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**Hamburg Township  
Zoning Board of Appeals  
Hamburg Township Board Room  
Wednesday, February 14, 2018  
7:00 P.M.**

**AGENDA**

- 1. Call to order**
- 2. Pledge to the Flag**
- 3. Roll call of the Board**
- 4. Correspondence**
- 5. Approval of agenda**
- 6. Call to the public**
- 7. Variance requests**
  - a) ZBA 2018-0001**

Owner: Michael Mulvihill  
Location: 3686 Colonial Drive  
Parcel ID: 15-29-403-021  
Request: Variance application to permit construction of a second-story addition to a non-conforming dwelling. The second-story addition will have a 4-foot east side yard setback (10-foot side yard setback required, Sections 7.6.1. and 11.3.2.) to match the non-conforming east side yard setback of the existing dwelling.
  - b) ZBA 2018-0002**

Owner: Timothy Hutchins  
Location: 11272 Algonquin Drive  
Parcel ID: 15-31-102-011  
Request: Variance application to permit the construction of a 426-square foot addition to the east façade of an existing dwelling and a 6-foot by 7-foot detached roofed structure between the addition and existing detached garage. The addition will have a 4.8-foot separation and the roofed structure will have a zero-foot separation from the existing garage (an accessory building which is detached from the principal building shall not be located nearer than 10 feet to any separate building or structure on the lot, Section 8.3.4.).
- 8. New/Old business**
  - a. Approval of November 8, 2017 meeting minutes and findings of fact for ZBA 17-021
- 9. Adjournment**



# Zoning Board of Appeals Staff Report

## AGENDA ITEM: 7a



**TO:** Zoning Board of Appeals  
(ZBA)

**FROM:** Amy Steffens

**HEARING DATE:** February 14, 2018

**SUBJECT:** ZBA 18-001

**PROJECT SITE:** 3686 Colonial  
TID 15-29-403-021

**APPLICANT/  
OWNER:** Michael Mulvihill

**PROJECT:** Variance application to permit construction of a second-story addition to a non-conforming dwelling. The second-story addition will have a 4-foot east side yard setback (10-foot side yard setback required, Sections 7.6.1. and 11.3.1.) to match the non-conforming east side yard setback of the existing dwelling.

**ZONING:** WFR (waterfront residential district)

### Project Description

The subject site is a 9,583-square foot parcel that fronts onto Colonial Drive; a park for use by White Lodge Country Club property owners is to the north; single-family dwellings are located to the south, west and east of the subject site. As seen in the site map above the dwelling was constructed across two single platted lots, which is not permitted. However, the property owner applied on November 29, 2017 to combine the two platted lots into one parcel and the township approved the application. The site is improved with a 2,385-square foot single-family dwelling and an attached 576-square foot garage. The first floor has 1,737 square feet of enclosed living space; the second-story contains 643 square feet of living space.

The dwelling's existing and proposed setbacks are noted in the table below.

	<b>Existing</b>	<b>Proposed</b>	<b>Required</b>
<b>North (front)</b>	30 feet	30 feet	25 feet
<b>South (rear)</b>	36 feet	36 feet	30 feet
<b>West (side)</b>	10 feet	10 feet	10 feet
<b>East (side)</b>	4 feet	4 feet	10 feet*

Proposed lot coverage is 39 percent, which is below the 40 percent permitted. Lot coverage over 40 percent would require an engineered grading and drainage plan.

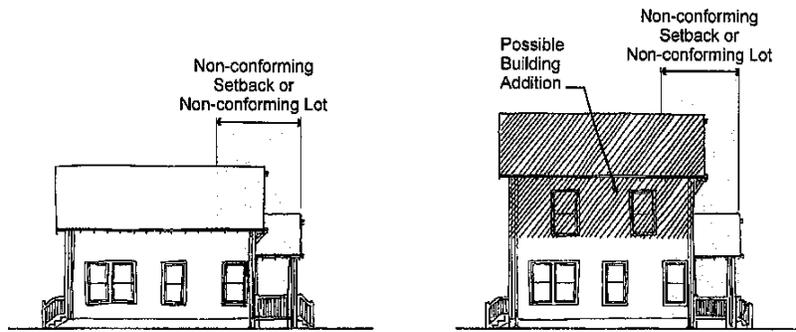
### **Variance Request**

On November 9, 2017, the township board approved a zoning text amendment to Article 11. The amendment removed the "50 percent rule" that required variance approval for improvements to a non-conforming dwelling that exceeded 50 percent of the market value of the structure. Additionally, Section 11.3.1. of the amendment clarifies the expansion of nonconforming buildings to require that second-story additions to a nonconforming building meet required setbacks. Prior to the amendment a second-story addition would be permitted to maintain the same setbacks as the footprint of the existing, non-conforming dwelling.

The applicant proposes to construct an additional 350 square feet of second-story living space, add an elevated deck to the south façade off of the proposed master bedroom, and re-frame the roof. Variance approval is required for the second floor living space addition with a proposed 4.0-foot east side yard setback, where a 10-foot side yard setback would be required (Sections 7.6.1.). Section 11.3.1. requires that a second level addition to an existing single-story house with a non-conforming side yard setback must not encroach into the required setback even if the existing main level already encroaches into the setback (See Section 11.3.1 wording and Diagram F).

11.3.1. Permitted Expansion of Residential Buildings: A residential nonconforming building may be allowed to expand provided the expansion is within a yard which retains compliance with the required setbacks and height, (eg. a home with a nonconforming front yard setback may be expanded in the rear so long as the rear yard setback remains conforming, (see Diagrams B,C and D) this includes expansions to upper levels (eg. A second level is added to an existing single story house with a non-conforming side yard setback the second story must not encroach into the required setback even if the existing main level already encroaches into the setback, see Diagram F).

Any other expansion shall be prohibited unless a variance is granted by the Zoning Board of Appeals.

**Diagram F: Addition of a second story to a non-conforming structure**

This addition will require a variance from the Zoning Board of Appeals

**Standards of Review**

The Zoning Board of Appeals (ZBA) decision in this matter is to be based on the findings of facts to support the following standards. The applicable discretionary standards are listed below in bold typeface followed by staff's analysis of the project as it relates to these standards. A variance may be granted only if the ZBA finds that all of the following requirements are met.

- 1. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in the same district or zone.**

Aerial photographs of the subject site and nearby dwellings show that many of the homes in the vicinity of the site were constructed with reduced side yard setbacks, which is not uncommon for lots in the WFR district. A reduced second-story setback would not be out of character with surrounding properties.

- 2. That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone and vicinity. The possibility of increased financial return shall not be deemed sufficient to warrant a variance.**

The site is zoned for single-family residential uses, has been developed for such uses, and can continue to be used for such use. With minor alterations to the plan, the proposed second story living space could comply with the ordinance requirement of a 10-foot side yard setback.

Staff would be concerned about the second-story addition's impact on the dwelling to the east. A reduced side yard setback does not simply reduce the two-dimensional setback shown on the site plan but rather it reduces the setback for the *bulk of the structure*. It is because of the impact of the structure's bulk at a reduced setback that Article 11 of the zoning ordinance was amended in 2017.

- 3. That the granting of such variance or modification will not be materially detrimental to the public welfare or materially injurious to the property or improvements in such zone or district in which the property is located.**

The proposed reduced side yard setback further increases the dwelling's nonconformity and the bulk of the structure at the setback will intensify the impact of the reduced setback on the lot to the east.

- 4. That the granting of such variance will not adversely affect the purpose or objectives of the master plan of the Township.**

This site is located in the North Chain of Lake planning area in the Master Plan. Parcels in this planning area are closely tied to lake waterfronts. The plan envisions the WFR district as a transition to lower density residential areas. The proposed project would not adversely affect the purpose or objectives of the Master Plan.

- 5. That the condition or situation of the specific piece of property, or the intended use of said property, for which the variance is sought, is not of so general or recurrent a nature.**

There is no condition or situation of the subject site that is not of so general or recurrent a nature that the proposed second story addition cannot comply with the required 10 feet side yard setback. The need for the variance arises from a personal preference and not a condition specific to the property. The lot, 80 feet wide by 120 feet deep, is a sizeable lot for the waterfront residential district. If the proposed second-story addition were to be built with the required 10-foot side yard setback the living space would be reduced by 218 square feet, a loss which could be replaced with an alternative design.

- 6. Granting the variance shall not permit the establishment with a district of any use which is not permitted by right within the district.**

The use of the site is single-family residential and the proposed variance would not change the use.

- 7. The requested variance is the minimum necessary to permit reasonable use of the land.**

The applicant's findings of fact indicate that receiving variance approval is the minimum necessary to permit reasonable use of the land without changing the footprint or nonconformity. The proposed design only increases the nonconformity of the structure. Constructing a second story addition with a four-foot side yard setback is not the minimum necessary to permit reasonable use of the land, as evidenced by the fact that the existing dwelling has been used for single-family residential. The lot can accommodate additional living space, with conforming setbacks, in an alternative design configuration.

“Practical difficulty” exists on the subject site when the strict compliance with the Zoning Ordinance standards would render conformity unnecessarily burdensome (such as exceptional narrowness, shallowness, shape of area, presence of floodplain or wetlands, exceptional topographic conditions)

**Recommendation**

Staff recommends the ZBA open the public hearing, take testimony, close the public hearing, evaluate the proposal for conformance with the applicable regulations, and deny or approve the application. In the motion to deny or approve the project the ZBA should incorporate the ZBA’s discussion and analysis of the project and the findings in the staff report. The ZBA then should direct staff to prepare a memorialization of the Board’s decision that reflects the Board’s action to accompany the hearing minutes and to be reviewed and approved at the next ZBA hearing.

**Approval Motion:**

Motion to approve variance application ZBA 18-001 at 3686 Colonial Drive to permit construction of a second-story addition to a non-conforming dwelling. The second-story addition will have a 4-foot east side yard setback (10-foot side yard setback required, Sections 7.6.1. and 11.3.1.) to match the non-conforming east side yard setback of the existing dwelling.

The variance does meet variance standards one through seven of Section 6.5 of the Township Ordinance and a practical difficulty does exist on the subject site when the strict compliance with the Zoning Ordinance standards are applied as discussed at the tonight’s meeting and as presented in the staff report. The Board directs staff to prepare a memorialization of the ZBA findings for the project.

**Denial Motion:**

Motion to deny variance application ZBA 18-001 at 3686 Colonial Drive to permit construction of a second-story addition to a non-conforming dwelling. The second-story addition will have a 4-foot east side yard setback (10-foot side yard setback required, Sections 7.6.1. and 11.3.1.) to match the non-conforming east side yard setback of the existing dwelling.

The variance does not meet variance standards two, three, five, or seven of Section 6.5 of the Township Ordinance and a practical difficulty does not exist on the subject site when the strict compliance with the Zoning Ordinance standards are applied as discussed at the meeting tonight and as presented in the staff report. The Board directs staff to prepare a memorialization of the ZBA findings for the project.

**Exhibits**

Exhibit A: Application materials

Exhibit B: Article 11, effective date November 28, 2017

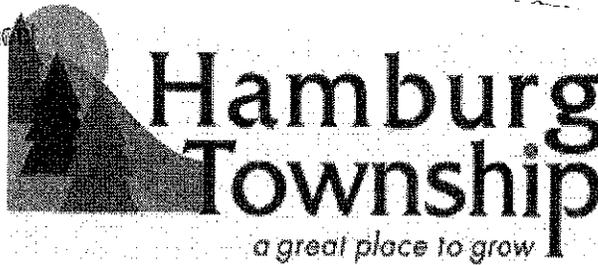
Exhibit C: site and construction plans (to be included in hard copy of report)

RECEIVED

ZBA Case Number P2BA 18-0001

JAN 17 2018

Hamburg Township  
Planning and Zoning Department



FAX 810-231-4295  
PHONE 810-231-1000

P.O. Box 157  
10405 Merrill Road  
Hamburg, Michigan 48139

**APPLICATION FOR A ZONING BOARD OF APPEALS (ZBA)  
VARIANCE/INTERPRETATION  
(FEE \$500 plus \$50 each additional)**

1. Date Filed: JAN 12, 2018
2. Tax ID #: 15-29-403 - W Subdivision: WHITE LODGE COUNTRY CLUB Lot No.: 345/346
3. Address of Subject Property: 3686 COLONIAL DR.
4. Property Owner: MICHAEL MULVHILL Phone: (H) 734 320-3855  
 Email Address: \_\_\_\_\_ (W) \_\_\_\_\_  
 Street: 3686 COLONIAL DR. City HAMBURG State MI
5. Appellant (If different than owner): JEFF HOARD Phone: (H) 734-498-2882  
 E-mail Address: HOARD BUILDING@GMAIL.COM (W) \_\_\_\_\_  
 Street: 4920 WEST M-36 City PINCKNEY State M
6. Year Property was Acquired: 1998 Zoning District: WFR Flood Plain NO
7. Size of Lot: Front 80' Rear 80' Side 120.97' Side 2 120.33' Sq. Ft. 9,652'
11. Dimensions of Existing Structure (s) 1st Floor 41x42 2nd Floor \_\_\_\_\_ Garage 24x24
12. Dimensions of Proposed Structure (s) 1st Floor 41x42 2nd Floor 27x42 Garage 24x24
13. Present Use of Property: RES. HOUSE
14. Percentage of Existing Structure (s) to be demolished, if any 20 %
15. Has there been any past variances on this property? Yes \_\_\_\_\_ No
16. If so, state case # and resolution of variance application \_\_\_\_\_
17. Please indicate the type of variance or zoning ordinance interpretation requested:  
LEGAL NON CONFORMING LOT, INCREASE LIVING SPACE ON 2ND STORY  
FOR TEENAGE DAUGHTER, NO EXPANSION OF FOOT PRINT.

18. Please explain how the project meets each of the following standards:

- a) That there are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in the same district or zone.

NONCONFORMING LAND USE SUBMITTED ON 6/21/17 WAS DELAYED &

I WAS NOT NOTIFIED OF VARIANCES ETC. UNTIL ORDINANCE AMENDED

- b) That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone and vicinity. The possibility of increased financial return shall not be deemed sufficient to warrant a variance.

TO MAINTAIN SAME FOOTPRINT. HOME IS DATED, ALL MECHANICALS

NEED UPDATING. HOME LAYOUT NEEDS UPDATING, LIVING SPACE.

- c) That the granting of such variance or modification will not be materially detrimental to the public welfare or materially injurious to the property or improvements in such zone or district in which the property is located.

EXPANSION OF 2ND STORY WILL NOT INCREASE FOOT PRINT OR NON CONFORMITY.

WILL ENHANCE PROPERTY VALUES.

- d) That the granting of such variance will not adversely affect the purpose or objectives of the master plan of the Township.

NO EFFECT

- e) That the condition or situation of the specific piece of property, or the intended use of said property, for which the variance is sought, is not of so general or recurrent a nature.

NO RECURRENCE OR PRIOR VARIANCE

- f) Granting the variance shall not permit the establishment with a district of any use which is not permitted by right within the district;

USE PERMITTED

- g) The requested variance is the minimum necessary to permit reasonable use of the land.

2ND LEVEL EXPANSION, ONLY MEANS TO INCREASE LIVING SPACE

FOR FAMILY W/O CHANGING FOOT PRINT OR NON CONFORMITY

- I hereby certify that I am the owner of the subject property or have been authorized to act on behalf of the owner(s) and that all of the statements and attachments are true and correct to the best of my knowledge and belief.
- I acknowledge that approval of a variance only grants that which was presented to the ZBA.
- I acknowledge that I have reviewed the Hamburg Township Zoning Ordinance, The ZBA Application and the ZBA Checklist and have submitted all of the required information.
- I acknowledge that filing of this application grants access to the Township to conduct onsite investigation of the property in order to review this application.
- I understand that the house or property must be marked with the street address clearly visible from the roadway.
- I understand that there will be a public hearing on this item and that either the property owner or appellants shall be in attendance at that hearing.
- I understand that a Land Use Permit is required prior to construction if a variance is granted.

Michael Mulvihill 1-12-2018  
Owner's Signature Date

Jeff Hoard 1-12-2018  
Appellant's Signature Date

Tracy Mulvihill

#4715-29-403-021

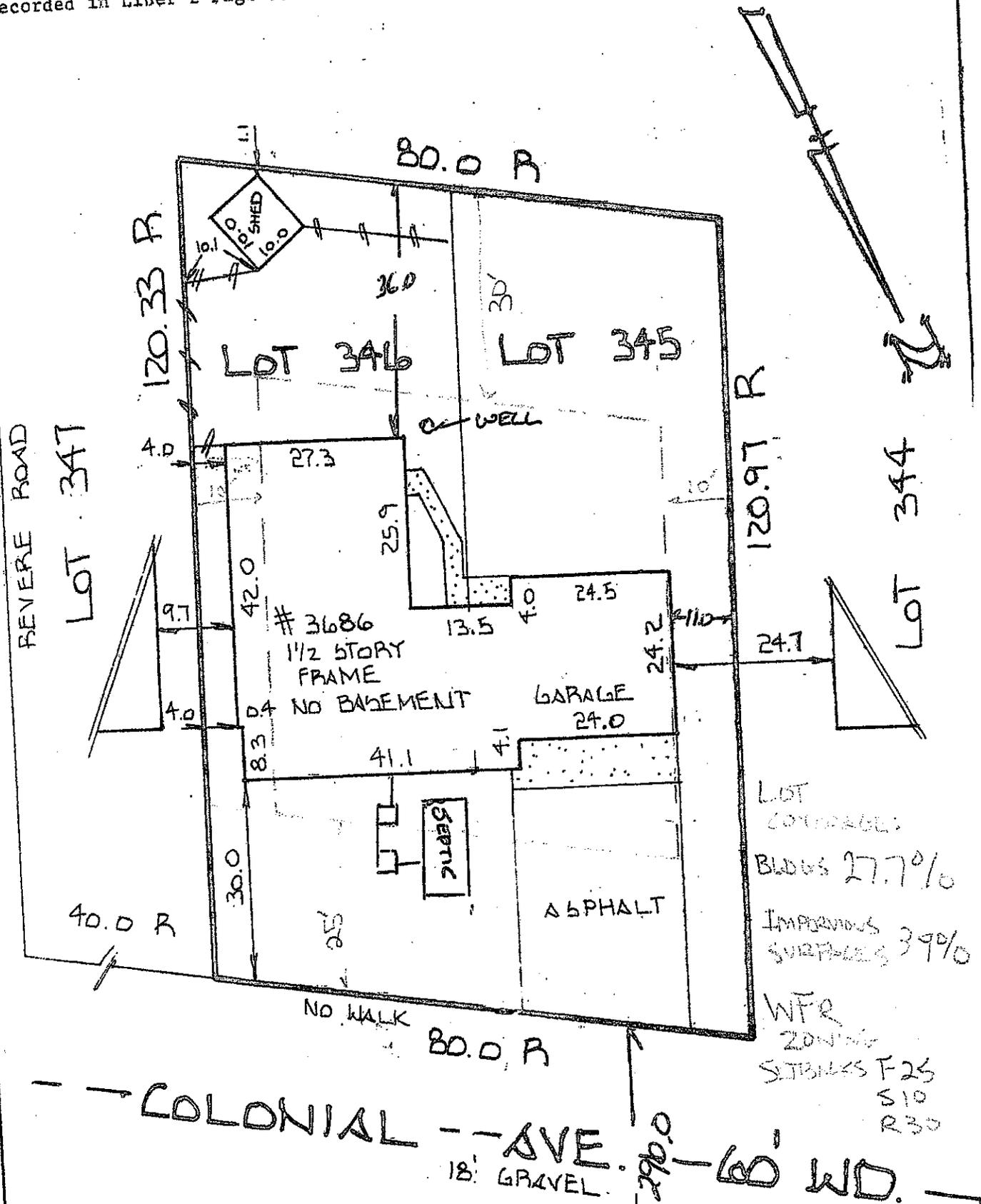
Description Lots 345 and 346, White Lodge Country Club, a subdivision of part of Section 29, Town 1 North, Range 5 East, Hamburg Township, Livingston County, Michigan. Recorded in Liber 2 Page 99 Plats L.C.R.

Fax (313) 432-9786

(313) 432-9777

37741 Pembroke, Livonia, MI 48152

INCOLN ASSOCIATES, INC.



LOT COVERAGE:  
 BLDGS 27.7%  
 IMPROVED SURFACES 39%  
 WFR ZONING  
 STRIPES F25  
 S10  
 R30

WHITE WOOD LK. MORTGAGE CERTIFICATE

# The Law Office of John D. Mulvihill

Professional Limited Liability Company

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20 W. Washington, Suite 2

Clarkston, MI 48346

(248) 625-3131 Facsimile (248) 625-3132

[jdmulvihill@sbcglobal.net](mailto:jdmulvihill@sbcglobal.net)

January 16, 2018

VIA regular and e-mail: [asteffens@hamburg.mi.us](mailto:asteffens@hamburg.mi.us)

Amy Steffens, Zoning Administrator  
Hamburg Township  
10405 Merrill Rd.  
P.O. Box 157  
Hamburg, MI 48139

**RE: Michael and Tracey Mulvihill- 3686 Colonial  
Land Use Permit/Variance Request**

Dear Ms. Steffens:

My nephew, Michael Mulvihill and his wife Tracey, have asked that I submit this letter to your office. Also, that it be placed in the ZBA packet for review at its hearing on February 14, 2018. Mike and Tracey believe that irregularities occurred in the processing of a Land Use Permit submitted to Hamburg Township on August 21, 2017. Mike and Tracey intend to update their home to increase its functionality and size of their second floor bedroom. They are concerned that the delay has or will thwart their dream of modernizing their home where they have resided for 21 years. We met with Supervisor Hohl and Zoning Coordinator Mike Beck on January 11, 2018 to discuss this matter. They agreed that a Land Use Permit generally has a 2-3 day turnaround time. Mr. Hohl and Mr. Beck indicated that an application for a variance is required to proceed with the remodeling project. The Application for Variance and plans have been submitted by Jeff Hoard of Hoard Building and it is set for hearing on the above date.

Mike and Tracey's home is an outdated cottage. It needs functional improvements and renovation. **It is a legal non-conforming use.** The second floor bedroom has inadequate living space or amenities for their teenage daughter and guests. They hired Hoard Building to prepare plans to increase the floor area of the second story and make other updates to the kitchen, bathrooms, etc. **The footprint of the original house will remain the same.**

The chronology of events are as follows:

- August 21, 2017. Mr. Hoard submits the Land Use Permit and his building plans consistent with the Hamburg Township Zoning ordinance in effect at that time. No response was received. He called the township several times regarding a status but his calls were not returned.

- September 21, 2017. Mr. Hoard appears at the township to inquire about the Land Use Permit and the delay. He was told he needed a variance, but was not told why or for what.
- September 25, 2017. Mr. Hoard submits the ZBA Application per your office's direction. When he does so, he is told he needs to first combine the two lots upon which the house sits. He was told combinations are done twice a year (combinations are typically done administratively without the need for a hearing etc. Taxes on the property are paid and current). The township has not combined the lots to date.
- November 27, 2017. Mr. Hoard appears at the township to inquire about the status of the combination and is told that the project cannot proceed since the Zoning Ordinance was amended in November and the second story expansion does not comply with amended Ordinance Sec. 11.3.1 (though in compliance when submitted).

When we met with Supervisor Hohl and Mr. Beck, Mr. Beck produced a memorandum dated August 23, 2017 after the Land Use Permit was filed. See attached. Neither Mike or Mr. Hoard ever received the Memorandum. Mr. Beck indicated it was mailed (there is no address on it) or was put with the plans after his review. As the memorandum notes, additional detail was requested in the plans that Mr. Hoard indicates was easily correctable. The only variance mentioned is a front porch overhang that encroached into the 25' front yard setback by one foot. **There is no reference of having to combine the lots. Further, there is no mention of a variance needed for the second floor expansion.**

The above memorandum, if it had been mailed or provided and if the township would have responded to Mr. Hoard's inquiries about the status of the Land Use Permit, a timely application for a variance would have been submitted regarding the front porch. Also, the plans would have been revised with requested detail and the project, in all likelihood, would have proceeded without incident. The combination would have been completed administratively. Unfortunately, Mike and Tracey feel they were delayed, intentionally or by error, and that the amended ordinance is now being used to prevent the remodeling of their home as planned. I am requesting that the ZBA consider the above when reviewing the current variance request which the township indicates is now needed for the second story expansion. I will be present at the hearing to answer any questions you may have. Thank you..

Sincerely,  
LAW OFFICE OF JOHN D. MULVIHILL, PLLC  
/s/John D. Mulvihill  
John D. Mulvihill  
cc. Mike and Tracey Mulvihill  
Jeff Hoard

**From:** ~~XXXXXX@XXXXXX~~  
**To:** [Amy Steffens](#)  
**Cc:** [Genal Pratt](#)  
**Subject:** Request variance of 3686 Colonial  
**Date:** Thursday, January 25, 2018 12:28:51 PM

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TO VARIANCE ZONING BOARD:

We currently in Florida and have received word that our neighbor 3686 Colonial has requested a variance to the east for an addition. We are on the east side 3692 Colonial and are protesting the closeness due to fire hazard. We are requesting a copy of the variance request and any additional information you may have. Sincerely Virgil and Carolyn Ramey

3692 Colonial, Pinckney, MI 48169

810 ~~XXXXXX~~

~~XXXXXX@XXXXXX~~

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Duchess Says Goodbye To Royal Family

risingstarnewspaper.com

<http://thirdpartyoffers.netzero.net/TGL3231/5a6a13cc6badc13cc06e5st02vuc>

**ARTICLE 11.00**

**NONCONFORMING LOTS, BUILDINGS, STRUCTURE, USES AND SITES**

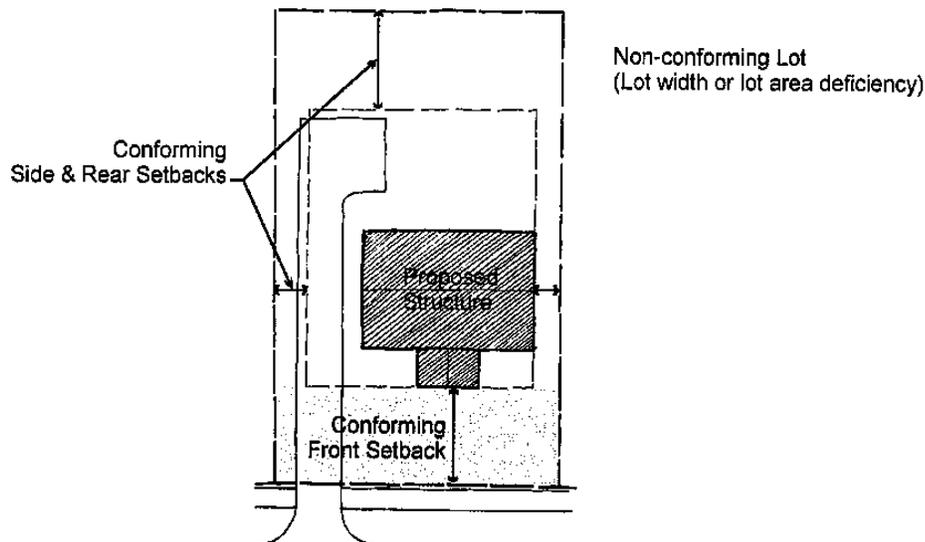
**Section 11.3. Nonconforming Buildings and Structures**

Where a lawful building or structure exists at the effective date of this Ordinance that could not be built under the present regulations by reason of restrictions on area, lot coverage, height, yards, landscape buffer, off-street parking, loading space, minimum setback, or other characteristics of the structure or its location on the lot, such building or structure may continue to be used, provided it remains otherwise lawful, subject to the following provisions.

**11.3.1. Permitted Expansion of Residential Buildings:** A residential nonconforming building may be allowed to expand provided the expansion is within a yard which retains compliance with the required setbacks and height, (eg. a home with a nonconforming front yard setback may be expanded in the rear so long as the rear yard setback remains conforming, (see Diagrams B,C and D) this includes expansions to upper levels (eg. A second level is added to an existing single story house with a non-conforming side yard setback the second story must not encroach into the required setback even if the existing main level already encroaches into the setback, see Diagram F).

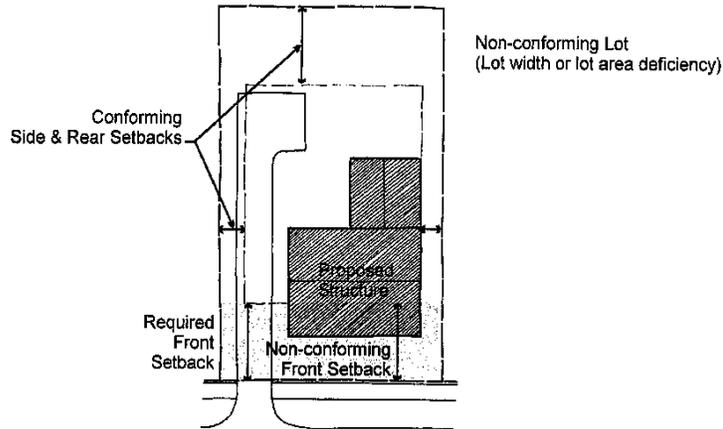
Any other expansion shall be prohibited unless a variance is granted by the Zoning Board of Appeals.

**Diagram A: Conforming, non-conforming or lot of legal record with conforming proposed structure**



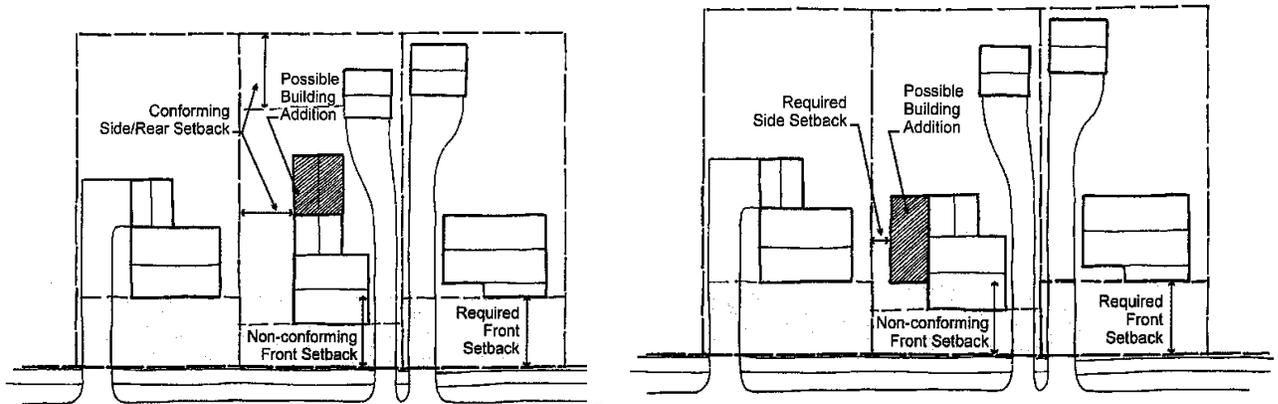
The development will not require a variance from the Zoning Board of Appeals

**Diagram B: Conforming, non-conforming or lot of legal record with non-conforming proposed structure**



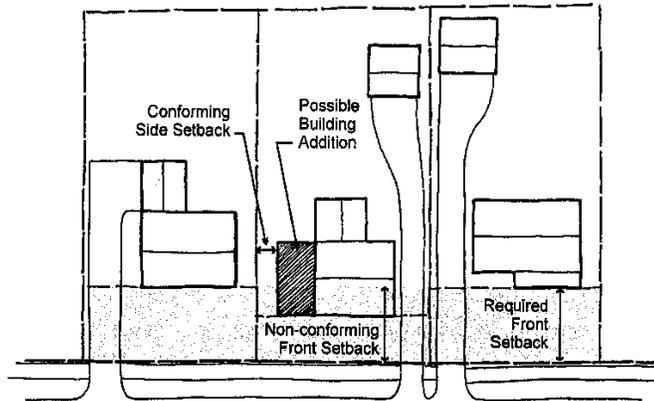
The development will require a variance from the Zoning Board of Appeals

**Diagram C and D: Expansion of a non-conforming structure with conforming addition.**

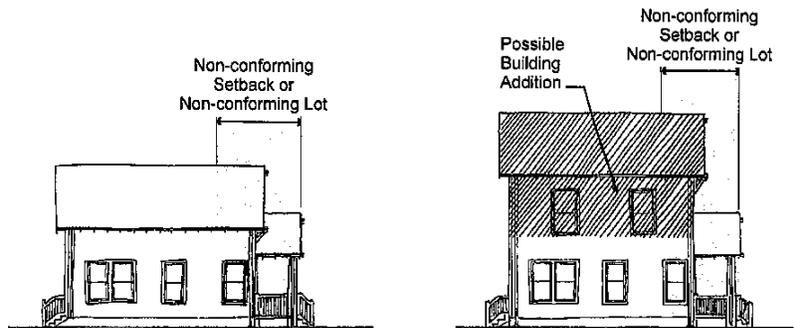


Neither requires a variance from the Zoning Board of Appeals

**Diagram E: Expansion of a non-conforming structure with an addition that does not comply with the zoning regulations**



The development will require a variance from the Zoning Board of Appeals

**Diagram F: Addition of a second story to a non-conforming structure**

This addition will require a variance from the Zoning Board of Appeals

**11.3.2. Permitted Expansion of Nonresidential Nonconforming Buildings:** Nonresidential nonconforming buildings shall not be expanded except to the extent permitted by the Zoning Board of Appeals pursuant to the authority granted in Article 6.0. A building necessary for an existing agricultural activity may be enlarged, altered, or rehabilitated if the purpose is to maintain or improve the agricultural activity.

**11.3.3. Permitted Repairs:** Nothing in this Ordinance shall prevent the repair, reinforcement, reconstruction, building construction, or other such improvements of a nonconforming building, or part thereof, rendered necessary by wear and tear, deterioration, flood, fire or vandalism provided that a land use and building permit shall be obtained for such work, and the work does not increase or alter the footprint and the work does not consist of the removal of more than 50% of the exterior perimeter walls of the non-conforming structure, except as provided in this Section.

**11.3.4. Permitted Replacement:** A nonconforming building and its accessory structures and uses damaged by Natural Disaster (i.e. tornado, flood, fire,) or by vandalism may be repaired or replaced subject to the following:

- A. A land use and building permit obtained for the replacement shall not increase or alter the footprint (as defined in this Ordinance) of the non-conforming structure, except as provided in this Section.
- B. The replacement of a nonconforming building shall commence within one (1) year of the date of damage and work shall be diligently pursued toward completion. Failure to complete replacement or diligently work toward completion shall result in the loss of legal, nonconforming status unless good cause for the delay is accepted at a hearing before the Board of Zoning Appeals.
- C. Should a structure be replaced **or damaged** by any other means, it shall not be reconstructed, except in conformity with the zoning regulations. Any improvements that do not meet the zoning regulations shall obtain Zoning Board of Appeals approval under the established variance procedures of the Ordinance.

- D. Replacement as used in this section of the ordinance means removal of more than 50% of the exterior perimeter walls of the existing structure, based on the linear feet.



# Zoning Board of Appeals Staff Report

## AGENDA ITEM: 7b



**TO:** Zoning Board of Appeals  
(ZBA)

**FROM:** Amy Steffens

**HEARING DATE:** February 14, 2018

**SUBJECT:** ZBA 18-002

**PROJECT SITE:** 11272 Algonquin  
TID 15-31-102-011

**APPLICANT/  
OWNER:** Timothy Hutchins

**PROJECT:** Variance application to permit the construction of a 426-square foot addition to the east façade of an existing dwelling and a 6-foot by 7-foot detached roofed structure between the addition and existing detached garage. The addition will have a 4.8-foot separation and the roofed structure will have a zero-foot separation from the existing garage (an accessory building which is detached from the principal building shall not be located nearer than 10 feet to any separate building or structure on the lot, Section 8.3.4.).

**ZONING:** WFR (waterfront residential district)

### Project Description

The subject site is an 8,202-square foot parcel that fronts onto Algonquin Drive to the east; Portage Lake is to the west; single-family dwellings are located to the north and south of the subject site. The site is improved with a 1,025-square foot single family dwelling, a 362-square foot detached garage, and a 60-square foot shed that is proposed to be removed.

The dwelling's setbacks are noted in Table A below.

	Existing	Proposed	Required
<b>North (side)</b>	11 feet	10 feet	10 feet
<b>South (side)</b>			
<b>dwelling</b>	10 feet	10 feet	5 Feet
		Addition 20 feet	15 foot aggregate
<b>garage</b>	4 feet	4 feet	5 feet
<b>West (rear)</b>	42 feet	42 feet	50 feet
<b>East (front)</b>			
<b>dwelling</b>	78 feet	58.7 feet	25 feet
<b>garage</b>	24.8 feet	24.8 feet	15 feet

Proposed lot coverage is 39.8 percent, which is below the 40 percent permitted. Lot coverage over 40 percent would require an engineered grading and drainage plan.

### **Project History**

On January 8, 2018, Hamburg Township issued a permit for the construction of a 426-square foot addition and a breezeway connection between the addition and existing garage. However, the applicant was denied structural permits by the Livingston County Building Department to connect the addition and garage because the existing garage has 24-inch footings, rather than 42-inch footings. Per the LCBD, if a structure will be attached to a dwelling, footings must be 42-inches on both structures to protect both foundations in the event that one structures heaves during a frost event.

### **Variance Request**

If approved, the variance request would allow for the construction of the 426-square foot addition to have a 4.8-foot separation from the detached garage and will allow a six-foot by seven-foot free-standing roofed structure (between the addition and the garage) to provide covered access between the home and garage that will have a zero (0)-foot setback from both the detached garage and dwelling. Section 8.3.4 requires a ten-foot distance separation between the dwelling and detached accessory structures.

### **Standards of Review**

The Zoning Board of Appeals (ZBA) decision in this matter is to be based on the findings of facts to support the following standards. The applicable discretionary standards are listed below in bold typeface followed by staff's analysis of the project as it relates to these standards. A variance may be granted only if the ZBA finds that all of the following requirements are met.

- 1. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in the same district or zone.**

The existing house is currently within 10 feet of an existing shed between the main structure and the detached garage. This shed will be removed. There are no permits on file with the

Township for construction of this 60-square foot shed. The new addition will extend east off the main structure and will be built 4.8 feet from the existing detached garage.

The addition could be redesigned to meet the zoning regulations:

- 1) The 426 square addition could be redesigned to meet the 10-foot setback from the detached, 362 square foot, garage and the covered structure could be removed; or
- 2) The breezeway could be attached and the detached garage could be built to existing build code (existing LUP approval).

**2. That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone and vicinity. The possibility of increased financial return shall not be deemed sufficient to warrant a variance.**

There is an existing 1,025 square foot house on the subject site with a 362 square foot detached garage. The new addition will add 426 square foot to the existing structure. This space will be used for an additional bedroom and bathroom. The 1,451 square foot structure is not out of character with the existing homes in the area. However, this addition could be designed to meet either the zoning or building code regulations.

**3. That the granting of such variance or modification will not be materially detrimental to the public welfare or materially injurious to the property or improvements in such zone or district in which the property is located.**

The subject and the properties to the north and south are adjacent to Portage Lake. Most of the outdoor living area and views from the homes in this area that are adjacent to the Lake are to the west. Because the proposed addition and roofed structure over the patio area between the house and the existing detached garage are at the east side of the existing structure; the modifications will not significantly impact the views or privacy of the adjacent properties. The reduced space between the home and the detached garage will have minor impacts on the visual appearance of the property from the adjacent home to the North and South; however, as stated earlier most of the views from these property are taken towards the Lake and not towards the adjacent homes.

Reducing the space between the home and the detached garage may have safety concerns on the structure; however, the building department will require that the structure meet the fire safety requirements of the building code.

**4. That the granting of such variance will not adversely affect the purpose or objectives of the master plan of the Township.**

This site is located in the North Chain of Lake planning area in the Master Plan. Parcels in this planning area are closely tied to lake waterfronts. The plan envisions the WFR

district as a transition to lower density residential areas. The proposed project would not adversely affect the purpose or objectives of the Master Plan.

**5. That the condition or situation of the specific piece of property, or the intended use of said property, for which the variance is sought, is not of so general or recurrent a nature.**

While in this case there would be negligible visual difference between an attached structure, such as was already issued a land use permit in January, 2018, and the proposed free-standing structure, a modification to the site plan requires the application of a different ordinance requirement that applies to all residentially zones lots. The issued land use permit proves that the proposed addition could meet the requirements of the zoning ordinance for attaching the dwelling and the accessory structure.

**6. Granting the variance shall not permit the establishment with a district of any use which is not permitted by right within the district.**

The existing use of the site is single-family residential and the proposed variance would not change the use.

**7. The requested variance is the minimum necessary to permit reasonable use of the land.**

The proposed addition and breezeway approved in January, 2018 could be constructed to meet the 10-foot setback requirements by reconfiguring the addition, removing a portion of the garage, or bringing the detached garage up to residential building code standards.

“Practical difficulty” exists on the subject site when the strict compliance with the Zoning Ordinance standards would render conformity unnecessarily burdensome (such as exceptional narrowness, shallowness, shape of area, presence of floodplain or wetlands, exceptional topographic conditions)

**Recommendation**

Staff recommends the ZBA open the public hearing, take testimony, close the public hearing, evaluate the proposal for conformance with the applicable regulations, and deny or approve the application. In the motion to deny or approve the project the ZBA should incorporate the ZBA’s discussion and analysis of the project and the findings in the staff report. The ZBA then should direct staff to prepare a memorialization of the Board’s decision that reflects the Board’s action to accompany the hearing minutes and to be reviewed and approved at the next ZBA hearing.

**Approval Motion:**

Motion to approve variance application ZBA 18-002 at 11272 Algonquin to permit the construction of a 426-square foot addition to the east façade of an existing dwelling and a 6-foot by 7-foot detached roofed structure between the addition and existing detached garage. The addition will have a 4.8-foot separation and the roofed structure will have a zero-foot separation from the existing garage (an accessory building which is detached from the principal building shall not be located nearer than 10 feet to any separate building or structure on the lot, Section 8.3.4.).

The variance does meet variance standards one through seven of Section 6.5 of the Township Ordinance and a practical difficulty does exist on the subject site when the strict compliance with the Zoning Ordinance standards are applied as discussed at the tonight's meeting and as presented in the staff report. The Board directs staff to prepare a memorialization of the ZBA findings for the project.

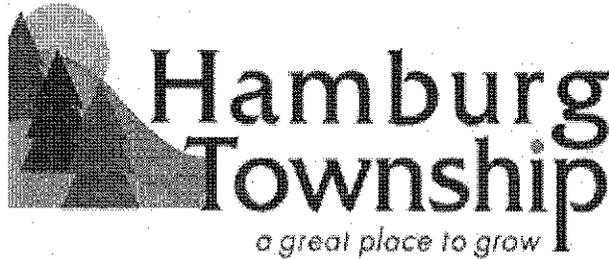
**Denial Motion:**

Motion to deny variance application ZBA 18-002 at 11272 Algonquin to permit the construction of a 426-square foot addition to the east façade of an existing dwelling and a 6-foot by 7-foot detached roofed structure between the addition and existing detached garage. The addition will have a 4.8-foot separation and the roofed structure will have a zero-foot separation from the existing garage (an accessory building which is detached from the principal building shall not be located nearer than 10 feet to any separate building or structure on the lot, Section 8.3.4.).

**Exhibits**

Exhibit A: Application materials

Exhibit B: Elevations and interior floor plan



FAX 810-231-4295  
PHONE 810-231-1000

P.O. Box 157  
10405 Merrill Road  
Hamburg, Michigan 48139

**APPLICATION FOR A ZONING BOARD OF APPEALS (ZBA)  
VARIANCE/INTERPRETATION  
(FEE \$500 plus \$50 each additional)**

1. Date Filed: \_\_\_\_\_
2. Tax ID #: 15-31-102-011 Subdivision: MUMFORD PARK Lot No.: 13
3. Address of Subject Property: 11272 ALGONQUIN DR. PINCKNEY 48169
4. Property Owner: TIMOTHY HUTCHINS Phone: (H) 734 660-3516  
Email Address: thutchins@ibew352.org (W) 734 660-3516  
Street: 11272 ALGONQUIN DR. City PINCKNEY State MI
5. Appellant (If different than owner): \_\_\_\_\_ Phone: (H) \_\_\_\_\_  
E-mail Address: \_\_\_\_\_ (W) \_\_\_\_\_  
Street: \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_
6. Year Property was Acquired: 2017 Zoning District: \_\_\_\_\_ Flood Plain \_\_\_\_\_
7. Size of Lot: Front 50' Rear 54.3' Side 1 149.6' Side 2 159.3' Sq. Ft. 8,202 SF
11. Dimensions of Existing Structure (s) 1st Floor 30'2" x 38'2" 2nd Floor \_\_\_\_\_ Garage 12' x 30'
12. Dimensions of Proposed Structure (s) 1st Floor 21'4" x 20" 2nd Floor \_\_\_\_\_ Garage 12' x 30'
13. Present Use of Property: RESIDENCE
14. Percentage of Existing Structure (s) to be demolished, if any \_\_\_\_\_ %
15. Has there been any past variances on this property? Yes \_\_\_\_\_ No X
16. If so, state case # and resolution of variance application \_\_\_\_\_
17. Please indicate the type of variance or zoning ordinance interpretation requested:  
8.3.4 10' SEPARATION REQUIRED

18. Please explain how the project meets each of the following standards:

- a) That there are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in the same district or zone.

THE EXISTING GARAGE HAS 24" FOOTINGS, THE LIVINGSTON CO. BDCG. DEPT  
WILL NOT ALLOW A ROOF CONNECTION FROM HOUSE TO GARAGE.

- b) That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone and vicinity. The possibility of increased financial return shall not be deemed sufficient to warrant a variance.

TO KEEP A GARAGE, AS ALL THE NEIGHBORS ENJOY, A VARIANCE IS NECESSARY  
WITH THE APPROVED ADDITION - THE ROOF LINES WILL LOOK THE SAME.

- c) That the granting of such variance or modification will not be materially detrimental to the public welfare or materially injurious to the property or improvements in such zone or district in which the property is located.

THE ROOF CONNECTION THAT WAS APPROVED LOOKS ALMOST EXACTLY LIKE  
THE ROOF LINE OF PROPOSED VARIANCE. - NO OTHERS ARE AFFECTED

- d) That the granting of such variance will not adversely affect the purpose or objectives of the master plan of the Township.

THE PROPOSED VARIANCE WILL AESTHETICALLY LOOK LIKE THE  
APPROVED LAND USE PERMIT. NO ADVERSE AFFECT

- e) That the condition or situation of the specific piece of property, or the intended use of said property, for which the variance is sought, is not of so general or recurrent a nature.

THIS IS VERY SPECIFIC. I HAVE MET ALL TWO RULES BUT RAN INTO A  
BDCG. CODE OBJECTION - THE COUNTY DOES NOT REQUIRE A CONNECTION

- f) Granting the variance shall not permit the establishment with a district of any use which is not permitted by right within the district;

IT SHOULD NOT

- g) The requested variance is the minimum necessary to permit reasonable use of the land.

YES

- I hereby certify that I am the owner of the subject property or have been authorized to act on behalf of the owner(s) and that all of the statements and attachments are true and correct to the best of my knowledge and belief.
- I acknowledge that approval of a variance only grants that which was presented to the ZBA.
- I acknowledge that I have reviewed the Hamburg Township Zoning Ordinance, The ZBA Application and the ZBA Checklist and have submitted all of the required information.
- I acknowledge that filing of this application grants access to the Township to conduct onsite investigation of the property in order to review this application.
- I understand that the house or property must be marked with the street address clearly visible from the roadway.
- I understand that there will be a public hearing on this item and that either the property owner or appellants shall be in attendance at that hearing.
- I understand that a Land Use Permit is required prior to construction if a variance is granted.

  
 Owner's Signature \_\_\_\_\_ Date \_\_\_\_\_

Appellant's Signature \_\_\_\_\_ Date \_\_\_\_\_

Michael Dolan  
Hamburg Township Clerk  
PO Box 157  
Hamburg, MI 48139

January 30, 2018

Dear Mr. Dolan,

We would like to submit the following comments regarding the notice ZBA 2018-0002 Amended, request for variance by Owner Timothy Hutchins.

This is a welcomed substantial investment into and improvement of a 1950's cottage into a 21<sup>st</sup> Century home that will add value to our entire neighborhood.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert M. and Serena Barnes". The signature is written in black ink and is positioned above the printed name and address.

Robert M. and Serena Barnes  
11320 Algonquin Drive  
Pinckney, MI 48169

P.O. Box 157  
10405 Merrill Road  
Hamburg, Michigan 48139-0157

(810) 231-1000 Office  
(810) 231-4295 Fax



**Supervisor:** Pat Hohl  
**Clerk:** Mike Dolan  
**Treasurer:** Jason Negri  
**Trustees:** Bill Hahn  
Annette Koeble  
Chuck Menzies  
Jim Neilson

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**Hamburg Township  
Zoning Board of Appeals Minutes  
Hamburg Township Board Room  
Wednesday, November 8, 2017 Minutes  
7:00 P.M.**

**1. Call to order:**

The meeting was called to order by Chairperson Priebe at 7:00 p.m.

**2. Pledge to the Flag:**

**3. Roll call of the Board:**

Present: Bohn, Hollenbeck, Neilson, Priebe and Watson

Absent: None

Also Present: Amy Steffens, Planning & Zoning Administrator & Mike Beck, Zoning Coordinator

**4. Correspondence:** None

**5. Call to the public:**

Chairperson Priebe opened the hearing to the public for any item not on the agenda. There was no response. The call was closed.

**6. Variance requests:**

ZBA 2017-021

Owner: Dennis J. Pennington Living Trust

Location: 5313 Gallagher Boulevard

Parcel ID: TID 15-27-301-201

Request: Variance application to permit the construction of a 24-foot by 35-foot detached accessory structure with an eight-foot setback from the boundary or edge of a regulated wetland (50-foot setback from the boundary or edge of any regulated wetland required, Section 9.9.3.B.).

Mr. Pennington stated that he is requesting a variance to build an accessory building. There is actually enough room on the property to meet the 50 foot setback. However, there is also a requirement of the Homeowner's Association for a 60 foot setback from the center of the road, which means there is no other location on the property for the structure.

Mike Beck, Zoning Coordinator stated that the applicant is requesting a variance to construct a garage within the 50 foot natural features setback requirement. The homeowner made application to construct a garage in 2016, however the permit did expire. When he re-applied in 2017, the presence of the wetlands was noted. The Township Zoning Ordinance does allow for an administrative review to approve a different or reduced setback or eliminate the setback based on certain criteria which details the future protection of the natural features and/or mitigation of the natural features. He could submit an engineered drainage plan, he could construct a physical barrier to protect the wetlands, or record a wetlands easement to protect the wetlands into the future. Today we did receive the engineering plan from the applicant's engineering firm. The survey does indicate that the wetlands and the proposed site of the garage still exceeds the eight foot setback that he

has requested. It is the recommendation of the Planning & Zoning staff to have an administrative approval of the setback versus a variance. Planning & Zoning Administrator Steffens reiterated that the ordinance allows the Zoning Administrator or the body undertaking review to not require a variance but to allow for an administrative approval of a reduced setback. If it is the Board's intention to approve this project in some way, we would suggest that you do it as an administrative step and not as a variance approval with at least one of the conditions as outlined.

Chairperson Priebe stated that the Board does not have any jurisdiction or any authority over civil matters, deed restrictions, etc. We are only looking at the Zoning Ordinance requirements.

Chairperson Priebe opened the public hearing.

Mr. Craig Haitz, President of the Strawberry Court Homeowner's Association, stated that he is representing both the their Homeowner's Association as well as the neighboring Homeowner's Association, Strawberry Estates. In reviewing the Standards of Review, they are in agreement that there are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in the same district or zone. Addressing the second point that such a variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone and vicinity, he would like to point out that the applicant currently has a 720 square foot garage, and other parcels within 300 feet of this property currently have 604 square foot garages. That is 19% larger. If this garage is approved, they would have a 264% larger garage at 1,595 square feet. His last point is to the review standard that "the requested variance is the minimum necessary to permit reasonable use of the land". The variance would establish a second garage on the parcel. The property is developed with a single family home and garage. Reasonable use of the property has already been established. He would hope that the Board would simply apply the requirements and protect the wetlands.

Mr. Gary Parsons of 5295 Gallagher stated the ordinance requires a 50 foot setback from the regulated wetland for the purpose of protecting the wetlands. We are calling this an accessory structure, but it is a garage, and it is not just a question of engineered drainage for rainwater or run-off. Garages have gasoline, oil, vehicles, etc. He does not feel that waiving the setback is appropriate to protect the wetlands. An 8 foot setback is significant. You have to ask, if the Board approves this, is there anything that you won't approve. He opposes the request.

Gary and Ruth Ann Fett of 5306 Gallagher were present. Mrs. Fett stated that they live across the street from the proposed structure. The proposed area is very low and they are concerned about what kind of fill would be required to build the structure. Mr. Fett stated that they are not only concerned about the wetland, but also the lake. He further stated that years ago, they built a sunroom off the back of their house, and like many of the neighbors, they are able to see the lake. This is one of the reasons they live there and contributes to the value of their home. If this structure is built, it will take away their view of the lake. Mrs. Fett stated that a study should be done. If there is going to be run-off, it could flood their access. Mr. Fett stated that they are also concerned about what the building would be used for, what kind of equipment would be in it, etc. and the potential impact that could have.

Mr. Haitz stated that he would like to officially put on record that the HOA Board is opposed to the structure being built.

Mr. Frank Swanson of 5197 Gallagher stated that they have lived in their home since 1980 and have served on the Board many times. They have tried to maintain the original rules for their properties and whole neighborhood. Things should be approved by the Association. If they have to go to court to settle this, it will cost a lot of money. It is hard to believe that somebody who has checked on what the rules are would make such a request and make so many enemies before they move in. They would ask that this Board not allow this to happen.

Ms. Kamille Karlson of 5221 Gallagher asked if this is approved, would it set a precedent for the whole neighborhood.

Hearing no further public comment, Chairperson Priebe closed the public hearing.

Chairperson Priebe stated that the ZBA looks at each request individually. They look at the practical difficulty, and financial impact is not a consideration. They look at the size, shape and configuration of the property in making a determination. Again, they do not consider deed restrictions.

Member Bohn stated that the letter from the MDEQ appears to be in response to a request for a full wetlands delineation. It concludes that a permit is required, however the State law does not require a setback. They regulate the feature. Mr. Pennington stated that the MDEQ indicated that a permit would be required because the way it was laid out, it would go into the wetland, which he was not aware of. He reduced the size of the structure. Member Bohn stated that what he understands is that the MDEQ has accepted ASTI's survey. He further asked if the 8 feet is measured from the corner of the proposed structure. Steffens indicated that it is. Member Bohn asked the reason why they would not move the structure closer to the residence but keeping the 60 foot HOA requirement. Mr. Pennington stated that he could do that, but not meet the 50 feet and there is a hill there as well as a driveway. Discussion was held on the topography of the site.

The question was asked about the administrative review process. Zoning Coordinator Beck stated that one of the differences between the administrative approval and a variance is that administrative approval would not run with the land but rather be limited to the current structure. Planning & Zoning Administrator Steffens stated that Section 9.9.3 requires a 50-foot setback from the boundary or edge of a regulated wetland. However, the Zoning Administrator or body undertaking plan review may reduce or eliminate the setback upon review of a request which details the future protection of the natural feature(s) and or mitigation of the natural feature(s). The letter from the MDEQ and the letter from ASTI indicates that these are regulated wetlands. The MDEQ does not have a setback requirement. They will issue permits for encroachments into a wetlands if the proper engineering is done. It was stated that the proposal does not encroach the wetlands, but rather 8 feet from the wetlands. Member Bohn stated that the thing that protects the wetland is a buffer, which in the case, is the engineered drainage plan. Steffens stated that engineered grading and drainage plan would only be required with the issuance of a land use permit. We are concerned about drainage going into the wetlands, so the plan is going to have to show us that all storm water run-off is managed on site and the wetlands are not being impacted negatively by run-off of the additional impervious area. Member Bohn asked if the plan would also show where the gutters are directed to, etc. Steffans stated that it would. One of the things the inspector looks at during final inspection is what direction the downspouts are facing, and must be into the internal part of the lot. The question was asked about the pitch of the roof. Mt. Pennington stated that it would be 8/12.

Discussion was held on the adjacent park. Mr. Pennington stated that there is a relatively thick vegetation area between his property and the park. Discussion was held on the use of the structure. Mr. Pennington stated that the storage is not for vehicles. He stated that people store their boats in the driveways, around their house, etc. He would prefer to have his blue-tarped boat within a structure as well as kayaks and other storage. It is more harmonious to the neighborhood, and what he is proposing is a structure that ties into his house.

Zoning Coordinator Beck reviewed the Boards options.

The question was asked if there would be any fill required. Mr. Pennington stated that the building would not require any fill. It may require cutting into the hill if he moves it to the left. The question was asked how much more to the left could the building be moved reasonably, understanding that you would have to cut into the hill. Mr. Pennington stated that it could be moved over approximately two feet, but he would still like to request the eight foot setback.

Further clarification was made for the administrative review of the setback versus a variance. The replacement for the setback is the drainage plan. The setback could be limited to something less than 50 feet.

Member Neilson asked the type of driveway would be used for the building. Mr. Pennington stated that he intends to leave it the way it is, which is grass. The building is for storage and will not be something that will be in and out all the time. The question was asked if it is going to simply be storage, why couldn't the building be put behind the house. Discussion was held on the setbacks, wetlands and other constraints.

Motion by Bohn, supported by Hollenbeck

Motion to approve variance application ZBA 17-021 at 5313 Gallagher Boulevard to permit construction of a 24-foot by 35-foot detached accessory structure. The garage will be not less than 8 feet from the designated wetland (50-foot setback is required, Section 9.9.3 (B)(1)). The variance meets the variance standards numbers one through seven of Section 6.5 of the Township Ordinance and a "Practical Difficulty" exists partially as a result of State regulated wetlands and the existing structures and the topography of the site as discussed at tonight's hearing and as presented in the staff report. The wetlands have been delineated as per the ASTI report dated November 1, 2017 and attachments to the report including the survey dated November 7, 2017. In addition, the applicant must provide a storm water drainage and grading plan acceptable to staff prior to issuance of a land use permit. The Board directs staff to prepare a memorialization of the ZBA findings for the project.

The question was asked if the three conditions as outlined in the staff report would also be required. Beck stated that it would be required only as part of the motion. It was stated that an engineered drainage plan is required per the motion.

Bohn revised the motion, Hollenbeck supported

to include: if necessary and determined by staff, in their reasonable discretion, to construct a physical barrier along the State wetland boundary to preserve the wetland from lawn equipment or any other trampling of that area, preferably a natural, vegetation barrier such as an earthen berm as opposed to a man-made structure that requires maintenance as needed to deflect drainage from the structure

Voice vote: Ayes: 3 Nays: 2 Absent: 0 MOTION CARRIED

## 7. New/Old Business:

1. Approve October 11, 2017 meeting minutes and memorialization of findings for ZBA 17- 020.

Motion by Watson, supported by Neilson

To approve the October 11, 2017 minutes and memorialization of Findings for ZBA 17-020

Voice vote: Ayes: 5 Nays: 0 Absent: 0 MOTION CARRIED

Planning & Zoning Administrator Steffens stated that tomorrow at the Township Board meeting, the Board will be discussing the Zoning text amendment dealing with the 50% rule as well as the Waterfront Residential district text amendment for lots less than 60 feet to have a reduced minimum setback. These will be discussed at their 2:30 p.m. meeting.

Planning & Zoning Administrator Steffens stated that at this point, we have no cases for the December meeting.

Member Bohn stated that the language dealing with a reduced setback and future protection of the wetlands is a good tool to have. Steffens agreed and stated that they still like the ZBA members look at it because it is

problematic and there are a lot of opinions on the matter. It is up to the Board to put it back to say an administrative review is appropriate.

Further discussion was held on the approved variance. Discussion was held on the view of the lake from surrounding neighbors.

Planning & Zoning Administrator Steffens stated that in September, one of the cases heard was for 10260 Langly Drive. Zoning Coordinator Beck stated that the case involved major reconstruction of more than 50% and adding a small addition to expand the structure 7.8 feet from the south property line. As of today, they have taken the structure down to its foundation. The question it raises is what was the ZBA's intent in approving this. It was stated that the intent was to simply "square off" the building, not tear down the entire structure. Steffens stated that what was submitted was a plan showing the existing walls and the new walls. It was an addition, and they were going up as well. It appears that they are using the same foundation and footprint. The question is, if the Board knew that they would be tearing down the structure, would you have approved the non-conforming setbacks.

The question was asked how they received a demo permit. Steffens stated they did not. The County will not issue a permit until we do, and we require shut-off notices from the utility companies.

Discussion was held on a required explanation from the applicant. It is different if you find something unanticipated, but another to tear down the entire structure. Steffens asked if the footprint has not changed, are we good to proceed. We will follow up with the Livingston County Building Department tomorrow to see what was issued. They filed for their land use permit based on their variance approval and then came back later to show us they were raising the house. They did not tell us they were taking it down to the foundation. Discussion was held on the type of foundation. It was stated that it is a crawl space. Steffens stated that we will follow up with the Building Department and go out and do an inspection.

The question was asked if our staff receives any training on wetland identification. Steffens stated that we do not. We rely on the applicant's engineering work to tell us whether or not there are wetlands and if they are regulated by the DEQ. Beck stated that we rely on the DEQ's wetlands map and data that they prepare as well. He described the wetland identification process. Further discussion was held on wetlands.

Discussion was held on the opposition from the neighbors regarding the Gallagher appeal. The Board is bound by seven questions of the findings of fact. If you find that it meets the findings of fact and a practical difficulty exists that they could not meet the standards, then you must vote yes. People are very protective of their property, particularly on the lakefront lots, and personality conflicts do arise. It was stated that if the concern is the wetlands, there are reasonable rules the homeowner's association can pass as well.

## **8. Adjournment:**

Motion by Bohn, supported by Neilson

To adjourn the meeting

Voice vote: Ayes: 5    Nays: 0    Absent: 0    MOTION CARRIED

The meeting was adjourned at 8:15 p.m.

Respectfully submitted,

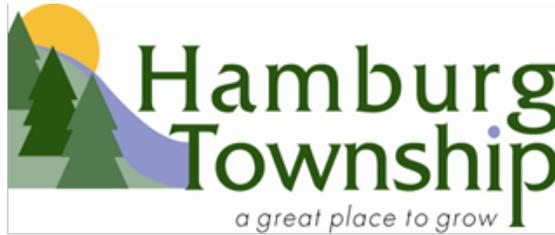
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Julie C. Durkin

Recording Secretary

The minutes were approved  
As presented/Corrected: \_\_\_\_\_

\_\_\_\_\_  
Joyce Priebe, Chairperson



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**ZONING BOARD OF APPEALS  
MEMORIALIZATION OF FINDINGS**

**November 8, 2017**

**Approval of Variance (17-021)**

**Project Location:** 5313 Gallagher Drive  
(TID 15-27-301-201)  
**Agent:** None  
**Owner:** Dennis J Pennington Living Trust  
**Project Planner:** Mike Beck  
**Zoning District:** Waterfront Residential (WFR)

**PART I – PROJECT DESCRIPTION**

Variance application to permit the construction of a 24-foot by 35-foot detached accessory structure with not less than an eight-foot setback from the boundary or edge of a regulated wetland (50-foot setback from the boundary or edge of any regulated wetland required, Section 9.9.3.B.).

**PART II – CONDITIONS OF APPROVAL**

Approval is subject to the following condition:

Prior to the issuance of a land use permit, owner shall:

1. submit an engineered storm water, drainage and grading plan acceptable to staff; and
2. if reasonably necessary and as determined by staff, submit as part of plan to construct a physical barrier, preferably an earthen, vegetated barrier such as a swale, as needed to direct drainage away from the wetland in order to protect the state regulated wetlands.

**PART III– FINDING FOR APPROVAL**

The Zoning Board of Appeals approves the project described above because the Board finds that the project complies with the applicable standards of the township ordinance including the applicable variance standards as follows:

## Variance Standards

- 1. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to other properties in the same district or zone.**

The 50 foot regulated wetlands setback requirement applies generally to all properties in Hamburg Township. However, the presence of this wetland encroachment is unique to this parcel. The approximated location of the wetland on this property adds practical difficulty to siting a garage within all required setbacks.

- 2. That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone and vicinity. The possibility of increased financial return shall not be deemed sufficient to warrant a variance.**

The requested variance would permit construction of an accessory building within the required 50- foot wetlands setback. Substantial property rights enjoyed by property owners within the WFR district include single family homes. Accessory structures are a customary residential use associated with single family homes.

- 3. That the granting of such variance or modification will not be materially detrimental to the public welfare or materially injurious to the property or improvements in such zone or district in which the property is located.**

The parcel immediately south of the proposed garage placement is a vacant parcel owned in common by the Strawberry Hill Estates homeowners' association. This parcel currently provides keyhole lake access to Strawberry Lake homeowners, and is unlikely to have a residence established on the lot in the future. The addition of a garage would have minimal effect on traffic or land use in the district, and minimal effect on other Strawberry Hill Estates property owners. Siting a garage as proposed would not be detrimental to public welfare or materially injurious to other properties or improvements in the same zone or district, provided the wetland is protected in conjunction with this variance request.

- 4. That the granting of such variance will not adversely affect the purpose or objectives of the master plan of the Township.**

This site is located in the South Hamburg/Strawberry planning area in the Master Plan. This planning area is predominately lower-density rural residential. Parcels in the applicant's subdivision are closely tied to lake waterfronts. The township master plan envisions the South Hamburg/Strawberry area to remain lower density rural residential. Because of the proposed garage exercises a substantial property right of single family homeowners and does not affect housing density, the proposed project would not adversely affect the purpose or objectives of the Master Plan.

- 5. That the condition or situation of the specific piece of property, or the intended use of said property, for which the variance is sought, is not of so general or recurrent a nature.**

See analysis under standard one.

- 6. Granting the variance shall not permit the establishment with a district of any use which is not permitted by right within the district.**

The permitted use of the site is single-family residential and the proposed variance would not change the use.

- 7. The requested variance is the minimum necessary to permit reasonable use of the land.**

This variance request would establish a second garage on the parcel. Property is developed with an existing single family home and garage. Reasonable use of the property has been established.

Approval by the Hamburg Township Zoning Board of Appeal at a regular meeting on Nov. 8, 2017 by the following vote:

AYES:	BOARD MEMBERS:	Priebe, Bohn, and Hollenbeck
NOES:	BOARD MEMBERS:	Neilson and Watson
ABSENT:	BOARD MEMBERS	