

**TYRONE TOWNSHIP ZONING BOARD OF APPEALS MEETING
APPROVED MINUTES – PAGE 1 – FEBRUARY 8, 2010**

CALL TO ORDER

Chairman Gregory Carnes called the Zoning Board of Appeals Meeting to order on February 8, 2010, at 7:30 p.m., at the Tyrone Township Hall.

ROLL CALL

Present: Commissioners Greg Carnes, David Cypher, Claudette Moyski, Dave Wardin, and Mark Meisel

Guests: Robert Miller, Larry Smeby, Dennis Boyle, Dan and Julie Dooling, Steven Davis, Margaret Polakowski, Eric Waligoria, Micah and Jacqueline Widder, and Kristina Mair

MINUTES OF OCTOBER 5, 2010, ZONING BOARD OF APPEALS MEETING

Meisel moved that the minutes of the October 5, 2010, Zoning Board of Appeals Meeting be approved as presented. (Moyski 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 January 24, 2010, edition of the **TRI-COUNTY TIMES** and was posted at the Tyrone Township Hall on January 21, 2010, at 9:00 A.M.

Commissioner Meisel recued himself from the first variance request, by Dan and Julie Dooling, because he has a relationship of sorts with Ms. Dooling by virtue of activities with Runyan Lake Inc. which he perceives could be viewed as a conflict of interest, so he will not participate in the decision, but will participate in the discussion at the request of the chairman.

UNFINISHED BUSINESS:

VARIANCE REQUEST

- #1 Dan and Julie Dooling, RE: Request for a variance to be allowed to keep the existing pavilion (that was added approximately 1½-years ago) on the existing deck, behind the existing house, located at 10128 Walnut Shores Drive, (TAX CODE # 4704-09-401-006)

Julie Dooling stated they are back after being tabled at the October 5, 2009 Zoning Board of Appeals meeting which they were unable to attend. Ms. Dooling gave the Board members a handout (Exhibit 1 – in the master file) which summarizes her request and addresses the criteria needed for a variance to be granted. She also referenced the decision by the Zoning Board of Appeals from October 6, 2008 for Charles and Kimberly LaClear, 11060 White Lake Road, Tax Code #4704-10-102-012. She stated the unreasonable burden is that they are located in a cove, that the intent of the Zoning Ordinance is to preserve sight lines to the water, and the pavilion is located on the property which is situated within a cove. She continued the cove does not afford them, being the property owners, or the immediate neighbor's unrestricted or significant views of Runyan Lake. She stated several adjacent property owners are afforded no view of Runyan Lake because of existing homes on the peninsula across the cove from the applicant. She continued their property and that of their neighbors, is not afforded direct

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views of Runyan Lake because the properties do not reside on open water, therefore the restriction being imposed should not apply to this situation. She stated the substantial justice would be that the pavilion does not adversely affect the neighbor's view of Runyan Lake, since no direct view exists. She continued that every neighbor whose sight lines to the water are potentially impacted are in support of this variance being granted, therefore the variance request related harmoniously with the neighborhood. She stated the structure is used as a safe haven for the neighbor's children during inclement weather and therefore is a benefit to the neighborhood as a whole. She continued the location of the structure does not pose an adverse affect. She stated the structure is located within a cove and is not seen by those using the main body of Runyan Lake. She continued property owners of the main portion of the lake have to enter a passageway through a canal to the cove, again not obstructing sight lines to the water on the main body of the lake. She stated the extraordinary circumstance is that their situation is unique and while their property is technically located on Runyan Lake, it is in fact located on a cove, created many years ago by dredging access to a smaller pond. She continued their property and that of their neighbors has either no direct views of Runyan Lake or significantly obstructed views of Runyan Lake, and that the placement and location of the pavilion has no adverse impact to those views. She added the pavilion is not able to be viewed from the main part of Runyan Lake. Ms. Dooling stated that the structure does not impose any health, safety or environmental concerns. She added the structure provides shelter during inclement weather which adds to their health and safety. She stated that many of her neighbors came to the meeting tonight to show support for their variance request. She submitted letters of support from neighbors that were not able to attend tonight's meeting. Once again, Ms. Dooling made reference to the decision by the Zoning Board of Appeals from October 6, 2008 for Charles and Kimberly LaClear. She stated their situation is similar to that of the LaClear's. [She continued that she had a letter from Jeff Ladd who built the LaClear deck (Reference Exhibit 2 – in the master file) and read to the Board the following: To whom it may concern: I, Jeff Ladd, rebuilt Charles and Kimberly LaClear's lake front deck at 11060 White Lake Road, Fenton, MI 48430 in July of 2008. Due to fallen trees, from high winds, that wrecked the deck, I rebuilt a new deck and added a permanent pergola roof. The pergola roof was nonexistent prior to the rebuild and was created new. When the original deck was built by the late Jim Kirkland (Kim's father) there was not a roof on the deck. There are pictures if needed of the before and after. I'm sorry I couldn't appear in person due to a previous business engagement. If you have any questions please call me at the below information. Regards, Jeff Ladd.] Ms. Dooling stated when the structure was built they did not know they needed permits. She added they had good faith in going to Livingston County Building Department and pulling an electrical permit. She continued that it was never their intent to not comply with the Township requirements. She stated that nothing was said about the structure when the electrical inspector came out and they thought they were doing the right thing. She continued that she took new measurements and the closest point of the structure to the water was 7 feet 4 inches and the furthest point from the water is 37 feet, due to the angle away from the water. She stated if you measure 5 feet from that it drops to 18 feet 7 inches, if you continue on 6 feet from there it drops to 29 feet, and then the furthest point is 37 feet. She added the LaClear's asked for a 47 foot setback to the water's edge, they had a deck that was existing and destroyed by fallen trees, was rebuilt, and a pergola was added that did not exist prior. At this time, Ms. Dooling read the LaClear decision verbatim to the Board:

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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 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. Ms. Dooling stated that the LaClear situation is very similar to their situation, they live on a cove and sight lines to the water are obstructed due to the cove, to the larger portion of the lake and to homes that are built around the cove. She continued the site lines for most of the neighbors are obstructed by a large house that is built on the peninsula already. Ms. Dooling added that their deck was damaged from years of use and freezing/thawing.

COMMENTS AND QUESTIONS BY ZONING BOARD OF APPEALS MEMBERS

In response to Moyski's question, Meisel answered that the LaClear's have an open air pergola and the discussion at the time was that 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, the pergola did not obstruct the view to the water; 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. In response to Moyski's question, Meisel answered that the LaClear deck was grandfathered in because it was pre-existing, but when they added the pergola they became non-compliant and the discussion was then if this was appropriate period. Meisel continued the lines of discussion that were debated had to do with: the deck being on a canal; if the intent is to preserve sight lines to the water – what are you preserving in that particular case; there was no views to the water relative to where the pergola was constructed. In response to Carnes' question, Ms. Dooling answered that they looked into a special land use permit and was told it was not a viable option for them. Carnes asked Ms. Dooling if she could recall who told her that and she responded that she could, but did not give an answer. Meisel responded that the Board asked the applicant to go talk to Zoning Administrator George Van Hecke and he rendered an opinion and it came back to the ZBA, the Board had a discussion and said this is the feedback from Van Hecke, had some additional discussion and said unfortunately from a special land use perspective there's nothing that is applicable. Cypher stated that everyone must understand that the Board is going by the Zoning Ordinance as it is written. Ms. Dooling stated that a variance would give an exception to the Zoning Ordinance.

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Cypher stated that every house on Runyan Lake or any other lake in Tyrone Township, based on the Board's decision, could end up with a structure that is 3 to 5 to 10 feet away from the lake. He continued that Zoning Ordinance Section 20.02Z is very clear, it states lakes, ponds, streams, drainage-way, wetland of any size or river, no structures, fences or decks extending more than 12 inches above the grade shall be permitted within 50 feet from the established edge of the water. Ms. Dooling asked the Board to explain the decision it made for the LaClear's on October 6, 2008, because the situation is very similar to their situation. Cypher stated the cases are very similar. Carnes stated that the difference is that it was an existing structure in the LaClear case. Meisel restated Cypher's concern for everyone on any of the lakes in Tyrone Township that could end up with a structure very close to the water's edge, but that an extraordinary circumstance or unreasonable burden could be established that is unique to this property and it is not on the main body of water. He continued the Board must decide what the intent of the Ordinance is and if the intent of the Ordinance is to preserve sight lines to the water. Cypher stated he was on the Planning Commission for 8 years and he was on there when these were written, but what is this Board here for? Meisel stated that from a variance perspective the Board has to keep in mind that any decision that they make, they need to make it so it is not precedent setting. Cypher stated a precedent was set whenever the Board approved the LaClear appeal, because nothing else has changed. Meisel stated you could argue it was precedent setting, but the case itself can stand on its own merit. He continued the merits are: it was a pre-existing deck, it had been damaged as the result of wind, there were a bunch of trees that were subsequently removed, etc, so that particular case and individual circumstances and merits that may or may not be similar in many cases to this particular case, but no different than other decisions that have been made by this body regarding as an example accessory structures in the front yard location. Meisel stated there are a number of things that because of the way the Zoning Ordinance is written, the Planning Commission in discussions over the last three years has said there are some things here that do not work very well, as an example the prohibition of accessory structures in the front yards in LK-1 Zoning district, yet the decision of the Planning Commission is that it applies so widely to the remainder of the Township that the decision to permit those should reside with the Zoning Board of Appeals on a case to case basis. Meisel stated that the Board must decide if this is a unique circumstance over and above what the Zoning Ordinance is intended to apply for in general, recognizing that the Zoning Ordinance cannot comprehend every situation or circumstance that is going to exist, hence the ZBA. Ms. Dooling stated she has the support of her neighbors. Carnes stated they have the support of the neighbors today. He continued that a variance is granted with the property. Carnes stated it was a Township Board Member that identified the structure does not comply with the Zoning Ordinance and that is why they are here. Cypher stated that had proper permits been applied for, the drawings would have been reviewed and the applicant would not be here. Meisel stated this is the current pool of neighbors, there is this harmonious coexistence with existing neighbors, the challenge always is what if you get a new neighbor and they do not like it, is there any tool or mechanism to say you could consider a variance conditional upon not receiving a complaint from neighbors within a reasonable proximity and if so have them come back before the ZBA. Carnes stated this would be messy and he would not want to do that. Cypher stated you would almost have to put that on any variance you grant. Meisel countered that you would not because it is a decision you make. Carnes stated the Board must consider that it may be precedent

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setting and it may not be, again it is unique. He continued that the Board decisions are made unique to a particular parcel. Carnes stated whatever the decision made here this evening, it could be considered precedent setting in the future.

PUBLIC COMMENT

Gregory Ladd, 10136 Walnut Shores Dr., stated support for the variance request and stated he is the adjacent neighbor and he cannot see the structure and it does not obstruct his view. Kristina Mair, 10122 Walnut Shores, stated support for the variance request. Larry Smeby, 10146 Walnut Shores Drive, stated his support for the variance request. Dennis Boyle, 10577 Sleepy Shores Path, stated support for the variance request and that nobody cares that this was built. The Board reviewed written correspondence from: William D. Richards, 10645 Sleepy Shores Path, Robert J. Luttman, 10141 Walnut Shores Drive, Timothy Polakowski, 10098 Walnut Shores Drive, and Holly & Lee Justice, 10623 Sleepy Shores Path, indicating they support the variance request by Dan & Julie Dooling.

MOTION

Cypher moved that the request by Dan and Julie Dooling for a variance to be allowed to keep the existing pavilion (that was added approximately 1½ - years ago), on the existing deck behind the existing house, located at 10128 Walnut Shores Drive, (TAX CODE # 4704-09-401-006), and the request for 43-foot setback variance from the water's edge be granted for the following findings of fact: Unreasonable Burden: The rebuild deck was existed prior, it is an existing structure, and although modified does not obstruct views of adjacent property owners. Substantial Justice: Existing structure, no sight lines are impacted to the water, the structure is harmonious with the neighborhood, and is supported by 100% of the neighbors. Minimum Variance Required: The existing structure was rebuilt in its previous location. Extraordinary Circumstances: Existing structure, it provides safe haven for the neighborhood children, and is not a public nuisance. Health and Safety: There are no safety hazards or nuisances as a result of granting this variance. [Ref. Tyrone Township Zoning Ordinance No. 36 – Sections 20.01 (Schedule of Regulations), 20.02Z (Footnote to Schedule of Regulations) and 21.02 (Accessory Structure Provisions)]. (Moyski seconded.) Roll call vote: Moyski, yes; Cypher, yes; Wardin, yes; Carnes, yes. The motion carried. Meisel abstained from the vote.

Commissioner Meisel stated he was not going to declare a conflict of interest but he is arguably a near neighbor, by near it is arguable that from structure to structure he is approximately 1000 feet away from the Widder's. He continued that despite the fact that they are in the same neighborhood, they have not met previously, don't know each other and do not have a relationship, but because he is arguably in some proximity to them, someone could infer that there is a conflict of interest. The Board agreed that there was no conflict of interest.

NEW BUSINESS:

VARIANCE REQUEST

- #1 Micah and Jacqueline Widder, RE: Request for a Front Yard Location Variance in Order to Build a New Proposed 32-Foot by 22-Foot Detached

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Accessory Structure in Front of the Existing House, Located at 10621
Runyan Lake Point, (TAX CODE # 4704-10-102-003)

Micah Widder requested a front yard location variance in order to build a new proposed 32-foot by 22-foot detached accessory structure in front of the existing house. He stated they moved to the area in May of 2008. He continued that there is no basement, just a crawl space. He stated there are a lot of natural springs and a bog marsh adjacent to their house. He stated they have a one car garage because if they expanded upon the existing structure that is already there they would have gone into the boggy area and would have ended up with pilings that are 35 to 50-feet into the ground. He continued he would probably have more into the structure underground than above the ground. He stated they looked at the higher ground about 50 feet away from the house and locate the structure between the house and the road. He continued that they are looking to build a 32-foot by 22-foot detached accessory structure in front of the existing house. He stated they meet the 10 foot side yard setback and the 50 foot setback from the road and that the proposed location for the proposed structure is about 300 feet from the water. He added that they are looking for extra storage space. He continued the proposed structure will match the facade of the house and will not be a pole barn with sheet siding. He stated the bottom will be 3 to 4-feet of rock wall, cedar shake at the top of the house, and the siding will match the aesthetics of the house. Mr. Widder continued that five of his closest eight neighbors have detached accessory structures, four are garages and one is a shed, all between the road and their houses. He stated that locating a structure lakeside would block the view for the neighbors and they would need to come in for a variance to do so.

COMMENTS AND QUESTIONS BY ZONING BOARD OF APPEALS MEMBERS

In response to Wardin's question, Mr. Widder answered that the proposed structure would be about 32 to 50 feet from the existing house and that the existing big tree will remain. In response to Wardin's question, Mr. Widder answered that the size of the house is about 2,360 square feet. In response to Moyski's question, Mr. Widder answered that the proposed structure would be a one-story structure with rafters up top; it meets the height requirement, and will have an 8/12 or 6/12-pitch to the roof. Meisel stated that in the applicants particular area there are a couple of encumbrances, the rear yards and sometimes portions of the front yards in that immediate area there, across from the Hicks property and Meisel's property inclusive, are burdened by springs that make the soil very challenging to build on. He continued the rear yards are generally not buildable anyway, even though that would again from an Ordinance perspective totally violate the intent of the Zoning Ordinance which is to keep the sight lines to the water. Meisel stated this came up as a lengthy discussion at the Planning Commission, should we come up with a means of permitting front yard accessory structures in LK-1 if there are no side yard or rear yard capabilities, and the Planning Commission, right or wrong, decided to let the Zoning Board of Appeals handle these on a case to case basis. Meisel continued that Robertson built a front yard accessory structure, closer to the road than this one would be, and it was built with a variance under the existing Ordinance. Meisel stated the setback is about 150 feet from the road and the fact that the property slopes downward somewhat, it will not obstruct anybody's ability to navigate Runyan Lake Point, it will not obstruct anybody's ability to navigate their driveways and see Runyan Lake Point traffic going back and forth, and it will arguably not be that noticeable because it is set back and there

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are some trees there. Meisel continued it appears to him to be low impact, however it is a front yard location because in LK-1 it does not permit an accessory structure period because you can never have it in the rear yard to comply with the Zoning Ordinance and you cannot have it in the side yard or the front yard, hence the ZBA.

PUBLIC COMMENT

None. No written correspondence was received prior to tonight's meeting.

MOTION

Moyski moved to grant the request of Micah and Jacqueline Widder, for a front yard location variance in order to build a new proposed 32 x 22-foot detached accessory structure in front of the existing house, located at 10621 Runyan Lake Point, (Tax Code# 4704-10-102-003), as a result of the following findings of fact: Unreasonable Burden: The Zoning Ordinance simply prohibits front yard location of accessory buildings in the LK-1 zoning district despite the historical location of homes found on Runyan Lake which does not allow for the location of an accessory building in the rear yard. Such a location would also obstruct views of the water, a key selling point for most lakefront homes. The proposed accessory building would be set back nearly 200 feet from Runyan Lake Point, resulting in minimal impact along Runyan Lake Point. The floor area of the structure complies with the Ordinance. Substantial Justice: A significant number of homes found on Runyan Lake, inclusive of those along Runyan Lake Point, have accessory buildings located in the front yard. This location is preferable to a waterfront location by waterfront owners as it preserves views of the water. The vast presence of existing front yard accessory buildings results in this variance preserving the character of the neighborhood and it relates harmoniously as well. The ability of the owner to store outdoor items in an enclosed building reduces the presence of exposed items in the front yard and therefore improves the visibility of the neighborhood. The structure will match aesthetics of the existing structure, and no trees will be removed. Extraordinary Circumstances: The absence of conditions or consideration within the Zoning Ordinance to accommodate accessory buildings in the LK-1 district, but specifically those located on water. A rear yard location would obstruct views to the water, which is highly valued. Access to the rear yard is limited for many LK-1 lots due to lot width, topography, and soil conditions. Minimum Variance: The variance being granted is the minimum variance required to construct the accessory building as presented. Health and Safety: No issues are present or created by approving the requested variance. The absence of items stored outdoors may reduce crime opportunities. [Ref. Tyrone Township Zoning Ordinance No. 36 – Section 21.02B (Accessory Structure Provisions – Number and Yard Locations)]. (Cypher seconded.) Roll call vote: Cypher, yes; Wardin, yes; Moyski, yes; Carnes, yes, Meisel, yes. The motion carried.

MISCELLANEOUS BUSINESS

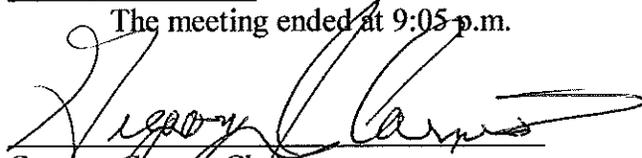
The Board reviewed and approved the proposed Zoning Board of Appeals meeting dates for April 2010 thru March 2011.

The next regular meeting of the Tyrone Township Zoning Board of Appeals is scheduled for Monday, March 1, 2010 at 7:30 p.m.

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ADJOURNMENT

The meeting ended at 9:05 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