

**WATERVLIET CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
MEETING AND PUBLIC HEARING
AUGUST 17, 2016**

Site Address: 5406 Forest Ave.

Property #: 11-21-2220-0010-00-1

Variance requested by Harley and Beth Sargent

Request: The Sargents were granted a variance at a May 14, 2004 Zoning Board of Appeals' meeting to extend a 6 foot X 22 foot deck into the front/lakeside setback of 35 feet to bring the total structure to within 28.4 feet of the water's edge. The Sargents subsequently added an additional 2 feet onto the front of that deck. The Township was appraised of that fact and, when verified, the Sargents were issued a notice and order to remove the added 2 feet. As a result of that action, the Sargents are requesting a variance to retain that added 2 feet citing the fact that the narrowness makes the deck impractical as it prohibits both sides of the table from being utilized, they have stated that they have had people fall off the deck in the past, and physical ailments prohibits both Mr. and Mrs. Sargent from setting the table for meals or cleaning.

Watervliet Charter Township Zoning Ordinance No. 77, Article XVIII, Section 18.05 "Lake Front Setbacks" mandates a lakeside setback of 35 feet. If granted, this will bring the extended deck to within 26.4 feet of the water's edge. As such, an overall front/lakeside variance of 8.6 feet would be needed. In addition to that, Zoning Ord. No. 77, Article V, Section 5.12 "Schedule of District Regulations" mandates a side yard setback in this district of 10 feet. The requested added extension would come to within 2 feet of the south side yard property line and 6 feet 2 inches from the north side yard property line. Therefore, a south side yard variance of 8 feet for 2 feet of length and a north side yard variance of 3 feet - 8 inches for 2 feet of length would have to be granted if the 2 foot deck extension is to be retained.

Zoning Board of Appeals Membership Present: Richard Quinn, Rick Hubona, Al Bodfish, Carl Spessard, Robert Wallace.

Also Present: Harley and Beth Sargent, Jude Evans, Juliann Evans, Kip Wright, Carla Thiede, Thomas Scheid, Diana Householder, Dan Hutchins

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

Roll Call was taken.

The minutes of the July 1, 2015 meeting were read. A. Bodfish made a motion to approve the minutes as read. R. Hubona seconded and the motion carried unanimously.

Chairman Spessard began the meeting with a direct reading of the specific variance being requested by the Sargents. At the conclusion of that reading Spessard entertained a motion to close out of the meeting and enter into the scheduled public hearing.

R. Wallace made a motion to close out of the meeting and enter into the public hearing. R. Quinn seconded and the motion carried unanimously.

The public hearing was opened at 2:04 p.m.

Upon the opening of the hearing, C. Spessard invited the Sargents to make their presentation first. B. Sargent approached the Board with a copy of the public notice of a past variance request from May 6, of 2004; a survey showing the Sargent house and property to the lake, and a copy of a survey of each contiguous property. B. Sargent noted that the survey provided illustrates the abandoned Sunset Park which the 2004 survey does not show, wherein she stated that the actual current setback from the lake is 29 feet on the north side of the deck, instead of the noticed 26 feet, and the actual set back on the south side of the deck is 34.5 feet. Sargent added that she provided the neighboring surveys to show that the "... numbers add up."

C. Spessard, addressing Zoning Administrator R. Lohr, asked where, as in this case, there are varying lengths of side lot lines to the lake shore, how is the 35 foot set back determined. Lohr replied that the measurement is taken from the nearest point of the shoreline to the structure. Sargent continued to point to the fact that the south lot line is 34.5 feet and that is an accurate measurement. C. Spessard asked Sargent, "Are you saying that you don't need a variance?" Sargent replied that she was not saying that; to which Spessard replied that despite the length of the south lot line a variance, in any event, was still needed. At this time R. Wallace asked to hear from others at the hearing. B. Sargent interjected by stating, before that, she would like to state the rational for why they added the 2 feet. She began by stating that she has rheumatoid arthritis which makes it very difficult for her to move about the narrow deck. She added that at numerous times in the past guests, getting up from the dinner table, would fall off the deck. She added that the 6 feet that was granted by the Zoning Board of Appeals in May of 2004 was open for interpretation and that is why they added the two additional feet, adding that the additional two feet are portable cubes that can be removed at the end of the season. C. Spessard asked B. Sargent, "When did you add the additional two feet to the six feet?" Sargent replied one and one-half months ago prior to a birthday party. She elaborated that they - the Sargents - had a neighbor make the cubes to add to the existing deck. Spessard asked B. Sargent, "Didn't it occur to you to check with the township before you added the two feet?" Sargent replied that she did not because the cubes are portable and did not think it was necessary. Spessard stated that despite the fact that the cubes are portable they still add length to an existing structure and would still have to comply with setback requirements where, at this point, R. Lohr provided corroboration of that fact. R. Wallace, addressing B. Sargent, stated, "You have flower planters placed all around the

deck.", pointing out that they are placed on the illegal part of the deck. Sargent replied that the flower planters are there to give people a warning that they are getting close to the edge of the deck, therefore, they wouldn't fall off. Wallace then stated, "You don't have any more room than what you did before."

Juliann Evans, being recognized by the Chair, stated that her brother reported the illegal deck extension to the Township back in 2015 and again earlier this year and that the extension was there before one and a half months ago and further stated, "What do they need a deck for? Why don't they just build a patio?" Jude Evans said that the Sargent's problem was not the size of the deck but the size of the table they use. He continued that the table they currently use seats about 10 to 11 people then, on top of that, they have another table on the deck that seats an additional six. He said that the size of that particular deck in that area of the lake is a common thing and that other people with that deck size do not have problems. B. Sargent replied that they purchased the smallest table they could for the deck, adding that they can seat three people on each side and one on each end for a total of eight. Jude Evans told the Board that several weeks prior, the Sargents had a party and all the furniture was placed on the lawn and the deck was not even being used. Sargent stated that the deck was being used and that it was only the young people that were on the lawn. Juliann Evans, again, questioned why the Sargents just do not build a patio, stating; "They had one variance, now they want another one. Just build the patio and they won't need a variance."

With that said, Chairman Spessard asked R. Lohr if there was any written correspondence to be read into the record. Lohr read two separate letters that are affixed to these minutes. At the conclusion of the reading, and with no further comment from the audience, C. Spessard entertained a motion to close out of the public hearing and reenter the meeting. R. Quinn made the motion to close out of the public hearing and return to the meeting. R. Hubona seconded and the motion carried unanimously. The meeting was reopened at 2:30 p.m.

Back in regular session, A. Bodfish stated that the underlying reason the ZBA was now in session was that the Sargents were requesting forgiveness or correction of a zoning violation. "This Board is not here to correct zoning violations. It goes against everything." He added, "I just don't believe that special circumstances exist. I don't think that this interpretation of the ordinance will deprive you of the enjoyment of your property." Bodfish further suggested that the Sargents may consider flatwork or paving at grade. B. Sargent said that would involve stepping down onto the ground. R. Wallace suggested a ramp to transition from the house to the grade of the yard. Bodfish finished by saying, "I believe granting this variance is not in harmony with the general purpose and intent of the Ordinance."

R. Wallace stated that he did not, "...see a big problem with this, but you still don't have enough room, even with that two feet, to entertain." Wallace further stated, "That deck was made for a couple of rocking chairs. Not entertaining." R. Quinn said that he understood there are health issues involved but, being the request was so contrary to the Ordinance, he could not support it. R. Hubona stated that the request did not meet any of the criteria outlined in the Zoning Ordinance to grant a variance. He further stated that, even though they received a variance in 2004, they did not honor that granted variance by illegally adding an additional two feet.

With no further comment from the Board, C. Spessard requested a motion to approve or deny the requested variance.

A. Bodfish made a motion to deny the variance as requested. R. Hubona seconded. A roll call vote is as follows: R. Quinn, yea; R. Wallace, yea, R. Hubona, yea; A. Bodfish, yea; C. Spessard, yea.

With there being no further business to come before the Board, R. Quinn made a motion to adjourn. R. Hubona seconded and the motion carried unanimously.

The meeting was adjourned at 2:40 p.m.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Robert Lohr". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Robert Lohr
Zoning Administrator