
**Hamburg Township
Zoning Board of Appeals
Hamburg Township Board Room
Wednesday, October 9, 2019**

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 19-0017
Owner: Jeffrey Weiss
Location: 0 Baudine Rd.
Pinckney MI 48169
Parcel ID: 15-17-301-086
Request: Variance application to allow for the construction of a new two-story 1,660 square foot single family dwelling with an attached 1,165 square foot garage. The dwelling will have a 22-foot west front yard setback (25-foot front yard setback required, Section 7.6.1.), and a 35-foot east rear yard setback from the ordinary high water mark of Rush Lake (50-foot setback from the OHM required, Section 7.6.1.fn3), and a 68 square foot elevated balcony with a 29-foot east setback from the ordinary high water mark of Rush Lake (44-foot setback from the OHM required for elevated decks, Section 8.18.2.).
- 8. New/Old business**
 - a) Approval of September 11, 2019 ZBA Minutes
- 9. Adjournment**



Zoning Board of Appeals Staff Report

AGENDA ITEM: 7a



TO: Zoning Board of Appeals
(ZBA)

FROM: Amy Steffens, AICP

HEARING

DATE: October 9, 2019

SUBJECT: ZBA 19-0017

PROJECT Vacant on Baudine
SITE: TID 15-17-301-086

APPLICANT/

OWNER: Jeffrey Weiss

PROJECT: Variance application to allow for the construction of a new two-story 1,660 square foot single family dwelling with an attached 1,165 square foot garage. The dwelling will have a 22-foot west front yard setback (25-foot front yard setback required, Section 7.6.1.), and a 35-foot east rear yard setback from the ordinary high water mark of Rush Lake (50-foot setback from the OHM required, Section 7.6.1.fn3), and a 68 square foot elevated balcony with a 29-foot east setback from the ordinary high water mark of Rush Lake (44-foot setback from the OHM required for elevated decks, Section 8.18.2.).

ZONING: WFR (waterfront residential district)

Project Description

The subject site is a 14,402-square foot parcel that fronts onto Baudine Road to the west and a Rush Lake canal to the east; single-family dwellings are located to the north, south, and east. The site is currently unimproved.

If approved, the variance request would allow for the construction of a new two-story 1,660 square foot single family dwelling with an attached 1,165 square foot garage, an 88-square foot covered

front porch, and a 68-square foot elevated deck on the rear of the dwelling. The dwelling will have a 22-foot west front yard setback (25-foot front yard setback required, Section 7.6.1.), and a 35-foot east rear yard setback from the ordinary high water mark of Rush Lake (50-foot setback from the OHM required, Section 7.6.1.fn3), and the 68 square foot elevated balcony will have a 29-foot east setback from the ordinary high water mark of Rush Lake (44-foot setback from the OHM required for elevated decks, Section 8.18.2.).

	Proposed	Required
North side	30 feet	10 feet
South side	56 feet	10 feet
West front		
garage	15 feet	15 feet
dwelling	25 feet	22 feet
East rear		
dwelling	31 feet/35 OHM	30 feet/50 feet OHM
deck	39 feet/29 feet OHM	24 feet/44 feet OHM

Based on FEMA’s Flood Insurance Rate Map (FIRM), as well as information provided by the applicant, a portion of the site lies within the 100-year floodplain and the existing grades of the building envelope are below the base flood elevation. Hamburg Township participates in the National Flood Insurance Program (NFIP). Proper enforcement of the building code standards is a prerequisite of the township’s participation in the NFIP. In NFIP communities, flood insurance must be purchased as a condition of obtaining a federally insured mortgage in federally identified 100-year floodplain areas. Elevation certificates must be submitted prior to the issuance of a land use permit, when the foundation is completed and before vertical construction, and when the project is complete. If the project site is within a floodplain over which EGLE has authority, an EGLE permit may be required in order to occupy the floodplain. Should the applicant propose to fill the building envelope to elevate the dwelling in order to obtain a LOMR-F, the township will require the applicant deposit a review escrow for the township engineer to review the plans prior to the zoning administrator signing the community acknowledgement form.

Project History

On August 9, 2017, the Zoning Board of Appeals approved a variance application (Exhibit A) on this site to allow for the construction of a new 1,699-square foot single-story dwelling with an attached 660-square foot garage; the dwelling would have had a 23.9-foot setback from the OHM (50-foot setback required) and a 23.9-foot rear yard setback (30-foot rear yard setback required). The property owner neither obtained permits nor began construction on the approved dwelling and the variance approval expired on February 9, 2018. Since the ZBA approval from 2017, the property owner has changed the architectural plans for the home to include a different orientation of the dwelling on the lot, a second story, a larger garage, a covered front porch, and an elevated balcony on the rear of the home.

Standards of Review

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

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

The site, while a considerable one-third acre, is constrained by two factors: the canal to the east and the shallow lot depth. At its deepest, the lot is 111 feet from the front property boundary to the canal and at its shallowest is 88 feet from the front property boundary to the canal. The required 50-foot setback from the OHM and the 25-foot front yard setback leaves a narrow, long building envelope (Exhibit B). Given the configuration of the lot and the setback from the OHM, there does appear to be an exceptional circumstance on this lot that is not applicable to other properties in the same district or zone. Therefore, it could be reasonable to consider that the property deserves some relief from the terms of the zoning ordinance.

However, the chosen design of the proposed structure, with the covered front porch and the elevated deck, are not necessarily reasonable deviations from the zoning ordinance. The design of the dwelling drives the need for the front yard setback for the covered porch to have a 22-foot setback, where a 25-foot setback is required, and an elevated deck with a 29-foot setback where a 44-foot setback would be required. The porch could be uncovered, thus meeting the definition of a patio, and the home moved forward by five feet, thereby negating the need for the front yard setback and increasing the dwelling's OHM setback to 40 feet rather than the proposed 35 feet. Additionally, the elevated deck on the rear of the dwelling is entirely a personal preference. An elevated deck has a visual, aesthetic, and privacy impact such that the township adopted a zoning text amendment in 2016 to address these concerns.

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.

A substantial property right is not preserved based on granting a variance for a particular architectural design. The covered porch, 30-foot front yard setback rather than the 25-foot setback required, and the elevated deck on the rear of the dwelling are personal preferences of the applicant and are the factors that necessitate the variance request. These appurtenances are not necessary to develop or use the site for single-family residential purposes.

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

The elevated deck on the rear of the dwelling could potentially be materially detrimental to the property or improvements in the zone in which the property is located. The setback from the OHM is intended to provide an open vista along waterfront properties and protect off-site views of the water. The reduced OHM setback and the elevated deck, taken together, could negatively impact adjacent properties.

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 a waterfront lot on Rush Lake in the Watson's Rush Lake Subdivision #1. Parcels in this area are primarily residential and zoned in the waterfront residential district. The site is in the West Hamburg/Rush Lake planning area that envisions a concentration of medium density residential, commercial, and public lands that will enhance the Rush Lake area as a secondary center of community activity while protecting the natural features of the waterfront. The proposed project would not adversely affect the 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.

Hamburg Township adopted a zoning text amendment in 2016 that defined a deck and an elevated deck, with associated standards for each. A deck that is less than 24 inches above grade has a less restrictive setback than an elevated deck more than 24 inches above grade because of the privacy and impact concerns associated with an elevated deck. An at-grade deck has no greater impact than a lawn in its natural state but an elevated deck is visually impactful, particularly with a reduced setback to the canal, and presents privacy concerns for adjacent properties.

There is no condition or situation of the subject site that is not of so general or recurrent a nature that the front porch should be covered or the elevated deck constructed on the rear of the dwelling.

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 site is zoned for single-family residential and the proposed variance would not permit the establishment of a use not permitted by right within the district.

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

As stated above, the property is constrained by size and OHM setbacks and it could be reasonable to grant a deviation from the zoning ordinance. However, the covered porch and

the elevated deck are not the minimum necessary to permit reasonable use of the land and should be denied.

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

Recommendation

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

Approval Motion:

Motion to approve variance application ZBA 19-0017 at parcel 15-17-301-086 to allow for the construction of a new two-story 1,660 square foot single family dwelling with an attached 1,165 square foot garage. The dwelling will have a 40-foot east rear yard setback from the ordinary high water mark of Rush Lake (50-foot setback from the OHM required, Section 7.6.1.fn3). The variance does meet standards one through seven of Section 6.5. of the Township Ordinance and a practical difficulty does exist on the subject site when the strict compliance with the Zoning Ordinance standards are applied as discussed at tonight’s meeting and as presented in the staff report. The Board directs staff to prepare a memorialization of the ZBA findings for the project.

Denial Motion:

Motion to deny variance application ZBA 19-0017 at parcel 15-17-301-086 to allow for the construction of a new two-story 1,660 square foot single family dwelling with an attached 1,165 square foot garage. The dwelling will have a 22-foot west front yard setback (25-foot front yard setback required, Section 7.6.1.), and a 35-foot east rear yard setback from the ordinary high water mark of Rush Lake (50-foot setback from the OHM required, Section 7.6.1.fn3), and a 68 square foot elevated balcony with a 29-foot east setback from the ordinary high water mark of Rush Lake (44-foot setback from the OHM required for elevated decks, Section 8.18.2.). 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.

Exhibits

Exhibit A: 2017 variance staff report and ZBA minutes

Exhibit B: Application materials

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

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



Exhibit A: August 9, 2017 ZBA minutes

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, August 9, 2017 Minutes
7:00 P.M.**

1. Call to order

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

2. Pledge to the Flag

3. Roll call of the Board:

Present: Bohn, Hollenbeck, Neilson, Priebe and Watson

Absent: None

Also Present: Scott Pacheco, Planning & Zoning Administrator & Mike Beck, Planning & Zoning Intern

4. Correspondence: None

5. Approval of agenda:

Motion by Neilson and supported by Watson

To approve the agenda as presented.

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

6. Call to the public:

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 2017-016

Applicant: Jeffrey Weiss

Owner: William Bothe

Location: Vacant on Baudine Street

Parcel ID: TID 15-17-301-086

Request: Variance application to permit the construction of a new 1,699-square foot single-story dwelling with an attached 660-square foot garage. The dwelling will have a 23.9-foot setback from the ordinary high water mark of a Rush Lake canal (50-foot setback from the ordinary high water mark of a waterbody required, Section 7.6.1.fn3) and a 23.9-foot rear yard setback (30-foot rear yard setback required, Section 7.6.1.).

Mr. Jeffrey Weiss stated that for clarification, the appeal is to the rear yard setback and water mark. A variance to the front is not required. He stated that they have an agreement to purchase this lot with the contingency that he do his due diligence, which he is in the process of doing now including soil evaluation and this variance request. He stated that the lot is 150x88' and 150x85 with the deepest point being the 88 feet. The current setback requirement is 50 feet from the edge of the house to the canal in the rear and 25 feet from the edge of the house to the edge of the road in the front for a grand total of 75 feet. This gives a building envelope of approximately 10 feet. That is why the request is being made.

Planning & Zoning Administrator Pacheco introduced Mike Beck, our summer intern who received his Master's degree from the University of Michigan.

Intern Beck stated that the applicant is proposing the construction of a new 1,699 square-foot single-story dwelling with an attached 660 square-foot garage. The dwelling will have a 23.9 foot setback from the ordinary high water mark of a Rush Lake canal (50 foot setback from the ordinary high water mark of a waterbody required, Section 7.6.1.fn3) and a 23.9 foot rear yard setback (30 foot rear yard setback required, Section 7.6.1). The minimum size home required by ordinance is 1,000 square feet. As the applicant indicated, the building envelope is quite restrictive.

Member Bohn questioned the purchase of three lots. Pacheco stated that the original plat was three lots that are now combined into one parcel.

Chairperson Priebe opened the public hearing.

Mr. Robert Odonnell of 8463 Baudine stated that he owns the property directly adjacent to the subject parcel. His major concern is that his home sits 54 feet back from the canal. The plan for Mr. Weiss's house would put the rear of his house at 23 feet 9 inches back which would substantially take away from his enjoyment and his views of the lake. The ordinance requires 50 feet for a reason. He is opposed to the request.

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

Priebe stated that we have received two letters one from Mr. Odonnell and one from Janet and Michael DiCarlo both opposed to the variance request.

Member Bohn asked if the canal is a man-made canal. Pacheco stated that it is. Member Bohn stated that it would then not have riparian rights. Discussion was held on the configuration of Mr. Odonnell's home as well as the radius of the curve of the canal. Member Bohn stated that with Mr. Odonnell's shed, most of the view would be onto the canal. Mr. Odonnell stated that he bought the house a year ago with the intent on moving the shed. It was stated that the proposed setback on this side is 36.8 feet and 23.9 on the south side.

Member Bohn asked if there would be any other structures allowed toward the water than what is proposed such as fencing, etc. that would obstruct the vision of the neighbors. Pacheco stated that all houses within the Lakefront District can have a shed within the 50 foot setback as long as it is no greater than 12 feet in height and no greater than 144 square feet.

Member Bohn asked the applicant if he would consider a restriction that there could not be a play structure, shed or other vertical impediment to the view on the north side of the property to limit the concerns of the neighbors and that any of these structures would be placed on the south side of the property. Mr. Weiss stated that would be fine. He further stated that he is dealing with the same issue with the neighbor to the right who has a row of arborvitaes that restrict his view as well. Discussion was held on seawalls to eliminate erosion. Further discussion was held on the proposed style of the home and the roof pitch so that it would not be overpowering. Mr. Weiss stated that the elevation is approximately a foot lower than the property to the north. The elevations have been set by a flood zone specialist. Pacheco stated that we do not have restrictions on people planting vegetation.

Chairperson Priebe stated that in considering a variance, the Board looks at practical difficulty and the unique features of the lot, shape, etc. As the applicant has stated, at the widest part, there is only 12 feet to build a house. Because the lot is narrow, curved and because of the excessive setbacks, it does appear to meet the requirements of practical difficulty.

Member Watson stated that when you are starting new, there should be a way to make it conforming. On this lot, you could not build anything to conform.

Mr. Weiss pointed out that based on the computations and given the lot size, it is not going to be a big house. There will still be plenty of landscaping, etc.

Motion by Bohn and supported by Hollenbeck

Motion to approve variance application ZBA 17-016 at vacant site on Baudine Street (TID 15- 17-301-086) to allow for the construction of 1,699-square feet dwelling and attached 660-square foot garage. The dwelling will have a 23.9 foot setback from the ordinary high water mark of a Rush Lake canal (50 foot setback from the ordinary high water mark of a waterbody required, Section 7.6.1.fn3) and a 23.9 foot rear yard setback (30 foot rear yard setback required, Section 7.6.1). The variance does meet the variance standards of Section 6.5 of the Township Ordinance and a practical difficulty does exist on the subject site, predominantly the building envelope, with the current setbacks as set forth in the ordinance, which would make it virtually impossible to build a home as well as other unique site conditions, 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, the applicant voluntarily but in a binding fashion, agrees to not place any more structures in any other area except to the south of the proposed structure and in compliance with all other zoning ordinances. 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. Approve July 12, 2017 meeting minutes and memorialization of findings for ZBA 17-015

Motion by Hollenbeck, supported by Neilson

To Approve the July 12, 2017 meeting minutes and memorialization of findings for ZBA 17-015 as presented

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

9. Election of Officers

Motion by Bohn, supported by Watson

To re-elect Joyce Priebe as Chairperson

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

Motion by Watson, supported by Watson

To elect Paul Bohn as Vice-Chairperson

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

Planning & Zoning Administrator Pacheco stated that at the Planning Commission meeting next Thursday, the Commission will be considering the amendment to the 50% rule as well as the setbacks for Waterfront Residential district. There are two alternatives being considered, one for all properties within the district, the other for only non-conforming lots. It was stated that once approved, it will eliminate a lot of variance requests.

10. Adjournment

Motion by Neilson, supported by Watson

To adjourn the meeting

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

The meeting was adjourned at 7:31 p.m.

Respectfully submitted,

Julie C. Durkin
Recording Secretary

The minutes were approved
As presented/Corrected: _____

Joyce Priebe, Chairperson

ZBA Case Number 19-0017

\$550
Rec. 9-10-19



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: September 10, 2019
2. Tax ID #: 15- 17301086 Subdivision: Watson's Rush Lake Subdivision Number 1 Lot No.: 32, 33 & 34
3. Address of Subject Property: 0000 Baudine Street, Pinckney, MI 48169
4. Property Owner: Jeffrey Weiss Phone: (H) (734) 716-2205
 Email Address: jweiss1111@gmail.com (W) (517) 241-5869
 Street: 30970 Stone Ridge Drive, Apt. 12115 City Wixom State MI
5. Appellant (If different than owner): _____ Phone: (H) _____
 E-mail Address: _____ (W) _____
 Street: _____ City _____ State _____
6. Year Property was Acquired: 2017 Zoning District: Residential Flood Plain Yes
7. Size of Lot: Front 150' Rear 150' Side 1 88' Side 2 85' Sq. Ft. 14,402'
11. Dimensions of Existing Structure (s) 1st Floor N/A 2nd Floor N/A Garage N/A
12. Dimensions of Proposed Structure (s) 1st Floor 31'-11" x 26' 2nd Floor 31'-11" x 26' Garage 40' x 29'-6"
13. Present Use of Property: Vacant Land
14. Percentage of Existing Structure (s) to be demolished, if any 0 %
15. Has there been any past variances on this property? Yes No _____
16. If so, state case # and resolution of variance application 2017-016 Rear variance was granted for a 23'-9" setback from the ordinary high watermark. _____

17. Please indicate the type of variance or zoning ordinance interpretation requested:

The current building setbacks for the rear, front porch and second floor balcony of the aforementioned property do not allow for a proper building envelope of the proposed structure. Setback to the ordinary high watermark from the house and balcony.

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.

No, there are none. It would appear that most of the surrounding properties are of moderate size.

- 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.

No, there are none. It would appear that most of the surrounding properties are of moderate size. Due to the current building setback requirements, even a moderately sized home would require such a variance to build a permanent residence.

- 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.

No.

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

No, it is a residential area and the owner plans to build a single family residence.

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

No, please see answers to Question 18 a) and b) above.

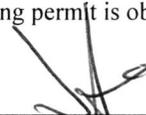
- f) Granting the variance shall not permit the establishment with a district of any use which is not permitted by right within the district;

No, it will not.

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

Yes.

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


Owner's Signature

9/10/19
Date

Appellant's Signature

Date

VARIANCE: A modification of the literal provisions of the zoning ordinance granted when strict enforcement would cause undue hardship due to circumstances unique to the individual property for which the variance is granted

VARIANCE STANDARDS:

- A. Where, owing to special conditions, a literal enforcement of the provisions of this Zoning Ordinance would involve practical difficulties, the Zoning Board of Appeals shall have power upon appeal in specific cases to authorize such variation or modification of the provisions of this Zoning Ordinance with such conditions and safeguards as it may determine, as may be in harmony with the spirit of this Zoning Ordinance and so that public safety and welfare be secured and substantial justice done. No such variance or modification of the provisions of this Zoning Ordinance shall be granted unless it appears that, at a minimum, the applicant has proven a practical difficulty and that all the following facts and conditions exist:
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.
 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.
 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.
 4. That the granting of such variance will not adversely affect the purpose or objectives of the master plan of the Township.
 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.
 6. Granting the variance shall not permit the establishment with a district of any use which is not permitted by right within the district;
 7. The requested variance is the minimum necessary to permit reasonable use of the land.
- B. For the purpose of the above, a "practical difficulty" exists on the subject land when the strict compliance with the Zoning Ordinance standards would render conformity unnecessarily burdensome (such as exceptional narrowness, shallowness, shape of area, presence of floodplain or wetlands, exceptional topographic conditions), and the applicant has proven all of the standards set forth in Section 6.5 (c) (1) through (7). Demonstration of practical difficulty shall focus on the subject property or use of the subject property, and not on the applicant personally.
- C. In consideration of all appeals and all proposed variations to this Zoning Ordinance, the Zoning Board of Appeals shall, before making any variations from this Zoning Ordinance in a specific case, determine that the standards set forth above have been met, and that the proposed variation will not impair an adequate supply of light and air to adjacent property, or unreasonably increase the congestion in public

streets, or increase the danger of fire or endanger the public safety, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, or welfare of the inhabitants of the Township.

VARIANCE APPLICATION CHECKLIST:

(8) sets of plans must be submitted. The sets are for the individual use of the Zoning Board members and the Township's records. None will be returned to you. The Land Use Permit will not be released until three (3) final construction blueprints and three (3) copies of your site plan are submitted which have been prepared according to the variances granted and conditions imposed at the appeals meeting.

_____ **1. Zoning Board of Appeals Application Form**

All Drawing should have a north arrow and be to scale

_____ **2. Site Plan with following information:**

- a) Location and width of road (s) and jurisdiction (public or private road).
- b) Location and dimensions of existing/proposed construction.
- c) Dimensions, designation, and heights of existing structures on property clearly marked.
- d) Dimensions of property.
- e) Location and dimensions of required setbacks
- f) Measurement from each side of existing and proposed structure to the property lines.
- g) All easements
- h) Any bodies of water (lake, stream, river, canal) with water body name.
- i) Distance from any body of water.
- j) Septic Tank and Field, Sewer Tap (Grinder pump), Water Well
- k) All areas requiring variances clearly marked with dimensions and amount of variance requested.
- l) Any outstanding topographic features that should be considered (hills, drop-offs, trees, boulders, etc.).
- m) Any other information which you may feel is pertinent to your appeal.
- n) If the variance is to a setback requirement a licensed professional stamp shall be on the site plan.

_____ **3. Preliminary sketch plans** may be submitted for the Appeal in lieu of final construction drawings.

- a) Elevation:
 - i. Existing and proposed grade;
 - ii. Finished floor elevations
 - iii. Plate height
 - iv. Building height

- v. Roof Pitch
- b) Floor plans:
 - i. Dimension of exterior walls
 - ii. Label rooms
 - iii. Clearly identify work to be done
 - iv. Location of floor above and floor below
- c) All other plans you may need to depict the variance. (grading plans, drainage plans etc.....)

_____ **4. Proof of Ownership:** Include **one** of the following:

- a) Warranty Deed - showing title transaction bearing Livingston County Register of Deeds stamps
- b) Notarized letter of authorization from seller of property giving the purchaser authorization to sign a Land Use Permit

VARIANCE PROCESS:

Once a project is submitted:

The Zoning Administrator will review your submittal to make sure you have submitted a complete set of project plans (1 week if complete).

Once the project has been deemed complete by the Zoning Administrator:

The project will be scheduled for a Zoning Board of Appeals (ZBA) hearing. (ZBA hearing are held of the second Wednesday of each month) Your Project will need to be deemed complete by the Zoning Administrator a minimum of three (3) weeks prior to a hearing in order to be schedule for that hearing.

Once the project has been schedule for a ZBA hearing:

All property owners within a three hundred (300) foot radius of the subject property shall be notified of the date and time of the public hearing on your variance request and the basic nature of your proposed project and variances being requested, and the owner's name and address of the subject property. Notices will be sent on or before Fifteen (15) days prior to the hearing date.

A public hearing notice stating all appeals for a given date will be published in the Tuesday Edition of the Livingston County Daily Press & Argus fifteen (15 days) prior to the date of the hearing.

At the ZBA Meeting

1. You or your representative (lawyer, builder, contractor, relative, friend) must attend.
2. Appeals are taken in order of submission.
3. Unless your appeal is tabled due to lack of information, insufficiency of drawings, etc., you will know the disposition of the appeal at the meeting before you leave.
4. **No Land Use Permits will be available for pick up on the night of the meeting, so please do not ask the Zoning Administrator for them that night.**

5. In the event that the Zoning Board of Appeals **does not grant** your variance request there will be **no refund** of the filing fee, as it pays for administration costs, the member's reviewing and meeting time, and noticing costs in the newspaper and for postage.
6. Rehearing requests may be charged \$200.00 for postage and newspaper costs in addition to the original \$325.00 charge, at the discretion of the Zoning Board of Appeals.

Once the project has been approved

You will need to submit a completed Land Use Permit, 3 sets of your final construction blueprints and 3 copies of your site plan from which your project will actually be constructed before your Land Use Permit will be released. If the Board has made special conditions, they must be met before your Land Use Permit will be released.

If the project is denied

Section 6.6.4 (C) of the Hamburg Township Zoning Ordinance states that a one (1) year period must elapse before a rehearing of the appeal "except on grounds of newly discovered evidence or proof of changed conditions found upon inspection by the Board to be valid."

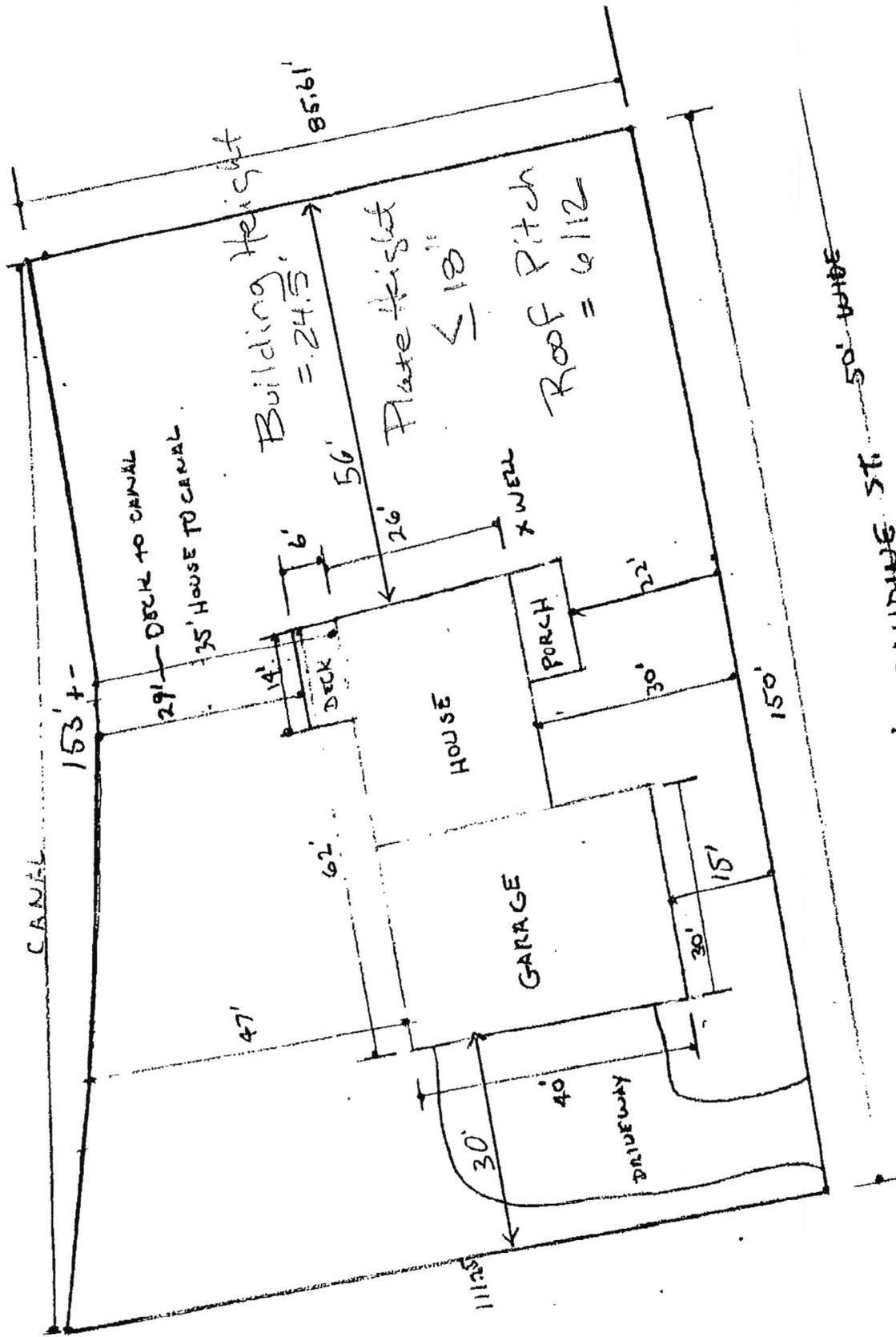
Section 6.7 of the Zoning Ordinance governs appeals to Circuit Court. If you desire to appeal the decision of the Zoning Board of Appeals, you need to contact your attorney for filing appeals to Circuit Court.

JEFF WEISE

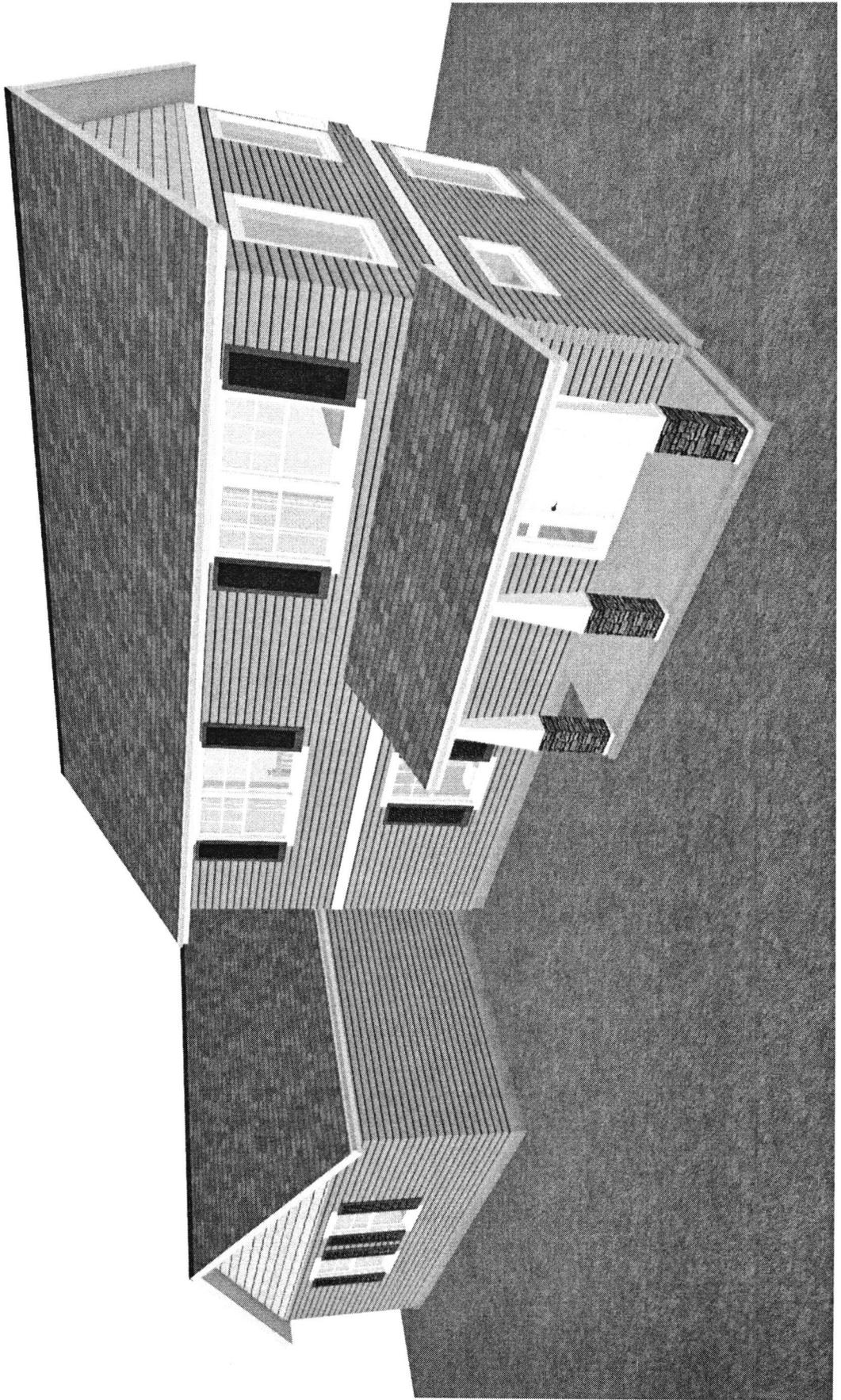
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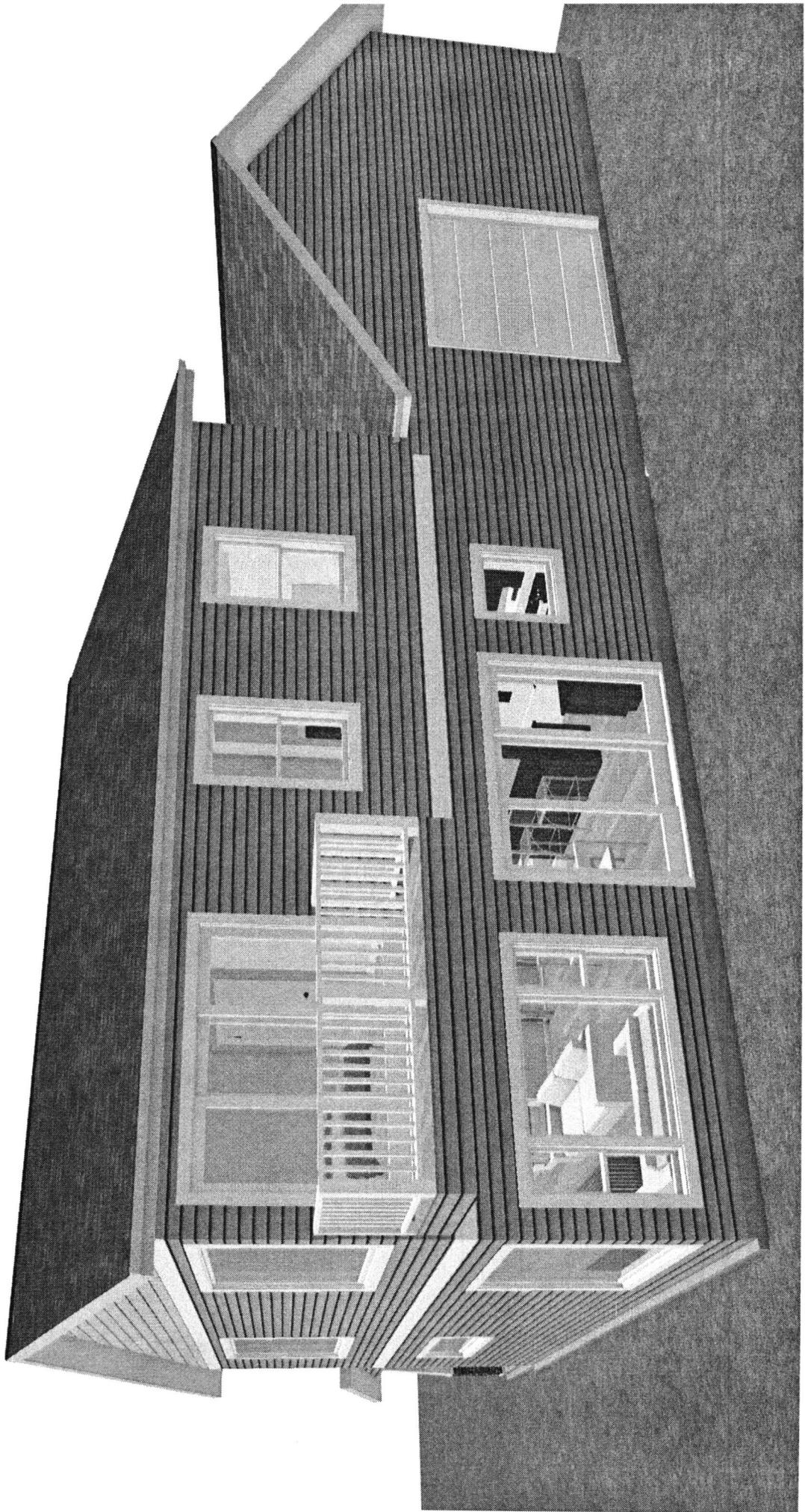
HAMBURG TWP LINCOLN COUNTY

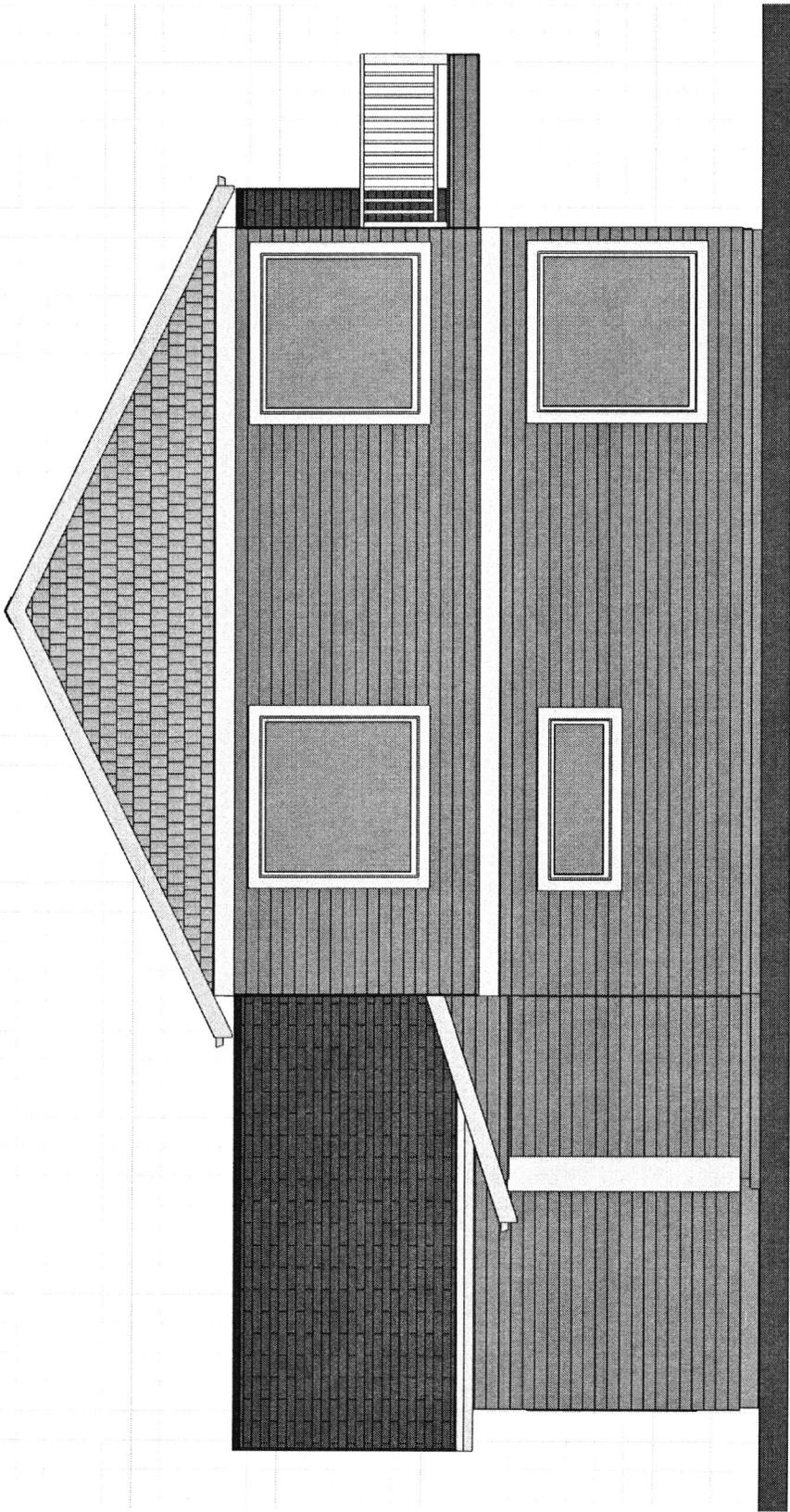
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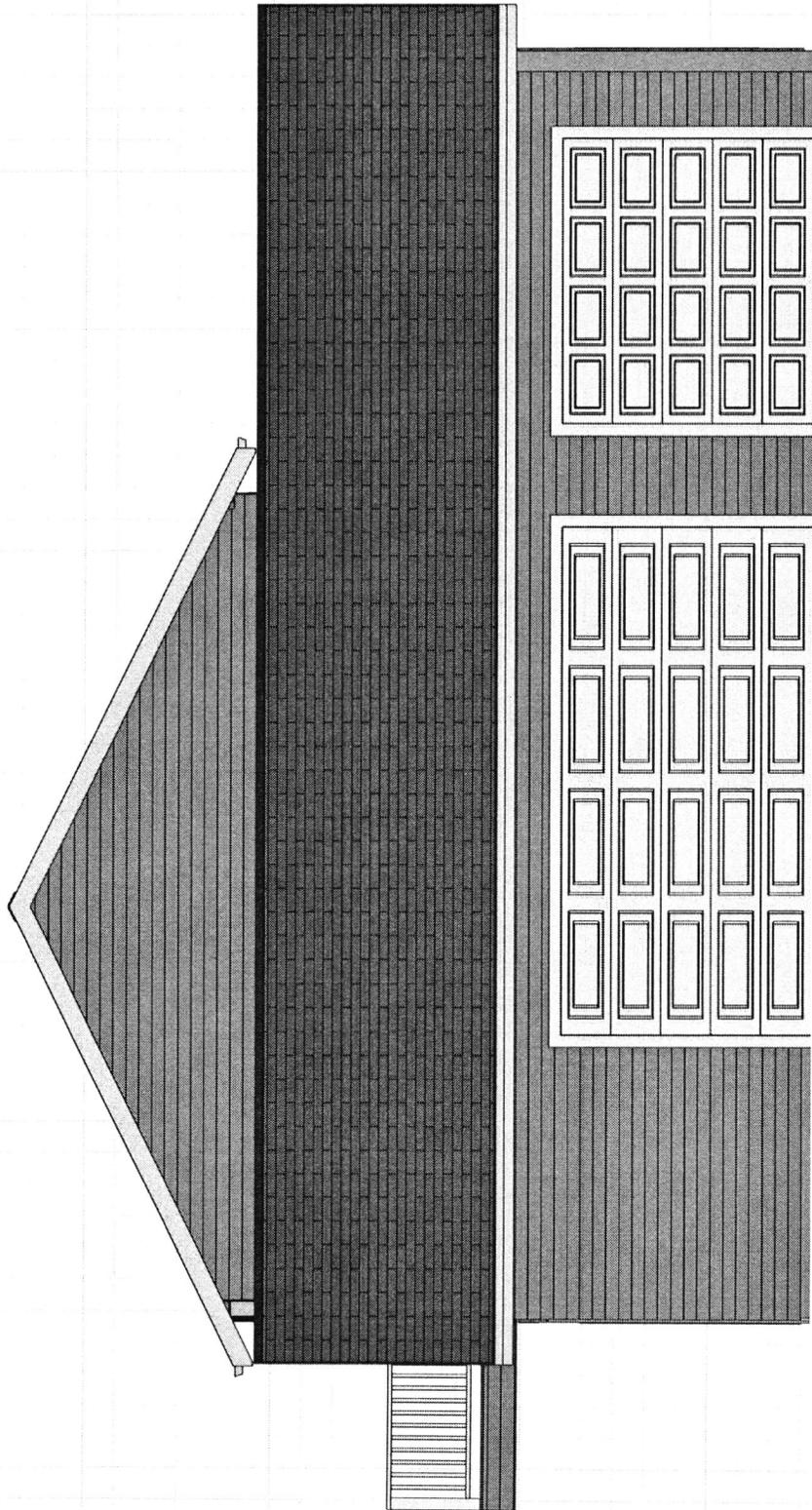


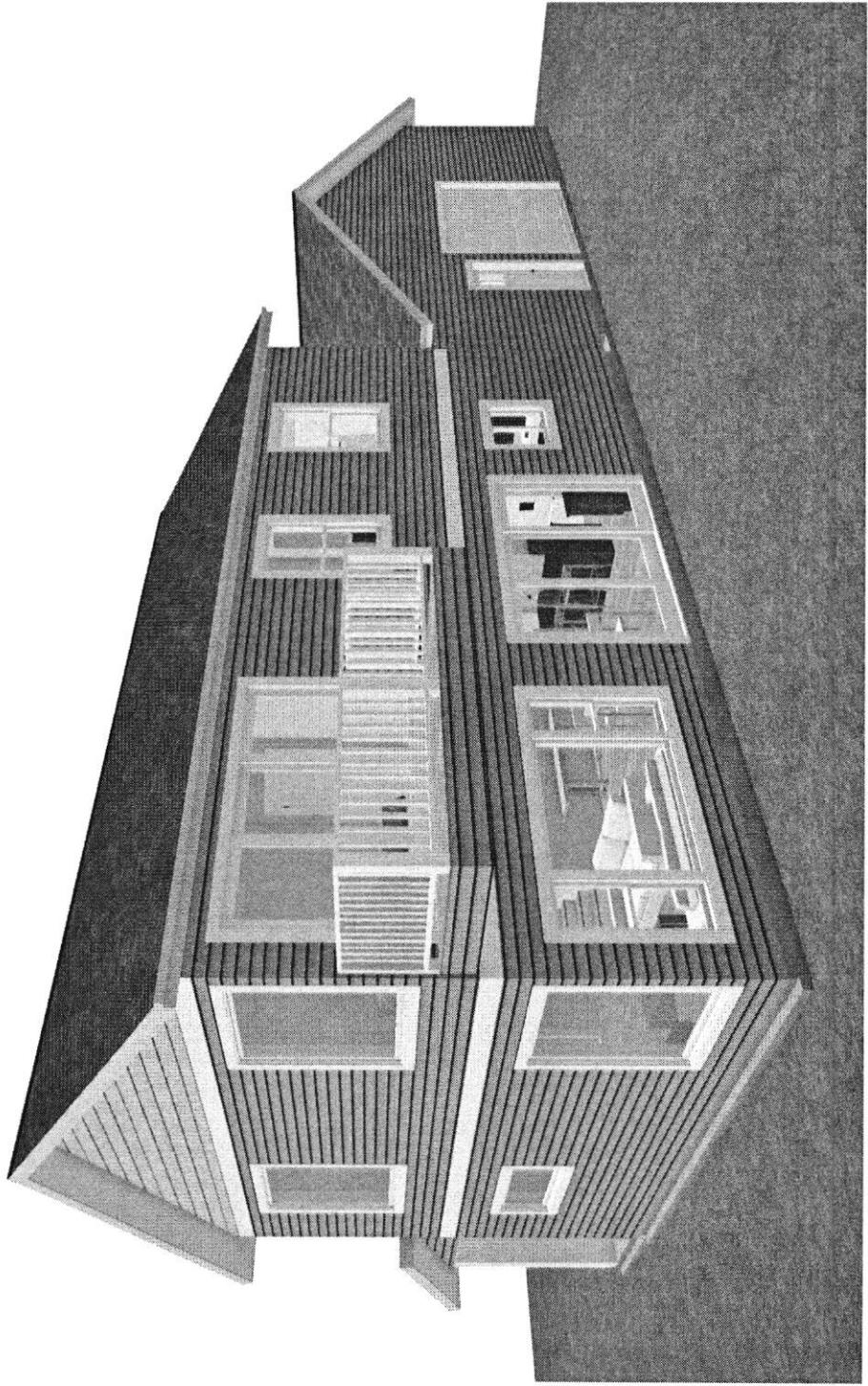
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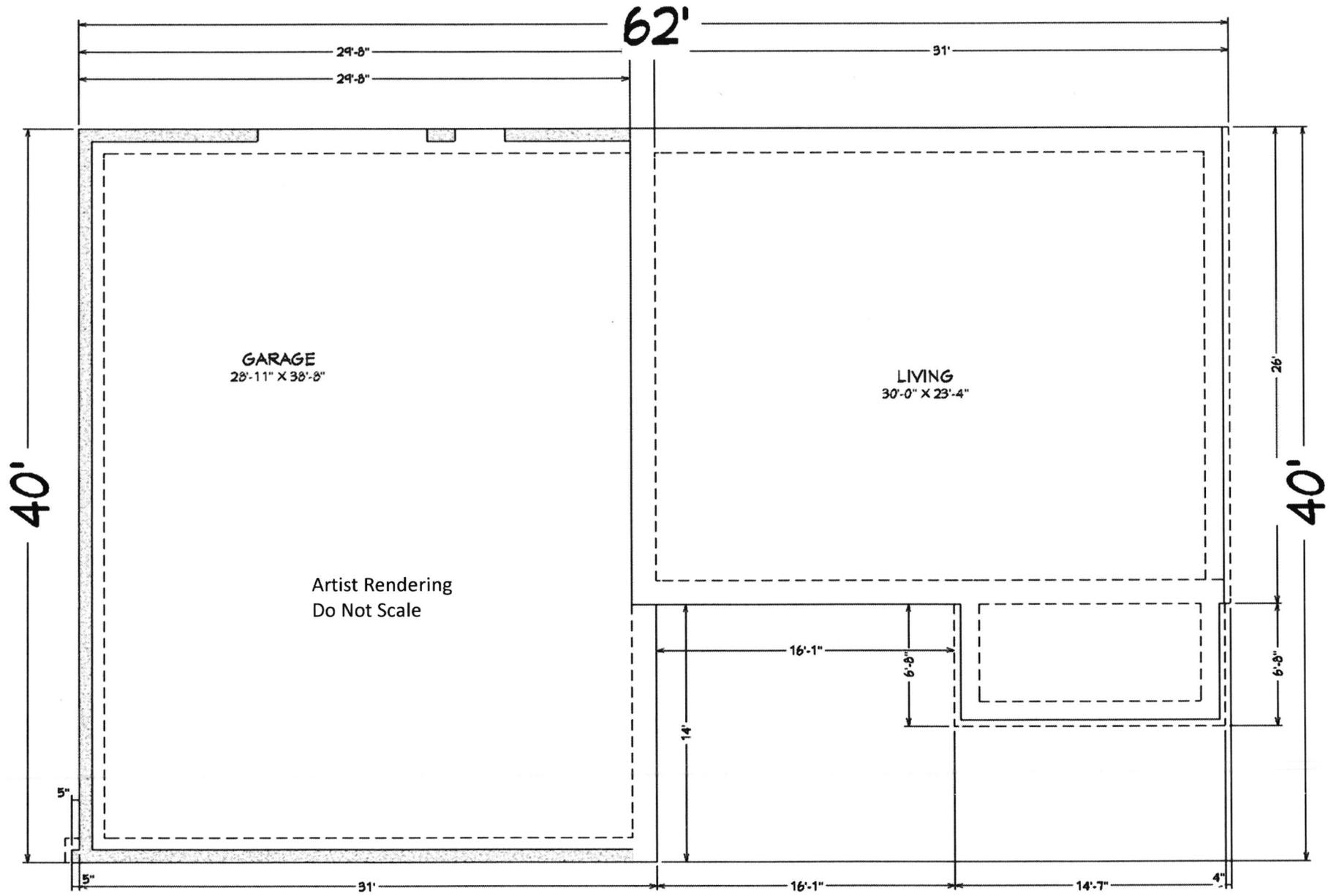


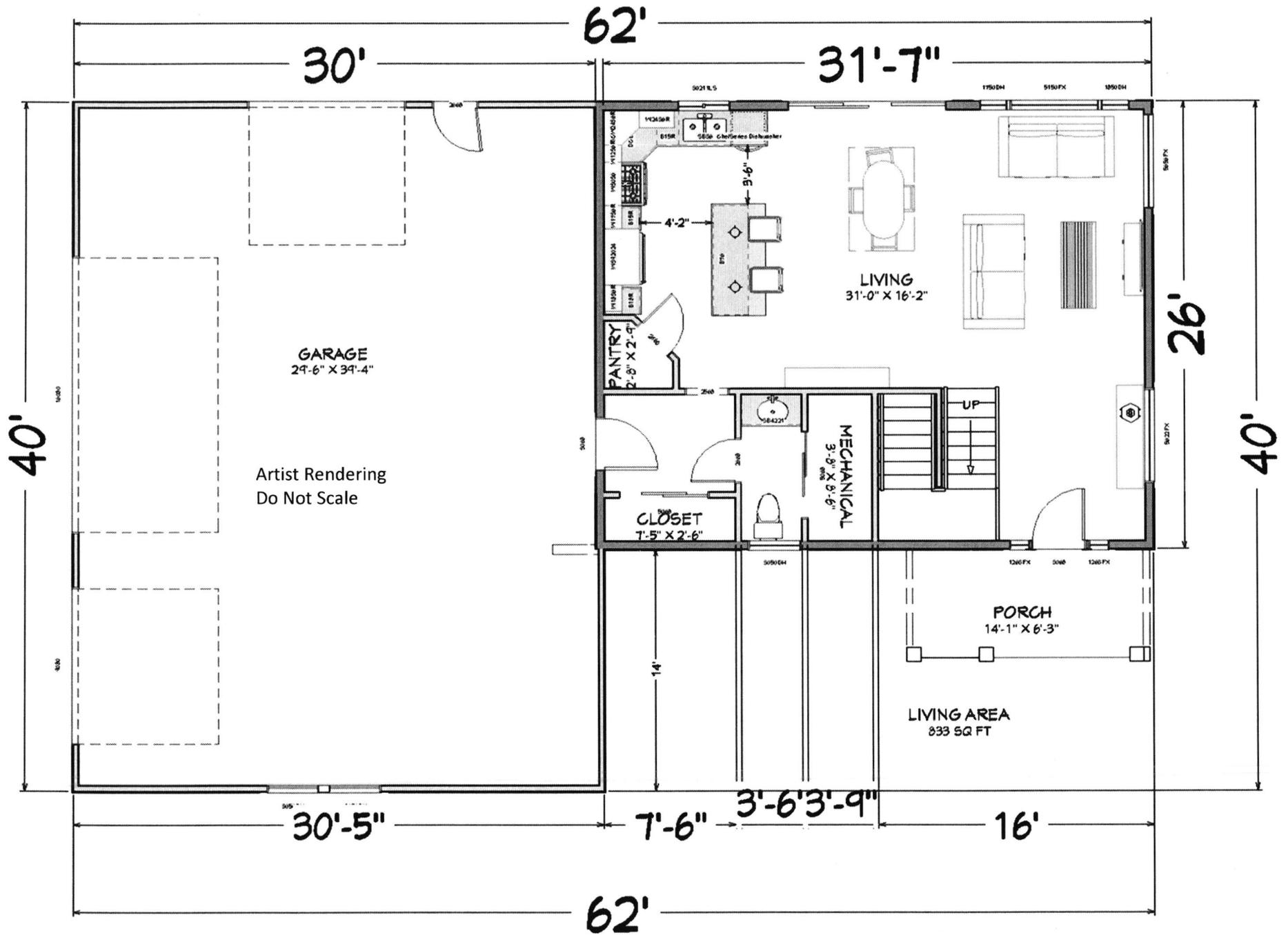


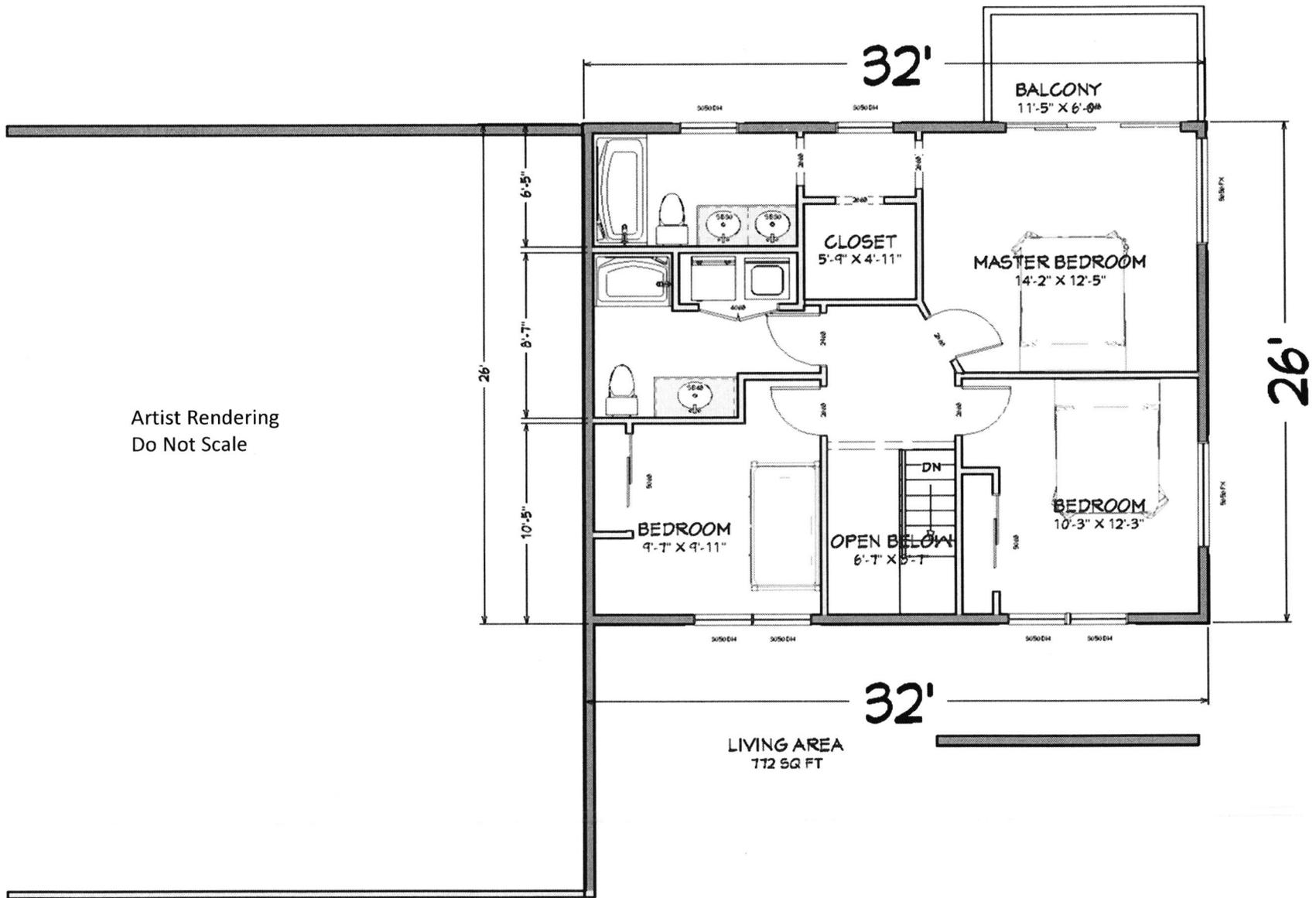












Artist Rendering
Do Not Scale

LIVING AREA
772 SQ FT

32'

BALCONY
11'-5" X 6'-0"

CLOSET
5'-9" X 4'-11"

MASTER BEDROOM
14'-2" X 12'-5"

BEDROOM
9'-7" X 9'-11"

BEDROOM
10'-3" X 12'-3"

OPEN BELOW
6'-7" X 5'-7"

32'

26'

26'

6'-5"

8'-7"

10'-5"

DN

	Dimensions		Total	Square footage
	Width	Depth		
Lot size*			0	14,402

Building coverage (square feet)

Existing site conditions:

dwelling/principal building (and attached garage)			0	0
garage			0	0
pole barn 1			0	0
pole barn 2			0	0
shed			0	0
carport			0	0

Proposed site conditions:

dwelling/principal building (and attached garage)			0	3,212
garage			0	0
pole barn 1			0	0
pole barn 2			0	0
shed			0	0
carport			0	0

Existing total building square footage 0

Proposed total building square footage 3,212

Total building coverage permitted (35%) 5,041

Is proposed building coverage within permissible limit? 22.3% **YES**

Impermeable surface coverage (square feet)

Existing site conditions:

driveway (paved and gravel)			0	0
sidewalk (paved and gravel)			0	0
sidewalk (paved and gravel)			0	0
roads/streets			0	0
parking pad (paved and gravel)			0	0
storage area (paved and gravel)			0	0

Proposed site conditions:

driveway (paved and gravel)			0	1,200
sidewalk (paved and gravel)			0	180
sidewalk (paved and gravel)			0	0
roads/streets			0	0
parking pad (paved and gravel)			0	0
storage area (paved and gravel)			0	0

Existing total impermeable surface coverage 0

Proposed total impermeable surface coverage 1,380

Lot coverage (square feet)

total proposed building coverage				3,212
total proposed impermeable surface coverage				1,380

Total proposed lot coverage 4,592

Total lot coverage permitted (40% of lot) 5,761

Is lot coverage within permissible limit? 31.9% **YES**



Jeff Weiss <jweiss1111@gmail.com>

Preliminary Flood Zone Evaluation

5 messages

FLOOD ZONE SPECIALISTS <floodzones@att.net>
Reply-To: FLOOD ZONE SPECIALISTS <floodzones@att.net>
To: Jeff Weiss <jweiss1111@gmail.com>

Tue, May 16, 2017 at 11:10 AM

Mr. Weiss,

Regards: Site at (ID# 4715-17-301-083), Lots 32, 33 and 34, Watsons Rush Lake Sub 1, Baudine Road, Hamburg Township, Livingston County, MI.

We have determined:

1. The aforesaid parcel of Lots 32, 33 and 34, Watsons Rush Lake Sub 1, are not eligible for a Letter of Map Amendment (LOMA) due to 95% of the parcel being below the Base Flood Elevation (BFE).
2. We find that the buildable area of the parcel is approximately 0 to 1.0' below the Base Flood Elevation (BFE) on Rush Lake. Should you wish to pursue a LOMR-F, the permitting process will require approval from the Township of Hamburg and the Michigan Department of Environmental Quality (MDEQ).

We have completed the preliminary field work, if you are interested in having the topographic drawing it will be an additional \$600.

We would be more than happy to help you with the permitting process.

Please let me know if you have any further questions.

David P. Smith, P.S., C.F.M.
Flood Zone Specialists
8615 Richardson Rd, Ste 100
Walled Lake, MI 48390
Phone: 248-363-3069
Toll Free: 855-566-3566
Fax: 248-363-1646
www.floodzonespecialists.us

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, September 11, 2019
6:00 P.M.**

1. Call to order:

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

2. Pledge to the Flag:

3. Roll call of the Board:

Present: Auxier, Diepenhorst, Hollenbeck, Neilson, & Watson,
Absent: Priebe
Also Present: Amy Steffens, Planning & Zoning Administrator

4. Correspondence: None

5. Approval of Agenda:

Motion by Hollenbeck, supported by Watson

To approve the agenda as presented

Voice vote: Ayes: 5 Nays: 0 Absent: 1 MOTION CARRIED

6. Call to the public:

Acting Chairperson Auxier 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 19-0015

Owner: Kim and Kevin Muszynski
Location: 3816 Langley, Pinckney MI 48169
Parcel ID: 15-29-202-033

Request: Variance application to allow for the construction of a 5-foot by 12-foot elevated deck with a 5-foot east side yard setback (8-foot side yard setback required for elevated decks, Section 8.18.2.).

Kim & Kevin Muszynski were present. Ms. Muszynski stated that they hired a builder, Mitch Harris, to build their house and deck. They assumed it would be done correctly. Mr. Harris became ill and the construction that was supposed to last 9 months actually lasted 13-14 months. They do not deny that the deck was built incorrectly, but they are at the mercy of the Board.

The question was asked when they moved into the house. Ms. Muszynski stated that they moved in January. Discussion was held on the deck being built as part of the house.

The question was asked if the builder is aware of the problems with the deck and has he agreed to amend the deck to the Township's satisfaction? Ms. Muszynski stated that the builder's solution is to cut the corner of the deck on a diagonal. They do not want a diagonal shaped deck or a deck that would cut off in the middle of the door wall.

Discussion was held on the fact that the deck was not added until May of 2019. It was stated that it was not in the original plans. Mr. Muszynski stated that it was part of the agreement with the builder.

Amy Steffens, Planning & Zoning Administrator stated that the subject site is a 6,621-square foot parcel that fronts onto Langley Drive to the north; Cordley Lake is to the south; single-family dwellings are to the north, east, and west. The site is improved with a recently constructed 1,156-square foot single-family dwelling, with a 976-square foot walk-out basement and a 776-square foot attached garage. If approved, the variance request would allow for the construction of a 5-foot by 12-foot elevated deck with a 5-foot east side yard setback. Our ordinance was amended within the last four months to allow additional encroachment by things like an elevated deck. The new ordinance specifies that an elevated deck may project into a required yard not to exceed six feet provided that the structure is no closer than eight feet to the property line. They are proposing a 5 foot setback. She stated that we do have a history with this elevated deck. On or about April 11, 2018, Hamburg Township received a land use permit application for the construction of a new single-family dwelling on a vacant parcel. Because additional information was needed, including lot coverage calculations and a hold harmless agreement for the location of the grinder pump, the permit application was put on hold. The first week of May, the zoning administrator emailed the contractor to inquire about an elevated deck that was shown on the proposed floorplans but not on the site plan. At that time, the zoning administrator indicated that based on the site plan submitted with the permit application, the proposed elevated deck might not comply with the zoning ordinance setback requirements because no setback was provided on the plan. In follow up telephone conversations between the zoning administrator and the contractor, it was suggested that the size of the deck could be reduced to no more than five feet in any horizontal direction so that it could be permitted as a stoop. A stoop can be that size. That would be allowed because we recognize that people need to get out of the home. It was also suggested that the size of the door opening could be changed or the deck itself could be reduced to meet the setback. The decision was made to remove the deck from the floorplans and the site plan. On May 7, 2018, land use permit 18-011 was issued for the construction of the dwelling without the elevated deck. On June 4, 2018, the contractor emailed staff to inquire again about the elevated deck requirements. On January 4, 2019, zoning staff conducted a final inspection of the construction of the dwelling and noted that no elevated deck had been installed. After a performance bond was placed for the street trees, staff released the final zoning compliance to allow the Livingston County Building Department to issue a certificate of occupancy (CO); the CO clearly indicates that no deck was permitted or constructed. As far as the Township is concerned, it is still a temporary CO because the street trees have yet to be planted. We do have a bond, and they are over their timeline to get the trees planted. On May 1, 2019, zoning staff was made aware that the elevated deck was installed without either a land use permit or a building permit. The Zoning Board of Appeals is bound by 7 findings of fact and must find that a project meets all 7 findings in order to recommend approval.

Steffens reviewed the findings. She stated that there is no exceptional or extraordinary circumstance or condition applicable to this property that do not apply or that would not apply to any other property in the same district or zone. The applicant suggests that the elevated deck was built in this location to minimize grading issues. However, as shown in staff photographs, there is no grade change that could not accommodate a compliant structure. The elevated deck could be reduced in size to comply with the zoning ordinance for a stoop. The dwelling was built to accommodate the grade change from the lake side to the street side, and the site work done in the location of the elevated deck is adequate for a reduced size structure. Furthermore, recent zoning text amendments to Section 11.3. support the community's desire to phase out non-conforming structures, not expand or create them. 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 compliant egress structure in this location. The applicant suggests that there was a misunderstanding about the elevated deck on the part of all parties even though staff advised that the deck would not meet the zoning requirements and suggested a remedy. The CO had already been issued by the LCBD, and no permit was issued for the elevated deck. As stated, there is a compliant remedy to allow egress from the east side of the home that would be less visually impactful to adjacent properties. Creating a non-conformity when a compliant alternative exists is detrimental to the public welfare and contrary to the intent of the Zoning Ordinance. The applicant has not demonstrated that there is a practical difficulty based on any circumstance related to the property itself. Approving the proposed elevated deck based on the circumstances of the applicant does not support the intent of the community's vision as promulgated by the zoning ordinance standards. 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 waterfront. The proposed request would not adversely affect the purpose or objectives of the Master Plan. The need for the variance is self-created and not a condition of the property. The zoning ordinance would allow, under Section 8.18.8., for a stoop that does not exceed five feet in any horizontal direction at this location thereby giving a point of egress into the home. Hamburg Township adopted a zoning text amendment in 2016 that defined a deck and an elevated deck, with associated standards for each. A deck that is less than 24 inches above grade has a less restrictive setback than an elevated deck more than 24 inches above grade because of the privacy and impact concerns associated with an elevated deck. An at-grade deck has no greater impact than a lawn in its natural state, but an elevated deck is visually impactful, presents privacy concerns for adjacent properties, and serves a different purpose than a stoop that is used solely for egress. The proposed elevated deck is 60 square feet in size, nearly two and a half times larger than a compliant structure that is permitted by the zoning ordinance. Additionally, recent changes to Article 11, commonly called the non-conforming article, support the community's desire to phase out non-conforming situations to bring buildings and uses into conformance with the zoning ordinance and the Master Plan. There is no condition or situation of the subject site that is not of so general or recurrent a nature that egress to the dwelling could not be achieved without need for variance. The use of the site is single-family residential and the proposed variance would not change the use. 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 compliant egress structure in this location. There is no practical difficulty why the elevated deck cannot be reduced in size to comply with the zoning ordinance setback requirements. There would be no change to the front elevation, as suggested by the applicant, nor would reducing the size of the structure be out of character with the neighborhood. The necessity for the variance is self-created.

Acting Chairperson Auxier opened the public hearing.

Discussion was held on the definition of a stoop and impact of a stairwell. It was stated that if they had a 5'x5' stoop then the stairwell would be okay per the ordinance.

Ms. Muszynski stated that they did not understand what the Zoning Administrator said.

It was stated that in May, the builder removed the deck from the site plan. Mr. Muszynski stated that they had no idea that was done. She discussed the financial problems and the cuts they had made to the arrangements with the builder. She stated that at one point they did tell her that there was a problem with the deck and she simply asked them to keep her posted about it. She further stated that she thought that between the emails between the Township and the builder, things were being handled. That is why you pay a builder.

Acting Chairperson Auxier closed the public hearing.

Auxier stated that he trusts what the applicant is saying, however we are now left to clean up the mess left by the builder. He stated that he feels that it would not matter if it were a five foot stoop or an eight foot deck. There is no impact to the community.

Diepenhorst stated that he did look at the surrounding properties, and he did not feel that this deck stood out in any way. He further discussed the surrounding area. He would be inclined to leave the deck.

Hollenbeck stated that this is a builder problem and we are left with cleaning up a mess. He too would be inclined to leave the deck as well.

Watson stated that it is nice looking and the neighbors should not have a problem because of the deck.

Motion by Auxier, supported by Watson

Motion to approve variance application ZBA 19-0015 at 3816 Langley to allow for the construction of a 5-foot by 12-foot elevated deck with a 5-foot east side yard setback (8-foot side yard setback required for elevated decks, Section 8.18.2.). The variance does meet the variance standards of Section 6.5. of the Township Ordinance and a practical difficulty does exist on the subject site when the strict compliance with the Zoning Ordinance standards are applied as discussed at 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: 1 MOTION CARRIED

b) ZBA 19-0016

Owner: Richard Olson

Location: 8772 Rushside Dr., Pinckney MI 48169

Parcel ID: 15-17-402-028

Request: Variance application to allow for the construction of a new two-story single-family dwelling with a 1,133 square foot footprint. The proposed dwelling will have a 7.1 foot south side yard setback, resulting in an aggregate side yard setback of 12.4 feet (15-foot aggregate side yard setback required, Section 7.6.1 fn. (4)).

Mr. Dan Merritt of 9815 Fairfax Ct., Pinckney, (architect) was present representing the applicant. He stated that previously they received a variance for the second story wall. During demolition, the wall was leaning toward the neighbor's house. They made the decision to take it down. They now need a variance to put it back. They do not meet the correct setback. They are approved for the second-floor wall, but not the first floor.

The question was asked if the contractor was aware of the requirement to leave 50% of the walls. Mr. Merritt stated that apparently he did not. They did not take down the entire wall. There are still two courses of block that they left.

It was stated that this is the third time this has been before the Board. Discussion was held on the variance for the second story because they did not want to move the wall in by 2-3 feet. Discussion was held on roof support. Further discussion was held on the support wall. It was stated that now the desire is to use the foundation and the two courses of block.

The question was asked what would happen if they had to tear out the footings and move them in. Mr. Merritt stated that they would start all over. He would not save the other footings at that point. The house was built in the 1930s. It would be a brand new house rather than a second-story addition.

Mr. Olson, applicant stated that it is his understanding that not only was the wall out of plumb but it was starting to crumble and was unsafe. It was their decision at that time to take down the wall. The north wall and portions of the east wall remains intact. The footings are fine. That simply need underpinning. They are asking to replace a wall that was deemed unsafe.

Further discussion was held on the original variance. Mr. Olson stated that they redesigned the interior so that there was dead space because living space was a concern.

Amy Steffens, Planning & Zoning Administrator stated that at this point, they have removed more than 50% of the structure, we are now looking at it as a new 2-story home. The original request was for a second story addition.

Acting Chairperson Auxier opened the public hearing.

Amy Steffens, Planning & Zoning Administrator stated that the subject site is a 6,272-square foot lot that fronts onto Rushside Drive to the East; Rush Lake is to the West, and single-family dwellings are located to the north and south of the site. The site is improved by a partially demolished single-story dwelling. If approved, the variance request would permit the construction of a new two-story single-family dwelling with a 1,133 square foot footprint with a 7.1-foot south side yard setback, resulting in an aggregate side yard setback of 11.7 feet. A 15-foot aggregate side yard setback is required per Section 7.6.1 fn. 4.

Steffens reviewed the history of the project. She stated that on September 12, 2018 the Zoning Board of Appeals held a public hearing regarding a proposed 982 square foot second story addition to the existing non-conforming dwelling. After the public hearing, the ZBA discussed the project in depth. According to the minutes of this meeting the following discussion occurred: Member Bohn asked if the structure that was there was going to be demolished. The applicant stated that they would be using the existing block foundation. Member Bohn stated that although he understands using the foundation, there is a way to design this without the need for a variance. These are beautiful plans, however we have had a recent ordinance amendment that speaks directly to this type of circumstance. Chairperson Priebe stated that it is possible to meet the setbacks, but it may not be practical. She discussed the lot and location of the lake. After all of the discussion, the ZBA later tabled the request to allow the applicant time to consider redesigning the project. At the November 14, 2018 the ZBA again considered the project. The applicant had redesigned the plans for the proposed second story addition and indicated that due to the existing first floor load, the bearing walls cannot support a second story that meets the required setbacks. The ZBA held additional discussion at which time, the applicant indicated that they would add dead space within the second story setback rather than living space as originally proposed to minimize any privacy concerns of the neighboring properties. Then the ZBA discussed the fact that the variance request had not changed from the first time they heard the case. They were still asking for a 7.1 foot south side yard setback. Ultimately at that meeting, the ZBA approved the 982 second story addition. On January 17, 2019 a Land Use Permit for the approved project was issued with the following description: Second story addition, remodel first floor, and a new 6.5' x 22.5' elevated deck. On August 9, 2019 Staff was made aware that the work on the house exceeded what was approved by the ZBA and what was permitted under land use permit. Upon investigation, staff noted that more than 50 percent of the exterior walls had been removed, which is a violation of Section 11.3.3. Permitted Repairs which states that Nothing in this Ordinance shall prevent the repair, reinforcement, reconstruction, building construction, or other such improvements of a nonconforming building, or part thereof, rendered necessary by wear and tear, deterioration, flood, fire or vandalism provided that a land use and building permit shall be obtained for such work, the work does not increase or alter the footprint and the work does not consist of the removal of more than 50% of the exterior perimeter walls of the non-conforming structure, except as provided in this Section. On August 9, 2019 Zoning Administrator issued a stop work order because of this violation. The County was informed that a stop work order had been issued, and this halted all permits and all approved variances issued on this property. At that point, the applicant made application for a variance for the reconstruction of a new single-family dwelling within the same footprint as the existing dwelling.

Steffens stated that the ZBA is bound by the seven findings of fact. She reviewed those standards of review. She stated that the piece of the ordinance that talks about the aggregate side yard setbacks is relatively new to the Township. The ordinance was changed to allow a lot that is less than 60 feet wide to have an aggregate side yard setback of 15 feet as long as no one setback is less than 5 feet. We relaxed the standards because we recognize that so many of our waterfront properties are small and constrained. This gives people greater option in designing a compliant project. We also have our ordinance that says if you remove more than 50 percent of the exterior walls, we are going to consider it a new structure. We have addressed situations like this. The setback standards are intended to create an open vista. Staff is particularly concerned about the impact of a second-story addition that does not meet the setbacks. She further discussed the impact of a second story versus a single story. We

have the option now of creating a conforming structure. We want to phase out nonconformities not create them. A substantial property right is not advanced based solely by one architectural design or one site plan layout. There is a way to design a compliant structure. 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. A two-story dwelling in the same footprint is solely a personal preference of the homeowner. The two-story dwelling could be reconfigured to meet the setback requirements. The possibility of increased financial return shall not be deemed sufficient to warrant a variance. The setback is intended to provide adequate space, open vistas, and privacy throughout neighborhoods and amid structures on smaller residential lots to preserve side yards from encroachment of residential structures. Staff is very concerned about approving a second story in a noncompliant location. The subject site is in the West Hamburg/Rush Lake planning area of the Master Plan. This area envisions medium density residential development in the developed areas around Rush Lake. Again, there have been multiple zoning text amendments that have specifically addressed situations such as this where we have a narrow lot with a non-conforming structure and the applicant would like to manipulate that structure somehow. The proposed request would not adversely affect the proposed or objectives of the Master Plan. There is no condition or situation of the subject site that is not of so general or recurrent a nature that the proposed two-story dwelling cannot comply with the required side yard setbacks. The need for the variance arises from a personal preference and not a condition specific to the property. There is a conforming location on the lot where a single-family residential dwelling could be located. The property must be considered, not the design preference of the applicant, in determining if the variance is the minimum necessary to permit reasonable use of the land. There is nothing peculiar about the property, such as topographical changes or significant environmental features that warrants variance approval for a two-story dwelling on this lot.

Mr. Merritt asked if they were to get 2.1 feet from his neighbor on the north side, could they then build what they want with no variance. It was stated that they need to make up 3.3 feet. It was stated that this would be a boundary change. Steffens discussed the need for a survey, etc. She stated that we would need to make sure that we would not put that neighbor into a non-conforming situation.

Acting Chairperson Auxier asked if the applicant would like this tabled to investigate other options or would he prefer the Board to make a decision. Mr. Merritt stated that he would like the discussion to continue. Mr. Olson discussed the construction of the wall that was removed and stated that they are not asking for more than the existing footprint. He further discussed the fact that he is not able to live in the home and the time that it may require to ask his neighbor for additional property if they were even inclined to do so. He would ask the Board to consider his request.

Acting Chairperson Auxier closed the public hearing.

Member Diepenhorst stated he is in favor of denying the request and the applicant exploring other options.

Member Hollenbeck stated that the applicant was aware of the situation. They have been before the Board twice. The builder made a decision, but perhaps he should have been made aware that by tearing down this wall, it would create a new situation.

Member Watson stated that this is the third time they have been here, and he would favor denial. However, if the rest of the Board favored tabling, he would support that.

Member Neilson stated that if the Board denies the request, then they could not re-apply. Steffens stated that if denied, the applicant may not come back to the ZBA for a period of 12 months except on the grounds of newly discovered evidence or proof of changed conditions. If it is tabled, we can come back in October.

Auxier stated that he would agree that the applicant does have an opportunity now to bring the structure into compliance. It is a small lot, but a lot of lake lots are. A second story is going to impact the neighbors. He would be inclined to deny the request, but it is the applicant's choice.

Discussion was held on deadline for the next meeting in order submit a revised plan. It was stated that if they revise the plans to make it in compliance with the setbacks, there is no need to come back before this Board. Discussion was held on a more likely support if the second story were in compliance. Mr. Olson requested that the Board table his request to investigate his options.

Motion by Auxier, supported by Diepenhorst

To table variance request ZBA 19-0016 for 8772 Rushside Drive

Voice vote: Ayes: 5 Nays: 0 Absent: 1 MOTION CARRIED

8. New/Old business

a) Approval of July 10, 2019 ZBA Minutes

Motion by Neilson, supported by Watson

To approve the minutes of the July 10, 2019 Minutes as written

Voice vote: Ayes: 5 Nays: 0 Absent: 1 MOTION CARRIED

b) Memorialization of findings: 19-005, 19-006, 19-007, 19-008, 19-009, 19-010, 19-011, 19-012, 19-013, 19-014

9. Adjournment:

Motion by Neilson, supported by Diepenhorst

To adjourn the meeting

Voice vote: Ayes: 5 Nays: 0 Absent: 1 MOTION CARRIED

The meeting was adjourned at 7:24 p.m.

Respectfully submitted,

Julie C. Durkin
Recording Secretary

The minutes were approved as presented/Corrected:_____

Acting Chairperson Auxier