

BURT TOWNSHIP  
ZONING BOARD OF APPEALS  
Minutes of May 22, 2009

The regular meeting of the Burt Township Zoning Board of Appeals was called to order by Chair Walt Lindsay on May 22, 2009 at 7 p.m. at the Burt Township Hall, Cheboygan, Michigan.

**Attendance:** Walt Lindsay, Gary Street, Harold Koviak, Katie Parker, Dave Poxson and Kim Kihnke (alternate member).

Also attending: Dan Swantek (Zoning Administrator) and Joyce Hutto (Recording Secretary).  
Guests: Chuck and Shelly Wilkinson, Marty Cheney, Mr. and Mrs. James Ball, Don Cheyne.

**Minutes of April 24, 2009 ZBA Meeting**

**MOTION:** Moved by Gary Street and seconded by Harold Koviak to accept the minutes of April 24, 2009 as published.

**MOTION APPROVED**

**Public Comment**

No Comments

**Public Hearing**

**Jerome and Patricia Randolph, 2068 Elmhurst Rd. Brutus, Mi 49716. Case #241**

Don Cheyne (Builder for the Randolph's) attended the meeting representing Jerome and Patricia Randolph. This is a continuation of a request by Jerome and Pat Randolph to tear-down their residence at 2068 Elmhurst Road and reconstruct the residence on the same non-conforming lot. The existing residence is a legally non-conforming building. This case was first considered by the Zoning Board of Appeals at its September 26, 2008 meeting, and a second public hearing was held at the ZBA meeting of April 24, 2009. At the April 24 hearing, the Randolph's request for variance was withdrawn following discussion; however, the Randolph's reinstated their variance request and submitted an updated plot plan dated May 6, 2009. According to the updated plan, all exterior walls of the building and a portion of the lakeside deck are in compliance with the setback requirements; however, the Randolph's request a waterfront setback variance to accommodate additional lakeside deck.

The distances shown in the May 6, 2009 plot plan between the water and the proposed building with deck are based upon an ordinary high water mark located by the Randolphs and/or their representative(s). Following discussion which included comment that the existing lake level is below its historic level at this time of year, Don Cheyne stated that he agreed with the position of Dan Swantke, Zoning Administrator, that the location of the ordinary high water mark should be moved two(2) feet to the west, thus two(2) feet closer to the shoreline and the proposed building. The measurements shown in the May 6, 2009 plot plan were adjusted accordingly to show that, based upon the proposed placement of the reconstructed residence, a lakeside deck that is eight(8) feet deep (4 feet from the "kick out" in the lakeside exterior wall) would comply with the 75 foot waterfront setback requirement. The deck as proposed would extend nine(9) feet into the waterfront setback, thus measuring a total of seventeen(17) feet deep (13 feet deep from the "kick out"). Don Cheyne stated that the Randolphs intend a step down (2 steps) from the lakeside of the residence to the deck, thus placing the deck approximately 16 inches below the

level of the proposed first floor. Gary Street asked if the proposed building could be moved two(2) feet to the west or rear of the property without causing any significant problems with the basement, foundation or overall height of the proposed building (31' 1 1/8"). Cheyne said he did not think moving the building two(2) feet to the rear would cause a problem. Katie Parker stated her feeling that moving the structure to the rear two(2) feet would represent a reasonable compromise as it would reduce the amount of the waterfront setback variance required for construction of the proposed building with deck.

**Public Comment:** Bob Porter, West Burt Lake Road, stated that he was very familiar with the area and had no objection to the Randolphs' proposed plan. He stated that he was lost as the significance of moving the proposed structure two(2) feet.

Dan Swantek reported he had received one phone call from a neighbor with no objection and one letter stating that a deck no closer to the lake than currently exists would be acceptable.

**MOTION:** Moved by Gary Street and seconded by Katie Parker to approve a two(2) foot waterfront setback variance for the Randolphs to reconstruct their residence as represented in the May 6, 2009 plot plan but based upon the ordinary high water mark located two(2) feet closer to the shoreline than shown in the plan.

Discussion: When measuring from the adjusted location of the ordinary high water mark, a two(2) foot waterfront setback variance would allow a deck that is ten(10) feet deep (6 feet deep at the "kick out"); this is based on the specified building being placed on the lot as shown in the May 6, 2009 plot plan. If the building were to be positioned on the lot two(2) feet toward the rear, a deck that is twelve(12) feet deep (8 feet at the "kick out") could be constructed.

Movement of the building two(2) feet to the rear would not encroach on the required 50 foot rear setback. Harold Koviak stated he is concerned that moving the building two(2) feet to the rear would be cumbersome in the back portion of this property. Walt Lindsay said that he shares the concern of any more structure than proposed being placed in the rear of the property given the limited open space resulting from close proximity of both the existing garage and Elmhurst Road. It was pointed out that the Randolph property has limited space to build and the depth of the area available for construction is limited by increasing elevation toward the rear of the property and the location of Elmhurst Road.

Roll call vote: Lindsay-no; Street-yes; Koviak-no; Poxson-yes; Parker-yes.

**MOTION APPROVED**

Reason: Practical difficulty established given the lot size and configuration, the uniqueness of the lot, the topography of the lot and the limitations resulting from the buildable portion of the lot being in close proximity to Elmhurst Road. Strict compliance would make conformity with the regulations unnecessarily burdensome.

**Chuck and Shelly Wilkinson, 959 Stratford Lane, Indian River Mi 49749-Case #247**

This is a request by Chuck and Shelly Wilkinson for a rear setback variance to allow the reconstruction and expansion of an addition to their home. The existing addition is 26 feet wide and 25 feet from the western edge of Stratford lane; the proposed reconstructed addition would be 2 feet closer to the road, thus measuring 23 feet from the western edge of the road and adding 52 square feet of useable space (2' x 26'). The Wilkinsons also wish to expand the addition to the north by 10 feet; the depth of this expansion would be 12 feet, thus adding 120 square feet of

useable space. In total, the reconstructed addition would add 172 square feet of useable space, all encroaching in the 50 foot rear setback.

The properties in the association at Sunset Beach share a common well. A concern is the location of the pipeline from the well to the various properties. Mr. James Ball, president of the association, stated that the association received a letter from the Health Department that the well would continue to be certified even if the pipeline had to be repaired. Harold Koviak stated that it is recommended but not necessary that an association provide the Zoning Board of Appeals with a letter approving a construction project by a member of the association. Mr. Ball, representing the association at Sunset Beach, stated that he had spoken to several of the association members and had not heard of any concerns with the proposal presented by the Wilkinsons. Walt Lindsay explained that if a variance were to be granted to allow the construction proposed by the Wilkinsons, Burt Township and its related boards and officials do not want to be held responsible if there were to be damage to the pipeline and/or well that serves members of the association. As a result, a hold harmless and indemnification agreement was prepared by Tim McArthur (Burt Township Attorney) for signature by the Wilkinsons in the event a variance were to be granted.

Public comment: No public comment.

**MOTION:** Harold Koviak moved and Katie Parker seconded that a twenty-seven(27) foot rear setback variance be granted to Chuck and Shelly Wilkinson for reconstruction and expansion of the addition to their home as specified provided that they execute the Hold Harmless and Indemnification Agreement drafted by Mr. Tim McArthur (township attorney).

Discussion: Katie Parker stated that what the Wilkinson are requesting is reasonable and in line with the neighboring properties. Gary Street said the small amount of the additional area that is requested for construction is consistent with the neighborhood and consistent with the objective to improve the property.

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

#### **MOTION UNANIMOUSLY APPROVED**

Reason: The need for the variance is due to the shallowness and uniqueness of the lot. Strict compliance would make conformity with the regulations unnecessarily burdensome. The variance allows construction that is consistent with other homes in the association.

Both Chuck and Shelly Wilkinson signed the Hold Harmless and Indemnification Agreement which is made a part of these minutes.

#### **REPORTS**

Dan Swantek (Zoning Administrator) reported the Teachouts have constructed the allowed deck the lake side of their property. The Budzinski property is in the process of being cleaned up. Dan will do a site trip to the Tom Bonnet property to address complaints of junk accumulation.

Harold Koviak (Burt Township Board Representative) reported that the annual Dump Day will be June 20 on the West Side of the township from 9 a.m. – 4 p.m. Volunteers are needed for various jobs. Minor destruction occurred behind the Township Hall. Someone drove through part of a field of the planted oats and did some damage. The police have been notified. The boat ramp damaged from ice has been repaired at the Hoppe's access site.

Gary Street: (Planning Commission Representative) reported that approximately two hundred Yellow Page books had been dumped next to Hogsback Road near Carp Creek. The Yellow Page Book Company has taken care of the problem. Several amendments to the Zoning Ordinance have been recommended by the Burt Planning Commission and will be presented in June to the Burt Township Board for approval. The issue of whether building eaves should be allowed to extend into the front, rear and side setbacks is being considered by the Planning Commission.

Next meeting: July 24, 2009 at 7 p.m., Burt Township Hall.

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

**MOTION APPROVED**

Meeting adjourned at 8:50 p.m.

Respectfully submitted

Joyce Hutto, Recording Secretary