

**ZONING BOARD OF APPEALS
ROSS TOWNSHIP
MEETING MINUTES
September 4, 2024**

The Ross Township Zoning Board of Appeals held its regular meeting on September 4, 2024, at the Ross Township Hall. Chairperson DeKruyter called the meeting to order at 5:00 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
Rob Thall – 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 August 7, 2024, as written and Bekes supported. The motion carried unanimously.

PUBLIC COMMENT

Dan Gallagher spoke on his hope that all ZBA members and those attending the meeting are doing well tonight.

OLD BUSINESS

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

NEW BUSINESS

1) Application for Variance

Dean Bostwick

Vacant Property on EF with no address (approximately 1000 yards east of 42nd Street.

Property Tax I.D. #3904-27-180-019

Chairperson DeKruyter stated that the next matter to come before the committee is the request by Dean Bostwick for variance approval from the front yard setback to allow for the construction of an agricultural barn. The subject site is located on the north side of EF avenue approximately 1000 yards east of 42nd Street in Augusta Michigan. The property is within the Rural Residential District.

Chairperson DeKruyter opened the public hearing.

Dean Bostwick was present on behalf of the application. He explained he is losing his current hay and equipment building (without detail on the why) and would like to build this new barn. The location chosen would make the operation smoother as building on top of the hill would make getting hay more dangerous and difficult during the winter months due to potential icy road conditions and cutting more into the hill to meet the setback requirement would require a large excavation along with the need to construct a corresponding retaining wall. He stated he would like to build a 32 feet by 64-foot barn instead of the 32 feet by 60 feet barn currently listed on the variance request primarily due to receiving more rafters than originally planned.

Gale stated the proposal is a request for a variance to Article 15. The applicant is looking for a front yard setback variance from 50 feet to 30 feet for the agricultural barn to work with the existing drive and to prevent the need to cut into a large existing hill on the 25-acre lot. Gale referenced a document in the Commissions package describing the setback request of 30 feet is from the north road easement line which is 33 feet north of the road easement centerline. The setback from the actual asphalt road is greater than the 30-foot variance request but the standard is measured from the easement line, not the road line. Gale also referenced three additional documents included in the Commissions package which described the land division and placement of the agricultural barn in the southwest corner of the property, the elevation diagram to document the contour lines to demonstrate the gradient of the hill and showing positions of trees on the land.

In response to board questions, Bostwick noted he is very comfortable with the 30-foot measurement accuracy, the agricultural barn will be 14 feet tall, there will be no utilities at this time at the barn, and the barn will be a stand-alone structure as there are no future plans to build a home in that area. Bekes stated there is no road related viewshed issue as the barn will be located in an area where it will not interfere with traffic sightlines.

Thall stated that building the barn at 64 feet versus the 60 feet described in the notice would be acceptable if it were addressed in the motion and approved by the ZBA members.

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

No further public comment was offered. Guarisco motioned to close the public comment portion of the public hearing and Bekes supported it. The motion was carried unanimously, and the public comment period was closed.

The committee members then proceeded with consideration of the variance request from the 50-foot front yard setback requirement. In review of 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 agricultural barn use of the property is permitted within the Rural Residential District.

#2 That compliance with the strict letter of the Zoning Ordinance would unreasonably prevent the owner of 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 building location choices. Redesign options included building at the top of the hill which would result in potentially dangerous conditions due to icy road conditions during the winter or cutting out a portion of the hill which would require a corresponding retaining wall. Both conditions were considered 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, a review of the setbacks on surrounding properties determined an agricultural barn with an approximate 20 foot or less set back was on the neighboring property. It was noted the proposed setback is similar or more in compliance than the arrangement on the adjoining lot.

#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 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, specifically hilly terrain.

#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 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 in granting the variance due to the structure is in the RR District, is an agricultural barn and it will be located as to not impair any roadway sightline.

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 from the 50-foot front yard setback requirement to allow the construction of the agricultural barn with a 30-foot setback on the 25-acre parcel in the area described on the application documentation. The approval is based upon the stated findings of the ZBA members on variance criteria #1, #2, #3 and #6 set forth in Section 23.8 of the Zoning Ordinance. Furthermore, Bekes added the motion includes approval to build the agricultural barn at 32 x 64 feet dimensions and the project would be subject to compliance with all other applicable dimensional requirements. Guarisco supported the motion. The motion carried unanimously.

**2) Application for Variance
Dan Gallagher
481 and 487 South Gull Lake Drive
Property Tax I.D.'s #3904-17-354-190 and
#3904-17-354-180**

Chairperson DeKruyter stated that the next matter to come before the committee is the request by Dan Gallagher for variance approval from a 50' front yard setback to allow construction on a home across two existing lots with a 46' 2" front yard setback. The property is in the R-1 Low-Density Residential Zoning District.

Chairperson DeKruyter opened the public hearing.

Dan Gallagher was present on behalf of the application. He explained the new home originally had a four-foot overhang and that dimension was changed to a three-foot overhang specifically to get within compliance with the lot coverage requirement. The architect drew the second story deck as rectangular, and this is the part of the structure that a variance request to 46 feet 2-inch setback from the lake is necessary. Gallagher explained he asked the architect to consider making the deck irregular in shape by cutting off the one corner of the deck to meet the 50-foot setback requirement and the returned opinion was cutting the corner would make the deck area unsatisfying and requesting a variance instead was the recommendation. Gallagher also explained the placement of the home would allow up to four cars to be parked without street interference. Currently, the road is very narrow, very busy, parking is limited due to the current buildings' roadside setbacks and the property does not extend across the road for parking as there is a hill present. The requested lot location is made to appease most of the neighbors and road safety.

Gale stated the property is a waterfront lot on Gull Lake. Proposed is a request for a variance to Article 15 and Sections 17.3 and 22.9 for a waterway setback of 46' 2" where 50' is required. Gale explained the ordinance determines the setback requirement as the greater of the average setbacks of the neighboring homes or 50 feet. As the average of the two neighboring homes is less than 50 feet, the greater 50-foot requirement becomes the setback requirement. Gale also explained the applicant asked for the lake edge measurement to begin at the water side of the rip rap. Gale opined it could not be the edge point because rip rap is pervious to water so the sea wall had to be used as the point of reference for the water edge.

Responses to board questions included the two properties are not joined into one lot at present time but this is not an issue for ZBA consideration, when the lots are adjoined post construction the lot area would still be considered non-conforming because the total area would be less than 20,000 square feet, the view line drawn on the application documentation can be ignored as it has no bearing on the decisions, the only setback needing a variance is the 46 feet 2 inch to the corner of the upper deck as the side yard setbacks are each greater than 13 feet and the rear yard setback is 37 feet 10 inches, storm water runoff would be controlled with a temporary holding area that would disperse close to the lake, confirmation the existing garage that closely abuts the road will be removed and confirmation of the rear yard setback measurement as the road was not constructed directly in the middle of the right of way, which is fairly normal for roads around Gull Lake.

Chairperson DeKruyter noted one piece of written correspondence on the matter had been received. Dave Krouse submitted a letter with four photos attached. The correspondence confirmed there would be zero viewshed issues with the requested location and raised concern the home would be built well above the existing grade and will tower over their home and deck, which seemed to be the major reason for his disagreement to approval of the variance request. Responses to board questions included the home was determined to

be built at an elevation one foot below the existing grade and the height of the building would be within standard (maximum height of 25 feet). The height standard was determined to not be within the purview of the ZBA variance request decision as the height of the structure would be within standard.

Mark Scholten, a neighbor to the immediate south of Dan Gallagher was present and opined he had no issues with variance approval after his review of the project documentation.

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

The Board then proceeded with consideration of the variance request from the 50-foot front yard setback requirement. 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 proposed single-family home is permitted within the Low-Density Residential District.

#2 That compliance with the strict letter of the Zoning Ordinance would unreasonably prevent the owner of 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 the home could be built five feet back to meet all setback requirements.

#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, a review of the setbacks on surrounding properties determined setbacks of less than the requested 46 foot 2 inches were present. It was noted that the proposed setback is similar and closer to compliance than the those on the adjoining lots.

#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 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 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 the new home would be more compliant regarding setbacks than the existing structures on the property, neighbors' confirmation viewshed and sightlines to the lake will not be compromised and full compliance with lot coverage requirements, street setback requirements and side yard setback requirements is present. In addition, public safety would benefit from the rear yard setback increase as road sightlines would be improved and there would be adequate space to park up to four vehicles without hazard to the road (parked vehicles sticking out into the road as an example).

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 from the 50-foot front yard setback requirement to allow for the construction a single-family residence at 481 S. Gull Lake Drive with a 46-foot 2 inch front yard setback as requested in the application. The approval is based upon the stated findings of the board on variance criteria #1, #3, and #6 set forth in Section 23.8, Zoning Ordinance with a higher weight given to points outlined in the criteria #6 discussion. The project would be subject to compliance with all other applicable dimensional requirements. Guarisco supported the motion. The motion carried unanimously.

PUBLIC COMMENT

No public comment was offered.

BOARD MEMBER TIME

Bekes reported the progress of work on a Ross Township workable ordinance for both Solar Farms and Battery Storage. A public hearing on those two ordinances is scheduled

for September 16th and the current plan is to get the ordinances in the Ross Township board's hands by the September 17th Board meeting.

Discussion on the size of the ZBA in terms of members resulted in Bekes taking responsibility to ascertain the actual population of Ross Township as membership would need to be five members when the Ross Township population is equal to or greater than 5000 residents. Bekes will also work with the Ross Township Board to increase the membership to five as the ordinance currently allows it, alternatives would not be necessary as a board of five can make decision with a quorum of three and the current alternatives (Sawusch and Duffy-Gieger) have attended most meetings, attended various trainings and are already engaged with ZBA responsibilities.

Gale reported there will be an October ZBA meeting on a variance request regarding signage and size along M-89 at the Bluffs Apartments. Thall opined he is investigating the ZBA's purview on the matter as the request is for consideration of a sign MDOT property in which permission had already been granted by MDOT.

BOAT TOUR OF GULL LAKE

The committee toured Gull Lake by pontoon and received a short history of Gull Lake including recent developments and also reviewed properties that were previously granted variances. Suggestions for the Board or Planning Commission regarding any future zoning ordinance changes were not made.

ADJOURNMENT

There being no further business to come before the Board, Guarisco made a motion to adjourn the meeting. Jim DeKruyter seconded the motion. All voted in favor of the motion. The meeting adjourned at 8:09 pm.

Respectfully Submitted,

Michael Bekes
Acting Recording Secretary