

MINUTES

Cascade Charter Township Zoning Board of Appeals
Tuesday, November 11, 2008
7:00 p.m.

- ARTICLE 1.** Vice-Chairman Lewis called the meeting to order at 7:00 p.m.
Members Present: Beahan, Casey, Lewis, Wilson
Members Absent: 1st Alternate Neal (unexcused)
Others Present: Planning Director Peterson, Recording Secretary Hern, and Members of the Public.
- ARTICLE 2.** **Pledge of Allegiance**
- ARTICLE 3.** Vice-Chairman Lewis requested a motion for approval of the November 11, 2008 Agenda.
- Member Wilson motioned for the approval of the November 11th ZBA Agenda with support from Member Casey. All were in favor, none opposed. The motion carried, November 11, 2008 Agenda approved.**
- ARTICLE 4.** Vice-Chairman Lewis requested a motion for approval or corrections of the October 14, 2008 Meeting Minutes.
- Member Beahan motioned to approve the October 14, 2008 ZBA Meeting Minutes as presented, supported by Member Casey. All in favor with none opposed. October 14, 2008 Zoning Board of Appeals Meeting Minutes was approved as submitted.**
- ARTICLE 5.** **Case # 08-2938: Mark and Mary Mochel**
Property Address: 1919 Watermark Drive
(From the Table of July 8, 2008)
Requested Action: The Applicants are requesting a variance to allow a roof structure on an existing deck that is inside the required setback.
- Vice-Chairman Lewis requested a motion for this item to be removed from the table.
- Member Casey motioned to remove Case # 08-2938: Mark and Mary Mochel from the table, supported by Member Wilson. All in favor with none opposed, motion carried.**
- Planning Director Peterson presented the site plan and contrasted that with the site plan that was used to permit the home.

Planning Director Peterson noted that at the July 8, 2008 ZBA Meeting, the Applicant presented new information and Staff needed time to research the information.

Since the July Meeting, Staff has reviewed some of the other permits that the Applicant's builder has pulled in this development as well as other permits in the same time frame from other projects and other builders.

What was found was that Legacy Homes, the builder, who built the home and the deck for the Applicant had consistently not shown on the site plan any information regarding a deck that was included in the construction plans. Planning Director Peterson referred to the approved site plan with his signature noting the deck was not included by Legacy Homes in the approved plan. As the builder at the last meeting noted, the construction plans for the home show a deck.

The other permits Staff reviewed from the other builders did not have the same incomplete site plan as the Applicant's builder. Staff found one (1) similar situation where they included the deck as part of the house plans but did not show the deck on the site plan.

Staff does not find any new information that alters the facts of this request. The Findings of Fact are also included within the Boards' packets. The deck was built with an incomplete site plan into the setback. The fact that it was on the building plan is not approval of the site plan.

Staff believes the ZBA has the following options:

- Deny the request for the roof structure and require that the existing deck be corrected as well.
- Deny the request for the roof structure and allow the deck to remain as it is today.
- Approve the Applicant's request.

Staff's recommendation does not change in denying the Applicant's request.

If the Zoning Board denies the Applicant's request, the Applicant could also pursue a change in the regulations or P.U.D. amendment to allow for smaller rear yard setbacks. If the Applicant pursues a P.U.D. amendment, this would require the consent of the other property owners to permit this change and would require a

different process of Public Hearings by the Planning Commission and Township Board.

Also included in the Board's packets are the July ZBA Minutes and Staff's Report.

Staff recommends denial of the variance to add the roof structure to the existing deck but does would suggest that they are permitted to keep the deck as constructed.

Member Wilson said if she remembers correctly, the issue with the deck was the length of the deck and that the footing is actually within the setback but the deck flooring is hanging over the setback by 2-feet and Planning Director Peterson stated that the measurement is taken from the setback to the nearest edge of the deck.

Member Casey recalled that the builder stated in July that the footings are within the setback. He also noted that technically speaking, the Board should not approve the deck as it is and Planning Director Peterson said the Zoning Board could grant a variance to the Applicant to allow the deck as it is today. The Zoning Board could also request the deck be removed or constructed to meet the Township's requirements.

Applicant Mark Mochel, 1919 Watermark Dr., thanked Staff and the Zoning Board of Appeals for working with him over the past few months.

Applicant Mochel clarified in one of Planning Director Peterson's comments regarding the neighbors being concerned of his project, he did speak with his neighbors who support the roof on his deck

He also noted in the Findings of Fact that he does not have an argument regarding the site plans that were found. He does argue, however, that the Certificate of Occupancy was presented. He can appreciate that inspectors are not required to measure all setbacks, etc. but if inspectors are not required to measure setbacks, etc. then why do inspections.

Mr. Mochel said the Township knew about the deck and cannot speak for Legacy Homes as to why the deck was not included on the site plan but in the construction plan.

Mr. Mochel purchased the home in May 2007 and was not the original owner. He unknowingly finds himself in this situation and

purchased the home with plans for modifications and now he is unable to.

He summarized that other than the Certificate of Occupancy, he wanted to clarify that the Watermark Home Owners Association and the developer have approved both the existing deck and the modification. He also submitted a petition that was presented to the residents within sight of his house, outside of the 300-foot parameter. The surrounding neighbors did not have any objections to his roof and their signatures are on the petition.

Applicant Mochel noted that he has financially invested himself in the project. He has invested money in the planning of the roof. He also invested some money with Legacy Homes and signed a contract. He has not deleted the contract Legacy Homes is now out of business.

He noted this is a small intrusion on the setback and prefers not to remove the deck. He asked the Board to consider his attempts to completing the project the right way and the investment he has already made into the project. He would like to proceed with the construction as planned

Vice-Chairman Lewis thanked Applicant Mochel, on behalf of the Township, for pointing out something the Township should be aware of.

Member Beahan asked Applicant Mochel if he has spoken with the developer regarding the possibility of purchasing an extra two (2) feet of property, hence bringing the deck within compliance? Applicant Mochel said he did speak with the developer a few months ago but has not pursued the opportunity depending on tonight's outcome. When speaking with the developer, he did indicate he has sold part of the property in the past but there is an expense in doing so and he is not sure he can afford to do so. Member Wilson said she has been impressed with how thorough the Applicant has investigated his case. She noted that the Applicant has referred to the receipt of a Certificate of Occupancy that is relevant to the deck. Member Wilson clarified that the Certificate of Occupancy is not related to the deck; it has to do with how far along the house is in construction and whether or not the house may be safely occupied.

She also noted the Applicant spoke of an inspector and again, an inspector reviews the details of the house, if the electric is up to code, water and sewer up to code and looks at the quality of the

construction and the building. The deck is reviewed during inspections but reviewed for the quality of work and if it is safe, not the setbacks.

She hopes to alleviate some of the Applicant's frustration regarding his case but those two (2) items are not in any relation to the deck and the Applicant thanked her for her explanation.

Vice-Chairman Lewis noted the Board needs to consider the Statement of Facts.

Member Wilson asked that if the Applicant's request were denied, would the Zoning Board need to grant a variance to allow the existing deck to remain? Planning Director Peterson said the ZBA could grant a variance to allow the deck to remain as it currently is.

Member Casey noted on the site plan the question is how much of the deck in the one corner actually encroaching. Planning Director Peterson agreed that as you move to the north, the encroaching area is less and primarily it is the northwest corner of the deck that is encroaching. Member Casey suggested that architecturally there could possibly be some adjustments made to bring the current deck into compliance and build the roof.

Member Beahan asked how many of these requests have the Township seen in the past. Planning Director Peterson said that we have not granted many setback variances in the past. The last setback variance granted was in 2005 on Thorncrest but involved a non-conforming situation we do not see a lot of setback variances.

Member Wilson motioned to deny the request for a variance to allow a roof structure on an existing deck that is inside the required setback at 1919 Watermark Drive but to allow for a variance to keep the current existing deck structure, supported by Member Beahan.

Member Casey agrees with the motion and noted the offending party is the builder, not the Applicant. The Applicant does have a choice in contracting a builder to bring the deck within compliance and then the Applicant could add the roof or the Applicant could also purchase additional property, bringing the deck within compliance and then adding the roof.

All in favor with none opposed. Variance denied to allow a roof structure on an existing deck that is inside the required

setback and approval of a variance to allow the current, existing deck at 1919 Watermark Drive. Motion carried.

ARTICLE 6.

Any Other Business

Planning Director Peterson reviewed the proposed 2009 calendar for upcoming Zoning Board of Appeals meetings. If any of the Board Members have any comments to please contact him.

ARTICLE 10.

Adjournment

Member Wilson supported by Member Casey moved to adjourn. The motion carried and the meeting was adjourned at 7:46 p.m.

Respectfully submitted,

Jack Lewis, Vice-Chairman/Secretary

Lisa Hern, Recording Secretary