

**WATERVLIET CHARTER TOWNSHIP  
ZONING BOARD OF APPEALS  
MEETING AND PUBLIC HEARING MINUTES  
SEPTEMBER 21, 2022**

Site Address: 8121 Shady Dr.

Property Number: 11-21-7190-0002-01-9

Applicant: Ray and Ashley Polino

Request: The property currently has a home on it with a small, approximately 15 foot by 4 ½ foot deck on the lakeside and an 8 foot by 34 ½ foot deck on the east side of the home that does not afford a very good view of the lake. In addition to that, the Polino home, as well as the contiguous property to the east, are situated on properties that are recessed from the surrounding average shore line by approximately 30 feet, thus greatly inhibiting their general view of the lake to the east, and mainly to the west.

As such, in an effort to improve their view of the lake, the Polinos would like to construct a 33' X 16' deck off the second story of the home. They would like the deck to line up with the west side of the current home and line up with the east side of the ground deck on the east side of the home. The deck, as proposed, would come to within 4.7 feet of the west side yard lot line and within 12.1 feet of the front or lake side of the property.

Watervliet Township Zoning Ordinance No. 77, Article V - Schedule of District Regulations, Section 5.12 - Yard, Height and Lot Size Requirements for Principal and Accessory Uses, mandates a side yard setback in this district of 10 feet and a front/lake side setback of at least 35 feet. For this project to proceed as proposed, a side yard setback variance of 5.3 feet for a length of 16 feet and a front yard (lakeside) variance of 22.9 feet for a width of 33 feet will have to be granted. The east side of the project will come to within 12.1 feet of the east property line and more than meets the side yard district requirement.

Present: Mark Vander Linden, Thys Van Hout, Carl Spessard, Stephen Myers, Robert Wallace, Deanna Heminger.

Also Present: Ray Polino, Colleen Curtis, Kathy McNicholas, Thomas Scheid,

Chairman Spessard called the meeting to order at 2:00 p.m.

The minutes of the June 30, 2022 meeting were read. S. Myers made a motion to approve the minutes as read. M. Vander Linden seconded and the motion carried unanimously.

At this time C. Spessard made a motion to close out of the regular meeting and enter the public hearing portion. R. Wallace seconded and the motion carried unanimously. The public hearing was opened at 2:02 p.m.

Chairman Spessard then invited the applicant to make the initial statement. R. Polino explained that, due to a large removal of land in front of his and his neighbor's house to the east, it makes his lot and home sit back further than other homes in the area fronting on the otherwise natural shore line of the lake. As such, Polino explained, in order to have a better view of the lake from his home he would need to build further out toward the lake but zoning regulations prevent him from doing that and further explained that is what led him to request this hearing.

Polino was asked how he intended to ingress and egress the deck. He explained that there is an existing deck on the east side of the home that has a doorway to the interior of the home. If the proposed deck is approved, it would tie-in with the existing deck and then use the current entry. S. Myers asked Polino what he intended to do with the land under the proposed deck. Polino said that, for the time being, it would be left as grass, and continued that at some time in the future they may construct a ground level deck or just install pavers. Myers asked the Zoning Administrator, R. Lohr, if adding an upper deck would increase the buildable envelope of the structure? Lohr did reply that it would. Myers did note that it is a common practice on the lake to add a deck or a screened in porch that usually, at some point, becomes a room addition.

T. Van Hout question why a cement patio was shown on the site plan submitted to be far less than what he observed upon inspection of the property, which he noted goes much closer to the lake shore than illustrated. Polino stated that was an error on the part of the surveyor. Van Hout then asked Lohr if that error could invalidate the site plan and impact the decision? Lohr stated that he did not know if it was an invalidation of the site plan or not but replied that, either way, it would be the Zoning Board of Appeals decision to decide.

M. Vander Linden asked Polino that if the whole point of the project was to obtain a better view of the lake to the west, would that possibly be an impediment to the westward view of the occupants to the east? Polino, explaining with an illustration of the site, noted that the occupants to the east of him already have their view blocked by the house to the west of him the same way it blocks his view. C. Spessard noted that the only lake side view protection is the 45 degree line of sight clause in the Zoning Ordinance.

Vander Linden said he understood that, but would the proposed deck be causing another hardship to the property owners to the east the same way Polino is hindered by his neighbor to the west. T. Van Hout noted that he understood what Vander Linden's concern was and asked R. Lohr what the consideration should be. Lohr noted that, by ordinance, the only lakeside view protection is a line of 45 degrees from the nearest lake side corner of the contiguous property. Anything up to that point is developable.

At this point C. Spessard asked if there was any written correspondence regarding the request. He was told there was none. Spessard then asked if anyone in attendance had anything to contribute. C. Curtis was recognized by the Chairman and stated that she lives two houses to the west of the applicant and that she has no objection to the request. She added that an elevated deck would not be a hinderance to any property owner on either side of the applicant. She continued to say that a previous owner of the home had a

deck on the ground and one elevated from the second story. It was a subsequent property owner who removed those decks and expanded the side deck.

Spessard then recognized K. McNicholas who stated that she had no objections with the request.

With no further comment from those in attendance, C. Spessard made a motion to adjourn the public hearing and re-enter regular session. R. Wallace seconded and the motion carried unanimously.

The public hearing was adjourned at 2:19 p.m.

Back in regular session, Spessard stated that the determinate factor is to decide if the thirty foot setback from the normal lake shore in that area constitutes a hardship. S.

Myers questioned the assumption that a view of the lake is an essential use of the property. T. Van Hout noted that Spessard used that language because that is one of the 4 points the Board must consider. Spessard replied that is one of the primary things to be considered. S. Myers replied that, if it is that important, why don't they just extend the house out 16 feet? Spessard replied that would be a consideration if the applicant were requesting that, but he is requesting a deck.

S. Myers stated that his concern would be if he proposed to extend the house out to within 10 - 12 feet of the edge of the water that would be a significant extension of the capability of the property. He added that would have been something that he could not support.

Vander Linden noted that was his primary concern that, at some time in the future, they could enclose beneath the deck. In so doing that would have a significant impact on the owners to the east.


After further discussion regarding the imposition of conditions mitigating any future construction, M. Vander Linden made a motion to approve the variance, as requested, with the conditions that there will be no enclosure beneath or above the deck and the deck's area will not become part of the legal non-conforming envelope of the structure.

The motion was supported by T. Van Hout. A roll call vote is as follows: R. Wallace, yea; T. Van Hout, yea; M. Vander Linden, yea; S. Myers, yea; C. Spessard, yea. Motion carried unanimously.

With there being no further business before the Board, S. Myers motioned to adjourn. M. Vander Linden seconded and the motion carried.

The meeting was adjourned at 2:28 p.m.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Robert Lohr", with a horizontal line extending to the right.

Robert Lohr  
Zoning Administrator