

# Otsego County Zoning Board of Appeals

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11-30-10 Meeting Minutes approved 9-27-11

**Call to Order:** 6:00pm

Pledge of Allegiance

**Roll Call:**

Present: Mr. Hoffman, Mr. Alexander, Mr. McCarthy, Ms. Bono, Mr. Stults, Mr. Wagar, Mr. Sagasser

Staff Present: Mr. Ferrigan, Mrs. Bolinger

Public Present: Rodney L. Schoolcraft, Jim Riling, Dwayne Fortney, Lee Fortney

**Approval of Minutes from 10-26-2010:**

Mr. Sagasser noted that his name was misspelled. Motion to approve the minutes as corrected, made by Mr. Wagar. Support by Mr. McCarthy.

Motion approved unanimously. Motion carried.

**Citizens Comment Regarding Items Not on the Agenda:** None

**Public Hearing:** Case # V100006

Rodney and Betty Schoolcraft, owners of property located at 6455 Honey Lane, Johannesburg, MI 49751 have made the following request:

A request to construct an addition to an existing deck. The new portion of the deck is 11.92 feet long and 7.75 feet wide. The front of the deck will be approximately 30 feet from the normal high water line of Little Bear Lake (requiring a dimensional variance of 20 feet). The side of the deck will be 3.5 feet from the property line (requiring a dimensional variance of 6.5 feet).

Parcel ID# 020-002-100-080-02

Legal Description: LOT 25 BLK 4 1<sup>ST</sup> ADD TO LITTLE BEAR LAKE

Public Hearing: Opened at 6:06 pm

Rodney Schoolcraft addressed the Board. He explained why he and his wife were requesting this variance.

Ms. Bono asked that it be stated for the record, that this is an after the fact request.

Mr. Schoolcraft stated that the deck is already in place.

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Mr. Ferrigan explained the process to obtain a permit within the shoreline.

Mr. Schoolcraft stated that he had obtained a shoreline permit for the stairs that were constructed down to the lake.

Mr. Ferrigan stated that he researched for any permits for construction of the deck or stairs and the only one he found was for a roof over an existing deck. That led to a zoning permit dated, 10-23-03, #Z03-571, stating no changing of footprint. The permit is showing that the new roof is 12 feet from the property line and that the measurements were not correct. This Zoning permit was issued to the person that previously owned the property.

Mr. Schoolcraft stated that the posts were placed 7.5 foot from the property line and this set back is allowed for nonconforming lots.

Mr. Ferrigan stated that the building inspectors were not doing cross over (Zoning) inspections at that time. Therefore the setbacks were not checked.

Mr. Lee Fortney addresses the Board. He stated that the upper deck was built after 2003. He submitted pictures to the Board (attached) showing the property markers and measurements to the deck added in July 2009. He is not in favor of the Schoolcraft's placing their deck within the required setback on his side of the property.

Mr. Wayne Fortney is in agreement with his brother Lee Fortney.

Mr. Jim Riling addressed the Board. He is in support of the Schoolcraft's being able to use the deck as it is built.

Mr. Schoolcraft addressed the Board again saying that this was not the first intrusion on his land.

Public Hearing: Closed at 6:55 pm.

**Old Business:** None

The Board decided to look at both dimensional variance requests at the same time.

**New Business:**

1. Rodney and Betty Schoolcraft, owners of property located at 6455 Honey Lane, Johannesburg, MI 49751 are requesting to construct an addition to an existing deck. The new portion of the deck is 11.92 feet long and 7.75 feet wide. The front of the deck will be approximately 30 feet from the normal high water line of Little Bear Lake (requiring a dimensional variance of 20 feet). The side of the deck will be 3.5 feet from the property line (requiring a dimensional variance of 6.5 feet).

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Mr. Ferrigan read a letter from Charlton Township abstaining from recommendation due to time constraints. They waived their rights granted to Township participation as listed in Article 24 of the Zoning Ordinance. (Attached Ex.11)

Mr. Ferrigan read a letter in favor of the request from Lee Olsen. (Ex. 9)

Let the minute's show that that Mr. and Mrs. Schoolcraft are applying for a variance request and not an appeal as accidentally marked on the application.

Exhibit list for case V1000006 Rodney and Betty Schoolcraft:

**Ex.1:** Warranty Deed provided by Rodney and Betty Schoolcraft

**Ex.2:** Zoning Board of Appeals Application including 2008 certificate of survey

**Ex.3:** Otsego County Zoning Ordinance

**Ex.4:** Otsego County Zoning Map

**Ex.5:** Public Hearing posting notice

**Ex.6:** Letter to Charlton Township dated 11-10-10

**Ex.7:** List and map of parties notified

**Ex.8:** Receipt for payment

**Ex.9:** Letter dated October 10, 2010 from Lee Olsen

**Ex.10:** Reason for denial on PZ10206 (attached)

**Ex.11:** Letter received 11-30-10 from Charlton Township Planning Commission

**Ex.12 to 16:** Photos submitted by Lee Fortney

General Finding of Facts for Case V1000006 Rodney & Betty Schoolcraft:

- 1) That the Zoning Board of appeals in accordance with 23.2.1.3 of the Otsego County Zoning Ordinance has the authority to grant nonuse variances. (Ex.3)
- 2) Rodney and Betty Schoolcraft are the owners of real property located in Otsego County described as: LOT 25 BLK 4 1<sup>ST</sup> ADD TO LITTLE BEAR LAKE (Ex.1)
- 3) That this parcel is located in Charlton Township, Otsego County Michigan. (Ex.1)(Ex.4)
- 4) That Rodney and Betty Schoolcraft seek a dimensional variance from the requirements of the Otsego County Zoning Ordinance for a deck that is 11.92 feet long and 7.75 feet wide. The front of the deck will be approximately 30 feet from the normal high water line of Little Bear Lake. (Requiring a dimensional variance of 20 feet). The side of the deck is 38 inches from the property line. (Requiring a dimensional variance of 6.5 feet.) (Ex.2)
- 5) That the parcel referenced (023-190-004-025-00) in ZBA case V1000006 is zoned Recreational Residential. (Ex.4)
- 6) That all requirements for holding a Public Hearing as required by the Otsego County Zoning Ordinance section 16.5 have been met. (Ex.3) (Ex.5) (Ex.7)

Let the record show that we recognize that there was an inaccurate parcel ID number listed in the paper, however the address was correct.

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- 7) That the requirements of Article 24 Township Participation of the Otsego County Zoning Ordinance have been waived by the Township. (Ex.6 and 11)
- 8) That the required fees have been paid by Rodney and Betty Schoolcraft. (Ex.8)
- 9) That the property is a lawful nonconforming lot and subject to Section 18.26 of the Zoning Ordinance.
- 10) That the property is a lot near water and subject to Article 15 of the Otsego County Zoning Ordinance.
- 11) Written letter. (Ex.9)
- 12) Verbal comments – Mr. Schoolcraft - Rodney Schoolcraft addressed the Board. He explained why he and his wife were requesting this variance. Mr. Schoolcraft stated that the deck is already in place. Mr. Schoolcraft stated that he had obtained a shoreline permit for the stairs that were constructed down to the lake. Mr. Schoolcraft stated that the posts were placed 7.5 foot from the property line and this set back is allowed for nonconforming lots. Mr. Schoolcraft addressed the Board again saying that this was not the first intrusion on his land.
- 13) Verbal comments – Mr. Lee Fortney - Mr. Lee Fortney addresses the Board. He stated that the upper deck was built after 2003. He submitted pictures to the Board (attached) showing the property markers and measurements to the deck added in July 2009. He is not in favor of the Schoolcraft's placing their deck within the required setback on his side of the property.
- 14) Verbal comments – Mr. Wayne Fortney - Mr. Wayne Fortney is in agreement with his brother Lee Fortney.
- 15) Verbal comments – Mr. Riling - Mr. Jim Riling addressed the Board. He is in support of the Schoolcraft's being able to use the deck as it is built.

Motion to approve the General Finding of Facts number 1 through 15 as written made by Mr. Alexander. Support by Ms. Bono.

Motion to continue with the case due to the time constraints as written in the Bylaws made by Mr. McCarthy. Support by Ms. Bono.

Motion approved unanimously.

Mr. Hoffman began the Board's deliberation of Case V1000006 (Schoolcraft) by reading aloud the definition from Article 2 of the Zoning Ordinance – Practical Difficulty

Mr. Hoffman read aloud Article #23.6 of the Otsego County Zoning Ordinance and then the first five criteria.

## 23.6.1

Motion that the requested variance will not be detrimental to the public welfare or otherwise injurious to other properties in the same zoning district made by Mr. Alexander. Support by Mr. Sagasser.

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Board comment: No evidence was given by the applicant addressing this point. Potential encroachment of property line setback.

Roll call vote: Mr. Hoffman No, Mr. Alexander Yes, Ms. Bono No, Mr. Stults No, Mr. McCarthy No, Mr. Wagar No and Mr. Sagasser No.

1 Yes to 6 No

## 23.6.2

Motion that the requested variance is necessary for the applicant to receive a right available to other properties in the same zoning district made by Mr. Stults. Support by Mr. Alexander.

Board comment: The applicant already has a lawful nonconforming cement landing in the shore land area that allows access to the lake. No evidence was provided by the applicant to support the necessity of a variance.

Roll Call vote: Ms. Bono No, Mr. Alexander No, Mr. Sagasser No, Mr. Wagar No, Mr. McCarthy No, Mr. Hoffman No and Mr. Stults No.

0 Yes to 7 No.

## 23.6.3

Motion that special conditions or unique circumstances exist with this property and do not generally apply to other properties in the same zoning district made by Mr. Stults. Support by Mr. McCarthy.

Board Comment: The property does have a steep slope within the shore line area. The property is a lawful nonconforming lot.

Roll Call vote: Mr. Alexander Yes, Mr. Sagasser Yes, Mr. Hoffman Yes, Mr. McCarthy Yes, Ms. Bono Yes, Mr. Stults Yes, and Mr. Wagar Yes.

7 Yes to 0 No.

## 23.6.4

Motion that the special conditions or circumstances are not the result of actions by the applicant or predecessor in title made by Mr. Stults. Support by Mr. Wagar.

Board comment: The dwelling unit is a lawful nonconforming structure.

Roll Call vote: Mr. Hoffman Yes, Mr. Stults Yes, Mr. McCarthy Yes, Mr. Wagar Yes, Mr. Alexander Yes, Ms. Bono Yes and Mr. Sagasser Yes.

7 Yes to 0 No.

## 23.6.5

Motion that the requested variance is the minimum variance necessary that will make possible the reasonable use of the land made by Mr. Stults. Supported by Mr. Sagasser.

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Board comment: The land has been used as waterfront property for a long time without the presence of the deck in question.

Roll Call vote: Mr. Sagasser No, Mr. Wagar No, Ms. Bono No, Mr. Alexander No, Mr. Stults No, Mr. Hoffman No and Mr. McCarthy No.  
0 Yes to 7 No.

Motion that based on the Finding of Facts under section 23.6.1, .2, & .5 that the request for 2 dimensional variances of case V1000006 be denied made by Mr. Stults. Support by Mr. Wagar.

Roll Call vote: Mr. McCarthy Yes, Mr. Hoffman Yes, Mr. Sagasser Yes, Ms. Bono Yes, Mr. Alexander Yes, Mr. Wagar Yes and Mr. Stults Yes.  
7 Yes to 0 No.

Variance request V1000006 for Rodney and Betty Schoolcraft denied.

## **ZBA Member Items:**

Mr. Hoffman asked that actions to schedule cases for ZBA should not take place until we get response from townships. Consensus of the board was unanimous.

Pictures of the Board members were taken for their ID badges.

**Meeting adjourned:** 8:49 pm.