstances. Bekes referred to several recent examples of ground level cases and asked for an opinion if there may be room here for the Ross Township board to ask the PC to address the Zoning Ordinance and shore up language to better delineate natural grade as it relates to ground level. Gale opined there is always room for Zoning Ordinance improvement as the Zoning Ordinance exists as a live document. Gale stated the Zoning Ordinance we have now is very clear on what is allowed and what is not allowed, reiterating his original interpretation outlined in the 2013 letter remains today. Guarisco shared it may be difficult to rely on natural grade as finished grades change in most structure builds and natural grades would be difficult to assess and/or measure.

Thall stated the Zoning Board of Appeals has the responsibility to decide if Gale's interpretation matches the interpretation made by this board. Ultimately, the board has the final decision on agreement or not with the interpretation or if there may be other factors that mitigate the decision.

Guarisco moved to close the public comment period. Bekes supported and the motion passed unanimously. The public comment period was closed.

Bekes moved to postpone deliberation on the decision to the next ZBA meeting to give board members time to review material brought forth by Tracy, Gale, and Lennon and to give Attorney Thall an opportunity to give board members opinions on the legal aspects brought forth by Tracy and Lennon for consideration before a decision is made. In addition, regardless of the decision on Gale's interpretation the board should also assess the Zoning Ordinance and determine if the Ross Township board should be petitioned to ask the PC to address natural grade and ground level delineation for future applications. Thall to also provide opinions on what happens in the event the ZBA agrees with Gale's interpretation or disagrees with Gale's interpretation. Guarisco supported and the motion passed unanimously.

DeKruyter motioned to hold a Zoning Board of Appeal public meeting on December 18th 2024 at 5:30 pm at the Township Office to continue deliberations. Guarisco supported and the motion passed unanimously.

BOARD MEMBER TIME

DeKruyter asked about penalties for people who begin projects without getting proper permits. Thall shared any penalty would need to relate to additional costs associated with the complaint resolution process. The Ross Township Board would need to approve a fee schedule change to accommodate a penalty or potentially set up a civil infraction process where fines can be collected by the Township, which might also include processing potential parking tickets submitted for parking violations around the lake. Bekes committed to writing a proposal to the board for consideration for a \$200 fine payable to Associated Government Services in addition to the cost of the permit necessary before work could continue or giving a civil infraction fine of \$200, collected by an Infraction Bureau to those who proceed with project work before getting proper permits in place.

DeKruyter asked about landscaping plans during the permitting process on lake front properties. Gale shared it could be part of a checklist and Thall opined we could have a specific permit for landscaping.

DeKruyter asked about The Bluffs lawsuit on the sidewalk from the apartments through their R-1 property to allow pedestrian road access to the Gull Lake Commercial District. Thall declared the Judge in the case found for The Bluffs, approving the walkway. Thall also shared he filed an appeal on the judgement.

Sawusch opined the Master Plan on the Ross Township Website is labeled 2022 but the document on the site is still a draft dated 2020. In addition, the Zoning Ordinance needs to be organized with all the latest changes and republished to all. Thall committed to working on getting the newest version of the Zoning Ordinance organized and ready for publication. Bekes shared he will discuss the Master Plan draft version on the website with Supervisor Hutchings.

Bekes gave an overview of the October 15th Ross Township board meeting including a Town Hall meeting scheduled on November 12, 2024, at 5:30 pm at the Fire Hall to discuss the public water to Ross Township opportunity and the initiative to increase the membership of the Zoning Board Appeals to five members from the existing three members was postponed until the November 19th board meeting. Bekes also reported there was no Planning Commission meeting in October.

ADJOURNMENT

There being no further business to come before the Board, DeKruyter motioned to adjourn and Guarisco supported. Passing unanimously, the meeting adjourned at 8:20 PM.

Respectfully Submitted,

Michael Bekes
Acting Recording Secretary

November 6, 2024 ZBA Meeting