

**BURT TOWNSHIP**  
**Zoning Board of Appeals Minutes**  
**May 28, 2010**

The regular meeting of the Burt Township Zoning Board of Appeals was called to order by Chair, Walt Lindsay on May 28, 2010 at 7 p.m. at the Burt Township Hall, Cheboygan, Michigan.

Attendance: Walt Lindsay, Gary Street, Harold Koviak, Dave Poxson, Katie Parker.  
Also attending: Dan Swantek, Kim Kihnke, Joyce Hutto, recording secretary.

Guests: Dale Hadel, Nancy Hadel, Gail Hadel.

**Minutes of April 30, 2010**

**Motion:** Moved by Katie Parker and seconded by Gary Street to accept the minutes of April 30, 2010 as written.

**MOTION APPROVED**

**Public Comment Period**

No Public comment

**Public Hearings**

**Dale and Nancy Hadel, 1240 Indian Point Road, Brutus MI 49716—Case #251**

**Subject of the Public Hearing**

This is a request by Dale and Nancy Hadel, 1240 Indian Point Road, for a variance to allow construction in the waterfront setback of an oversized fire pit and fire area and further to allow construction in the waterfront setback of a hard-surface walkway wider than 4 feet. The Hadel's also seek interpretation of the term "structure" in Section 6.12 titled "Waterfront Setback" and "permeable surface" in Section 6.04.3(3) as it relates to the buffer zone in a fire area. By letter dated October 12, 2009, Dan Swantek, the township's Zoning Administrator, advised the Hadel's that, upon noticing construction at their property in violation of several provisions of the Zoning Ordinance, he was issuing a stop work order. The Hadel's wish to retain the fire pit and fire area they have constructed. The footprint of the fire pit is approximately 19.6 square feet versus 9 square feet allowed by ordinance, and the footprint of the entire fire area constructed is more than 450 square feet versus 64 square feet allowed. The outer perimeter of the fire area is comprised of a surround that measures 20 inches in height. The paperwork submitted by the Hadel's states that the buffer zone of the fire area is constructed of permeable pavers. The Hadel's have also constructed a hard surface walkway connecting the fire area with a previously existing gazebo; most of the walkway is in the waterfront setback and most measures approximately 5'4 in width versus the 4 feet width allowed by ordinance. As justification for the requests they make, the Hadel's state that the enlarged fire area and walkway are to allow handicapped access and usage by the elderly.

### **Dale Hadel presented his request to the Board**

The purpose of constructing the enlarged fire pit and walkway is to allow for access of wheelchairs used by the Hadel's elderly parents and guests. Hadel questioned the ordinance and feels the nine square feet diameter allowed for a circular fire area (i.e. total footprint of 64 square feet) is not reasonable for handicap usage. He questioned the definition of a structure and said he thought it was something with a roof. He stated that although this fire pit is within the 75' waterfront setback it is not an eyesore. He thought he was making an improvement. A fire pit approximately 4' square and 12' high was on the property prior to 1989 when the Hadel's bought the property; it was removed by the Hadel's and replaced with a new fire area that has been in place for the last 10 years with a steel culvert base installed. Hadel said the pavers surrounding the fire pit are small and set in sand; he stated that water runoff migrates toward a drainage ditch on his side property line. Hadel said the Burt Township ordinance does not provide for handicap access nor are any dimensional adjustments considered for handicap use. He feels the fire pit is eye appealing, does not damage the environment in the waterfront setback area and provides for good safe use of the fire pit for elderly people.

### **Comments from Dan Swantek, Burt Township Zoning Administrator**

Dan Swantek said because the oversize structure is within the waterfront setback, which is against the ordinance, the Hadel's were asked to stop construction, which they did. Swantek also stated that the Zoning Ordinance does not allow a fire area surround extending above ground level.

### **Open discussion period**

Gary Street commented that he measured portions of the walkway as being more than 5'6". Walt Lindsay presented a diagram of a circular fire area. The "fire pit" is the inside circle where the burning takes place. The entire footprint including the fire pit is called the "fire area" with the separation between the fire pit and the outer perimeter called the "buffer zone." In the waterfront setback, the ordinance allows a diameter of 3.4 feet for a circular fire pit (i.e. footprint of 9 square feet). The Hadel fire pit is measured at 5 foot diameter (i.e. footprint of 19.6 square feet). The ordinance allows a diameter of 9 feet for a circular fire area (i.e. footprint of 64 square feet). The diameter of the Hadel fire area is measured at 24.5 feet (i.e. footprint of 471 square feet). The fire area the Hadel's built is within the 75' waterfront setback and therefore the requirements set forth in the ordinance must be met. It was explained that the fire pit in the waterfront setback existing when the Hadel's purchased the property is not "grandfathered" as a prior non-conforming structure because the Hadel's completely removed it in advance of their constructing the existing structure.

Gary Street presented, for thoughts only, the idea of a square or circular fire pit placed in the corner of the fire area rather than in the middle; such a configuration would allow a buffer zone sized to allow a wheelchair more room to maneuver. Hadel said the ordinance needs to be looked at to consider handicap and wheelchair access. Street explained it is a lengthy process to amend the ordinance but procedures are in place that allow this to be accomplished.

Walt Lindsay stated the width of the sidewalk could be reduced to 4 feet as allowed by the ordinance yet still adequately provide for a wheelchair. The minimum width of an ADA-compliant sidewalk for a wheelchair is three feet. Hadel said he is asking for a reasonable width of buffer zone for a handicap wheelchair to get around his fire pit.

The ordinance provides that the buffer zone “shall be a totally permeable surface.” It was explained that permeable means porous and accepting of water. Water penetrates through, rather than around or over, a permeable surface. Reference was made to the definition of “impervious” in the ordinance. Dale Hadel agreed that the pavers installed in their fire area are not a “totally permeable surface.” The Burt Township ordinance states fire areas are to be of modest size and accepting of water. Lindsay stated that the Zoning Ordinance would allow the Hadel’s to reconstruct their fire area as is just as long as it is placed outside the 75 foot waterfront setback and meets side and rear setback requirements. The Board provided the Hadel’s with the option to table their request for a variance until the next meeting in order for them to consider alternatives; however, Mr. Hadel stated that he would like to now revise the terms of his variance request so the Board could vote on it at this meeting. Hadel indicated that he would like his fire area to stay in the waterfront setback, reduce the fire pit to 9 square feet, downsize the fire area to 141 square feet, retain the existing pavers, and reduce the sidewalk width to four feet.

### **Public Comment**

None

### **Public Hearing Closed**

### **Discussion of revised Request for Variance**

Katie Parker said there are problems with the Hadel’s satisfying the requirements to establish “practical difficulty” in order for a dimensional variance to be granted per Section 8.01(5) of the Burt Township Zoning Ordinance. 1. The need for the requested variance is not due to unique circumstances or physical conditions of the Hadel’s property. 2. The need for the requested variance is the result of the Hadel’s action (i.e. self-created). 3. Strict compliance with regulations governing area and setback would not unreasonably prevent the Hadel’s from using their property for a permitted purpose. All five of the “practical difficulty” criteria must be met and the Hadel’s do not meet all five.

Gary Street suggested the Hadel’s move the fire area outside the 75’ waterfront setback.

The Hadel’s revised their Request for Variance to provide as follows: 1. Reduce the width of the walkway to four feet in the 75 foot waterfront setback. 2. Reduce the total fire area to 141 square feet. 3. Allow use of the paver blocks that are currently installed in the buffer zone. 4. Downsize the fire pit to 3.4 feet diameter (i.e. footprint of 9 square feet).

**MOTION:** Moved by Gary Street and seconded by Katie Parker to deny the Hadel’s Request for Variance as revised.

Roll call vote: Lindsay-yes; Street-yes; Koviak-yes; Poxson-yes; Parker-yes.

### **MOTION UNANIMOUSLY APPROVED**

Reasons: revised request does not meet the requirements for granting a dimensional variance per Section 8.01(5); in addition, the pavers requested in the buffer zone of the fire area do not satisfy the “totally permeable surface” requirement of Section 6.04.3(3).

The Hadel’s were advised that they are required to completely remove the constructed fire area by July 28, 2010.

## **Other Business**

No other business

## **Reports**

### Dan Swantek, Zoning Administrator

The Jim Parker, Brutus Road matter remains in the hands of the township attorney.

Douglas Walls on Chickagami Trail had poured cement of footings for an above-ground brick retaining wall in the 75 foot waterfront setback. Walls was asked to remove it and did so.

Permeable pavers will be discussed at a future Zoning Board Meeting.

Don Hagerl, West Burt Lake Road was sent a registered letter on May 25, 2010 giving him 30 days to remove his junk, such as boats, cars and snowmobile trailers.

Gary Quick was sent a registered letter on May 26, 2010 giving him 30 days to remove junk.

A prohibited fire area with impervious pavers was being constructed on 10431 Chickagami Trail. The owners replaced the pavers with permeable crushed rock and the issue is now resolved.

### Harold Koviak, Burt Township Board Representative

Koviak reported the Burt Township "Big Dump Day" will be June 19 and located this year at the east side transfer site.

The Cheboygan Road Commission will request a millage vote of 1 mill for 5 years for roads and to maintain equipment.

A meeting of Lindsay, Parker, Koviak and Swantek with Mary Campbell, the township's planning/zoning consultant, was requested.

### Gary Street, Planning Commission Representative

Street reported that a series of minor modifications of the Zoning Ordinance were passed by the Burt Township Board in May, 2010.

The Burt Township Trail Committee has submitted grant applications to the DNR and MDOT.

Pledges totaling \$150,000 are required by September in order for the grant requests to be considered.

## **Public Comment Period**

No Public comment

**Next meeting:** July 23, 2010 at 7 p.m. Burt Township Hall. Deadline for submitting requests for a public hearing to the Zoning Administrator is July 5, 2010.

**MOTION:** Moved by Harold Koviak and seconded by Katie Parker to adjourn.

**MOTION APPROVED**

Meeting adjourned at 9:15 a.m.

Respectfully Submitted

Joyce Hutto, Recording Secretary