

GRATTAN TOWNSHIP ZONING BOARD OF APPEALS
Regular Meeting of October 7, 2010

1. Call to Order

Chairman Pat Mooney called the meeting to order at 7:01 p.m.

2. Pledge of Allegiance

P. Mooney led the Pledge of Allegiance.

3. Roll Call

Members present: P. Mooney, N. Benner, A. Berry, J. Jakeway, D. Hockemeyer, G. Jonker and B. Johnson. Members absent: None. Township Supervisor Frank Force, Township Zoning Administrator Gregg Converse, Township Deputy Clerk Monica Burt and Township Attorney Jim Brown also attended the meeting.

4. Approval of Minutes

A. Berry noted one minor correction to the September 15, 2010 Zoning Board of Appeals minutes. N. Benner moved and D. Hockemeyer seconded to approve the minutes of the September 15, 2010 meeting as amended. All ayes. The motion carried.

5. New Business- Ross Holst- 4852 Abrahams Dr.-Variance Request

Chairperson P. Mooney said the ZBA granted Ross Holst a variance in 2008 for his property at 4852 Abrahams Dr, but that variance has expired. Ross Holst has applied for a new variance.

Ross Holst said he is requesting a variance due to the situation of the hill in the back of his property. He said he is trying to conform to existing homes in the area and keep them in line. Paul Hendricks said he helped with plans for the proposed house. He said the lot was very challenging with the hill at the rear of the lot. He said he tried to ~~the~~ follow the line of the neighbor's driveway to the south of the Holst property. Mr. Hendricks said the proposed house was a good fit and in line with existing houses on the road.

N. Benner asked Township Zoning Administrator Gregg Converse to explain the variance issue. G. Converse said the variance is affecting 2 sections of the ordinance, resulting in a front yard setback violation. He said the 100' x 100' property, located in the lake residential district, is a conforming lot. The front portion of the proposed house and elevated deck are located within the front yard setback. The applicant is requesting a 20' front yard setback variance. G.

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Converse also said the proposed elevated deck is part of the structure. G. Converse provided ZBA members copies of a survey of the Hekman's property located adjacent to the Holst property, submitted by Jim Scales, attorney for the Hekmans. G. Converse explained his drawing of the Holst and Hekman shared property line and the location of both houses in reference to Abrahams Drive.

N. Benner asked if the proposed house was within the 30% maximum lot coverage. G. Converse said the proposed house complies with that requirement.

P. Mooney said there appears to have been a change to the site plan from 2008 as the proposed house now has a deck extending across the entire front of the house. Paul Hendricks said he thought the deck was on the previous site plan. P. Mooney said it was not. ZBA members discussed the location of the deck.

A. Berry said the prior drawing showed a 22' x 24' garage, but the new drawing shows a 30' x 30' garage. He asked the applicant if that was correct. Paul Hendricks said the depth hasn't changed. He said there is a little inset into the house. The actual size of the garage is 24' x 30' with a small 12' x 6' area. Paul Hendricks said the change was made because that area didn't affect the setbacks and it was already going to be a driveway. He said the house didn't go any deeper into the lot. J. Brown asked if the proposed plan accurately showed the deck. Paul Hendricks said it does. J. Brown asked the applicant to describe the deck because some of the materials raise a question about interference of view. Paul Hendricks said the deck will be elevated, with a ~~6' x 6'~~ 6" x 6" corner post and most likely a ~~4' x 6'~~ 4" x 6" post set 2' in from the edge of deck with a 2' overhang. J. Brown asked if under the deck there would be posts with open space. Paul Hendricks said that was correct. J. Brown asked if the deck starts at the second story of the house and the bottom of the deck is more or less level with the second floor. Paul Hendricks said that was correct. J. Brown asked if the deck railing would be solid. Paul Hendricks said it would probably be spindles, not solid wood. N. Benner asked how high the deck would be. Paul Hendricks said about 9'. Paul Hendricks supplied a plan for the ZBA to see the location of the deck. Deputy Clerk Monica Burttt provided the building plan from the applicant's building permit file.

P. Mooney said each person who wishes to speak will have one turn to speak. He asked audience members to direct all their comments to the Board, not to the audience. There will be a 3 minute speaking time limit.

D. Hockemeyer moved and A. Berry seconded to open the public hearing. All ayes. The motion carried.

Anitra Malindine, 4830 Abrahams Drive, said she lives about 65' from Ross Holst's lot. She noted that when she made improvements to her home a variance was required. She said it was difficult with the amount of land residents have and the street located between the properties and the lake. She said her brother,

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Andy Pope, lives between the Holst lot and her lot. She said Ross Holst has done a good job designing his house, taking into consideration Andy Pope's driveway, the road between the lake and the way Hekman's house lines up. She said it would look extremely odd if the Holst house was set way back from the other houses on the road. She said she had the same issues with the hill. She was glad to see homes being improved. She noted that as you go about 3 or 4 lots further down Abrahams Drive the setback requirements decrease. Those homes are even closer to the road. She was in favor of ~~the~~ approving the variance.

Jim Scales, attorney for Don and Mary Hekman, said his clients oppose the variance. He said the Hekmans did not receive notice of the 2008 Holst variance request; if they had they would have opposed the variance request. He said the people who spoke in favor of the 2008 variance would not have been directly affected by the variance. Regarding the current variance request he said the proposed house will be 3 stories tall, with a 2 story deck, and affect the Hekmans, who are 20' away, the most. He said the applicant did not comply with the Township's 90 day variance requirement with his approved 2008 variance.

Mr. Scales said when looking at the 2008 variance application he saw a couple things that were incorrect. The Hekman house and the proposed Holst house do not line up; surveys provided show the Hekman's house sets back from the road-right-of way 26.2' and is 6' farther back than the proposed front wall of the proposed Holst house.

Mr. Scales said forms in place on the Holst property, shown in photographs to be provided, clearly show the walls will be located 4' to 8' in front of the Hekman's house. He said the deck depicted on the Hekmans house gives the impression they have a second story deck, but that deck is near ground level, approximately 16-18" above ground, and will not block anyone's view. Mr. Scales also said at the 2008 variance hearing drawings showed the Hekman and proposed Holst house setting back about the same distance. He said the Hekman's house is 44' deep and the proposed Holst house is 65' deep. He said Mr. Holst's plans now show a bigger house.

Mr. Scales said the Hekman's biggest objection is the location of the building wall, which extends 6' out further toward the road from the Hekman's house and the front deck, both of which will block the Hekman's views and sunlight. He said people on the Holst deck will be right on top of the Hekman's deck.

Mr. Scales questioned whether this variance is contrary to the ordinance. He said the Township ordinance permits ground level decks and noted that if the proposed deck were at ground level it would be allowed without a variance.

Mr. Scales said information provided by the Township Assessor shows the average house size from Murray Lake Road to the White's house on Abrahams Drive is about 1600 square feet. The proposed house would be much larger than

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that average. He said houses in the area on lots with smaller setbacks are generally smaller houses. He said a lot of those smaller houses along Abrahams Drive meet the setbacks.

Mr. Scales said the 2008 variance stated Mr. Holst's lot was the last lot, but there are a couple other lots available in the area. He said although the hill is a challenge, the proposed house would not fit on the lot if the lot were flat; it would be too long for the lot. He said the problem is the house is built deep as opposed to wide and noted that if the garage were located on the side or the deck was at ground level the applicant would not need a variance. He said the ordinance or property is not the cause for a variance; it is the design of the house. Jim Scales ~~provide~~ **PROVIDED** photos of forms in place on the Holst property for ZBA members review. He said those forms show where the walls would be located. He said the deck would extend out another 10-12' from those forms, blocking the Hekman's view and sunlight. He said Mr. Holst should redesign the house to better fit the property and asked ZBA members to turn this variance request down.

Don Hekman, 4866 Abrahams Drive, said he has lived at that address since 1993 and noted when they built their house they went thru the same process, combining 2- 50' lots to comply without a variance. He asked ZBA members to enforce the ordinance. He said if the proposed house is allowed, he will not be able to see to the south of his lake front lot. Mr. Hekman provided another photo for ZBA review noting the location of forms on the Holst property. He said if the proposed house is allowed his property value will take a hit.

Steve Hessler, 5820 Lincoln Lake Road, who is helping Ross Holst build the house, said the house fits relatively well on the lot. He said not everyone lives in the same size house. He pointed out that the tall form shown in the photograph is the wall of the house. The forms extending closer to the road are for the retaining wall which will be about 6" above ground. He did not feel the house will obstruct the Hekman's view. He said the Hekman complaint says the Holst house will obstruct their view of the lake, but the Hekmans will still have a 180 degree view of the lake. He said the proposed Holst house fits well with other houses in the area.

Joel Karr, 4938 Abrahams Drive, said he has just finished fixing up his house. He noted that his deck is so close to the road if something dropped off the deck it would land on a car going by. He was grateful that a nice house was being built on the Holst property to help bring up property values.

Jim Chambers, 10975 Crooked Lake Drive, said when the variance was granted in 2008 it **IS** the Township's responsibility to notify the applicant of the 90 day deadline. P. Mooney said it was. Jim Chambers **SAID** that mistake has caused major financial costs for the applicant.

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Paul Hendricks, 3631 Autumn Crest Lane, Kentwood, said in 2008 stakes were put in at the Holst property for at least a month showing location of a house. He was not sure how the Hekmans did not notice the stakes. He said the Holst house will be a lot more difficult to move now. He said the Hekman property doesn't have the same hill to deal with as Ross Holst. Mr. Hendricks said approximate dimensions were clearly stated on the plan as he did not feel comfortable crossing the property line to measure to the Hekman's house. When construction on the house started the applicant realized he could move the house an additional 2' from the Hekman lot line, increasing the side yard setback to 12'. The garage was located to the back of the house in order to avoid parking on a hill. He said they were not trying to impose on the neighbors, just taking a challenging lot and doing the best they could.

Chris Hekman, 5615 Courtland Meadows Ct., former resident of 4866 Abrahams Drive, who is also looking at purchasing the house next door at 4896 Abrahams Drive, said Mr. Holst purchased the property in 2005. Every summer from that time, stakes were going in, stakes were coming down and the stakes were moving; and the stakes were put in by Mr. Holst and people he knew and typically involved drinking beer and having a good time. Chris Hekman said they knew there would be a house built there. He said Mr. Holst knew what he was buying, knew about the hill and setback requirements and now he just wants too much house for the lot. He said the blue house in the background of one of the pictures is essentially what the view from the Hekman's windows will be. He said the house needs to be shrunk down to fit the lot.

Andy Pope, 4836 Abrahams Drive, said the 3 windows on the south side of the Hekman's house have blinds that he has never seen open, as well as a 15' pine tree in front of one of windows. He asked Board members if they see the lake in the background of the photograph of the forms at the Holst property. He said you see his house in the background. He said the Hekman's view of the lake will not be blocked by Ross Holst's proposed house.

Jeff DeVries, 11141 Crooked Lake Dr., who lives and boats on the lake and works construction, said he has seen plans for Mr. Holst's house. He said the proposal looks good and he was in favor of it.

Jim Chambers questioned why the Hekman's assessment of the average size home in the area stopped at the White's house. He said there are larger houses farther past the White's to the end of Abrahams Drive.

Anitra Malindine said when she applied for a variance the Hekman's said it would block their view and the same thing happened when Don Kurlowicz applied for a variance. She believed this was more of a neighborhood issue than a variance issue. She said there was an existing house from the 40's or 50's on the property the Hekman's purchased in 1993. The Hekman's put an addition on that house. She said she has lived in the area for 33 years, 14 of which were in her

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current home. She agreed that curtains on the windows looking out at the proposed Holst house aren't opened and the Hekman's view of the lake will not be blocked by the proposed Holst house.

Jeff Schmidt, 11002 Keystone Drive, said the Hekman's said they had no knowledge this was going to take place, yet their son said they saw the stakes being put in place.

Steve Hessler said he believed Ross Holst wanted a deck out from the master suite and noted that not everyone has a deck at ground level. He did not see a problem with the deck.

Jim Scales said the Hekman's knew someone was going to build, but expected that they would meet the zoning ordinance.

A. Berry moved and B. Johnson seconded to close the public hearing. All ayes. The motion carried.

Board members reviewed the proposed variance request and said it appears the proposed deck would be located 10' from the road right-of-way and the front of the house 20' from the road right-of-way.

ZBA members reviewed and discussed the building plans. They asked Zoning Administrator Gregg Converse if the retaining wall is considered part of the structure if that retaining wall is attached to the structure. He said it was part of the structure and cannot go further than the setback without a variance. Steve Hessler said the deck doesn't come out as far as the retaining wall.

G. Jonker asked what the exact variance request is. P. Mooney said the applicant had requested a 20' variance from the 30' front yard setback requirement. G. Jonker said he has issues with the proposed deck. P. Mooney said if the variance is granted he would like a statement included in the resolution stating the variance was for the plans as drawn and submitted for the building permit. He would also like to stipulate that the house would have a 20' setback to the wall of the house itself. P. Mooney said the ZBA does not have to grant the proposed deck. G. Jonker said it makes more sense for the bigger part of the deck to be on the south side of the house.

J. Jakeway said a smaller deck would be more conforming.

D. Hockemeyer had concerns about the deck also. She was concerned that people will continue to ask for variances to build larger houses. J. Brown said the test for each variance request is whether or not the variance request meets the standards.

G. Jonker said the applicant should down size to meet the setback requirements.

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J. Jakeway said he only supports a hardship on the back side of the house because of the hill. D. Hockemeyer agreed.

B. Johnson said he had mixed emotions regarding this variance request. He would like to see the deck reduced in size or eliminated to make it less nonconforming. B. Johnson said he did not see the house as **BEING A** detriment to the neighborhood.

N. Benner said the applicant has submitted a beautiful plan, but the house is too big for the lot. She said this is a self imposed hardship. She said the 100' x 100' lot could accommodate a smaller house. The proposed deck is very imposing. She wondered if the whole plan could be bumped back with additional excavation. She said the ordinance could be met by reducing the footprint.

A. Berry said the applicant should build a house to fit the lot and if the applicant can do that it should be done. Either do away with the deck, the garage or move the house back on the lot. He noticed that much of the hill has been excavated already.

P. Mooney said it appears that some members favor reducing the size of the deck and others favor reducing the size of the house.

N. Benner asked if using the plan they have here they could consider a couple of modifications to the plan. She said the deck would have to go because it sticks out 12' or be changed to ground level, and the front of the house modified. P. Mooney said the front corner of the house is at ~~30'~~ **20' FROM THE ROAD RIGHT-OF-WAY**, but the applicant would still have the retaining wall issue. That wall would have to be removed or built out of a different material. P. Mooney said the ZBA was not there to solve all the design problems. G. Converse said Section 2.72 B says a ground level deck is not considered part of the structure if it is 24" or less high. P. Mooney said the applicant has about 6' further back ~~on the lot with the garage to~~ **THAT HE COULD GO AND** stay within the setbacks.

B. Johnson suggested granting a 10' variance from the road right-of-way. He said if the deck was removed from the front of the house the front wall would be 20' from the road right-of-way. N. Benner noted if the applicant removed the deck and modified the front of the house they would still have an issue with the retaining wall. P. Mooney said the applicant could still put a deck in the cut out portion of the front wall, but could not extend beyond the front wall. ZBA members discussed this proposal. Paul Hendricks asked if there could be minor modifications to the plan. G. Converse said he assumed if you granted the variance to a specific outside wall and the ZBA is ~~positioning~~ **FOCUSING** more on building within the footprint **THAN ON THE FLOOR PLAN**, it wouldn't be too disconcerting to him as the Zoning Administrator.

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ZBA members reviewed the findings of fact under Section 18.06 of the ordinance. J. Brown asked if ZBA members agreed with the findings of fact as written in the draft resolution. All members said they did. They asked that an additional finding of fact (f) be added to state that the proposed drive matches the drive to the south.

ZBA members discussed the standards required for a dimensional variance under Section 18.06 of the ordinance.

There was a consensus of the members that if Mr. Holst were required to comply with the front yard setback requirement, that would involve practical difficulties because of the steep hill on the property that slopes upward from Abrahams Drive to the rear of the property. It was also pointed out by N. Benner that Abrahams Drive is not centered on the right-of-way, and so the part of the street that cars travel on is close to the front line of the Holst property.

There was a consensus of the members that there are special circumstances that apply to the Holst property, as compared to other land in that district, because there has to be so much excavation of the lot because of the steep hill, and the excavation has to extend well into the rear part of the lot. It was also pointed out that because of the steepness of the lot, the house has to be placed in such a way that there will be enough room for storm water to drain away from the house, and so Mr. Holst does not have much choice as to where the house can be located.

The members indicated that if Mr. Holst had to meet the established front yard building setback, this would deprive him of property rights that other property owners have in that district because then he would not be able to build his proposed house on the property, even though the house is not unusually large. It was pointed out that while the house is larger than some homes, it is actually about the same size as the average size of homes in that area around and near the lake.

The members decided that if the variance were granted that would not be of substantial detriment to other properties if, as was suggested, the Board of Appeals did not grant the entire variance that Mr. Holst was asking for, but only partially, so that the front line of the house, where the two-foot bumped-out part is, would be 20 feet back from the right-of-way, but the deck could not be built where proposed by Mr. Holst, but would be only within the northwest corner. The members agreed that if only this lesser variance were granted, then there would not be an interference with view from the other properties. It was decided that the variance resolution would include a condition covering this lesser variance.

The members then discussed the condition to be included in the variance resolution. The members referred to the building plans for the house as submitted to the Township. P. Mooney drew a yellow highlighted line across the required front line of the house, to show the reduced setback that would be a condition of the variance. It was decided that the two-foot bumped-out portion of

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the front line could be no closer than 20 feet from the right-of-way line and the part of the front line on either side **OF THE PORTION OF THE HOUSE THAT IS CLOSEST TO THE ROAD RIGHT-OF-WAY** would be two feet further back **FROM THE ROAD RIGHT-OF-WAY**, as shown on the building plan, and the deck could be located only in the northwest corner and could not be located any further forward ~~then~~ **THAN** the highlighted yellow line shown next to where the deck would be. As a result, the proposed deck could not be built as shown on the building plans, but would be only in the northwest corner, or, in any event, could not be further forward than the yellow line as drawn on the plans.

It was decided that P. Mooney would label and date the yellow line as he had drawn it on the building plans and would sign or initial that part of the plan, so that the building official would have that information for the building permit.

J. Jakeway moved and B. Johnson seconded to adopt the resolution as amended. Roll call vote: Ayes: P. Mooney, B. Johnson, J. Jakeway and G. Jonker. Nays: N. Benner, A. Berry and D. Hockemeyer. The motion carried 4-3-0 and the variance was approved.

6. Old Business

There was no old business.

7. Schedule Next Meeting

The next ZBA meeting will be held scheduled as needed.

8. Adjournment

There being no further business, N. Benner moved to close the meeting. The meeting was adjourned at 9:19 p.m.

Respectfully submitted,

Al Berry, ZBA Secretary

Diane Timmons
ZBA Recording Secretary