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**Hamburg Township
Zoning Board of Appeals Minutes
Hamburg Township Board Room
Wednesday, April 11, 2018 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

4. Correspondence: None

5. Approval of Agenda:

Motion by Neilson, supported by Watson

To approve the agenda as presented

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

6. 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.

7. Variance requests:

a. ZBA 2018-004

Agent: Angelini & Associates Architects

Owner: Stephen and Catherine Boston Living Trust

Location: 9658 Zukey Drive Pinckney MI 48169

Parcel ID: 15-22-301-001

Request: Variance application to allow for the partial demolition of an existing dwelling and the reconstruction of a 3,873-square foot dwelling. The proposed dwelling will have a 34.5-foot setback from the ordinary high water of Zukey Lake (50-foot setback from the ordinary high water required, Section 7.6.1.) and an 11-foot north side front yard setback from the platted right-of-way of Petty's Drive (25-foot front yard setback required for corner lot, Section 7.6.1.fn4.).

Variance application to allow for the addition to an existing non-conforming detached garage. The addition will have a 2.7-foot south side yard setback (five-foot side yard setback

required, Sections 8.3.2. and 11.3.2.). A pergola attached to the garage will have a 9.4-foot east front yard setback (25-foot front yard setback required, Section 8.3.2.).

Theresa Angelini of Angelini & Associates Architects clarified the project description and the requested variances. She reviewed the proposed project including a partial demolition of the existing structure and utilizing 100% of the existing foundation, except the porch foundation on the lake side which they believe is not structurally reliable. Most of the walls on the south and east sides will remain. The existing ground floor is 1589 square feet, they will be adding 556 square feet for a total ground floor of 2,145 square feet. They are adding roughly 25% more square footage. The second floor existing is 2,580 square feet and are adding roughly 1,300 square feet. The total square footage will be 3,877. From the ordinary high water mark, the existing dwelling is 29 feet 3 inches and the proposed dwelling would have a 33 foot setback. She stated that none of the dwellings in the area meet the required 50 foot setback. She reviewed the current setbacks in the area and stated that enforcement of that setback would create a hardship that the surrounding property owners do not have. She further discussed the elevation of the house, grade and 100 year floodplain. Mr. Angelini reviewed the design of the house. Ms. Angelini reviewed the site layout including the fact that it is a corner lot with a 25 foot setback on the north side, which they are asking to be reduced to 11 feet. She discussed the garage. She stated that currently the footprint overlaps the property line by .9 feet and they have moved the north end of that east wall back 1 foot so it is back from the property line 2.7 feet. She stated that they are proposing the pergola to soften the connection of the detached garage and the house from the street. It is open on top and is not much more than a garden element. She discussed the standards of review. She stated that this is a corner lot and has additional restrictions that do not apply to other properties. The lot size is 9,627 square feet which is slightly larger than some of the properties in the Petty's subdivision, but it is significantly less than the minimum lot size as stated in the zoning ordinance for Waterfront Residential. The lot width is 74.75 feet or 60% of the required width. The staff report indicates that the dwelling could be demolished and replaced with a conforming structure, however that would result in a subdivision type house. They feel that the scale of that would be wrong for the site. The staff has described the garage addition as minor. However they feel that it makes the space much more functional. She discussed the November 2017 Zoning Text Amendment. She further stated that there is no basement so the additional storage is needed. The proposed remodeling and addition does not block the view from the north or south and they are proposing to move that back an additional 4 feet from the existing house improving the current setback from the ordinary high water mark. Since all of the homes in the area are built within that 50 foot setback, it would be unreasonable to hold this applicant to that standard. She further discussed the need for storage space and adding that to the existing garage rather than an additional accessory structure. They believe that none of the variances requested are detrimental to the public welfare or materially injurious to the properties in the district nor will they adversely affect the purpose or objectives of the master plan. She further discussed the estimated demolition and the desire to use portions of the existing dwelling. She discussed the existing cottages and houses in the area. The practical difficulty here is that the lot is ¼ the size stated in the zoning ordinance, all the homes in the area have setbacks within that 50 foot required setback, and they are re-using the existing structure as much as possible.

Planning & Zoning Administrator Steffens described the subject site, existing conditions and the existing and proposed setbacks. She stated that the ordinance considers a lot to be a corner lot even if the right-of-way that it touches is unimproved. In this case it is platted that way, and in the future it could be improved. Ms. Steffens discussed the ordinary high water mark. She stated that this is separate from the 100-year flood plain. The applicant has supplied a topo survey, but it is not sealed which will be required. It does show that the proposed structure is outside the flood plain. The ordinary high water mark has no relation to the flood plain elevations. They also understand that the ordinary high water mark can change over time. She stated that the Board is bound to find that the application would or would not comply with the seven standards of review. She reviewed the staff's findings. She stated that the lot could accommodate a compliant structure but the chosen design creates a self-imposed practical difficulty. With the demolition of approximately 70 percent of the existing walls, the project could be designed to meet the setback standards. Staff does find that the requested north front yard setback variance is a reasonable deviation from the ordinance based on the unlikelihood that the platted right-of-way would be developed as anything other than unimproved lake access. However, the requested setback from the ordinary high water mark and the setback for the garage are a

concern. The applicant has indicated that because the lot is smaller than the minimum lot size required for the waterfront district, it creates an exceptional or ordinary circumstance. However, the one-acre requirement is applied when creating a lot. The vast majority of our lakefront subdivisions were platted with 50-foot lot widths. This is actually a sizeable lot for lots within the waterfront district. The removal of the majority of the structure does present the opportunity to bring the structure into compliance. Additionally, the garage addition would increase the nonconformity of a structure that basically sits right on the street. Our ordinance is designed to get rid of nonconformities, not make the nonconformity greater. She stated that the pergola is a self-imposed practical difficulty. It is something that is desired and not needed. The site is zoned for single family uses and can be used for such a use. With 70% of the walls being removed, there is no reason to approve further encroachment into the setbacks. Additional living space could be constructed on the other side of the street. The location of the addition is a self-created practical difficulty. Also, as it relates to the additional garage storage, additional storage could be located elsewhere on the site in a conforming location. Furthermore, the proposed pergola's deficient setbacks is due to personal preference. She stated that the setback from the ordinary high water mark is intended to protect an open vista to the water from neighboring properties. Permitting a new structure to impede on the waterfront setback when there are alternative locations is detrimental to the public welfare, particularly those properties that have been built with a compliant setback. She discussed the master plan vision of the area and stated that the proposed request would not adversely affect the purpose or objectives of the Master Plan. She further discussed review standards 5-7 as it relates to the site. The lot could accommodate a compliant structure, but the chosen design creates a self-imposed practical difficulty requiring variance approval. The project could be designed to meet the setback requirements. Ms. Steffens presented a drawing of the lot drawn to scale and included the required setbacks and building envelope and showed how the house could be built in a compliant location. The Board is here to determine if there is something so restrictive with the lot that a compliant structure could not be built. Clearly it can.

Ms. Boston, applicant, stated that what is being missed is that they are trying to preserve what they can of a 100 year old house. They do not want to tear down the house and build a new house. They have spent a lot of money to try to preserve a 100 year old home that they love. After many plans, this is what they have come up with. There is a beautiful aesthetic along that strip and that is what they are trying to preserve.

Member Bohn stated that all of the houses to the south have substantially less than 50 foot setback from the high water mark. Discussion was held on the engineering and the use of the FEMA map to determine the high water mark.

Member Watson stated that he still has a problem with the front yard setback at the unimproved right-of way. The existing setback is 27 feet and proposed is 11 feet. You cannot ignore the setback simply because you want a bigger structure. He agrees that a lot of the structures are non-conforming, but if they chose to re-build, they would also have to meet the setbacks.

Chairperson Priebe opened the public hearing.

Mr. John Lamb of 9700 Zukey Drive stated that he does have some concern particularly with the 11 foot side setback. He stated that he and some of the other residents have been discussing putting gravel down on the access to the lake. The applicants have approached some of the residents because they do not feel that they should be using that access to park their boats and trailers, which they have been doing since the 1950s. His understanding when he bought his property was that was the intent for the residents in the subdivision. They do not want to lose their rights to that property. They are concerned that if the house is that close to the easement, then they will end up putting grass there, etc. He is also concerned about the road during construction. It is a private road maintained by the residents. They would hope that they would maintain the road as they are building or restore the road when they are complete. Finally, this is already a non-conforming property and they are requesting an additional three variances making it even more non-conforming.

Mr. Nick Graham of 9669 Zukey Drive stated that he lives across the road from the Boston's. One of the concerns he has is the site lines. They are requesting to take the home that is already encroaching on the south side and extending it further to the north side. He is losing his site lines. When he purchases a property, he knows the provisions and the setbacks. Prior to purchasing that property, he has a plan. They are already encroaching the setbacks on the lake side, the south side and the east side, and they are now asking to encroach even further on the north side. He is concerned about the site lines and how it affects his property value into the future.

Mr. Paul Stark of 9638 Zukey Drive stated that he lives to the north of the Boston's and has been on the lake since 1968. The Boston's house was his brother's house, and he gave a brief history of the property. Unfortunately, the houses all along that road are non-conforming. To try and correct some of these things is going to be difficult. To tear down the house to make if fit does not make a lot of sense. We want to use what's there and make sense of it. Ever since he has been there, nobody knew what that right-of-way was. People have been able to use it to whatever extent they wanted. There will never be a road there. When his brother owned the home, he made some improvements, but there are still a lot of deficiencies. We can try to use common sense here. If changes can be made, he would hope that they don't have to tear down the entire building. He does not have any opposition to what they are trying to do. He stated that he knows the Bostons, and they are trying to do what is right to meet the requirements but yet not start from scratch. If you move the structure back from the water, then they will lose their view because of existing structures.

Marlo Stevens of 9708 Zukey Drive stated that she is fairly new to the subdivision. She recently added an addition to her house and did not have to ask for any variances. When she moved in, she was told that they did have the access that they could use to park boats and trailers, etc. They do not have a homeowner's association. They all work together. She has had a knock on her door from someone saying they could not park their stuff on the common area. She does not want them to encroach the area that is common to all of them.

Elizabeth Ann Winter of 9715 Zukey Drive stated that area has always been known as common area. It is used and it always looks nice. She agrees that having a defined space is important for those who use it.

Mr. Rick Beaudin of 9676 Zukey Drive stated that the good thing that has come out of this is that the neighbors have gotten together to discuss the access. Now they are finding out that it is a road. They need to have a discussion about what they are going to allow there. He does not have a problem with the variance, but they cannot tell us that they cannot park there.

Mr. Boston, applicant, stated that this is about the variance to the property no so much about the road. He did not strong-arm anyone, but he did talk to people. There is no intent to take down the fence or develop the road. Since it is a drive, they are asking that it be treated as a drive. They have used it for storage and are in agreement to move their equipment somewhere else. They feel that their proposal is consistent with other remodels that have been done in the area. They have been trying to work with the existing footprint as much as possible while trying to expand it to what they want out of a lake house. If they were to meet all of the setbacks, it would look like a neighborhood house out of a typical subdivision, not a lake house they intend it to be. They feel that the variances they are requesting are fair and reasonable to meet the design they are trying accomplish and still meet the requirements with as few variances as possible. He appreciates everyone's time and comments.

Chairperson Priebe closed the public hearing.

Chairperson Priebe stated that the ZBA deals only with zoning. Issues dealing with the lake access would be a civil matter. We are looking at the variance requests as submitted.

Commissioner Bohn asked how that access is platted. Planning & Zoning Administrator Steffens stated that it is a platted right-of-way dedicated to the use of the owners within the subdivision.

Steffens stated that there has been discussion regarding a fence along the right-of-way. Staff would like to point out that a fence is not allowed within 50 feet of the ordinary high water mark.

Chairperson Priebe stated that her biggest concern is the garage issue.

Member Watson asked if the Board could ask the applicant to re-look at this to possibly reduce the variance request. Steffens stated that the Board could table the issue to the next hearing to allow the petitioner time to re-work their plan.

Chairperson Priebe stated that the Board could approve or deny all or part of the request. If it is denied, the applicant could not make a request for a year unless the plan is substantially different than the original request.

Member Neilson stated that the request is to go from 2500 square feet to over 3800 square feet. Something in between could meet the setbacks. He feels that there are too many things that are self-imposed.

Steffens discussed an alternative design.

Mrs. Boston stated that they would be willing to forgo the pergola and additional space to the garage if it is helpful to reach a conclusion.

Member Bohn stated that he does not feel that we will ever be able to achieve 50- foot setback to the high water mark on this road. And, it is completely for aesthetic purposes, not a safety issue.

Motion by Bohn, supported by Hollenbeck

Motion to approve variance application ZBA 18-004 at 9658 Zukey Drive to allow for the construction of a dwelling with an 11-foot north front yard setback from platted right-of-way (25-foot front yard setback required for a corner lot, Section 7.6.1.fn4.). The variance does meet variance standards one through seven of Section 6.5. of the Township Ordinance and a practical difficulty does exist (predominantly the shape and location and size of the lot and its relationship to an undeveloped, dedicated, and used by the subdivision. right-of-way) on the subject site when the strict compliance with the Zoning Ordinance standards are applied as discussed at tonight's hearing and as presented in the staff report and allow for a 3,877 square foot dwelling with a 34.5 foot setback from the ordinary high water of Zukey Lake (50-foot setback from the ordinary high water mark is required by Section 7.6.1) 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 (predominantly its orientation to the lake and it's lot size relative to other waterfront lot sizes) when the strict compliance with the Zoning Ordinance standards are applied as discussed at tonight's hearing and as presented in the staff report. The Board directs staff to prepare a memorialization of the ZBA findings for the project.

Steffens asked if the intent of the motion is that any of the existing structure could remain. Staff has indicated that the entire structure could be removed. Member Bohn stated that the intent is to approve the variance request as submitted with no more than 70 percent of the existing structure being removed. This is an improvement to an existing structure with those features to be preserved. If those walls were to be removed, it would not comply with the approval.

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

Member Watson again discussed the applicant going back to re-design the request.

Motion by Watson, supported by Neilson

To deny a variance application to allow for the addition to an existing non-conforming detached garage. The addition would have a 2.7-foot south side yard setback (five-foot side yard setback required, Sections 8.3.2. and 11.3.2.). A pergola attached to the garage would have a 9.4-foot east front yard setback (25-foot front yard setback required, Section 8.3.2.). The variance does not meet variance standards one, 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 tonight's hearing and as presented in the staff report. The Board directs staff to prepare a memorialization of the ZBA findings for the project.

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

Chairperson Priebe stated that the applicant has the option of re-designing the garage and making another request at a future date.

It was stated that the existing house is already within the 50-foot setback to the high water mark. Any addition to a non-conforming structure has to comply with the setbacks. You could keep what is there, but anything added would have to be 50 feet back from the high water mark and 25 feet back on the north.

8. New/Old Business:

- a. Approval of March 14, 2018 meeting minutes and findings of fact for ZBA 18-003

Motion by Neilson, supported by Watson

To approve the March 14, 2018 meeting minutes and findings of fact for ZBA 18-003 as presented

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

Steffens stated that the 2020 Master Plan Update kick-off meeting is tomorrow here at 1:00 p.m. Chairperson Priebe and Member Neilson are on the steering committee. We welcome anyone interested in attending and would love to have additional Board members attend. We will introduce the steering committee, the process, the schedule and set our next meeting date. We will have a mix of daytime and evening meetings.

9. Adjournment:

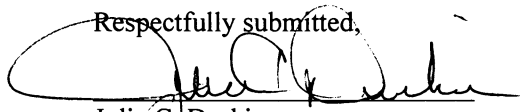
Motion by Hollenbeck, supported by Watson

To adjourn the meeting

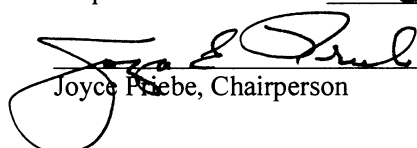
Voice vote: Ayes: 5 Nays: 0 Absent: 0 MOTION CARRIED

The meeting was adjourned at 8:39 p.m.

Respectfully submitted,


Julie C. Durkin
Recording Secretary

The minutes were approved
As presented/Corrected:

6-13-18

Joyce Priebe, Chairperson