

**Hamburg Township
Zoning Board of Appeals
Hamburg Township Board Room
Wednesday, February 13, 2019
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**

ZBA 2019-001

Applicant: Stephen and Deborah Nash
Location: Downing Drive
Hamburg MI 48139
Parcel ID: 15-28-402-010
Parcel owner: Greg and Kimberly Attwood
Request: Appeal of Zoning Administrator's issuance of land use permit 18-0584 that would permit the installation of 70 linear feet of a six-foot tall fence at parcel 15-28-402-010.

- 8. New/Old business**
 - a) Approval of January 9, 2019 minutes and memo of findings for ZBA 18-014
- 9. Adjournment**



Zoning Board of Appeals Staff Report

AGENDA ITEM: 7a



TO: Zoning Board of Appeals
(ZBA)

FROM: Amy Steffens, AICP
Zoning Administrator

**HEARING
DATE:** February 13, 2019

SUBJECT: ZBA 19-001

**PROJECT
SITE:** TID 15-28-402-010,
property on Downing Drive

APPLICANT: Stephen and Deborah
Nash

OWNER: Greg and Kimberly
Attwood

PROJECT: Appeal of Zoning Administrator's issuance of land use permit 18-0584 that would permit the installation of 70 linear feet of a six-foot tall fence at parcel 15-28-402-010.

ZONING: WFR (waterfront residential district)

Project Description

Stephen and Deborah Nash have filed an appeal of the zoning administrator's issuance of land use permit (LUP)18-0584 to permit the installation of 70 linear feet of a six-foot tall fence at parcel 15-28-402-010, lot 8 of the Supervisor's Plat of Indian Gardens (plat attached as Exhibit A). Lot 8 fronts onto Downing Drive to the east; Strawberry Lake is to the south; the site is improved with an existing 1,196-square foot garage.

On December 11, 2018, Greg Attwood, owner of lot 8, applied for a land use permit through his representative, Chris Hewison, to construct approximately 70 linear feet of a six-foot tall board-on-

board vinyl fence along the north property boundary of the site. The application materials (application form, fence drawing, and property boundary survey) are attached as Exhibit B. When Mr. Hewison submitted the land use permit application, staff verified the location of the fence on the survey and highlighted the area included in the application.

Land Use Permit Application Requirements

Section 3.3. of the Zoning Ordinance is provided below; this section stipulates what projects require a land use permit and what information is needed for a permit submittal. Staff comment as it relates to Mr. Attwood's land use permit application is in italics.

Section 3.3. Land Use Permits

3.3.1. Permit Required

- A. The following actions shall not commence until a land use permit has been issued by the Township Zoning Administrator:
 - 1. The excavation, alteration, or filling of land.
 - 2. The new use or change in use of land, except for the conduct of agricultural activity.
 - 3. The new use or change in use of an existing building or structure.
 - 4. Construction or expansion of a structure, including parking lots.

Staff comment: The construction of a fence, which is defined as a structure, requires a land use permit.

- B. Except upon a written order of the Township Zoning Board of Appeals, no land use permit shall be issued for any building or structure where the construction, addition, alteration or use thereof would be in violation of any of the provisions of this Ordinance.

Staff comment: No variance was requested as the fence location and height as indicated on the permit application comply with the township Zoning Ordinance (Section 8.14.).

- C. No building permit shall be issued until the Zoning Administrator has determined that the building, structure, or use of land, if constructed or used as planned and proposed, will conform to the provisions of this Ordinance, as evidenced by issuance of a land use permit.

Staff comment: Review of application materials is discussed in detail below.

3.3.2. Application Requirements. Application for a land use permit shall be submitted at least ten (10) days prior to a contemplated new use or change of use of a building or land. Application for a land use permit shall be made in writing to the Zoning Administrator, signed by the person, firm, co- partnership, or corporation requesting the same or by the duly authorized agent of such person, firm, co- partnership or corporation. For those uses requiring a site plan, the Zoning Administrator shall not issue a land use permit until the provisions of Article 4.0, Site Plan Review, have been satisfied.

For those uses not requiring a site plan, there shall be submitted to the Zoning Administrator with all applications for land use permits, two (2) copies of a plot plan, drawn to scale showing:

- A. The location, shape, area and dimensions for the lot, lots, or acreage.

Staff comment: A property owner may provide either a plot plan or a survey with the land use permit application, but a survey is not required. In this instance, Mr. Attwood did provide a survey of his property showing the information that is required under Section 3.3.2.(A).

- B. The location of the proposed construction, alteration, or repair upon the lot, lots, or acreage affected, along with existing structures, wells, and disposal systems. All wells and sanitary septic systems must have Livingston County Health Department approval.

Staff comment: The existing garage is shown on the survey, and staff verified the location of the fence at the time of application submission. There neither a well nor a sanitary system on the lot.

- C. The dimensions, height, bulk of structures, and setback lines and a finished building grade drawing of existing and proposed structures.

Staff comment: The application specified the dimension and height of the fence, as well as the location of the fence along the northern property boundary; there was no proposed change in grade.

- D. The nature of the proposed construction, alteration, or repair and the intended uses.

Staff comment: The required information was provided in the application.

- E. The present use being made of any existing structure affected and any proposed change in the use thereof.

Staff comment: Does not apply; the application did not propose to affect any existing structures although the survey clearly shows that the existing structure is being used as a garage.

- F. The approximate boundary of any water body or Michigan Department of Natural Resources (MDNR) regulated wetland as determined by the procedures of Section 3.6, Wetland Determination. An MDNR permit shall be required for activities in a regulated wetland or an inland lake or stream. A copy of any required MDNR permits shall be submitted with the land use permit application.

Staff comment: The boundary of the water body is shown; no wetlands are present on the site.

- G. Any other information deemed necessary by the Zoning Administrator to determine compliance with this Ordinance and to provide for its enforcement.

Staff comment: Zoning Administrator did not request additional information from the owner.

3.3.3. Evidence of Ownership. All applicants for land use permits shall have available for the Zoning Administrator's inspection, evidence of ownership of all property affected by the permit and shall submit the same upon the request of the Zoning Administrator.

Staff comment: A warranty deed is on file for lot 8 with the township assessor's office (Exhibit C). The warranty deed shows that Greg and Kimberly Attwood are the owners of lot 8.

Application of Section 3.3. to the Owner's Permit Application

Once staff receives a land use permit application, a site inspection is scheduled by the code enforcement officer, the zoning coordinator, or the zoning administrator. Zoning Coordinator Brittany Stein conducted a site inspection on December 14 to verify that lot conditions were as shown on the survey; pictures taken by Brittany Stein are attached as Exhibit D). She found that the survey stakes were installed, the location of the proposed fence was indicated, and the survey accurately depicted the site conditions (i.e., existing garage and asphalt drive). Zoning Administrator Amy Steffens and Code Enforcement Officer Mike Sumeracki conducted a second site inspection on December 17 to confirm the existing site conditions matched the owner's permit application.

The owner's survey does show that the site is within the AE floodplain. Staff confirmed with the Michigan Department of Environmental Quality that the fence would not require a DEQ permit under Part 301. In a telephone conversation with Donna Cervelli on December 18, 2018, staff confirmed with Donna Cervelli, DEQ floodplain engineer, that the proposed fence would not constitute a hazard if properly anchored. The DEQ also confirmed that no Part 301 permit was necessary (Exhibit E).

Application of Section 8.14. to the Subject Site (Adopted on May 18, 2016, ZTA 15-005)

The zoning administrator, when reviewing Mr. Attwood's fence permit application, applied Section 8.14., Fences, Walls, and Screens, of the Hamburg Township Zoning Ordinance to the permit application for lot 8. Below is the text of Section 8.14., with staff comment in italics:

Section 8.14.1. All fences, walls and other protective barriers (referred to in this section as "fences") of any nature, description located within any district of Hamburg Township shall meet all of the following regulations:

- A. All structures shall be located entirely on or within the lot lines of the lot upon which they are located; and shall not be located within any public road right-of-way or private road easement. Fences on any corner lot must also comply with the setback requirements of Section 8.15, Intersection Visibility.

Staff comment: The submitted survey and site staking show that the permitted fence would be entirely within the lot lines of lot 8; was not located within any public road right-of-way or private road easement. The subject site is not a corner lot.

- B. Fences shall consist of materials commonly used in conventional fence construction, such as wood or metal. Razor wire shall not be permitted. Fences, which carry electric

current, shall be permitted only in conjunction with the raising and keeping of horses or other domesticated animals permitted under Section 7.7.1. Barbed wire may be permitted in industrial districts, provided that the barbed wire is at least six (6) feet above ground.

Staff comment: The permitted fence would be white vinyl, which is a commonly used conventional fence material. No razor, electric, or barbed wire fence was proposed.

- C. If, because of the design or construction, one side of the fence has a more finished appearance than the other, the side of the fence with the more finished appearance shall face the exterior of the lot.

Staff comment: There does not appear to have an unfinished side of the fence panels, however; this requirement will be verified at the final zoning inspection.

- F. A fence shall not be erected where it would prevent or unreasonably obstruct the use of adjacent property or the safe use of an existing driveway or other legal means of access to adjacent property.

Staff comment: The permitted fence does not obstruct access to any adjacent property, as it is entirely on lot 8, nor does it block the right-of-way of Downing Drive, which is the legal access to adjacent properties as the location of the fence would be more than 30 feet from the right-of-way. Furthermore, the permitted fence would not prevent or unreasonably obstruct the use of any adjacent properties for the intended, zoned, and developed purpose of single-family residential use. Adjacent properties to the north and south have direct platted access to the water.

- G. Fences shall be erected in a manner to allow emergency access to the rear yard of a lot by placing a gate and providing sufficient space between the building line of any structure and the fence on at least one-side of the yard.

Staff comment: The permitted fence would not prohibit emergency access to the rear of lot 8, or to any other portion of lot 8 or to adjacent lots, in its permitted location. The permit includes only a straight 70-linear foot run of fence that would not enclose any portion of lot 8.

- H. Fences shall be maintained in good condition. Rotten or broken components shall be replaced, repaired, or removed. As required, surfaces shall be painted, stained, or similarly treated.

Staff comment: This regulation applies to all fences; fences must be well maintained after installation.

- I. The height of a fence shall be measured from the point at which the fence posts, pilasters or footing intersects the ground on the lowest side of the fence to the top of the fence directly above. Where a fence is built on top of a wall, the combined fence/wall height is measured from the lowest grade to the top of the fence directly above. A fence may slightly exceed the height limits due to minor variations in the underlying terrain as determined by the Zoning Administrator.

Staff comment: Both the permit application and the permit issued by the Zoning Administrator specify that the height of the fence shall not exceed six feet from grade. Once installed, staff would conduct a site inspection to verify the fence was installed per the permit and ordinance requirements.

Section 8.14.2. In addition to the standards of Section 8.14.1., all fences, walls, or other screening structures, other than necessary retaining walls, located within a single-family residential district shall not exceed the following maximum heights as depicted in Figures 1-9 section 8.14.3.

- A. Any fence located in front yard area may have a maximum height of four (4) feet. For the purpose of the fence regulations corner lot shall be considered to have front yard areas along each of the roadways.

Staff comment: The permitted fence is not in the front yard area, but rather is in the side yard area.

- B. Any fence located outside of a front yard area may have a maximum height of six (6) feet, except for a fence located in a rear yard along the rear lot line without street frontage where a fence may have a maximum height of eight (8) feet.

Staff comment: The fence was permitted in the side yard only, which means that the ordinance would allow a maximum height of six feet.

- C. Where lots abut a water body, any fence located between the Ordinary High Water Mark of the water body and the principal building and between a conforming building closest to the roadway or the required setback for a building whichever is further and the roadway easement may not exceed a maximum height of four (4) feet. No fence shall be permitted in the required waterfront yard between the shoreline and the required waterfront yard setback, other than railings as permitted under Section 8.17.9. All other fences may have a maximum height of six (6) feet. (See Figure 6)

Staff comment: The survey submitted with the fence permit application indicates that the fence is located outside of the required 50-foot setback from the ordinary high water mark (Section 7.6.1.(fn3)).

- D. On all lots where the side or front yard space of a lot abuts the rear property line of one or more adjoining lots, the height of the fence shall not exceed eight (8) feet along that portion of the common lot line. (See Figure 2)

Staff comment: Does not apply to lot 8 as neither the side or front yard spaces abut the rear property line of an adjoining lot.

- E. On all lots where the front yard space of a lot abuts side yard or rear yard space along the side property line of one or more adjoining lots, the height of the fence shall not exceed six (6) feet along that portion of the common lot line. (See Figure 2 and 6)

Staff comment: The front yard space of lot 8 does abut side yard to the north, meaning approximately 15 additional linear feet of six-foot fence could be permitted to be installed to the east of the permitted location.

- F. Required four (4) foot high fences must be made to be 50% open (Examples Split Rail, picket and wrought iron fences) (See Figure 9)

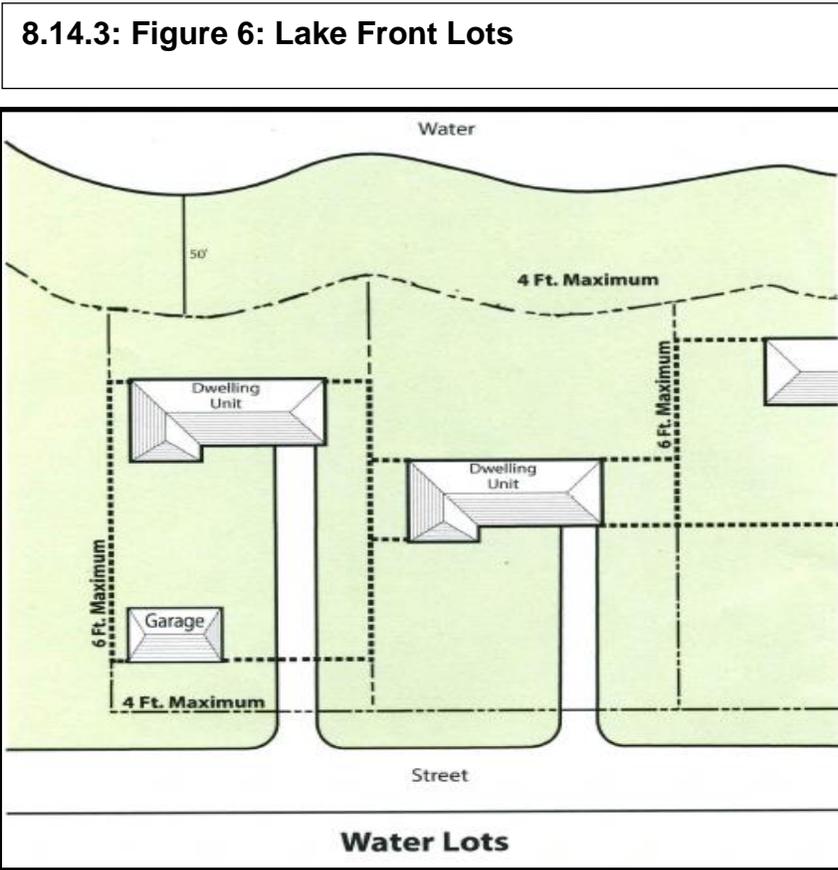
Staff comment: Does not apply to lot 8 as the fence is not required to be a maximum of four feet.

- G. Wire fences used to contain livestock and farm animals are exempt from height requirements.

Staff comment: Does not apply to lot 8.

- H. Wire fences used around gardens or crops are exempt from height requirements if they are made to be 75% open materials, and are over 75 feet from the closest property line, water body, or wetland area.

Staff comment: Does not apply to lot 8.



Zoning Administrator Issuance of Land Use Permit 18-0584

The zoning administrator determined that Mr. Attwood had submitted an administratively complete land use permit application that included a boundary survey, fence details, and application. Two site inspections determined that the site conditions matched the permit application. A warranty deed shows that Greg and Kimberly Attwood own lot 8. Section 8.14. permits a six-foot fence at the location as shown on the application.

On December 21, 2018, the zoning administrator issued LUP 18-0584 for a “six-foot tall vinyl privacy fence along only the north property line, extending from the existing fence to the rear property line. Approximately 70 linear feet. Fence posts shall be designed and anchored to prevent flotation, collapse, or lateral movement of the fence panels.” Permit is attached as Exhibit F.

Appeal of Zoning Administrator’s Issuance of LUP 18-0584

Section 6.4. of the Zoning Ordinance specifies the appeal process for a decision of the zoning administrator.

Section 6.4. Appeal

- A. An appeal may be taken to the Zoning Board of Appeals by any person, firm, or corporation, or any officer, department, board or bureau aggrieved by a decision of Zoning Administrator concerning the administering and enforcing of the provisions of the Zoning Ordinance. In order to be "aggrieved by a decision", the person or other entity must have a property interest recognized under the law, and sufficient standing as recognized under the law, to challenge the decision. Such appeal shall be taken within such time as prescribed by the Zoning Board of Appeals by general rule, but in no event later than thirty (30) days after the date of the decision from which the appeal is taken, by filing with the Zoning Administrator and with the Zoning Board of Appeals a notice of appeal, specifying the grounds thereof. The Zoning Administrator will transmit to the Zoning Board of Appeals all of the papers constituting the record upon which the action appealed from was taken.
- B. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Zoning Board of Appeals after the notice of appeal has been filed with him/her that by reason of facts stated in the certificate a stay would, in his/her opinion, cause imminent peril to life or property, in which case the proceedings shall be stayed by a restraining order which may be granted by the Zoning Board of Appeals or by the Circuit Court.
- C. A fee in accordance with the duly-adopted schedule of fees shall be paid to the Township Clerk at the time of filing the application to the Zoning Board of Appeals. The purpose of the fee is to cover any necessary investigation expenses incurred by the Zoning Board of Appeals in connection with said appeal, and to cover the costs associated with processing the appeal.

On January 18, 2019, Stephen and Deborah Nash filed an appeal of the zoning administrator's issuance of LUP 18-0584. The appeal application and letter are attached as Exhibit G.

On January 18, 2019, the zoning administrator contacted the property owner both by telephone and email to advise that an appeal of the fence permit was filed and that all activities permitted by LUP 18-0584 were to immediately cease per Section 6.4.(B). On January 22, 2019, a stop work order was posted on the site and mailed to the property owner. Stop work communications to Greg and Kimberly Attwood are attached as Exhibit H.

The applicants seek an interpretation of Section 6.5.(A)(4) that the fence permit violates certain provisions of the township's Zoning Ordinance:

Section 6.5 Jurisdiction

- A. The Zoning Board of Appeals, as herein created, is a body of limited power. The Zoning Board of Appeals shall have the following powers and it shall be its duty:
4. To hear and decide appeals where it is alleged there is an error of law in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of this Zoning Ordinance.

Specifically, the applicants believe that the fence permit violates Section 8.14.(F): "A fence shall not be erected where it would prevent or unreasonably obstruct the use of adjacent property or the safe use of an existing driveway or other legal means of access to adjacent property."

Staff comment: The permitted fence does not obstruct access to the Nash property, as it is entirely on lot 8 and does not block the right-of-way of Downing Drive, which is the legal access to the Nash's property. Furthermore, the permitted fence would not prevent or unreasonably obstruct the use of any adjacent properties for the intended, zoned, and developed purpose of single-family residential use.

The permitted fence does not obstruct Nash's adjacent property's access to the water, as the Nash property to the north has direct, platted access to the water.

The following grounds of appeal are from the applicant's letter accompanying the appeal application; staff comment is in italics.

1. The application for the fence permit contained material misrepresentations that there was existing fence on the subject property and proposed fence "matches existing."

Staff comment: Staff wrote the notation on the survey indicating that there was an existing fence on a neighboring property, not on lot 8, and that the proposed fence on lot 8 would be even with the fence on the adjacent property. Whether or not there was an existing fence on lot 8 does not change the application of Section 8.14. to lot 8 and the permit application for a fence. Permit review contemplates the proposed project and how it relates to existing site conditions. The permitted fence complies with the height and location requirements of the Zoning Ordinance.

It is not clear by the applicant's appeal letter how "matches existing" is a material misrepresentation of the fence permit application. Determining whether or not the

permitted fence “matches existing” fence materials either on lot 8 or on an adjacent property is not contemplated by the Zoning Ordinance.

2. The privacy fence will completely obstruct the waterway and riverway views of Applicant’s property and neighboring properties thereby adversely altering the entire unique character of this established neighborhood of properties with natural, unobstructed views of the lake.

Staff comment: The intent of the Zoning Ordinance requirement of the 50-foot setback from the ordinary high water mark of a waterbody (Section 7.6.1(fn3)) is to preserve aesthetic views. The permitted fence complies with the required 50-foot setback from the OHM. Providing, maintaining, and guaranteeing an unobstructed view of a waterway when all Zoning Ordinance requirements are met is not contemplated or addressed by any provision of the Zoning Ordinance.

3. The installation of the posts for the privacy fence will cause irreparable damage to the root structure of the large mature hardwood trees that are an integral part of the overall character of the neighborhood and which will create a safety hazard for adjacent properties.

Staff comment: Neither the Zoning Ordinance nor the zoning administrator can address damage to a neighboring property. Any damage caused by the installation of the fence is a civil matter between property owners.

4. The privacy fence is contrary to existing easements, right-of-ways, plat restrictions and deed restrictions.

Staff comment: The fence is not located in the right-of-way of Downing Drive. Easements and plat and deed restrictions are civil matters between property owners. As previously indicated to Mr. Nash, the township has the authority to regulate land use through the Zoning Ordinance, not deed restrictions, under the Michigan Zoning Enabling Act (MCL 125.3201) (Exhibit I).

5. Blatant trespassing on and malicious destruction of Applicant’s property in furtherance of the construction of the privacy fence.

Staff comment: Neither the Zoning Ordinance nor the zoning administrator can address trespassing. The applicant has been previously advised to contact the Hamburg Township Police Department (Exhibit J).

Recommendation

Staff recommends the ZBA open the public hearing, take testimony, close the public hearing, evaluate the appeal for conformance with the applicable regulations, and deny or approve the appeal. In the motion to deny or approve the project the ZBA should incorporate the ZBA’s discussion and analysis of the appeal 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.

Exhibits

Exhibit A: Indian Gardens plat

Exhibit B: Owner's land use permit application materials

Exhibit C: Lot 8 warranty deed

Exhibit D: December 14, 2018 staff site inspection pictures

Exhibit E: DEQ email re: Part 301 permit requirement

Exhibit F: Land use permit 18-0584

Exhibit G: Stephen and Deborah Nash appeal application

Exhibit H: Stop work order communications

Exhibit I: MCL 125.3201

Exhibit J: emails from staff to Stephen and Deborah Nash

SUPERVISOR'S PLAT OF INDIAN GARDENS. A part of Golf Lot 3 and part of Golf Lot 4, Sec. 28, T19N 5E, Hamburg Township, Livingston Co. Mich.

PLATE 2 OF 2.

KNOW ALL MEN BY THESE PRESENTS, THAT I, J. Arthur Smith, Supervisor of the Township of Hamburg, of Livingston County, Michigan, do hereby certify that the land described in the aforesaid plat of "Supervisor's Plat of Indian Gardens", a part of Golf Lot 3 and part of Golf Lot 4, Section 28, T19N 5E, Hamburg Township, Livingston County, Michigan, being a re-creation of lots 5 to 10 inclusive of Plat of "Township Subdivision", Hamburg Township, Livingston County, Michigan, and other adjacent unplattd land in Golf Lot 3, in the full said Section 28, and in Golf Lot 4 in SE 1/4 said Section 28, is described as follows: Beginning at the center of Section 28, T19N 5E, Hamburg Township, Livingston County, Michigan, thence N 00 57' E 319'; N 10 29' E 170'; N 89 15' E 1206.5'; N 00 57' W 190'; N 09 45' E 365.8'; S 31 0 26' E 173.4'; S 09 15' W 210'; S 11 0 W 12.2'; S 59 09' E 48.3'; S 28 09' E 38'; S 18 0 E 38.4'; S 48 E 76.6'; N 88 0 E 170'; S 09 23' W 100.5'; S 10 12' E 51.6'; S 15 0 20' W 47.3'; S 29 33' W 252.2'; S 12 35' W 62'; N 11 0 30.5'; N 25 0 34' W 90'; N 17 0 20' W 85.7'; N 20 10' W 143.3'; N 10 20' W 38'; N 7 10' W 27'; S 88 0 W 49.8'; S 40 15' W 65.2'; S 39 51' W 19.0'; S 9 24' W 55.4'; S 87 1' N 07 30' W 139.1'; N 00 57' E 139 0 to point of beginning; thence from the recorded plat of "TOWNSHIP SUBDIVISION", Hamburg Township, Livingston County, Michigan, and described as follows: Beginning at a point 677' E of center of said Section 28, thence S 9 15' E 101.9'; S 10 35' W 148'; N 79 09' E 249'; N 10 37' E 50'; N 89 0 E 145'; N 10 35' E 112.5'; N 79 09' E 55.5'; N 9 15' W 123.1'; N 20 0 51' W 127'; S 79 09' W 465.5'; S 5 15' E 123.2' to the point of beginning. All measurements are in feet and decimals thereof.

ACKNOWLEDGMENT
I, J. Arthur Smith, Supervisor of the Township of Hamburg, do hereby certify that the above and foregoing plat of "Supervisor's Plat of Indian Gardens", a part of Golf Lot 3 and part of Golf Lot 4, Section 28, T19N 5E, Hamburg Township, Livingston County, Michigan, was duly prepared and filed for record in my office on this 14th day of August, A.D. 1911, according to the provisions of the Act in that behalf to that effect, and that the same is a true and correct copy of the original as the same appears in my office.

STATE OF MICHIGAN
Notary Public in and for Livingston County,
do hereby certify that the above and foregoing plat of "Supervisor's Plat of Indian Gardens", a part of Golf Lot 3 and part of Golf Lot 4, Section 28, T19N 5E, Hamburg Township, Livingston County, Michigan, was duly prepared and filed for record in my office on this 14th day of August, A.D. 1911, according to the provisions of the Act in that behalf to that effect, and that the same is a true and correct copy of the original as the same appears in my office.

SUBDIVISION CERTIFICATE
I HEREBY CERTIFY THAT THE PLAT HEREIN DELINEATED IS A CORRECT ONE AND THAT PERMANENT METAL MONUMENTS CONSISTING OF IRON PIPES, OR OTHER METAL THIN DISCS, OR OTHER METAL MARKERS, OR SHORTER BARS, OF NOT LESS THAN AN OVER-ALL LENGTH OF NOT LESS THAN ONE INCH OR AT LEAST 6 INCHES GROUND SURFACE AS MEASURED BY THE SURVEYOR, AND NOT LESS THAN ONE INCH IN THE DIAMETER AND NOT LESS THAN ONE INCH IN THICKNESS, HAVE BEEN PLACED AT THE CORNERS OF THE LOTS, AND AT THE INTERSECTIONS OF ALLEYS, OR OF STREETS AND ALLEYS, AND AT THE CORNERS OF THE BOUNDARIES OF THE PLAT AS SHOWN ON SAID PLAT.

CERTIFICATE OF APPROVAL BY BOARD OF COUNTY ROAD COMMISSIONERS
THIS PLAT WAS REPLY EXAMINED AND WAS APPROVED BY THE BOARD OF COUNTY ROAD COMMISSIONERS OF LIVINGSTON COUNTY ON THE 14th DAY OF AUGUST, 1911.

APPROVED AND APPROVED
J. Arthur Smith, Supervisor
J. Arthur Smith, Notary Public

DESCRIPTION OF LAND PLATTED
THE LAND EMBRACED IN THE AFORESAID PLAT OF "SUPERVISOR'S PLAT OF INDIAN GARDENS", A PART OF GOLF LOT 3 AND PART OF GOLF LOT 4, SECTION 28, T19N 5E, HAMBURG TOWNSHIP, LIVINGSTON COUNTY, MICHIGAN, BEING A RE-CREATION OF LOTS 5 TO 10 INCLUSIVE OF PLAT OF "TOWNSHIP SUBDIVISION", HAMBURG TOWNSHIP, LIVINGSTON COUNTY, MICHIGAN, AND OTHER ADJACENT UNPLATTED LAND IN GOLF LOT 3, IN THE FULL SAID SECTION 28, AND IN GOLF LOT 4 IN SE 1/4 SAID SECTION 28, IS DESCRIBED AS FOLLOWS: BEGINNING AT THE CENTER OF SECTION 28, T19N 5E, HAMBURG TOWNSHIP, LIVINGSTON COUNTY, MICHIGAN, THENCE N 00 57' E 319'; N 10 29' E 170'; N 89 15' E 1206.5'; N 00 57' W 190'; N 09 45' E 365.8'; S 31 0 26' E 173.4'; S 09 15' W 210'; S 11 0 W 12.2'; S 59 09' E 48.3'; S 28 09' E 38'; S 18 0 E 38.4'; S 48 E 76.6'; N 88 0 E 170'; S 09 23' W 100.5'; S 10 12' E 51.6'; S 15 0 20' W 47.3'; S 29 33' W 252.2'; S 12 35' W 62'; N 11 0 30.5'; N 25 0 34' W 90'; N 17 0 20' W 85.7'; N 20 10' W 143.3'; N 10 20' W 38'; N 7 10' W 27'; S 88 0 W 49.8'; S 40 15' W 65.2'; S 39 51' W 19.0'; S 9 24' W 55.4'; S 87 1' N 07 30' W 139.1'; N 00 57' E 139 0 TO POINT OF BEGINNING; THENCE FROM THE RECORDED PLAT OF "TOWNSHIP SUBDIVISION", HAMBURG TOWNSHIP, LIVINGSTON COUNTY, MICHIGAN, AND DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 677' E OF CENTER OF SAID SECTION 28, THENCE S 9 15' E 101.9'; S 10 35' W 148'; N 79 09' E 249'; N 10 37' E 50'; N 89 0 E 145'; N 10 35' E 112.5'; N 79 09' E 55.5'; N 9 15' W 123.1'; N 20 0 51' W 127'; S 79 09' W 465.5'; S 5 15' E 123.2' TO THE POINT OF BEGINNING. ALL MEASUREMENTS ARE IN FEET AND DECIMALS THEREOF.

CERTIFICATE OF MUNICIPAL APPROVAL
THIS PLAT WAS APPROVED BY THE TOWNSHIP BOARD OF THE TOWNSHIP OF HAMBURG ON A RESOLUTION PASSED ON THE 14th DAY OF AUGUST, 1911.

CERTIFICATE OF APPROVAL BY COUNTY BOARD
THIS PLAT WAS APPROVED ON THE 14th DAY OF AUGUST, 1911.

FILED IN ARCHIVE GENERAL'S OFFICE
AUGUST 14 1911
MAYOR J. J. BROWN, COUNTY CLERK

18-0575



LAND USE PERMIT FORM

Hamburg Township Zoning Department
10405 Merrill Rd., P.O. Box 157
Hamburg, MI 48139 (810) 231-1000

PROJECT ADDRESS/TAX IDENTIFICATION NUMBER:

~~15-28-402-002~~ 15-28-402-010

OWNER

Name: Greg Attwood Phone Number(s): 734-657-8401

Address: 4831 Downing

City: Pinckney State: Mich Zip: 48169

E-Mail: _____

CONTRACTOR

Name: NONE Phone Number(s): _____

Address: _____

City: _____ State: _____ Zip: _____

E-Mail: _____

DESCRIBE WORK TO BE DONE:

~~REMOVE~~ Putting in 6'x6' fence approx = 70' ^{FE}
East to west north side

RECEIVED

DEC 11 2018

Hamburg Township
Planning and Zoning Department

APPLICANT CERTIFICATION: I hereby certify that all structures and uses for which this application is made shall conform to the Ordinances of Hamburg Township, Livingston County and the State of Michigan. All information submitted for this permit is to my knowledge accurate. If the information is determined either now or in the future to be inaccurate the permit shall be void and any structures built or uses approved may be in violation of the required ordinances and must otherwise be brought into compliance with all regulations.

The accuracy of the lot lines, dimensions and other information presented in the project plans are the sole responsibility of the property owner and in NO way does the Zoning Inspector signature on the permit guarantee the accuracy of the information provided by the applicant for this permit. Applications to construct fences, decks, accessory structures, new construction and additions require staking property boundaries and project boundaries for inspection prior to issuance of the land use permit. However, a site inspection also does not guarantee the location of the property boundaries.

Applicant Signature: Greg Attwood Date: 12-11-18

If the applicant is not the owner of the property a signed copy of a contract for the work to be completed or a letter authorizing the work to be done by another party will be required with the submittal of the LUP form.

Please review the Land Use Permit checklist on pages 2 and 3 of the Land Use Permit Packet on-line at <http://www.hamburg.mi.us/2018%20Land%20Use%20Packet.pdf>. If all items of the checklist are not submitted your LUP may be denied based on lack of information.

Product Weight (lb.)

29.5lb

Returnable

90-Day

Top Shape

Flat

Top Style

Framed

SCANNED

Warranty / Certifications

Manufacturer Warranty

Limited Lifetime

How can we improve our product information? Provide feedback.

Recently Viewed Items



6 feet
grade

Veranda Somerset
6 ft. H x 6 ft. W
White Vinyl

(61)

(Matches existing)

LUP# 18-0584 / DATE 12/21/18
HAMBURG TOWNSHIP
APPROVED FOR ZONING
BY Steffen
ONLY RED INK STAMP IS VALID!!

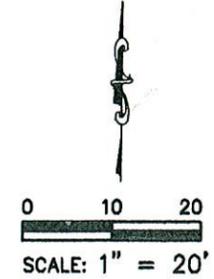
Prepared For: CHRIS HEWISON

TOPOGRAPHICAL SURVEY

LEGAL DESCRIPTION:

Lot 8 of "Supervisor's Plat of Indian Gardens", a part of Government Lot 3 and part of Government Lot 4, Section 28, T.1N., R.5E., Hamburg Township, Livingston County, Michigan, as recorded in Liber 4, Pages 23 and 24, Livingston County Records.

LUP# 18-0584 / DATE 12/21/18
HAMBURG TOWNSHIP
APPROVED FOR ZONING
BY: *Steffen*
ONLY RED INK STAMP IS VALID!!



ZONING CHART:

PROPERTY IS ZONED: WFR
(WATERFRONT RESIDENTIAL)

PRINCIPLE BUILDING SETBACKS
FRONT = 25 FEET
SIDE = 10 FEET
REAR = 30 FEET
WATER = 50 FEET

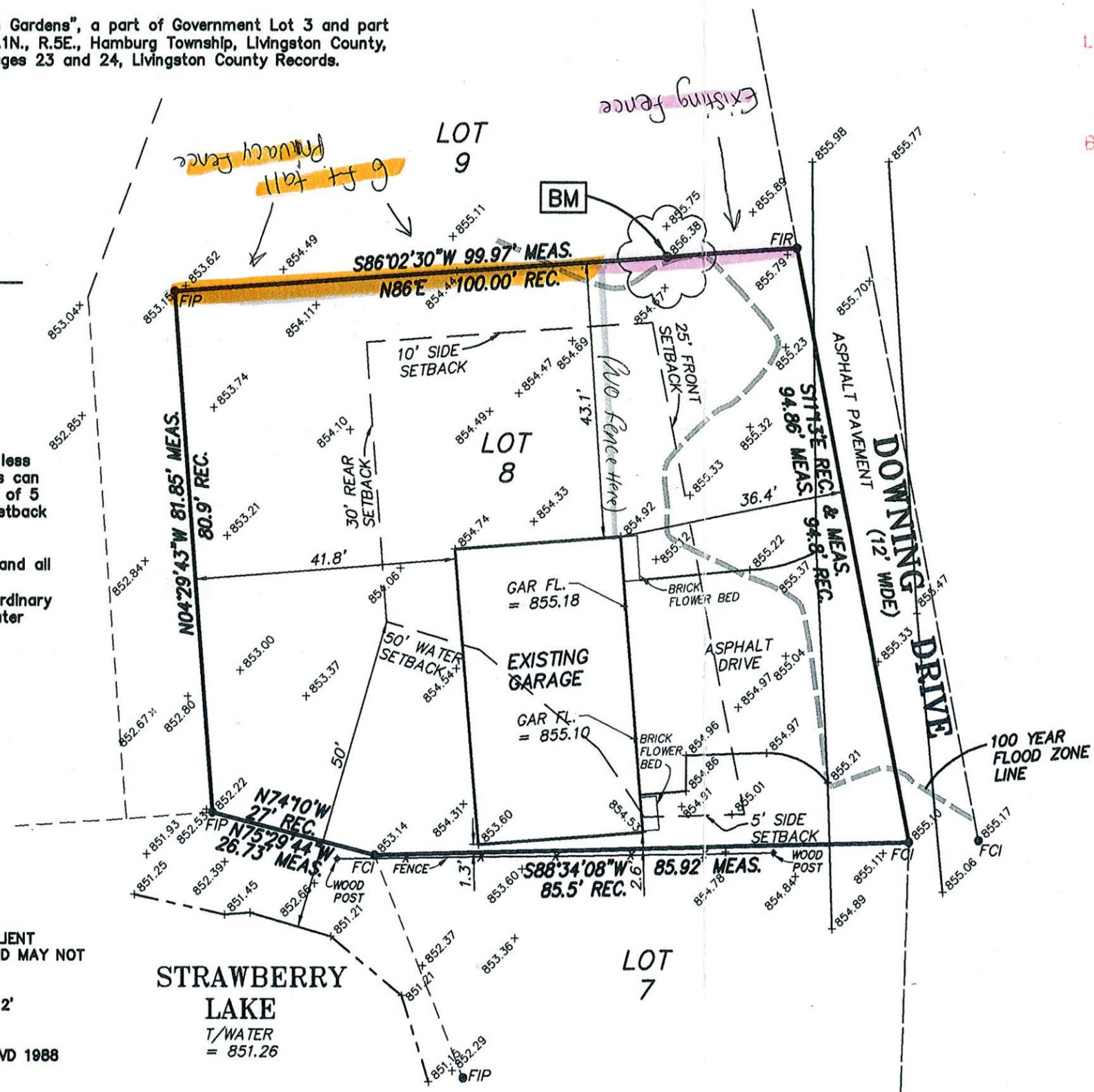
In the WFR district, lots that have less than or equal to 60 foot lot widths can have a minimum side yard setback of 5 feet with an aggregate side yard setback of 15 feet.

In any district, a principal building and all attached structures shall not be permitted within fifty (50) of the ordinary high water mark of any body of water

NOTES:

1. NO TITLEWORK WAS SUPPLIED BY CLIENT THEREFORE ALL EASEMENTS OF RECORD MAY NOT BE SHOWN.
2. THE 100 YEAR FLOOD ZONE = 855.2' (NAVD 1988 DATUM)
3. ALL ELEVATIONS ARE SHOWN IN NAVD 1988 DATUM.

UTILITY WARNING
UNDERGROUND UTILITY LOCATIONS AS SHOWN ON THE PLAN WERE OBTAINED FROM UTILITY OWNERS AND WERE NOT FIELD LOCATED.
A WARNING OF 3 WORKING DAYS PRIOR TO BEGINNING CONSTRUCTION, THE CONTRACTOR SHALL NOTIFY THIS OFFICE AND HAVE ALL UNDERGROUND UTILITIES STAKED BEFORE ANY WORK MAY BEGIN.
THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION AND OR RELOCATION OF ALL UTILITIES THAT MAY INTERFERE WITH CONSTRUCTION.



BENCH MARK

SET MAG NAIL IN 16" TREE
ELEV. = 856.38 (NAVD88)

LEGEND

- - IRON SET
- - IRON FOUND
- ⊙ - FOUND CONC MONUMENT
- MEAS. - MEASURED
- REC. - RECORDED
- FIR - FOUND IRON ROD
- FCI - FOUND CAPPED IRON
- FCM - FOUND CONC MONUMENT
- SCI - SET CAPPED IRON
- +853.06 - EX. ELEVATION
- ⊕ - POWER POLE
- BM - BENCH MARK
- x- - EXISTING FENCE LINE
- /-/- - OVERHEAD WIRES
- - - - - 100 YEAR FLOOD PLAIN LINE
855.2' (NAVD 88 DATUM)



KAROL L. GROVE
LICENSED PROFESSIONAL SURVEYOR #39075

ALPINE Land Surveying, Inc.
11590 HIGHLAND ROAD, SUITE #100
HARTLAND, MI 48353
PHONE: 810-207-8050, FAX: 419-735-0171

FIELD: KG DATE: OCTOBER 26, 2018
DRAWN: DS JOB NO: 18-3844
CHECKED: KG SHEET: 1 OF 1
REVISION:

LIVINGSTON COUNTY TREASURER'S CERTIFICATE

I hereby certify that there are no TAX LIENS OR TITLES held by the State or any individual against the within description, and all TAXES on same are paid for five years previous to the date of this instrument or appear on the records in this office, except as stated.

Jul 10, 2017 Jennifer M. Nash, Treasurer by TJ 26898

2017R-019981
RECORDED ON
07/10/2017 11:36:18 AM
BRANDON DENBY
REGISTER OF DEEDS
LIVINGSTON COUNTY, MI 48843
RECORDING: 26.00
REMON: 4.00
PAGES: 2

WARRANTY DEED

Received eRecord 7/10/2017 at 11:01 AM
LivCo, MI ROD by GG

(Platted/Condominium)

Drafted By:
Deborah Harrison
4831 Downing Drive
Lakeland, MI 48143

Return To:
Greg Attwood
4831 Downing Drive
Lakeland, MI 48143

Send Tax Bills To:
Greg Attwood
4831 Downing Drive
Lakeland, MI 48143

Recording Fee: \$35.00
File Number: 771286

State Transfer Tax: \$3,063.75
County Transfer Tax: \$449.35

Tax Parcel No.: 4715-28-402-002,
4715-28-402-010

Know All Persons by These Presents: That **Deborah A. Harrison, Personal Representative for The Estate of George S. Harrison as filed in Livingston County Probate File # 16-16769-DE** whose address is 4831 Downing Drive, Lakeland, MI 48143

Convey(s) and Warrant(s) to **Greg Attwood and Kimberly Attwood, husband and wife** whose address is 8015 Sharon Rd, Leander, TX 78641

the following described premises situated in the Township of **Hamburg**, County of **Livingston**, State of Michigan, to wit:

Lots 2 and 8, SUPERVISOR'S PLAT OF INDIAN GARDENS according to the plat thereof recorded in Liber 4 of Plats, Page 23 of Livingston County Records.

More commonly known as: **4831 Downing Drive, Lakeland, MI 48143**

For the full consideration of: **four hundred eight thousand one hundred ninety nine Dollars (\$408,199.00)**

Subject To:

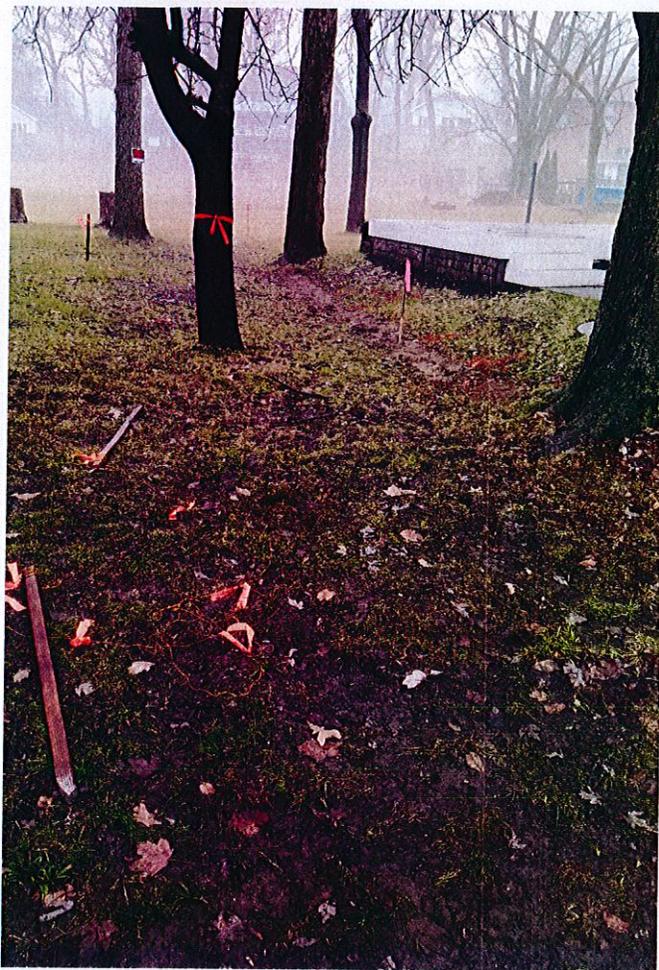
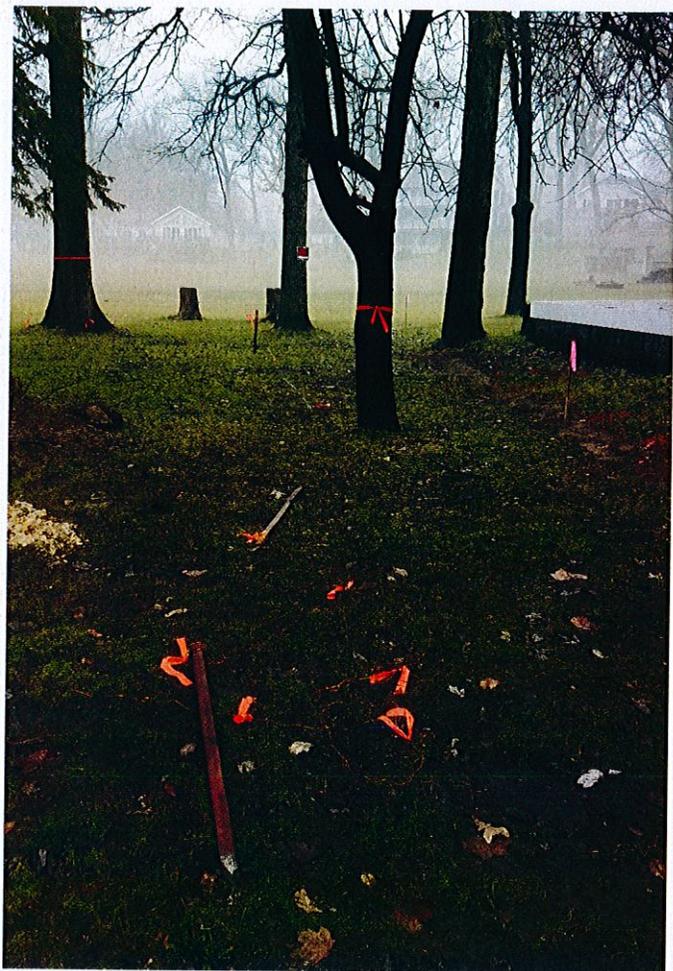
Existing building and use restrictions, easements and zoning ordinances, if any.

STATE OF MICHIGAN
Livingston County
07/10/2017
2017R-019981
REAL ESTATE
TRANSFER TAX
\$449.35 CO
\$3063.75 ST
TTX# 6184263



First American Title Insurance Company

Livingston County Register of Deeds. 2017R-019981



Amy Steffens

From: Cervelli, Donna (DEQ) <CERVELLID@michigan.gov>
Sent: Tuesday, December 18, 2018 1:30 PM
To: Brittany Stein
Cc: Amy Steffens
Subject: RE: 4831 Downing (4715-28-402-010) - Fence in Floodplain concerns?

Hi Brittany,

Based on the type of fence in the floodplain and proposed location, there does not appear to be a concern of it blocking floodplain storage, therefore a permit under the State's Floodplain Regulatory Authority found in Part 31, Water Resources, of the NREPA, as amended, will not be necessary.

Any other filling, grading, or occupation may need a permit under Part 31.

Let me know if you have any other questions, or concerns. Thanks, Donna

Donna Cervelli, P.E.
Floodplain Engineer
Lansing and Jackson District Offices
Water Resources Protection
517-243-6951

From: Brittany Stein <bstein@HAMBURG.MI.US>
Sent: Monday, December 17, 2018 4:00 PM
To: Cervelli, Donna (DEQ) <CERVELLID@michigan.gov>
Cc: Amy Steffens <asteffens@HAMBURG.MI.US>
Subject: 4831 Downing (4715-28-402-010) - Fence in Floodplain concerns?

Donna,

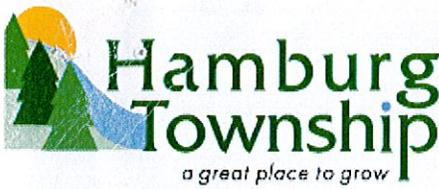
I have attached a survey from 4715-28-402-010 (Across the street from the home of 4831 Downing). They are proposing to install a 6 foot tall privacy fence (65-70 linear feet only) (as shown on the plan). Amy and I are wondering if the DEQ has any concerns on this one and in any part of Hamburg Township with privacy fences proposed in the 100-year floodplain. Also attached is an aerial view of our floodplain map, which shows the floodplain a bit differently here.

Also, remember we plan to have another conference call again tomorrow at 10am.

Thanks,

Brittany Stein
Hamburg Township, Zoning Coordinator
(810) 222-1166





Hamburg Township

10405 Merrill Rd P.O. Box 157 Hamburg MI 48139 (810) 231-1000

ZONING DEPARTMENT

PLUP18-0584

Issued: 12/21/2018
Expires: 12/21/2019

Land Use

Fence

SCANNED

Flood Plain: No

JOB LOCATION	OWNER	CONTRACTOR
DOWNING DR 4715-28-402-010 Lot: Plat/Sub: ZONING WFR	ATTWOOD GREG & KIMBERLY 8015 SHARON RD LEANDER TX 78641 Phone: Email:	 Phone: Email:

Permit Item	Work Type	Fee Basis	Item Total
		Fee Total:	\$0.00
		Amount Paid:	\$0.00
		Balance Due:	\$0.00

WORK DESCRIPTION:

REQUIREMENTS FOR FINAL ZONING COMPLIANCE:

6' tall vinyl privacy fence along only the north property line, extending from the existing fence to the rear property line. Approximately 70 linear feet.

All Construction Debris Removed. Final Grading of Site.

Fence posts shall be designed and anchored to prevent flotation, collapse, or lateral movement of the fence panels.

- | | | | | |
|-------------------------------------|-------------------|-----------|------------|--|
| <input checked="" type="checkbox"/> | Zoning Review | BrittanyJ | 12/21/2018 | |
| | Comment: | | | |
| <input checked="" type="checkbox"/> | Utilities Review | Brittany | 12/17/2018 | |
| | Comment: | | | |
| <input checked="" type="checkbox"/> | Treasurers Review | SusanD | 12/17/2018 | |
| | Comment: | | | |
| <input checked="" type="checkbox"/> | Assessing Review | BrendanS | 12/17/2018 | |
| | Comment: | | | |

APPLICANT CERTIFICATION: I hereby certify that all structures and uses for which this application is made shall conform to the Ordinances of Hamburg Township, Livingston County and the State of Michigan. All information submitted for this permit is to my knowledge accurate. If the information is determined either now or in the future to be inaccurate the permit shall be void and any structures built or uses approved may be in violation of the required ordinances and must otherwise be brought into compliance with all regulations.

Applicant Signature Date: 12/21/2018

Date Received: _____

ZONING ADMINISTRATOR DATE: 12/21/2018

The accuracy of the lot lines, dimensions and other information presented in the project plans are the sole responsibility of the property owner and in NO way does the Zoning Inspector signature on this permit guarantee the accuracy of the information provided by the applicant for this permit. A site inspection can be required by Hamburg Township; however a site inspection also does not guarantee the location of the property boundaries.

Please call 1-810-231-1000, Ext. 230 to schedule your inspections (requirements listed above). This will help to eliminate any delays in the issuance of the Certificate of Occupancy from the Livingston County Building Department.

If the above marked items cannot be completed prior to the request for Final Zoning Compliance, the Zoning Department will require a cash bond for issuance of a Temporary Zoning Compliance. A re-inspection fee will be required. The bond will be returned when items are completed.

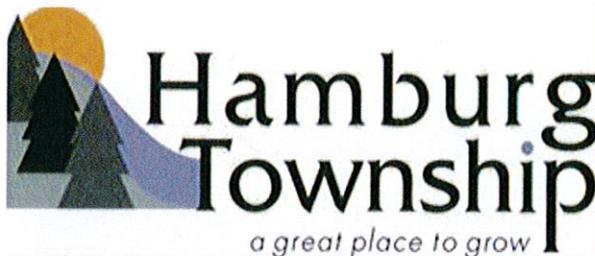
FINAL ZONING COMPLIANCE INSPECTION

HAMBURG TOWNSHIP
Date 12/26/2018 10:25:07 AM
Ref 10P18-0584
Receipt 199039
Amount \$40.00

THIS PROJECT DID PASS FINAL ZONING COMPLIANCE. THE CERTIFICATE OF OCCUPANCY MAY BE ISSUED BY THE LIVINGSTON COUNTY BUILDING DEPARTMENT.

ZONING ADMINISTRATOR/INSPECTOR: _____ DATE; _____

HAMBURG TOWNSHIP
Date 01/18/2019 4:57:21 PM
Ref ZBA1900-1
ZBA Case Number 19-001
Amount \$500.00



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: January 18, 2019
2. Tax ID #: 15- 28 - 402 -010 Subdivision: Supervisor's Plat of Indian Gardens Lot No.: 8
3. Address of Subject Property: 4831 Downing Drive
4. Property Owner: Greg and Kimberly Attwood Phone: (H) 734-657-8401
 Email Address: _____ (W) _____
 Street: 8015 Sharon Road City Leander State TX
5. Appellant (If different than owner): Stephen and Deborah Nash Phone: (H) _____
c/o Roger L. Myers
 E-mail Address: nashlawoffice@yahoo.com/rmyers@myers2law.com (W) 517-540-1700
 Street: 4816 Downing Drive City Lakeland State MI
6. Year Property was Acquired: 2017 Zoning District: _____ Flood Plain Yes
7. Size of Lot: Front _____ Rear _____ Side 1 _____ Side 2 _____ Sq. Ft. _____
11. Dimensions of Existing Structure (s) 1st Floor _____ 2nd Floor _____ Garage _____
12. Dimensions of Proposed Structure (s) 1st Floor _____ 2nd Floor _____ Garage _____
13. Present Use of Property: Vacant with garage.
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:
This application seeks an interpretation under Section 6.5(A)(2) and an appeal under Section 6.5(A)(4) as explained in
the attached statement regarding Land Use Permit #18-0584.

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.

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.

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.

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

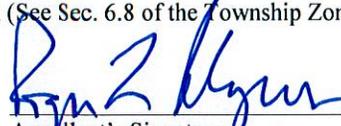
e) That the condition or situation of the specific piece of property, or the intended use of said property, for which the variance is sought, is not of so general or recurrent a nature.

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

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

- 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.
- I understand that any order of the ZBA permitting the erection alteration of a building will be void after six (6) months, unless a valid building permit is obtained and the project is started and proceeds to completion (See Sec. 6.8 of the Township Zoning Ordinance).

_____, 01/18/2019
Owner's Signature Date

 01/18/2019
Appellant's Signature Date
Attorney for Nashas

Applicants Stephen and Deborah Nash's Application for Interpretation of Hamburg Township Ordinance Regarding Privacy Fence And Appeal of Land Use Permit # 18-00584

On December 21, 2018, the Township issued Land Use Permit # 18-0054 for the construction of a 6-foot high by 70-foot long fence along the boundary of the subject property that is immediately adjacent to Applicants' property located at 4816 Downing Drive, Lakeland, MI 48143.

Applicants seek an interpretation under zoning ordinance section 6.5(A)(2) and an appeal under section 6.5(A)(4) that the issuance of the fence permit violates certain provisions of the Township's zoning ordinance. Specifically, the issuance of the fence permit violates section 8.14.1(F), which provides: "A fence shall not be erected where it would prevent or unreasonably obstruct the use of adjacent property or the safe use of an existing driveway or other means of access to adjacent property." In addition, the issuance of the fence permit violates section 3.3.2(E), which provides that the application for the land use permit must show "the present use being made of any existing structure affected and any proposed change in the use thereof."

The grounds on which Applicants rely include, but are not limited to, the following:

1. The application for the fence permit contained material misrepresentations that there was an existing fence on the subject property and the proposed fence "matches existing."
2. The privacy fence will completely obstruct the waterway and riverway views of Applicants' property and neighboring properties thereby adversely altering the entire unique character of this established neighborhood of properties with natural, unobstructed views of the lake.
3. The installation of the posts for the privacy fence will cause irreparable damage to the root structure of the large mature hardwood trees that are an integral part of the overall character of the neighborhood and which will create a safety hazard for adjacent properties.
4. The privacy fence is contrary to existing easements, right-of-ways, plat restrictions and deed restrictions.
5. Blatant trespassing on and malicious destruction of Applicants' property in furtherance of the construction of the privacy fence.

On January 11, 2019, Applicants' attorney sent the attached letter to the owner of the subject property informing them of Applicants' intent to file this interpretation/appeal prior to the construction of the fence. A copy of the UPS delivery confirmation page is also attached. The property owners ignored Applicants' warning letter and thereafter constructed the fence anyway.

MYERS & MYERS, PLLC
ATTORNEYS AT LAW

Kelly A. Myers
Roger L. Myers *
*Also Admitted to Practice in California

915 N. Michigan Avenue
Suite 200
Howell, Michigan 48843
(517) 540-1700
Fax: (517) 540-1701

Matthew M. Hagerty
Rebecca J. S. Cassell
Robert F. Marvin

January 11, 2019

Greg and Kimberly Attwood
4831 Downing Drive
Pinckney, Michigan 48169

Via UPS Overnight Delivery

And

8105 Sharon Road
Leander, Texas 78641

Re: Stephen and Deborah Nash;
Appeal of Hamburg Township Land Use Permit # 18-0584
for a proposed fence at 4831 Downing Drive (the "Subject Property")

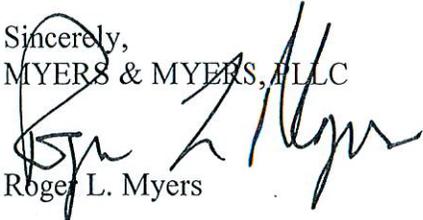
Dear Mr. and Ms. Attwood:

This firm represents Stephen and Deborah Nash, who own the home located adjacent to the Subject Property. It is our understanding that Hamburg Township has issued a land use permit (Permit # 18-0584) for the proposed construction of a fence on the Subject Property.

Be advised that my clients object to the construction of the proposed fence for numerous reasons. In furtherance of those objections, this office will be filing an appeal of the issuance of the land use permit with the Hamburg Township zoning board of appeals (ZBA) prior to January 18, 2019. Upon the filing of that appeal, it is my understanding that the zoning board of appeals hearing regarding this matter will occur on February 13, 2019, at which time my clients will be seeking a revocation of the permit. Therefore, any work undertaken in furtherance of the construction of the proposed fence prior to the ZBA hearing will be done at your own risk and subject to the future removal of the fence.

Govern yourself accordingly.

Sincerely,
MYERS & MYERS, PLLC


Roger L. Myers

RLM/cs
cc: Stephen and Deborah Nash

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1Z123YW21393429692

Weight

0.30 LBS

Service

UPS Next Day Air Saver®

Shipped / Billed On

01/11/2019

Delivered On

01/15/2019 1:35 P.M.

Delivered To

VOLENTE, TX, US

Received By

DRIVER RELEASE

Left At

Other - released

Thank you for giving us this opportunity to serve you. Details are only available for shipments delivered within the last 120 days. Please print for your records if you require this information after 120 days.

Sincerely,

UPS

Tracking results provided by UPS: 01/18/2019 3:43 P.M. EST

Amy Steffens

From: Amy Steffens
Sent: Friday, January 18, 2019 5:34 PM
To: 'Greg Attwood (g.attwood@hamburgmi.gov)'
Cc: 'Chris Hewison'
Subject: ZBA appeal of fence permit LUP 18-0584
Attachments: LUP 18-0584.pdf

Tracking:	Recipient	Delivery
	'Greg Attwood (g.attwood@hamburgmi.gov)'	
	'Chris Hewison'	
	Brittany Stein	Delivered: 1/18/2019 5:34 PM
	Pat Hohl	Delivered: 1/18/2019 5:34 PM

Mr. Attwood,

I wanted to follow up on the voice message I left today, January 18, 2019, at 5:02 pm EST on (810) 222-1167. Stephen and Deborah Nash have filed an appeal of the zoning administrator's issuance of the fence permit for parcel ID 15-28-402-010 (permit attached) under Section 6.4. of the Hamburg Township Zoning Ordinance. Per township zoning ordinance Section 6.4.B.: "An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Zoning Board of Appeals after the notice of appeal has been filed with him/her that by reason of facts stated in the certificate of stay would, in his/her opinion, cause imminent peril to life or property, in which case the proceedings shall be stayed by a restraining order which may be granted by the Zoning Board of Appeals or by the Circuit Court."

The Zoning Administrator does not determine that the a stay would cause imminent peril to life or property, therefore **please be advised that any and all work authorized under land use permit 18-0854 shall cease until such time that the Zoning Board of Appeals makes a determination on the appeal.**

The Zoning Board of Appeals will hold a public hearing on this matter on Wednesday, February 13, 2019 at 7:00 pm in the township hall offices.

Please let me know what questions you have.

Amy Steffens, AICP
Hamburg Township Planning and Zoning Administrator
(810)222-1167

NOTICE DATE: January 22, 2019
PROPERTY OWNER: Attwood, Greg and Kimberly
TAX CODE NUMBERS:
4715-28-402-010, Downing Street

STOP WORK ORDER

YOU ARE HEREBY ORDERED TO CEASE WORK IMMEDIATELY AT THIS JOB SITE

TO: **ATTWOOD, GREG AND KIMBERLY**
8015 Sharon Road
Leander TX 78641

NOTICE SERVED VIA:

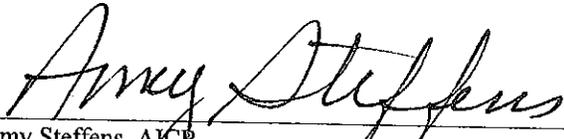
Certified Mail
 Posted at Site
 Personal Service by:

An appeal has been filed of the zoning administrator's issuance of a fence permit for parcel ID 15-28-402-010 under Section 6.4. of the Hamburg Township Zoning Ordinance. Per township zoning ordinance Section 6.4.B.: "An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Zoning Board of Appeals after the notice of appeal has been filed with him/her that by reason of facts stated in the certificate of stay would, in his/her opinion, cause imminent peril to life or property, in which case the proceedings shall be stayed by a restraining order which may be granted by the Zoning Board of Appeals or by the Circuit Court." The Zoning Administrator **does not** determine that a stay would cause imminent peril to life or property.

Please be advised that any and all work authorized under land use permit 18-0854 shall cease until such time that the Zoning Board of Appeals makes a determination on the appeal.

The appeal of land use permit 18-0854 will be heard by the Hamburg Township Zoning Board of Appeals on February 13, 2019 at 7:00 pm at the township hall offices at 10405 Merrill Road. The appeal documents are available for review at the Township offices during regular business hours. Monday – Friday, 8:00 a.m. – 5:00 p.m. Comments will be heard from the public at the hearing. Written comments will be accepted until 4:00 p.m. the day of the hearing.

THIS STOP WORK ORDER IS IN EFFECT UNTIL THE ZONING ADMINISTRATOR GIVES WRITTEN NOTICE LIFTING IT.



Amy Steffens, AICP
Hamburg Township Zoning Administrator
(810) 222-1167
asteffens@hamburg.mi.us

MICHIGAN ZONING ENABLING ACT (EXCERPT)
Act 110 of 2006

125.3201 Regulation of land development and establishment of districts; provisions; uniformity of regulations; designations; limitations.

Sec. 201. (1) A local unit of government may provide by zoning ordinance for the regulation of land development and the establishment of 1 or more districts within its zoning jurisdiction which regulate the use of land and structures to meet the needs of the state's citizens for food, fiber, energy, and other natural resources, places of residence, recreation, industry, trade, service, and other uses of land, to ensure that use of the land is situated in appropriate locations and relationships, to limit the inappropriate overcrowding of land and congestion of population, transportation systems, and other public facilities, to facilitate adequate and efficient provision for transportation systems, sewage disposal, water, energy, education, recreation, and other public service and facility requirements, and to promote public health, safety, and welfare.

(2) Except as otherwise provided under this act, the regulations shall be uniform for each class of land or buildings, dwellings, and structures within a district.

(3) A local unit of government may provide under the zoning ordinance for the regulation of land development and the establishment of districts which apply only to land areas and activities involved in a special program to achieve specific land management objectives and avert or solve specific land use problems, including the regulation of land development and the establishment of districts in areas subject to damage from flooding or beach erosion.

(4) A local unit of government may adopt land development regulations under the zoning ordinance designating or limiting the location, height, bulk, number of stories, uses, and size of dwellings, buildings, and structures that may be erected or altered, including tents and recreational vehicles.

History: 2006, Act 110, Eff. July 1, 2006.

Amy Steffens

From: Amy Steffens
Sent: Thursday, December 13, 2018 6:09 PM
To: 'Stephen Nash'
Cc: Deborah Nash; Michael Sumeracki
Subject: RE: 15-28-402-010

Steve,

First, as long as what is proposed meets all required zoning requirements for setbacks, height, and lot coverage there is nothing in the zoning ordinance prohibiting construction of a structure although it might block views from adjacent properties.

Second, I reviewed again the paperwork you gave to me and do not see that Hamburg Township is bound by the deed restrictions because the township is neither buyer, seller, or owner of the property in question. Additionally, deed restrictions are not land use regulations imposed by Hamburg Township; the township has the authority to regulate land use through the zoning ordinance, not deed restrictions, under the Michigan Zoning Enabling Act.

Finally, I will ask that our code enforcement officer, Mike Sumeracki, do another inspection to determine whether or not there are on-going zoning violations. I did not find evidence of blight when I visited the site in late fall but I did notice an unlicensed snowmobile trailer. I have asked that the trailer be brought into compliance. When Mike does a re-inspection he will follow-up on the trailer.

Please let me know what further questions and concerns you have.

Thank you,

Amy Steffens, AICP
Hamburg Township Planning and Zoning Administrator
(810)222-1167

From: Stephen Nash <[redacted]>
Sent: Thursday, December 13, 2018 10:49 AM
To: Amy Steffens <asteffens@HAMBURG.MI.US>
Cc: Deborah Nash <[redacted]>
Subject: Re: 15-28-402-010

Thank you, Amy.

Two things:

One:

I did not see a reply to my questing asking if a boundary neighbor can build a new residence on a WFR lot where none existed prior that also blocks the waterway/river views of existing neighbor(s)?

Two:

Regarding the Lot 8 Fence Land Use Permit application, I have just again reviewed the Title and Deed chain and find continuous and perpetual restrictions that do not allow fences, buildings, structures, etc. to ever be constructed on Lot 8.

Further, the Downing's Subdivision deed conveyance (open playground area) chain also forbids, for perpetuity, essentially the same list of restrictions. So, both sides of the lot 8 boundary lines prohibit fence installation - and that agrees with the overall intent of Mr. & Mrs. Downing at the time they conveyed said property.

I will be forwarding copies of those recorded deed instruments to your attention.

Amy, I will do my absolute best to minimize the volume of communication on this matter, and I appreciate your time and efforts with recognition of your work-load.

Warmest Regards,

Steve

On Dec 13, 2018, at 6:09 AM, Amy Steffens <asteffens@HAMBURG.MI.US> wrote:

My apologies. No sooner had I sent my previous email than Brittany Stein in our office send me an email to correct me. A land use permit application for a fence was submitted on Tuesday, December 11, and I was unaware of the application being made.

Amy Steffens, AICP
Hamburg Township Planning and Zoning Administrator
(810)222-1167

-----Original Message-----

From: Law Office <lawoffice@hamburgmi.com>
Sent: Wednesday, December 12, 2018 7:31 PM
To: Amy Steffens <asteffens@HAMBURG.MI.US>
Subject: Re: 15-28-402-010

Thank you for the prompt reply.

If there are no applications - I'm curious what is going on ... this is from Monday (day before yesterday) before Mr. Hewison scraped our lot line and grass off.

Amy Steffens

From: Amy Steffens
Sent: Thursday, December 13, 2018 9:09 AM
To: 'Law Office'
Subject: RE: 15-28-402-010

My apologies. No sooner had I sent my previous email than Brittany Stein in our office send me an email to correct me. A land use permit application for a fence was submitted on Tuesday, December 11, and I was unaware of the application being made.

Amy Steffens, AICP
Hamburg Township Planning and Zoning Administrator
(810)222-1167

-----Original Message-----

From: Law Office <[REDACTED]>
Sent: Wednesday, December 12, 2018 7:31 PM
To: Amy Steffens <asteffens@HAMBURG.MI.US>
Subject: Re: 15-28-402-010

Thank you for the prompt reply.

If there are no applications - I'm curious what is going on ... this is from Monday (day before yesterday) before Mr. Hewison scraped our lot line and grass off.

Amy Steffens

From: Amy Steffens
Sent: Wednesday, December 12, 2018 4:11 PM
To: Stephen Nash
Cc: Michael Sumeracki
Subject: Re: 15-28-402-010

Mr. Nash,

Thank you for your letter. Your concerns related to destruction of property or trespassing are not zoning issues and should be instead brought to the attention of the Hamburg Township police department.

There are no land use permit applications currently before the township for any development on this parcel.

Let me know if you have any other questions related to the township zoning ordinances.

Thanks,
Amy

> On Dec 12, 2018, at 3:13 PM, Stephen Nash <[REDACTED]> wrote:

>

> <TWP12DEC2018.pdf>

>

Amy Steffens

From: Amy Steffens
Sent: Saturday, January 12, 2019 3:57 PM
To: 'Stephen Nash'
Subject: RE: Lot 8

It appears that those are fence posts lying on the ground, which I would assume is a pre-cursor to installing a fence. There have no changes to permit application or permitted project.

Thanks,

Amy Steffens, AICP
Hamburg Township Planning and Zoning Administrator
(810)222-1167

-----Original Message-----

From: Stephen Nash <[REDACTED]>
Sent: Thursday, January 10, 2019 8:47 AM
To: Amy Steffens <asteffens@HAMBURG.MI.US>
Cc: [REDACTED]; Deborah Nash <[REDACTED]>
Subject: Lot 8

Ms. Steffens:

The attorneys are finalizing the appeal / complaint package now.

However it appears Attwood & Hewison are now overreaching on their own land use permit; they have staged 10 ft wall posts around the corner to the rear lot boundaries and it appears they intend to wall-off the playground edge.

If my observation is incorrect, please let me know. I have subscribed to the HT FOIA email service, yet have not been notified of the apparent fence wall addition in the new location. Not only far more than 70', but also is on the outside of the 5' right-of-way that was not disclosed on application, together with other omissions and discrepancies.

My property value is being decimated and my water views will be obliterated. At what point will the township step up and offer the promised protection of the rights of long term residents from non-resident house flipping opportunists ?

>

Amy Steffens

From: Amy Steffens
Sent: Wednesday, January 23, 2019 9:00 AM
To: 'Stephen Nash'
Cc: Roger Myers; Pat Hohl
Subject: RE: 4831 Downing ref Lot 8 SWO

Thank you for your email. There is no requirement that the stop work order remain posted on the site. Mr. Attwood is aware that the stop work order is in effect until a decision is made by the ZBA.

Amy Steffens, AICP
Hamburg Township Planning and Zoning Administrator
(810)222-1167

From: Stephen Nash <[REDACTED]>
Sent: Wednesday, January 23, 2019 8:54 AM
To: Amy Steffens <asteffens@HAMBURG.MI.US>
Cc: Roger Myers <[REDACTED]>; Pat Hohl <pathohl@hamburg.mi.us>
Subject: 4831 Downing ref Lot 8 SWO

Hello Amy:

In case anyone cares - I observed Mr. Hewison arriving at the aforementioned Lot 8 last night 9:54pm, and he proceeded to tear down your Stop Work Order posting then drove off with it.

Our S.A.I. security cameras also recorded this event together with your agent installing the posting earlier in the day.

Not stirring things up in any way, just letting you know observations so the record is clear and accurate.

Stay safe in this weather !

Sincerely,

Steve

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

**Hamburg Township
Zoning Board of Appeals Minutes
Hamburg Township Board Room
Wednesday, January 9, 2019 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: Auxier, Bohn, Neilson, Priebe, Watson,

Absent: None

Also Present: Amy Steffens, Planning & Zoning Administrator

4. Correspondence: None

5. Approval of Agenda:

Motion by Auxier, 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 2018-014

Owner: Vickie Neff and David Gabbey

Location: 11332 Algonquin Drive Pinckney MI 48169

Parcel ID: 15-31-102-039 Request:

Variance application to allow for a second-story addition and an elevated deck to the existing dwelling. The addition will have a 46-foot setback from the ordinary high water mark of Portage Lake (50-foot setback from the OHM required, Section 7.6.1. fn.3). The deck will have a 34-foot setback from the ordinary high water mark (44-foot setback from the OHM required, Section 8.17).

Mr. Gabbey, applicant, stated that their home is located on lot 39 in Mumford Park, and they also own lot 46 which is across Algonquin with a stand-alone garage. They have lived in the home for 21 years and plan to stay in the home for the rest of their lives. Over the years they have made quite a few improvements. The home was built in the 1960s and have smaller rooms. To bring their home to more current standards, they

have looked at different options. In order to not increase the footprint of the home, reconfiguring the second floor became the most obvious option. The proposed modifications would require approval of two variances.

Theresa Angelini, Architect for the applicant gave a Powerpoint presentation of their request. She stated that the house was designed in the 1960s and built in 1966. A second floor dormer was added in 1974, the sunroom was added in the late 1970s, and the house was connected to the garage in 2005. She stated that there is a 20 foot easement to the south. Portage Lake is to the west, and the lot length is 131 feet which is 18 feet shorter than the neighboring lots. The surrounding homes do not have a 50 foot setback with the exception of a newer home to the north where there were two lots combined. She discussed the views of the surrounding homes. She discussed the leaking roof on the sunroom and the pitch of the roof. She discussed the bearing walls of both the second story dormer and the first floor and evidence of movement. She presented a site plan showing that the house being forward from the 50 foot setback. The 46.5 feet is where the existing first floor wall is. That is where they would like to start the second story. The requested 34 feet is from the face of the deck to the lake. She presented a floor plan of the new second story. The new addition is 43 square feet. The replacement of the sunroom roof is 366 of roof deck. It is that size because of the sunroom below. She showed the proposed west elevation.

Ms. Angelini reviewed the Standards of Review and exceptional circumstances. The existing first floor sunroom encroaches into the 50 foot setback at 34.5 feet from the water. Re-framing that roof allows for the elevated deck. It has no negative affect on neighboring views. It would be exactly in the footprint of the existing house. The second floor dormer currently encroaches into the setback by 2 feet. Their proposal moves that 20 inches to be 46.5 feet back from the water so that it aligns with the first floor wall. The goal is to improve the structural integrity. Putting the roof deck on the existing structure would not have a negative impact on surrounding properties. She stated that the practical difficulty is the location of the house on the site and the length of the property being 18 feet less than the ones around it. They recognize the need to repair the house so that they can live in it comfortably for the next many years.

Amy Steffens, Planning & Zoning Administrator stated that the subject site is a 8,364-square foot parcel that fronts onto Algonquin Drive to the east; Portage Lake is to the west, and to the north and south you will find single-family uses. The site currently has a 2,872-square foot two-story single-family dwelling and a 545-square foot attached garage. They are requesting to move the second story wall on the west less than two feet to correct some structural problems. Then they will remove the slightly pitched roof over the existing sunroom and turn that into an elevated deck. The first floor foot print is not changing at all. The elevated deck would be required to have a 44 foot setback from the ordinary high watermark. An elevated deck is anything over 24 inches above grade and is allowed to encroach into a required setback no more than six feet. They are asking for a setback of 34.5 feet. She has provided a table showing the existing and proposed setbacks for both the existing house as well as the proposed improvements. She further stated that based on FEMA's floodplain maps, it appears that a portion of the special flood hazard area or 100 year flood plain, could encroach onto the existing structure. Hamburg Township does participate in the NFIP program, and one of our requirements is that we have to enforce proper floodplain development standards. If any work is done on this structure, we would need an estimate prepared by a licensed contractor showing the value of the work. If this is a substantial improvement, anything more than 50% of the market value of the structure, we would need an elevation certificate or a LOMA issued by FEMA showing that the house is out of the floodplain or if it is, it meets the floodplain standards.

Steffens reviewed the Standards of Review. She stated that the dwelling's existing first-story sunroom encroaches into the ordinary high water mark setback by 14.5 feet, which will not change. The proposed second-story addition would encroach no more than an additional 20 inches. Staff believes that would not be noticeable by adjacent properties or impactful. The existing sunroom would be reframed to permit the roof of the sunroom to be used as an elevated deck. Given the siting of the dwelling on the subject site, the siting of the properties to the north and the south, and the configuration of the shoreline, it is not likely to be negatively impacted by the 20 inch addition to the second story wall nor the elevated deck.

Steffens stated that a substantial property right is not preserved based on granting a variance for a particular architectural design. 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 a conforming structure or conforming addition. The site could not accommodate a compliant, usable elevated deck anywhere on the site. Having an accessory structure does not advance a substantial property right. However, the encroachment into the ordinary high water mark for the second-story addition would be a minor deviation to the zoning ordinance. The granting of a variance or modification would not be materially detrimental to the public welfare. Again, because of the way the house sits on the lot in relation to the shoreline and the way that the house to the south comes more forward into the ordinary high water mark, staff does not believe that the improvements would be materially injurious to the property or improvements in the district. The proposed request would not adversely affect the purpose or objectives of the Master Plan. The site could not accommodate a compliant elevated deck, however it could accommodate a compliant at-grade deck. The use of the site is single-family residential and will continue to be single family residential. The improvements would not change that. A second story addition is a minor deviation from the ordinance and would allow for improvements to the structural integrity of the dwelling. It is up to the Board to determine whether the requested variance is an acceptable deviation from the ordinance for the elevated deck.

Discussion was held on the applicant obtaining a LOMA. Steffens stated that they purchased the home prior to the adoption of the current flood plain maps. She stated that the only way to determine whether they are in the floodplain is by either a topographical survey or elevation certificate.

Chairperson Priebe opened by public hearing.

Chairperson Priebe stated that we have received a letter of support from Robert Barns and email in support from Raymond and Tamara Havermahl.

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

Priebe asked if the exterior stairway is going to remain. Applicant stated that it will be removed.

Member Auxier stated that the plan is well done. He did not see any issues with the homes in the area or that would impede the line of sight. Having a site that met the ordinance may impede the sight lines more.

Member Bohn stated that existing conditions dictate a great deal. Priebe stated that she appreciates that they are containing the improvements within the existing footprint.

Motion by Bohn, supported by Neilson

Motion to approve variance application ZBA 19-001 at 11332 Algonquin Drive to allow for a second story addition and an elevated deck to the existing dwelling. The addition will have a 46-foot setback from the ordinary high water mark of Portage Lake (50-foot setback from the OHM required, Section 7.6.1. fn.3). The deck will have a 34-foot setback from the ordinary high water mark (44-foot setback from the OHM required, Section 8.17). 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 (that it is a short lot in comparison to the surrounding lots and the existing structure dictates improvements that need to be done) 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: 5 Nays: 0 Absent: 0 MOTION CARRIED

8. New/Old Business:

a. Approval of November 14, 2018 minutes

Motion by Neilson, supported by Watson

To approve the November 14, 2018 minutes as presented

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

Planning & Zoning Administrator Steffens stated that February 27th is our annual joint meeting with the Township Board, Planning Commission, Parks and Recreation and ZBA. There will be a review of everything the Boards accomplished in 2018. We will also discuss the Master Plan Update which is slowly progressing. She would like the ZBA Members to think about any zoning text amendments they think we should consider pursuing in 2019, any clarifications that may be useful.

Member Bohn asked if there is a particular section that we see repetitive requests for variance. Steffens reviewed the changes that have been made that have reduced the number of requests. She asked do we want to address the 50 foot setback from the ordinary high water mark? She stated that probably not. That is the one that we see all the time. Priebe stated that she would like to address the second story on non-conforming structures. She stated that may have been an unintended consequence to the wording in that part of the ordinance. Further discussion was held on side setbacks versus front. Steffens stated that when you are talking about a side yard setback, there is a big difference between a single story and a two-story. The bulk of a structure at the setback can be quite impactful to the neighbors. It was stated that the ordinance allows for the Board to take a look at the impact before allowing it.

Priebe stated that she has concern with the PUD ordinance and the increase density thereby allowing 40-50 foot wide lots. She further discussed the unintended consequences when certain ordinances are changed.

Steffens stated that if there are any training classes the Board would like to attend, please let her know and she will see what is available.

Steffens stated that the Township Attorney gave a presentation to the Township Board on the legalization of recreational marijuana and suggested that the ZBA members take a look at that because it is something that will be discussed at the joint meeting. We also need to address short-term rentals. Discussion was held on enforcement of these short-term rentals and the potential to see an increase when the wedding barn becomes operational.

9. Adjournment:

Motion by Auxier, supported by Watson

To adjourn the meeting

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

The meeting was adjourned at 7:53 p.m.

Respectfully submitted,

Julie C. Durkin
Recording Secretary

The minutes were approved
As presented/Corrected:_____

Chairperson Priebe



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

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

ZONING BOARD OF APPEALS MEMORIALIZATION OF FINDINGS

January 9, 2019

Approval of Variance (18-014; heard as 19-001)

PROJECT SITE: 11332 Algonquin Drive
TID 15-31-102-039

APPLICANT/OWNER: Vickie Neff and David Gabbey

PART I – PROJECT DESCRIPTION

Variance application to allow for a second-story addition and an elevated deck to the existing dwelling. The addition will have a 46-foot setback from the ordinary high water mark of Portage Lake (50-foot setback from the OHM required, Section 7.6.1. fn.3). The deck will have a 34-foot setback from the ordinary high water mark (44-foot setback from the OHM required, Section 8.17).

PART II– FINDINGS 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.**

Given the siting of the dwelling on the subject site, the siting of the adjacent dwellings, and the configuration of the shoreline and property boundaries, the adjacent properties are not likely to be negatively impacted by the proposed improvements, nor would the proposed lateral second-story addition be a discernable change from the existing second-story location.

- 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 encroachment into the OHM for the second-story addition and the elevated deck would be a minor deviation to the zoning ordinance due to the siting of the existing structure on the lot and the siting of dwellings on the adjacent properties and is not likely to have a negative impact on those properties.

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.

As stated in standard number one, due to the configuration of the vicinity and adjacent dwellings the proposed improvements are not likely to be materially injurious to the property or improvements in the zone or district.

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

The subject site is in the North Chain of Lakes planning area of the Master Plan. This area envisions waterfront and natural river district zoning closely tied to the lakes and Huron River. The proposed request 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 findings one and three.

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 proposed second-story addition is a minor deviation from the ordinance and would allow for improvements to the structural integrity of the dwelling. There is no compliant location on the site for an elevated deck.

Approved by the Hamburg Township Zoning Board of Appeal at a regular meeting on January 9, 2019 by the following vote:

AYES:	BOARD MEMBERS:	Priebe, Watson, Neilson, Bohn, Auxier
NOES:	BOARD MEMBERS:	
ABSENT:	BOARD MEMBERS:	