

**ZONING BOARD OF APPEALS  
ROSS TOWNSHIP  
MEETING MINUTES  
December 18, 2024**

The Ross Township Zoning Board of Appeals (ZBA) held a Special Meeting on December 18, 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, ZBA Member  
                     Cheryl Duffy-Geiger, ZBA Member

Absent: None

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

**APPROVAL OF AGENDA**

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

**APPROVAL OF MINUTES**

Sawusch moved to approve the minutes of November 6, 2024, as written and Guarisco supported it. The motion carried unanimously.

**CLOSED SESSION**

Bekes moved that the Zoning Board of Appeals convene in closed session under section 8(1)(h) of the Open Meetings Act, to consider material exempt from disclosure by state statute, section 13(1)(g) of the Freedom of Information Act, being a letter from its attorney dated December 15, 2024, for the reason that the letter is exempt from disclosure under State law due to the attorney-client privilege. Guarisco supported and the motion carried unanimously. The ZBA went into closed session in the back-office area at 5:41 PM.

Upon the ZBA members and Attorney Thall returning to the Ross Township Conference Room, Bekes moved to come out of closed session. Guarisco supported and motion carried unanimously. The ZBA meeting was back in open session at 6:14 PM.

December 18, 2024 Special  
ZBA Meeting

## OLD BUSINESS

Chairperson DeKruyter stated old business to conduct is the ZBA deliberation and decision regarding the November 6, 2024, public hearing on the application for appeal and interpretation from Christopher Tracy, 1703 Idlewild Drive. The subject parcel property is the neighboring property at 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 area of the subject property. This matter involves the Zoning Administrator's prior interpretation letter of November 20, 2013 to Mr. 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.

The ZBA discussed their findings on the case which included the following:

- The Zoning Administrator's interpretation based on the letter to King has been valid for many years and was fairly applied to this patio. Reference was given to the twenty-six (26) or more other patios around the lake taking form in this same manner presented at the November public hearing.
- Per the Zoning Ordinance, Building or Structure Height (Roof) states for buildings or structures with a roof, the vertical distance measured from the average of the existing natural (unaltered) grade at the building or structure foundation to the average height between the eave and ridge of the highest roof slope; for structures without a roof, the vertical distance measured from the average of the existing natural (unaltered) grade at the structure foundation to the highest point of the structure. This Zoning Ordinance provision was read out loud verbatim by Bekes.
- Per the Zoning Ordinance, the definition of 'Structure' states anything constructed, assembled or erected, the use of which requires location on the ground or attachment to something having location on or in the ground, and shall include tanks, towers, advertising devices, bins, tents, lunch wagons, trailers, dining cars, camp cars or similar structures on wheels or other supports used for business or living purposes. The word "structure" shall not apply to fences, or wires and their supporting poles or frames of electrical or telephone utilities, or to service utilities entirely below the ground.
- Per the Zoning Ordinance, the definition of a patio states a patio is a structure consisting primarily of flooring at ground level. Recognition that patios at ground level are not subject to front yard setbacks on waterfront properties was cited.
- From a Spirit of the Zoning Ordinance perspective, there is a strong element of constructing a structure when a patio is built upon a grade that is artificially raised with a combination of rocks, dirt, stones, railway ties, and landscaping.

- If the ZBA changes the interpretation and finds that the landscaping/ground level rule is no longer applicable, it would not legally affect this patio as the rule should not be applied retroactively since this patio was constructed under an interpretation based in a prior time, consistently applied for several years and the project was given approval by the Zoning Administrator. The finding specifically included this patio would not need to be demolished, the owner would not need to come in front of the ZBA for a variance and the new interpretation would only apply for new constructions going forward.
- If the ZBA changes the interpretation and rules in this manner, construction companies will not be able to construct like projects within front yard setbacks on waterfront properties without a variance from the Zoning Board of Appeals.
- If the ZBA changes the interpretation and rules in this manner, it would be beneficial for the Ross Township Board to give an ordinance overview assignment to the Planning Commission for updates that would specifically cover the attributes of the new interpretation.

Bekes moved to reverse the decision made by the Zoning Administrator, remove the letter used over the past 10+ years that has been applied consistently on all prior like projects between the time the letter was written and today from consideration on future like projects, not require the current owner to modify their property to bring it into compliance with this new interpretation, have the Zoning Administrator treat patios built on artificially raised natural grade ground levels as structures and have the ZBA ask the Ross Township Board to assign an ordinance review for changes that specifically address this interpretation.

DeKruyter stated new ZBA members Sawusch and Duffy-Geiger would not be voting members on this motion as neither participated as voting members at the initial November 6 public hearing.

Thall added this case is similar to a prior case that went to Circuit Court where a berm was constructed and a line of trees were planted on top of the berm, severely impacting viewshed from the neighbor's perspective. The ZBA ruled it was not allowed as it was a vegetative fence, and the court determined that was a new interpretation, but it cannot be applied retroactively. The ruling revealed you must look at how you have applied interpretations of your ordinances in the past and if there are changes in the interpretation, it would only impact future decisions. The Zoning Administrator can make interpretations as they are given this authority by law. This ZBA board sits above the Zoning Administrator and can say 'they do not agree with the interpretation'. The case before the ZBA today is like that prior case as decisions were made with a long-standing opinion applied consistently by the Zoning Administrator so with a new interpretation, we can't go back and change prior projects. Prior like constructions will be considered lawful non-conforming on that issue. The interpretation of the ZBA would have a prospective effect and only apply to projects moving forward.

When asked, Gale stated he is not aware of any current projects that would be impacted should this new interpretation be voted in.

Guarisco supported and the motion passed with a 3-0 in favor vote.

## **NEW BUSINESS**

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

## **PUBLIC COMMENT**

DeKruyter introduced an emailed letter from Stephanie Walbridge into the record.

Charlie Glass opined from a building perspective that there is always a sloping grade to the lake and determining where the natural grade starts and stops and how that will play out will be difficult at best. DeKruyter opined this is a valid point and it should be addressed by the Planning Commission. Bekes committed to taking the request for the Planning Commission review of the Zoning Ordinance to the Ross Township Board for consideration.

With no further comment offered, Guarisco moved to close the Public Comment period. Bekes supported and the motion passed unanimously 5-0.

## **BOARD MEMBER TIME**

DeKruyter addressed a prior concern of Zoning Ordinance books that have not been fully updated. He shared Thall's office is working on it and Thall shared once it is complete, he will send copies both PDF and in Word Document form to all and give said material to Mary Carol, the Ross Township Office Manager for full distribution.

DeKruyter addressed the prior idea of a penalty when constituents ignore the Zoning Ordinance, begin a project without having proper permitting in place and experience a stop work order. Bekes shared he brought this to the attention of the board with two options, either a \$200 fine payable to Ross Township through AGS in addition to the normal permitting fees or setting up a \$200 fine that would be collected by a civil infraction bureau. Thall reiterated the fine established would need to be reasonably related to the cost of processing the stop work order, additional inspections and administrative costs. Gale recommended a number be established that would just be added to the normal permitting fee as this would prevent the need for AGS to write civil infractions. Bekes committed to discussing the choice with Supervisor Hutchings.

Bekes shared the Master Plan has been uploaded to the Ross Township website.

Bekes put on record the ZBA is now formed with five members, up from the prior three members. Bonnie Sawusch and Cheryl Duffy-Geiger were welcomed in. There will be no alternates going forward and a quorum will now be three members.

Sawusch stated she will not be able to attend the February ZBA Meeting. Bekes stated he will not be able to attend the February and March Meeting. Duffy-Geiger committed to writing the meeting minutes of the February ZBA meeting and Sawusch committed to writing the meeting minutes of the March ZBA meeting, should there be a meeting. Gale confirmed he had no required review for a January meeting resulting in the decision not to conduct a ZBA meeting in January 2025. Gale then confirmed he has a variance review necessary for the February ZBA

December 18, 2024 Special  
ZBA Meeting

meeting. Duffy-Geiger stated she will not be able to attend a ZBA meeting in October 2025 should there be one scheduled.

#### **ADJOURNMENT**

There being no further business to come before the Board, DeKruyter motioned to adjourn, and Bekes supported. Passing unanimously, the meeting adjourned at 6:38 PM.

Respectfully Submitted,

Michael Bekes  
Acting Recording Secretary