

Approved Minutes August 4, 2025

**Lake Township Zoning Board**  
**Wednesday, May 7, 2025**  
**6:30 p.m.**  
**4988 W. Kinde Rd, Caseville MI 48725**

**Approved Minutes**

The meeting was called to order at 6:30 p.m. by Hoffman at the Lake Township Hall.

**Roll Call:** Keith Hoffman, Morene Rehbine, David Diehl, Ann Krzeminski present, Jim Deming and Mike Manenti absent.

The meeting was attended by Valerie McCallum, Supervisor, Terry Kelly, Zoning Administrator, as well as eleven (11) guests present and four (4) virtual guests.

**Approval of Agenda:** Hoffman added presentation by Terry Kelly to the Agenda. Motion by Rehbine to accept changes and approve agenda, seconded by Krzeminski. All in favor, motion carried.

**Approval of March 27, 2025 ZBA Minutes-**Motion by Diehl to approve, seconded by Rehbine, All in favor, motion carried.

**New Business:**

Chairperson Hoffman explained the rules, procedures and standards for the Zoning Board of Appeals and read the published notice.

The chairperson stated the variance request is for consideration of the application of Brandon & Jennifer Filauro to construct a new deck located at 3965 Port Austin Road, Caseville MI, Parcel No: 3213-014-169-50, which does not meet the setback requirements stated in Article 3, Zoning Districts, Regulations and Map, Section 3.4 Interpretation of District Boundaries and Section 3.6 Site Development Requirements. The setback requirements are 25 feet from the public road right-of-way; the setback does not meet those requirements.

**Reading of Correspondence-** Secretary Rehbine read aloud letters received by the Township from the following: Tory & Jacqueline Geilhart 3970 Mary Anne Lane, (email dated May 7, 2025), Charles Slack 3959 Port Austin Rd (email dated May 7, 2025) Ted Snider 3961 Port Austin Road. (email dated May 7, 2025).

At this point Terry Kelly, Lake Township Zoning & Building Administrator, gave his presentation. Mr. Kelly noticed construction being done at 3965 Port Austin Road. When he checked the Township's records to see what permits were issued, he discovered that no permits were applied for or issued. He went back to the site and indicated to the men working on deck at

3965 Port Austin Road that no Building Permit was issued and also informed them to stop the construction. The workers told Mr. Kelly that Mr. Filauro was pulling the permits. The construction continued. Mr. Kelly spoke with Mr. Filauro and after discussion realized the deck being built was in the road right-of-way. Mr. Kelly posted a stop work order.

Hoffman asked Mr. Kelly if the Filauro's would have come to the Township prior to building the deck and have left parts of the original deck intact could there have been something that the Township could have done? Mr. Kelly stated yes, there is a 50% rule that comes into play. The building permit was applied for after the workers were told to stop construction and a stop work order to do so had already been issued.

**Presentation by Petitioners' explaining variance request** was given by Attorney Larry Opalewski representing the Filauro's as well as the Filauro's speaking on their own behalf. Mr. Opalewski stated that they do believe that they meet all the requirements for this ordinance variance but also thinks it's helpful to boil it down to some more down-to-earth types of considerations. First, we have basic personal property rights, the ability for someone to maintain their own property as we all value as Americans, and the other is just basic common-sense fairness.

The applicants purchased the property in August 2022. The existing deck had been in place for many years. The aging and the deterioration of the deck were more pervasive than originally thought. It became apparent that this was more than a replacement of just a few boards here and there.

Mr. Opalewski indicated that their records show they applied for a permit on or about October 11<sup>th</sup> and the stop work order was not issued until October 25<sup>th</sup>. The applicants here want to do things the right way. Mr. Opalewski doesn't believe there is any question that there is a practical difficulty here.

Mr. Opalewski laid out some requirements that the Michigan Court of Appeals looks at when deciding whether there is a practical difficulty. The main thing that Mr. Opalewski wants to focus on is whether to grant the variance for substantial justice. He believes there is no question about that. Again, this deck has been in place for decades, they are not going to expand it, not even one inch beyond what it already is and they have already heard from several neighboring residents that they do not want the deck destroyed. This house is kind of built onto a hill so if the decks are not there, it's not safe to have the doors accessible and those doors would have to be blocked off. Again, that would greatly decrease the usability of the house. Also, Jennifer Filauro has a mother who is handicapped, she has a hard time walking, she cannot use stairs and she lives there in the warm months. So again, she would not be able to use this property at all, due to no fault of her own, if they cannot put this deck in.

Mr. Opalewski talked about substantial variance to the surrounding property owners. There was no correspondence with opposition and there were three very strong in favor and our zoning ordinance says to provide opportunities to single and two-family residents to accommodate varying lifestyles and to meet the varying housing needs of current and future residents and to ensure a healthy environment for residents.

Then again, the practical difficulty here is the lot size; it's a very small lot. It is no fault of their own. Under Michigan Law, when we are talking about these types of variances, variances are usually a good fit when like here you have a small property next to some sort of impediment that cannot be moved. In this case because it is on M-25.

Mr. Opalewski indicated the intention was not to take the deck out, it was to perform maintenance. It became clear that simply changing a few boards was not going to do it. MDOT, who is the primary authority over this right-of-way and has jurisdiction over this, has said repeatedly in writing that it is fine, the deck can go in where the deck is. They have no plans to perform any sort of work in that area. If MDOT ever decides to widen M-25 then everybody that has these encroachments is going to have to move them or have the situation figured out. There is no additional burden upon that by granting this variance.

The next criteria will only relate to the property described; we are only asking for a variance for the Filauro property, none other.

The variance will be in harmony with the intent of the ordinance.

Next criteria, whether or not the variance will cause adverse effect upon surrounding property including property values. Granting the variance will maintain the property values, denying the variance will force the Filauro's to create an eye sore, which will lower people's property values. This criterion certainly favors to grant the variance.

That the request is the minimum amount necessary to mitigate the practical difficulty. If the Filauro's were requesting an extension or to go further out into the right-of-way, but that's not what we are asking. We are asking for the exact same location not even one inch forward. All we want is to maintain what has been there for decades.

Mr. Opalewski indicated there was a suggestion by the Township Attorney that he wasn't sure whether or not the Township has the authority to grant this variance. That is a direct contradiction to what was received from both the Township Attorney and the Building Inspector in writing. Both letters indicated that they are welcome to apply for a variance on this. If the Township feels it has jurisdiction to stop this, it certainly has jurisdiction to allow it.

Jennifer Filauro stated that it was never their intent to cause any difficulty or hardship for anybody. They simply just wanted to make their deck safe. They didn't know from the beginning

that they did anything wrong. We are not just out of town people that want to change things, we plan to retire in this home so a lot of thought and care go into it. The first couple of summers they tried to maintain the deck, but it became apparent about a year ago that was just not enough. They knew that they would need to replace it. We are not making the deck bigger or changing the design at all, it was little over half-finished when the stop work order was placed. There is an upstairs porch balcony with a pole structure. They believe it was Linda Birchell from (MDOT) who has no problem with the deck. The Filauro's don't understand why it has become an issue.

Brandon Filauro stated on October 2<sup>nd</sup> the contractors called him and let him know that a permit was needed and the Building Inspector told him he needed to stop the work. Mr. Filauro stated that the contractors usually always pull the permits. He was told by Don Zimmerman, his electrician, that most people up here do not pull permits. Mr. Filauro went to Huron County to pull a permit and was told he needed to pull the permit with Lake Township. The contractors started to take the deck down without Mr. Filauro knowing.

Mr. Opalewski stated he just doesn't see a good argument for forcing these people to take their deck out and devalue the entire neighborhood. It just seems contrary to the content of the Ordinance. So, we request approval.

#### **ZBA Questions to the Petitioner**

Rehbine asked the Filauro's if the old deck had a ramp or just a shorter set of steps? Mrs. Filauro said there was just a few steps.

Rehbine and Hoffman stated there is a need for caution here and asked Mr. Opalewski who is ultimately responsible MDOT or the Township. No one can predict what MDOT is going to do. Mr. Opalewski indicated that they have in writing from MDOT, if ever there is a problem with the deck, that it would be removed. HOFFMAN QUESTIONED IF A PRECEDENT WOULD BE ESTABLISHED BY GRANTING A NEGATIVE VARIANCE. OPALEWSKI STATED THAT THIS WOULD NOT CREATE A PRECEDENT FOR THE ZBA. HOFFMAN THEN QUESTIONED IF IT WOULD LEGALLY SET A PRECEDENT IN THE COURTS. OPALEWSKI DID NOT HAVE A RESPONSE TO THAT. HOFFMAN QUESTIONED WHY WOULD THE TOWNSHIP ENTER INTO AN AGREEMENT WITH THE OWNER TO HAVE THE DECK REMOVED IF MDOT CHANGED THEIR MIND RELATED TO THE RIGHT OF WAY. NO ANSWER WAS PROVIDED.

Deihl indicated that he went out to the site to get a complete view of the right-of-way.

Krzeminski questioned the width of the deck, whether it is 8' feet, just wanting to make sure.

Hoffman asked due to the mother being handicapped why not 3 steps at most, or why no ramp. Mr. Filauro answered it would make the deck that much bigger. HOFFMAN QUESTIONED THE

FACT THAT THE PETITIONERS WRITTEN REQUEST FOR THE ZBA HEARING STATED THAT THE MOTHER WAS LEGALLY HANDICAPPED AND COULD NOT USE STAIRS. WHEN QUESTIONED AS TO WHY A RAMP WAS NOT INDICATED, THE PETITIONER INDICATED THAT THE MOTHER COULD USE SOME STAIRS.

Hoffman asked Opalewski why he would consider this to be a practical difficulty? Opalewski responded, it is a small lot with no control of M-25. Opalewski indicated that it is not something that was within the applicants' control.

Hoffman stated that it's not a small lot. Maybe due to the topography you could make that argument, but it's a fairly wide lot AS WELL AS A DEEP LOT. Hoffman states a permit was not pulled, stating the rules and process wasn't followed.

Opalewski indicated that the practical difficulty here is chiefly M-25. There was a good faith attempt to follow the rules. ZBA MEMBERS QUESTIONED WHY A PERMIT WAS NOT REQUESTED AND MR. FILAURO DID STATE THAT HE HAD PULLED A PERMIT FROM THE TOWNSHIP PREVIOUSLY IN ORDER TO DO SOME ELECTRICAL WORK. WHEN ASKED WHY HE DIDN'T FOR THIS PROJECT, HE DID NOT HAVE A CLEAR OR CONCISE ANSWER. MR. FILAURO STATED THAT HE CONTACTED MDOT AND WENT TO HURON COUNTY FOR A PERMIT BUT WAS INFORMED THAT THE PERMIT FOR THE DECK NEEDED TO COME FROM THE TOWNSHIP. HE STATED THAT WORK ON THE DECK HAD ALREADY STARTED PRIOR TO REQUESTING A PERMIT FROM THE TOWNSHIP.

Hoffman asked when the contractors started taking down deck and that they might have some responsibility in this as well. Hoffman also asked can the location be changed to where a deck can be built?

Mr. Filauro answered due to the above porch and the height of front door he indicated that would create too many steps and the mother not being able to use those steps.

Hoffman asked if there was a recent survey because the last one is from 2008. We don't have clarity on what the actual dimensions are.

Opalewski stated both under the case law and one of the factors under our ordinance is whether the variance would be in harmony with the spirit and intent of the ordinance and district. He stated that he doesn't think that there is any question about that here and that to deny this variance would be a substantial injustice to the applicants and the surrounding neighborhood.

### **Public Comments**

Julie Mozdzen stated she is in favor of the deck being built but admits that a permit should have been obtained. Anyone would want to fix deck so that it's not a danger to anyone coming into their home.

Al Merian from the corner of Walter J and M-25 thinks we are just as responsible should there be a fire in that house, if you block off the entrances to the home, referring to the upstairs of the home and the safety measurements needed.

Peter Eskau of 3960 Port Austin Road stated he is in favor of the deck.

Mark Anderson of 6789 Oak Beach Road agrees with safety concerns, stating that something needs to be done so there are safety measurements.

Alicia Tatham of 6789 Oak Beach Road is in support of the deck, and thinks we should let deck be built.

McCallum (Supervisor) for the Township stated that the zoning ordinance requires a site plan and no site plan was submitted in this case. Anyone who builds here knows that the Township requires building permits. They also know that we are available by phone and emails and that the office is open from 10:00 a.m. to 2:00 p.m. and emails are checked every day. We are available to people. McCallum indicated also that the 25-foot setback has been in existence since 1975. The deck permit in 2008 was for an extension that was an existing deck that probably didn't have a permit because years ago a lot of things were done without permits. They wanted to put an extension on the deck but could not put an extension on it due to it being a non-conforming structure and they were denied. At that time in 2008 MDOT sent out a Notification letter of Right-of-Way (dated 7/30/2008) that encroachments had to be removed and that could happen again.

Ken Kappa- Board of Trustees Lake Township (Virtual comments) He doesn't see why not to grant the variance based on the neighbors and surrounding area.

**Public Hearing closed by Chairperson Hoffman at 8:00 p.m.**

## **Finding of Facts**

The Board discussed the seven standards outlined in Sec 16.6 (B) of the Zoning Ordinance and responded accordingly whether or not the petitioner met each standard:

Hoffman requested the board members go through each of the criteria to be met in order to grant a variance. Krzeminski stated that the house was built years ago too close to the road ROW and the applicants didn't have anything to do with that. Hoffman questioned whether there were other options that have not been looked at such as a patio or deck on the side of the house. Applicants have only requested a variance to replace the deck. They should have come to the township first to find out what they could or could not do. They hired a contractor who was apparently unfamiliar with Lake Township's rules but it falls on the property owners to make sure they are being followed. This is not really a small lot but it does have topography issues. Rehbine agreed that there is a practical difficulty due to where the house was built and the applicants purchased the house after the fact.

Diehl felt that it will change the look of the property and will affect the property value. Hoffman agreed that it will look different and is a valid argument but does not feel it will decrease the value to the extent the applicants have claimed. He further stated that when the deck was completely torn down, it became a new structure.

Rehbine stated there is a practical difficulty as there would be no entrance into the house, whether they did it right or not.

Krzeminski stated the doors need some sort of access, but not necessarily a deck. There is a potential to do something different besides a deck to make the doors accessible. Hoffman stated that it does not destroy the use but does cause other challenges.

Hoffman suggested going through each standard and taking a vote on each one and then based on those votes a motion can be made to either grant, deny or grant the variance with conditions. He asked that each member give their rationale for their vote.

Standard No. 1 – That there are practical difficulties that prevent carrying out the strict letter of this Ordinance due to unique circumstances specific to the property such as its narrowness, shallowness, shape, or topography, that do not generally apply to other property or uses in the same District, and shall not be recurrent in nature. These difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular lot.

Hoffman felt they meet the criteria for this standard. Krzeminski agreed that there was a practical difficulty in that the house was built at the road ROW. Rehbine and Diehl agreed also due to the location.

Standard No. 2 – That the practical difficulty or special circumstance is not a result of the actions of the applicant.

Krzeminski stated that whether the contactor had knowledge or not, they hired the contractor but the homeowner still has responsibility. They had a nonconforming deck and took it down before making any contact with the township. Rehbine agreed that yes, they tore the deck down and they should know what the contractor is going to do but it is a special circumstance as a result of action that occurred prior to them owning the property. Diehl felt it was the contractor's fault and not the applicants. Hoffman stated it falls back on the applicant, they hired the contractor and permits are needed. It may be a technical aspect but one has to look at what the rules are.

Standard No. 3 – That strict compliance with the site development requirement in question would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity unnecessarily burdensome.

Rehbine stated that strict compliance would not allow the applicants to use their front door. Diehl and Hoffman both felt it does make it burdensome. Krzeminski agreed, because of the door.

Standard No. 4 – That the variance will relate only to property described in the variance application.

All members agreed that it will relate only to the property involved, no other parcels are affected.

Standard No. 5 – That the variance will be in harmony with the purpose of this Ordinance and the intent of the district, including the protection of public health, safety and welfare in general and vehicular and pedestrian circulation specifically.

Hoffman stated it would be in harmony. Krzeminski does not feel it is doing anything to harm public safety. Rehbine and Diehl both agreed.

Standard No. 6 – That the variance will not cause a substantial adverse effect upon surrounding property values and the development, use and enjoyment of property in the neighborhood or District.

Krzeminski stated it is going to somewhat affect the property value and the enjoyment of the property, the aesthetics. Rehbine agreed and also will affect others in the area. Diehl agreed it will affect property in question but not neighboring properties. Hoffman stated it will not cause an effect upon neighboring properties.



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Standard No. 7 – That the variance request is the minimum amount necessary to overcome the inequality inherent in the particular property or mitigate the practical difficulty.

Rehbine questioned whether they are requesting the minimum amount necessary. Diehl agreed that it was the minimum amount as they are only talking about replacing what was there. Hoffman disagreed that it is the minimum amount stating that no other options were presented. Krzeminski voted no, that there is something else they could do.

Hoffman stated that Standard No. 2 was not met with a 3/1 vote and Standard No. 7 was not met due to a tie vote, which is a no. Hoffman stated that this is a very difficult case but feels that if the applicant had done what they needed to do, we wouldn't be here.

Motion by Hoffman to deny variance for a deck, seconded by Diehl. All in favor, motion carried.

Meeting adjourned 8:45 p.m.

JoAnna Watts

Recording Secretary