

GERRISH TOWNSHIP

ZONING BOARD OF APPEALS

January 9, 2012

Meeting was called to order by Chairperson, Bill Case, at 10:30 AM.

MEMBERS PRESENT: Terry Shaltz, Bob Boyle, Bill Case, Maggie Soltman and alternate, Ken Dennings.

MEMBERS ABSENT: Stan Cooke

OTHERS PRESENT: Laura Alderman, Susan Kenny, Wade Alderman, Bob Frye, Gregg Fluegel, Bill Carey and Bob Yaske

MINUTES: Shaw (11.07) minutes not completed since the appeal was tabled on December 21, 2011.

NEW BUSINESS: Appeal 01.12: Mr. Alderman and Mrs. Kenney hired Mr. Fluegel (Twin Oaks Landscaping) to install large rocks at the waters edge of Higgins Lake in front of their property, in violation of Section 20.12 (A), which was originally heard before the Board on September 8, 2008, as Appeal 08.11.

Mr. Yaske's letter of explanation was read into the minutes by Mr. Boyle.

There was no new correspondence.

Mr. Carey: point of order; additional correspondence was sent to Mr. Hess and Mr. Yaske on December 28, 2011, regarding de novo hearing and asked that said letter be read into the minutes. It was read by Mr. Boyle. Copy attached to the minutes.

Mr. Boyle disagreed with Mr. Carey's letter and questioned why it should be heard with both old and new ordinances.

Mr. Carey proceeded to explain that the court ordered the remand of appeal from 2008 back to the Board. He would provide new opinions and views from several individuals that the variance is appropriate and there should be permission to deviate from the ordinance. He continues that set standards do not violate spirit and intent of the ordinance. He will illustrate the practical difficulties. Granting the variance will not create a nuisance or threat to neighbors or public. Character of

the neighborhood would not be changed. Board is concerned about setting precedent but each case should stand on its own.

Mr. Case stated the facts: 1. No permit applied for or issued. 2. Type of seawall is in direct violation of ordinance. 3. Construction was within the 10 feet or 20 feet shoreline stabilization zones. Both ordinances require rip rap of average 6 inch and 10 inch maximum diameter stones.

There a question of the shape of the shore line and the survey map was placed on the wall so all could see it.

Mr. Case said that the spirit and intent of the ordinance was compromised.

Mr. Frye gave some history of the particular shore line and it erosion problems. There was discussion of HLPOA's input and that cement seawalls were not good for the lake. It was noted that the experts consulted by the Township recommended the rip rap as the best for this lake. Mr. Frye concluded that the outcropped ledge rocks did collect the debris and felt that it was a proper solution in his opinion.

Mr. Boyle asked about the construction of the seawall. Mr. Fluegel said that he was aware that there was an ordinance regarding seawalls but did not consider this a seawall. He explained that he began the placing of the stones in front of the lowest logs that were already there. He submitted pictures of the debris that was removed from shoreline prior to installing the stone barrier.

There was discussion between Dennings, Case and Frye about the history of the ordinance.

Mr. Boyle asked if this was not a 'good' ordinance. Mr. Frye answered that it was but there may be other ways to achieve the purpose of mitigating the wave action and collecting debris.

Mr. Dennings asked if the structure has moved any in the three years it has existed; and Mr. Alderman replied that it had not.

Mr. Case gave examples of ice destruction and stated that the ordinance followed the advice of experts.

Mr. Carey said they do not wish to disparage the ordinance but that there are other ways just as effective.

Mr. Fluegel explained how he constructed the outcropped rock formation.

Mr. Case questioned permit from DEQ. Mr. Alderman presented the letter he received from Silagy and his response to it. Letter from Silagy is attached.

Mr. Shaltz stated that he looked the case up and found no record of it from the DEQ, concluding that the case was closed or never considered.

Mr. Alderman said that the practical difficulty was that there were logs placed to prevent erosion and they were slippery. He and neighbor Mrs. Kenny decided to solve the problem and contracted Mr. Fruegel to do so. Both Mr. Alderman and Mr. Fluegel apologized for not coming to the Township for a permit.

Mr. Case commented that the property was purchased in 1991 and was used by the appellants for all that time. Mrs. Kenney explained that she is an amputee and found the ledges safer for her. Mrs. Alderman told of the concern for the safety of the grandchildren.

Mr. Case explained that Mr. Yaske could have permitted ways to enter and egress from the lake without a variance.

Mr. Case stated that this structure does alter the character of the neighborhood and would result in others using their own ways of dealing with erosion instead of the ordinance adopted by the Township. Mr. Carey commented that each case should be considered individually.

Mr. Dennings brought up the correspondence from the former hearing and stated that all the neighbors saw the rocks and none disapproved of it.

Mr. Carey said that there seems to be a disconnect; you think that we think you have a bad ordinance. We do not think that the ordinance is bad or wrong. We have an opinion that is only our opinion. Our job is to consider that what has been done is one of the ways to conform. The problem was solved by the contractor, that is why the judge remanded the case.

Mr. Case: We used the advice of experts and took the advice to formulate the ordinance.

Mr. Case opened the discussion to the Board Members.

After some comments and discussion, it was decided that we would use the new zoning ordinance, Section 16.7, for this decision.

After questions from Mr. Shaltz, Mr. Yaske explained what the controlled area is and that a permit is needed to do anything within the 10 feet controlled area including installing rip rap.

Mr. Shaltz asked if the only thing we are considering is the material. It was concluded that it was the material that was in question.

Mr. Dennings stated that Ordinance Section 20.12 should be used and Board Members agreed.

Mr. Case read the ordinance section into the record found in Article 20 of Gerrish Township Zoning Ordinance, adopted July 12, 2011.

Using Section 16.7: Variances, the discussion proceeded.

Mr. Case read Article 16.7(A) Authority and 16.7(B) Standards.

16.7 (B)(1). Discussion proceeded to include comments about large pine trees, as a difficulty. However, the members concluded that there is no practical difficulty to placing the rock ledges behind the 10 feet shoreline stabilization zone. It was also noted that the Board gave the solution proposed by the appellants consideration, and acknowledged that there may be other solutions, but the rock ledges are not what the ordinance calls for. The method of shoreline stabilization in the ordinance was researched and approved.

B(2). The appellants are totally responsible for the actions taken, as they chose to install a type of shoreline stabilization not approved by ordinance. If they had pursued obtaining a permit first, they could have avoided this problem.

B(3). The variance request only applies to the properties described in the appeal. The survey clearly shows this.

B(4). A variance would not be a detriment to public health or safety, but Mr. Case believes that it is not in harmony with the ordinance or the rest of the adjoining properties in the area.

B(5). Same as above.

B(6). The appellants could get to the lake before the structure was built and it was not necessary for access to the lake, and improved limited access is allowed by the ordinance.

B(7). The structure of outcropping rocks is not the minimum solution to the erosion problem presented. Mr. Dennings asked Mr. Yaske if there would have been a solution if Mr. Alderman had come to the Township. Mr. Yaske said that if that had been done there would have been alternative solutions proposed. The fact is there is a practical solution. Mr. Boyle asked if there is any expert opinion as to the solution already completed. We do not know that there is a reason for using what was done.

Mr. Yaske stated that if the Board concluded that the rock ledges are the same as rip rap, we would in effect be rewriting the ordinance, which is not within the scope of this Board.

Mr. Case noted that all criteria of 16.7 were not met and therefore we are forced to deny the variance.

Mr. Dennings proposed that perhaps this structure of outcropping rocks could be viewed as an experiment. It might be an agreement between the Township and the appellants to study this for a time. Mr. Carey agreed that it could be done. Mr. Dennings proposed that the appeal be tabled until the Township's legal counsel could be consulted with regarding this.

Mr. Case asked for a motion.

Motion is made by Dennings supported by Boyle to table this case pending discussion with legal counsel for the Township, within 30 days, as to the possibility of an agreement between the parties to allow the existing structure to remain and be evaluated over a period of time.

Vote: Boyle-yes Case-no Shaltz-yes Dennings-yes Soltman-no

3 yes / 2 no Motion is approved.

Meeting adjourned at 1:20 PM.

Respectfully submitted by Maggie Soltman, Secretary.