

**TYRONE TOWNSHIP ZONING BOARD OF APPEALS MEETING
APPROVED MINUTES – OCTOBER 6, 2008**

CALL TO ORDER

Chairman Gregory Carnes called the Zoning Board of Appeals Meeting to order on October 6, 2008, at 7:30 p.m., at the Tyrone Township Hall.

ROLL CALL

Present: Commissioners Greg Carnes, David Cypher, Debi Smulsky, Maureen Leaske, and Mark Meisel

Other: Tyrone Township Zoning Administrator George Van Hecke

Guests: Charles and Kimberly LaClear, John Norris

MINUTES OF AUGUST 11, 2008, ZONING BOARD OF APPEALS MEETING

Leaske moved that the minutes of the August 11, 2008, Zoning Board of Appeals Meeting be approved as presented. (Cypher seconded). The motion carried.

READING OF THE PUBLIC NOTICE

The Zoning Board of Appeals Recording Secretary read aloud the public notice for tonight's meeting, which was published in the September 21, 2008, edition of the **TRI-COUNTY TIMES** and was posted at the Tyrone Township Hall on September 18, 2008, at 9:00 A.M.

VARIANCE REQUEST

- #1 Charles and Kimberly LaClear, RE: Request for a 47-Foot Setback to the Water's Edge to Keep the Existing Rebuilt Deck Which is in Excess of 12-Inches Above Grade, Located at 11060 White Lake Road, (TAX CODE # 4704-10-102-012)

Charles LaClear requested a variance for a 47-foot setback to the water's edge, in order to keep the existing rebuilt deck which is in excess of 12-inches above grade. He stated at the end of May his waterfront deck was destroyed when two large trees growing near the deck were knocked down by straight line winds. He continued that submitted pictures A thru G show the pre-existing deck torn up from the winds. He stated that they were very happy with this deck, as well as the trees because of the shade they provided. He continued one of the trees was still standing but they opted to remove it to make sure it would not cause any property damage to the neighbor to the east of them, the Norris'. He stated that as they started to rebuild the deck they decided to make some modifications and ended up with current deck. He continued the grade, at the beginning of the deck, begins to roll down to the water. He stated they wanted some railings and that the pergola was added as a way to provide shade. He continued that he spoke to his neighbors and kept them apprised of their plans for the deck. He stated that they made sure not to disturb their neighbors view to both the east and west of them. He continued they neglected to secure a permit or seek a variance at the time the deck was being rebuilt.

COMMENTS AND QUESTIONS BY ZONING BOARD OF APPEALS MEMBERS

Carnes stated the applicant provided the Board with all the necessary information needed to request a variance. Meisel commented the intent of the Zoning Ordinance is to protect the sight lines to the water. He continued that this is a unique situation in that there

**TYRONE TOWNSHIP ZONING BOARD OF APPEALS MEETING
APPROVED MINUTES – PAGE 2 – OCTOBER 6, 2008**

is a pre-existing deck which was replaced due to storm damage. He stated this storm and a previous storm resulted in the loss of trees in the immediate area. He continued neighbors took out some of their trees which exposed the applicant's trees on his property to straight line winds more so because they were protected by the other trees and inevitably came down when the next straight line winds came through. Meisel stated this property is on a canal with extremely limited visibility of Runyan Lake. He continued the homes are set far back from the canal and their vantage point is such that at this particular area of the canal they have limited visibility of the water. He stated the situation now is as good as it was or even better with the pergola style and open rails. Meisel continued that from the Ordinance perspective the Board needs to look at: the rebuilt deck being greater than 12 inches, posts and beams not really being considered a structure, and the sight lines for the neighbors. Smulsky stated the canal takes the issue of the sight lines out because it is more like a big ditch. Meisel stated he looked at LK-1 zoning and there is a provision which allows for normal maintenance, repair, etc., without having to get a variance for non-conforming structures, but he does not think it applies in this particular case because it would be considered an accessory structure and not part of the house. He continued the applicant repaired what was destroyed by mother nature. Leasky stated the pergola is the only major change and that the previous trees obscured the view more than the pergola. Mr. LaClear stated that when rebuilding the deck he kept in mind the view for his neighbors both to the east and the west. He continued that there were no concerns from his neighbors on either side. Carnes stated the new deck appears to be less of a non-conformance than the old deck. He continued this is somewhat of an improvement. Meisel stated this is technically not true and it is a combination of the removal of the trees and the new deck. He stated the pergola top is much higher than the previous railing on the deck and could be argued that the new deck is more non-conforming than the previous deck. Meisel stated the net effect is less non-conforming, according to the picture on the bottom right, which shows a whole line of trees gone.

PUBLIC COMMENT

John Norris, 11066 White Lake Road, stated his support of the variance request by Charles and Kimberly LaClear. He continued that he lives to the east of the applicant and would be most affected from a sight standpoint. He stated the new deck is at the same level as the previous deck, the visibility is better, and he is pleased with the outcome. The Board reviewed written correspondence from John and Wendy Norris, 11066 White Lake Road.

MOTION

Meisel moved to grant the variance request of Charles and Kimberly LaClear, located at 11060 White Lake Road, tax code 4704-10-102-012, for a 47 foot setback to the water's edge to keep the existing rebuilt deck for the following findings of fact: Unreasonable Burden: The intent of the Zoning Ordinance in this case is to preserve sight lines to the water. The deck is located near the eastern end of a channel, along the northern shore. The immediate area is not afforded views of Runyan Lake due to the proximity of homes to the water and their location along the channel, therefore sight lines in the immediate area are unaffected by the appellant's actions. Further, the new structure does not afford any additional impediment to views versus the prior existing deck which was replaced and

**TYRONE TOWNSHIP ZONING BOARD OF APPEALS MEETING
APPROVED MINUTES – PAGE 3 – OCTOBER 6, 2008**

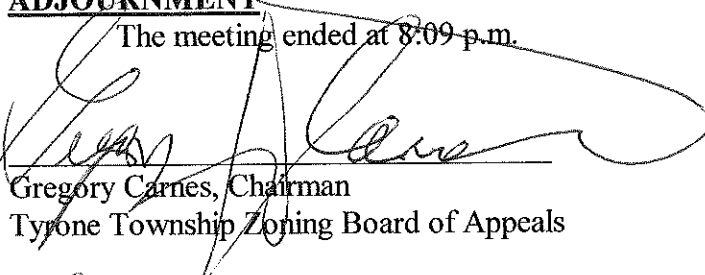
brought to the Township's attention as a result. Strict compliance to the Zoning Ordinance unreasonably prejudices the appellant while providing no measurable benefit to the immediate neighbors. Substantial Justice: The appellant has replaced a pre-existing deck as a result of damage sustained during a storm which uprooted large trees in close proximity to the deck. The applicant has simply replaced the deck. The deck does not adversely affect the neighbor's views of Runyan Lake, and relates harmoniously with the immediate area. The immediate neighbors whose sight lines to the water are potentially impacted are in support of this variance being granted. Minimum Variance Required: The appellant has requested permission to retain a replacement of a pre-existing deck in the prior location. The minimum variance required is to grant approval of a substantially similar deck in this same location which does not adversely affect the sight lines of adjacent neighbors. Extraordinary Circumstances: The pre-existing deck was damaged as a result of a storm which uprooted trees surrounding the deck. The deck required extensive repairs or replacement as a result. The deck is located along a channel which affords very limited views of Runyan Lake. As currently reconstructed, the deck is substantially similar to the pre-existing deck, and the large trees which were previously along the northern shore of the channel have been removed due to the recent storm damage. The resulting views of Runyan Lake are no worse, and are arguably better than the views which existed prior to the tree damage and removal, and the reconstruction of the damaged deck. Health and Safety: Granting this variance does not adversely impact public safety or create a public nuisance. [Ref. Tyrone Township Zoning Ordinance No. 36 – Sections 20.02Z (Footnote to Schedule of Regulations) and 21.02D (Accessory Structure Provisions – Waterfront)]. (Smulski seconded.) Roll call vote: Cypher, yes; Smulsky, yes; Meisel, yes; Carnes, yes; Leaske, yes. The motion carried.

MISCELLANEOUS BUSINESS

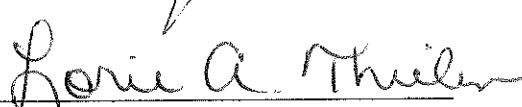
The next regular meeting of the Tyrone Township Zoning Board of Appeals is scheduled for Monday, November 10, 2008 at 7:30 p.m.

ADJOURNMENT

The meeting ended at 8:09 p.m.



Gregory Carnes, Chairman
Tyrone Township Zoning Board of Appeals



Lorie A. Thielen, Recording Secretary
Tyrone Township Zoning Board of Appeals

c File
Tyrone Township Clerk
Tyrone Township Zoning Administrator
Tyrone Township Zoning Board of Appeals Commissioners